

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1991
First Extraordinary Session, 1991

BJW Printers, Beckley, W. Va.



FOREWORD

This volume contains the Acts of the First Regular and the First Extraordinary Sessions of the 70th Legislature, 1991.

First Regular Session, 1991

The First Regular Session of the 70th Legislature convened on January 9, 1991. The constitutional sixty-day limit on the duration of the session was midnight, March 9, 1991. However, the session was extended by Proclamation of the Governor for the sole consideration of the Budget Bill, and the Legislature adjourned its Regular Session *sine die* on March 17, 1991.

Bills totaling 1,624 were introduced in the two houses during this session (987 House and 637 Senate). The Legislature passed 179 bills, 91 House and 88 Senate. The Governor vetoed two Senate bills (S. B. 533 and S. B. 538), leaving a net total of 177 bills which became law.

One hundred nine concurrent resolutions were introduced during the session, 55 House and 54 Senate, of which 15 House and 10 Senate were adopted. Twenty-two House Joint and 11 Senate Joint Resolutions were introduced proposing amendments to the State Constitution. S. J. R. 4, Local Government Levy and Bond Issue Amendment, was adopted. The House had 21 House Resolutions and the Senate had 35 Senate Resolutions, of which 11 House and 30 Senate were adopted.

The Senate failed to pass 85 House bills passed by the House and 52 Senate bills failed passage by the House. One House bill (Com. Sub. for H. B. 2665) and one Senate bill (Com. Sub. for S. B. 485) died in conference.

First Extraordinary Session, 1991

The First Extraordinary Session convened at 12:36 P.M. on March 17, 1991, and adjourned *sine die* at 1:20 P.M., on March 17, 1991.

The Proclamation convening the session contained two items for consideration during the session.

Two House bills were introduced, passed and approved by the Governor.

The House introduced and adopted one House Resolution, authorizing the appointment of employees for the Extraordinary Session. The Senate introduced and adopted four Senate Resolutions.

* * * * *

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

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

DONALD L. KOPP,
*Clerk of the House and
Keeper of the Rolls.*

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MEMBERS OF THE SENATE

REGULAR SESSION, 1991

OFFICERS

President—Keith Burdette, Parkersburg
President Pro Tem—William R. Sharpe, Jr., Weston
Clerk—Darrell E. Holmes, Charleston
Sergeant at Arms—Estil L. Bevins, Williamson
Doorkeeper—Porter Cotton, Chesapeake

District	Name	Address	Prior Service in Senate
First.....	Thais Blatnik (D)	Wheeling	(House 63rd; 65th-67th); 69th
	John G. Chernenko (D)	Wellsburg	66th-69th
Second.....	Don Macnaughtan (D)	New Martinsville	
	Larry Wiedebusch (D)	Glen Dale	(House 62nd-67th); 69th
Third.....	Donna J. Boley (R)	St. Marys	Appt. 5/14/85; 67th; 68th-69th
	Keith Burdette (D)	Parkersburg	(House 64th-65th); 66th-69th
Fourth.....	Oshel B. Craigo (D)	Hurricane	(House 65th); 66th-69th
	Robert L. Dittmar (D)	Ravenswood	69th
Fifth.....	Homer Heck (D)	Huntington	65th-66th; 69th
	Ned Jones (D)	Huntington	Appt. 12/30/85; 67th; 68th-69th
Sixth.....	H. Truman Chafin (D)	Williamson	66th-69th
	A. Keith Wagner (D)	Jaeger	69th
Seventh.....	Sammy D. Dalton (D)	Harts	(House 62nd-67th; 69th)
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd-64th); 65th-69th
Eighth.....	James F. Humphreys (D)	Charleston	(House 66th-68th); Appt. 9/13/89; 69th
	Mark Anthony Manchin (D)	Charleston	69th
Ninth.....	Billy Wayne Bailey, Jr. (D)	Alpoca	Appt. 1/8/91
	William R. Wooton (D)	Beekley	(House 63rd-67th; 69th)
Tenth.....	Leonard W. Anderson (D)	Summers	
	Tony E. Whitlow (D)	Kellysville	(House 60th-61st; 63rd-66th); 67th-69th
Eleventh.....	J. D. Brackenrich (D)	Lewisburg	68th-69th
	Robert Kelvin Holliday (D)	Fayetteville	(House 56th-58th); 59th-60th; 65th-69th
Twelfth.....	Walt Helmick (D)	Marlinton	(House 1 yr.; 69th); Appt. 9/25/89; 69th
	Jae Spears (D)	Elkins	(House 62nd-64th); 65th-69th
Thirteenth.....	Joseph M. Minard (D)	Clarksburg	(House Appt. 1/10/83; 66th; 67th-69th)
	William R. Sharpe, Jr. (D)	Weston	55th-64th; 67th-69th
Fourteenth.....	Eugene Claypole (D)	Granville	
	Joe Manchin, III (D)	Fairmont	(House 66th); 68th-69th
Fifteenth.....	Charles B. Felton, Jr. (D)	Rowlesburg	Appt. 5/21/87; 68th; 69th
	J. M. Withers (D)	Grafton	
Sixteenth.....	Thomas J. Hawse, III (D)	Moorefield	(House 67th-68th); 69th
	Sondra Moore Lucht (D)	Martinsburg	66th-69th
Seventeenth.....	Charlotte Jean Pritt (D)	Charleston	(House 67th-68th); 69th
	Martha G. Wehrle (D)	Charleston	(House 62nd-66th); Appt. 9/5/89; 69th
	(D) Democrats		33
	(R) Republicans		1
	TOTAL		34

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1991

OFFICERS

Speaker—Robert C. Chambers, Huntington*Speaker Pro Tem*—W. E. Anderson, Logan*Clerk*—Donald L. Kopp, Clarksburg*Sergeant at Arms*—Oce W. Smith, Jr., Fairmont*Doorkeeper*—E. Don Yoak, Spencer

District	Name	Address	Prior Service in House
First.....	Sam Love (D).....	Weirton.....	66th-69th
	Tamara Pettit (D).....	New Cumberland	Appt. 11/20/89, 69th
Second.....	Paul R. Higgins (D).....	Follansbee.....	
	Robert G. Lindsey, Jr. (D).....	Wellsburg.....	
Third.....	Greg D. Martin (R).....	Wheeling.....	
	David B. McKinley, P.E. (R).....	Wheeling.....	65th-69th
	L. Gil White (R).....	Wheeling.....	
Fourth.....	Donald A. Haskins (R).....	Glen Dale.....	
	Joseph D. Parriott (R).....	Moundsville.....	
Fifth.....	Dave Pethel (D).....	Hundred.....	69th
Sixth.....	James E. Willison (R).....	Sistersville.....	69th
Seventh.....	Otis A. Leggett (R).....	St. Marys.....	68th-69th
Eighth.....	J. D. Beane (D).....	Vienna.....	
	Larry Border, R.Ph. (R).....	Davisville.....	
	Brenda Brum (D).....	Parkersburg.....	
	Robert W. Burk, Jr. (R).....	Parkersburg.....	58th-59th (Appt. to Senate 2/23/69, 59th); Appt. to House 1/17/86, 67th; 68th-69th
	Barbara W. Sims (R).....	Parkersburg.....	
Ninth.....	John Campbell (D).....	Sutton.....	
	Randy Schoonover (D).....	Clay.....	69th
Tenth.....	Bob Ashley (R).....	Spencer.....	67th-69th
Eleventh.....	Bill Carmichael (R).....	Ripley.....	Appt. 7/8/69; 61st; 64th-67th
Twelfth.....	Charley Damron (D).....	Leon.....	62nd-63rd; 65th-66th; 69th
	Deborah F. Phillips (D).....	Scott Depot.....	67th-69th
	Ben Vest (D).....	Scott Depot.....	
	Patricia Holmes White (D).....	Poca.....	67th-69th
Thirteenth.....	Robert C. Chambers (D).....	Huntington.....	64th-69th
	Rick Houvooras (D).....	Huntington.....	68th-69th
	John C. Huntwork, M.D. (D).....	Huntington.....	
	James Hanly Morgan (D).....	Huntington.....	69th
	Evelyn E. Richards (R).....	Huntington.....	64th; 67th; 69th
	Stephen T. Williams (D).....	Huntington.....	68th-69th
Fourteenth.....	Kenneth Adkins (D).....	Huntington.....	68th-69th
	Walter Rollins (D).....	Kenova.....	60th-62nd (Senate 63rd-64th); 67th-69th
Fifteenth.....	Grant Preece (D).....	Ragland.....	
	Jim Reid (D).....	Williamson.....	68th-69th
Sixteenth.....	W. E. Anderson (D).....	Logan.....	67th-69th
	Tracy Dempsey (D).....	Harts.....	
	Joe C. Ferrell (D).....	Logan.....	66th-69th
	Larry Hendricks (D).....	Chapmanville.....	
Seventeenth.....	Delores W. Cook (D).....	Ridgeview.....	69th
Eighteenth.....	Ernest C. Moore (D).....	Thorpe.....	60th-63rd; 65th-69th
	Rick Murensky (D).....	Welch.....	65th-69th

HOUSE OF DELEGATES

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Nineteenth.....	Richard Browning (D).....	Oceana.....	69th
	W. Richard Staton (D).....	Mullens.....	69th
Twentieth.....	Gilbert E. Bailey (D).....	Camp Creek.....	66th-68th
	William G. Carper, Jr. (D).....	Bluefield.....	
	Richard D. Flanigan (D).....	Princeton.....	66th-69th
	Odell H. Huffman (D).....	Princeton.....	59th-60th; (Senate 61st-66th)
Twenty-First....	Mary Pearl Compton (D).....	Union.....	69th
Twenty-Second	Robert S. Kiss (D).....	Prosperity.....	69th
	Perry E. Mann (D).....	Hinton.....	
	Pat Reed (D).....	Beckley.....	
	Jack J. Roop (D).....	Beckley.....	66th-69th
	Tom Susman (D).....	Beckley.....	68th-69th
Twenty-Third....	Bonnie L. Brown (D).....	South Charleston	66th-68th
	Ann Calvert (R).....	Charleston.....	
	Ramona Tate Cerra (D).....	Charleston.....	69th
	Joseph H. Farris (D).....	Charleston.....	
	Ruth Goldsmith (R).....	South Charleston	65th
	David Grubb (D).....	Charleston.....	69th
	Nancy Kessel (D).....	Charleston.....	
	Charlotte R. Lane (R).....	Charleston.....	64th
	Margaret Miller (R).....	South Charleston	69th
	Phyllis J. Rutledge (D).....	Charleston.....	59th-61st; 69th
	Sharon Spencer (D).....	Charleston.....	66th; 68th-69th
	Martha Yeager Walker (D).....	Charleston.....	
Twenty-Fourth	Paul M. Blake, Jr. (D).....	Fayetteville.....	69th
	Tom Louisois (D).....	Oak Hill.....	67th-68th
	Lucile S. Meadows (D).....	Fayetteville.....	Appt. 12/11/90
Twenty-Fifth....	James J. Rowe (D).....	Lewisburg.....	69th
	Bill Wallace (R).....	Clintonville.....	69th
Twenty-Sixth....	C. Farrell Johnson (D).....	Summersville.....	68th-69th
	Eugene T. Wilson (D).....	Cowen.....	69th
Twenty-Seventh	Joe Martin (D).....	Elkins.....	Appt. 6/15/78, 63rd; 64th-69th
	Bill Proudfoot (D)	Elkins.....	
Twenty-Eighth	Dale F. Riggs (R).....	Buckhannon.....	69th
	Donald L. Stemple (R).....	Philippi.....	65th; 67th-69th
Twenty-Ninth....	Robert J. Conley (R).....	Weston.....	65th-69th
Thirtieth.....	Percy C. Ashcraft, II (D).....	Clarksburg.....	66th-69th
	Ron Fragale (D).....	Nutter Fort.....	
	Floyd Fullen (D).....	Bridgeport.....	66th-68th
	Barbara Ann Warner (D).....	Bridgeport.....	69th
Thirty-First....	Roman W. Prezioso, Jr. (D).....	Fairmont.....	69th
	Paul E. Prunty (R).....	Fairmont.....	61st; 63rd-65th; 67th,
	William Ellsworth Stewart (D)	Fairmont.....	66th; 68th
	John R. Taylor (D).....	Grafton.....	
Thirty-Second....	Robert C. Beach (D).....	Core.....	Appt. 7/27/90, 69th
	Stephen L. Cook (D).....	Morgantown.....	Appt. 1/21/80, 64th; 65th
			(Senate 66th-67th); 69th
	Brian Gallagher (D).....	Morgantown.....	Appt. 5/22/89, 69th
	Greg Sayre (D).....	Morgantown.....	
Thirty-Third....	David Collins (D).....	Davis.....	
	David E. Miller (D).....	Kingwood.....	69th
Thirty-Fourth....	Allen V. Evans (R).....	Dorcas.....	
	Robert A. Schadler (R).....	Keyser.....	69th
Thirty-Fifth....	Harold K. Michael (D).....	Moorefield.....	69th
Thirty-Sixth....	Jerry L. Mezzatesta (D).....	Romney.....	68th-69th
Thirty-Seventh	Vicki V. Douglas (D).....	Martinsburg.....	
Thirty-Eighth....	Larry V. Faircloth (R).....	Inwood.....	65th-69th
Thirty-Ninth....	John Overington (R).....	Martinsburg.....	67th-69th
Fortieth.....	Dale Manuel (D).....	Charles Town.....	69th

(D) Democrats.....	74
(R) Republicans.....	26
TOTAL.....	100

**COMMITTEES OF THE
HOUSE OF DELEGATES**

Regular Session, 1991

STANDING

Agriculture and Natural Resources

D. Miller (*Chairman of Agriculture*), Compton (*Vice Chairman of Agriculture*), Love (*Chairman of Natural Resources*), Johnson (*Vice Chairman of Natural Resources*), Bailey, Browning, Campbell, Fragale, Hendricks, Michael, Pethtel, Preece, Reed, Sayre, Schoonover, Stewart, Vest, Warner, Wilson, Border, Evans, Leggett, Riggs, Stemple and Willison.

Banking and Insurance

Rutledge (*Chairman of Banking*), Williams (*Vice Chairman of Banking*), Susman (*Chairman of Insurance*), Adkins (*Vice Chairman of Insurance*), Beane, Carper, Collins, S. Cook, Damron, Dempsey, Farris, Ferrell, Flanigan, Gallagher, Grubb, Michael, Staton, Vest, Ashley, Border, Carmichael, Goldsmith, McKinley, Riggs and L. White.

Constitutional Revision

Brown (*Chairman*), Blake (*Vice Chairman*), Beach, Beane, Browning, Fullen, Houvouras, Huffman, Kessel, Kiss, Lindsey, Louisos, Manuel, Meadows, Moore, Pethtel, Preece, Prezioso, Faircloth, McKinley, Overington, Parriott, Prunty, Stemple and Wallace.

Education

Ashcraft (*Chairman*), Prezioso (*Vice Chairman*), Beach, Blake, Carper, Compton, D. Cook, Hendricks, Kessel, Lindsey, Mezzatesta, D. Miller, Phillips, Proudfoot, Schoonover, Spencer, Susman, Williams, Border, Goldsmith, Haskins, Leggett, G. Martin, Prunty and Richards.

Finance

Murensky (*Chairman*), Kiss (*Vice Chairman*), Adkins, Anderson, Bailey, Browning, Campbell, Collins, S. Cook, Farris, Flanigan, Houvouras, Louisos, Mezzatesta, Morgan, Pettit, Rutledge, Warner, P. White, Burk, Conley, Faircloth, McKinley, M. Miller and Stemple.

Government Organization

J. Martin (*Chairman*), Cerra (*Vice Chairman*), Beane, Dempsey, Fragale, Fullen, Higgins, Johnson, Love, Meadows, Michael, Preece, Reed, Sayre, Stewart, Taylor, Vest, Walker, Calvert, Evans, Overington, Parriott, Wallace, L. White and Willison.

Health and Human Resources

P. White (*Chairman*), S. Cook (*Vice Chairman*), Brown, Brum, D. Cook, Douglas, Flanigan, Gallagher, Grubb, Huffman, Kessel, Mann, Mezzatesta, Morgan, Pettit, Roop, Susman, Taylor, Walker, Conley, Haskins, Lane, M. Miller, Richards and Sims.

Industry and Labor

Spencer (*Chairman*), Schoonover (*Vice Chairman*), Adkins, Campbell, Compton, Farris, Hendricks, Louisos, D. Miller, Phillips, Prezioso, Proudfoot, Reed, Reid, Stewart, Walker, Wilson, Calvert, Carmichael, Haskins, M. Miller, Overington, Parriott, Prunty and Sims.

Interstate Cooperation

Pethtel (*Chairman*), Brown, Ferrell, Fullen, Michael, Lane and Overington.

Judiciary

Rowe (*Chairman*), Staton (*Vice Chairman*), Brum, Brown, Damron, Douglas, Ferrell, Fullen, Gallagher, Grubb, Huffman, Huntwork, Mann, Manuel, Moore, Pethtel, Reid, Roop, Wilson, Ashley, Carmichael, Lane, Riggs, Schadler and Sims.

Pensions and Retirement

Browning (*Chairman*), Kiss (*Vice Chairman*), Morgan, Prezioso, Rollins, Ashley and Wallace.

Political Subdivisions

Roop (*Chairman*), Manuel (*Vice Chairman*), Bailey, Beach, Collins, Damron, Douglas, Higgins, Houvouras, Huntwork, Johnson, Kiss, Mann, Meadows, Pettit, Phillips, Proudfoot, Sayre, Calvert, Goldsmith, Faircloth, G. Martin, Richards, Schadler and Willison.

Roads and Transportation

Reid (*Chairman*), Warner (*Vice Chairman*), Anderson, Blake, Brum, Carper, Cerra, D. Cook, Dempsey, Ferrell, Fragale, Fullen, Higgins, Huntwork, Love, Morgan, Staton, Taylor, Conley, Evans, Leggett, G. Martin, Schadler, L. White and Wallace.

Rules

Chambers (*Chairman*), Ashcraft, Houvouras, J. Martin, Mezzatesta, Murensky, Rollins, Rowe, P. White, Burk, Faircloth and Stemple.

SELECT**Select Committee on Redistricting**

Damron (*Chairman*), Staton (*Vice Chairman*), Blake, Brown, Ferrell, Flanigan, Houvouras, Love, Manuel, J. Martin, Moore, Roop, Warner, Burk, Faircloth, Lane and McKinley.

JOINT**Commission on Special Investigations**

Chambers (*Co-Chairman*), J. Martin, Rowe, Faircloth and Lane.

Enrolled Bills

Moore (*Chairman*), D. Cook (*Vice Chairman*), Overington and Willison.

Government and Finance

Chambers (*Co-Chairman*), Murensky, Ashcraft, Rollins, Rowe, Ashley and Burk.

Government Operations

J. Martin (*Co-Chairman*), Cerra, Love, Wallace and L. White.

Legislative Commission on Juvenile Law

Brown (*Co-Chairman*), Douglas and Schadler.

Legislative Rule-Making Review

Grubb (*Co-Chairman*), Roop (*Vice Chairman*), Gallagher, Love, Burk and Faircloth.

Rules

Chambers (*Co-Chairman*) and Burk.

COMMITTEES OF THE SENATE

Regular Session, 1991

STANDING

Agriculture

Hawse (*Chairman*), Dalton (*Vice Chairman*), Anderson, Bailey, Dittmar, Helmick, Minard, Spears, Whitlow and Wiedebusch.

Banking and Insurance

Craigo (*Chairman*), Minard (*Vice Chairman*), Bailey, Dittmar, Hawse, Heck, Jones, J. Manchin, Pritt, Sharpe, Tomblin, Wagner and Wooton.

Confirmations

Whitlow (*Chairman*), Jones (*Vice Chairman*), Blatnik, Chafin, Claypole, Lucht, Tomblin, Wehrle and Wooton.

Education

Lucht (*Chairman*), Wagner (*Vice Chairman*), Bailey, Blatnik, Brackenrich, Dalton, Felton, Hawse, Humphreys, Jones, M. Manchin, Withers and Boley.

Energy, Industry and Mining

Sharpe (*Chairman*), Macnaughtan (*Vice Chairman*), Brackenrich, Chernenko, Dalton, Felton, Helmick, J. Manchin, M. Manchin, Wagner, Wehrle, Withers and Boley.

Finance

Tomblin (*Chairman*), Craigo (*Vice Chairman*), Blatnik, Brackenrich, Chernenko, Hawse, Jones, Lucht, J. Manchin, M. Manchin, Sharpe, Spears, Wagner, Whitlow, Withers, Wooton and Boley.

Government Organization

Spears (*Chairman*), Wiedebusch (*Vice Chairman*), Brackenrich, Chernenko, Claypole, Craigo, Felton, Holliday, Jones, Lucht, J. Manchin, Tomblin, Wehrle and Boley.

Health and Human Resources

Holliday (*Chairman*), Pritt (*Vice Chairman*), Blatnik, Chernenko, Craigo, Macnaughtan, J. Manchin, Sharpe, Spears, Wooton and Boley.

Interstate Cooperation

Wagner (*Chairman*), Claypole (*Vice Chairman*), Dalton, Heck, Holliday, Humphreys and M. Manchin.

Judiciary

Humphreys (*Chairman*), Felton (*Vice Chairman*), Anderson, Bailey, Chafin, Claypole, Dalton, Dittmar, Heck, Helmick, Holliday, Macnaughtan, Minard, Pritt, Wehrle and Wiedebusch.

Labor

Chernenko (*Chairman*), Withers (*Vice Chairman*), Chafin, Claypole, Helmick, Holliday, Humphreys, Macnaughtan, Wagner and Wiedebusch.

Military

Felton (*Chairman*), Helmick (*Vice Chairman*), Bailey, Blatnik, Chernenko, Heck, Minard, Spears and Wooton.

Natural Resources

Brackenrich (*Chairman*), Anderson (*Vice Chairman*), Chafin, Craigo, Dittmar, Hawse, Helmick, Humphreys, Macnaughtan, Minard, Spears, Whitlow, Wiedebusch and Withers.

Pensions

Wehrle (*Chairman*), J. Manchin (*Vice Chairman*), Dittmar, Lucht, Wagner, Withers and Wooton.

Rules

Burdette (*Chairman*), Blatnik, Brackenrich, Chafin, Craigo, Humphreys, Lucht, Pritt, Tomblin and Boley.

Small Business

Blatnik (*Chairman*), M. Manchin (*Vice Chairman*), Anderson, Craigo, Hawse, Jones, Macnaughtan, Minard, Pritt, Sharpe, Tomblin and Whitlow.

Transportation

Dittmar (*Chairman*), Heck (*Vice Chairman*), Anderson, Craigo, Dalton, Sharpe, Tomblin, Wagner and Wiedebusch.

SELECT**Select Committee on Ethical Standards and Practices**

Wehrle (*Chairman*), Dittmar, Holliday, Lucht, Wagner, Whitlow and Boley.

Select Committee on Redistricting

Wooton (*Chairman*), Spears (*Vice Chairman*), Anderson, Brackenrich, Chernenko, Craigo, Felton, Lucht, J. Manchin, Sharpe, Tomblin, Wagner, Wehrle, Wiedebusch and Boley.

JOINT**Commission on Special Investigations**

Burdette (*Co-Chairman*), Blatnik, Craigo, Wooton and Boley.

Enrolled Bills

Heck (*Chairman*), Dittmar (*Vice Chairman*), Anderson, Claypole and M. Manchin.

Government and Finance

Burdette (*Co-Chairman*), Chafin, Craigo, Humphreys, Lucht, Tomblin and Boley.

Government Operations

Spears (*Co-Chairman*), Brackenrich, J. Manchin, Wiedebusch and Boley.

Legislative Commission on Juvenile Law

Lucht (*Co-Chairman*), Felton and Boley.

Legislative Rule-Making Review

Wooton (*Co-Chairman*), Chafin, J. Manchin, Tomblin, Wiedebusch and Boley.

Rules

Burdette (*Co-Chairman*), Chafin and Boley.



LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 1991

CHAPTER 1

(Com. Sub. for H. B. 2492—By Delegates J. Martin and Kiss)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the abandoned mine land reclamation program generally; establishing two new accounts in the state treasury; granting the commissioner of energy authority to expend funds; requirements for expenditures.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-3-2. Legislative findings; intent and purpose of article; jurisdiction and authority of commissioner.

§22-3-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

§22-3-2. Legislative findings; intent and purpose of article; jurisdiction and authority of commissioner.

1 The Legislature finds that there are a substantial
2 number of acres of land throughout the state that were
3 disturbed by surface-mining operations prior to the time
4 of present day effective control and regulation. There
5 was little or no reclamation conducted and the impacts
6 from these unreclaimed lands impose social and eco-
7 nomic costs on residents in nearby and adjoining areas
8 as well as continue to impair environmental quality,
9 prevent or damage the beneficial use of land or water
10 resources, or endanger the health and safety of the
11 public.

12 Further the Legislature finds and declares that, due
13 to the passage of Public Law 95-87, certain areas within
14 the boundaries of this state do not meet present day
15 standards for reclamation.

16 Further, the Legislature finds that Title IV of the
17 Surface Mining Control and Reclamation Act of 1977
18 "Public Law 95-87" provides for the collection of thirty-
19 five cents per ton of coal produced from surface-mine
20 operations and fifteen cents per ton of coal produced
21 from underground mine operations in West Virginia to
22 be collected by the secretary of the United States
23 department of the interior until the thirtieth day of
24 September, one thousand nine hundred ninety-five. At
25 least fifty percent of the funds so collected are to be
26 allocated directly to the state of West Virginia to
27 accomplish reclamation of abandoned coal mining
28 operations, as of the date the state of West Virginia
29 obtained an approved abandoned mine reclamation plan
30 in accordance with sections 405 and 503 of Public Law
31 95-87.

32 Therefore, it is the intent of the Legislature by this
33 article to vest jurisdiction and authority in the commis-
34 sioner of the department of energy to maintain program
35 approval by, and receipt of funds from, the United
36 States department of the interior to accomplish the
37 desired restoration and reclamation of our land and
38 water resources.

**§22-3-4. Abandoned land reclamation fund and objec-
tives of fund; lands eligible for reclamation.**

1 (a) All abandoned land reclamation funds available
2 under Title IV of Public Law 95-87, private donations
3 received, any state appropriated or transferred funds, or
4 funds received from the sale of land by the director,
5 under this article shall be deposited with the treasurer
6 of the state of West Virginia to the credit of the
7 abandoned land reclamation fund heretofore created,
8 and expended pursuant to the requirements of this
9 article.

10 (b) Moneys in the fund may be used by the commis-
11 sioner for the following:

12 (1) Reclamation and restoration of land and water
13 resources adversely affected by past coal surface-mining
14 operations, including, but not limited to, reclamation
15 and restoration of abandoned surface mine areas,
16 abandoned coal processing areas and abandoned coal
17 processing waste areas; sealing and filling abandoned
18 deep mine entries and voids; planting of land adversely
19 affected by past coal surface-mining operations to
20 prevent erosion and sedimentation; prevention, abate-
21 ment, treatment and control of water pollution created
22 by coal mine drainage, including restoration of stream
23 beds and construction and operation of water treatment
24 plants; prevention, abatement and control of burning
25 coal processing waste areas and burning coal in situ;
26 prevention, abatement and control of coal mine subsi-
27 dence; and payment of administrative expenses and all
28 other necessary expenses incurred to accomplish the
29 purpose of this article: *Provided*, That all expenditures
30 from this fund shall reflect the following priorities in
31 the order stated:

32 (A) The protection of public health, safety, general
33 welfare and property from extreme danger of adverse
34 effects of past surface-mining practices;

35 (B) The protection of public health, safety and general
36 welfare from adverse effects of past coal surface-mining
37 practices;

38 (C) The restoration of land and water resources and

39 environment previously degraded by adverse effects of
40 past coal surface-mining practices, including measures
41 for the conservation and development of soil, water
42 (excluding channelization), woodland, fish and wildlife,
43 recreation resources and agricultural productivity;

44 (D) Research and demonstration projects relating to
45 the development of surface-mining reclamation and
46 water quality control program methods and techniques;

47 (E) The protection, repair, replacement, construction
48 or enhancement of public facilities such as utilities,
49 roads, recreation and conservation facilities adversely
50 affected by past coal surface-mining practices;

51 (F) The development of publicly owned land adversely
52 affected by past coal surface-mining practices, including
53 land acquired as provided in this article for recreation
54 and historic purposes, conservation and reclamation
55 purposes and open space benefits.

56 (2) (A) The commissioner may expend up to fifteen
57 percent of the funds allocated to the state in any year
58 through the grants made available under paragraphs (1)
59 and (5), subsection (g) of section 402 of Public Law 95-
60 87 for the purpose of protecting, repairing, replacing,
61 constructing, or enhancing facilities relating to water
62 supply, including water distribution facilities and
63 treatment plants, to replace water supplies adversely
64 affected by coal mining practices.

65 (B) If the adverse effects on water supplies referred
66 to in this subdivision occurred both prior to and after
67 the third day of August, one thousand nine hundred
68 seventy-seven, subdivision (3) of this subsection shall not
69 be construed to prohibit the state from using funds for
70 the purposes of this subdivision if the commissioner
71 determines that such adverse effects occurred predom-
72 inantly prior to the third day of August, one thousand
73 nine hundred seventy-seven.

74 (3) The commissioner may receive and retain up to ten
75 percent of the total of the grants made annually to such
76 state under paragraphs (1) and (5), subsection (g) of

77 section 404 of Public Law 95-87 if such amounts are
78 deposited to the credit of either:

79 (A) A special account in the state treasury designated
80 the "Reclamation and Restoration Fund" which is
81 hereby created. Moneys in the fund may be expended
82 by the commissioner for administrative and personnel
83 expenses and to achieve the priorities stated in subdivi-
84 sion (1) of this subsection after the thirtieth day of
85 September, one thousand nine hundred ninety-five; or

86 (B) A special account in the state treasury designated
87 the "Acid Mine Drainage Abatement and Treatment
88 Fund" which is hereby created. Moneys in the fund may
89 be expended by the commissioner for administrative
90 and personnel expenses and to implement, in consulta-
91 tion with the United States Soil Conservation Service,
92 acid mine drainage abatement and treatment plans
93 approved by the secretary of the United States depart-
94 ment of interior. Such plans shall provide for the
95 comprehensive abatement of the causes and treatment
96 of the effects of acid mine drainage within qualified
97 hydrologic units affected by coal mining practices.

98 (c) Except as provided for in this subsection, lands and
99 water eligible for reclamation or drainage abatement
100 expenditures under this article are those which were
101 mined for coal or which were affected by such mining,
102 wastebanks, coal processing or other coal mining
103 processes, and abandoned or left in an inadequate
104 reclamation status prior to the third day of August, one
105 thousand nine hundred seventy-seven, and for which
106 there is no continuing reclamation responsibility:
107 *Provided*, That moneys from the funds made available
108 by the secretary of the United States department of
109 interior pursuant to paragraphs (1) and (5), subsection
110 (g), section 402 of Public Law 95-87 may be expended
111 for the reclamation or drainage abatement of a site that:
112 (1) The surface-mining operation occurred during the
113 period beginning on the fourth day of August, one
114 thousand nine hundred seventy-seven, and ending on or
115 before the twenty-first day of January, one thousand

116 nine hundred eighty-one, and that any funds for
117 reclamation or abatement which are available pursuant
118 to a bond or other financial guarantee or from any other
119 source, and not sufficient to provide for adequate
120 reclamation or abatement of the site; or (2) the surface-
121 mining operation occurred during the period beginning
122 on the fourth day of August, one thousand nine hundred
123 seventy-seven, and ending on or before the first day of
124 October, one thousand nine hundred ninety-one, and that
125 the surety of such surface-mining operation became
126 insolvent during such period, and as of the first day of
127 October, one thousand nine hundred ninety-one, funds
128 immediately available from proceedings relating to such
129 insolvency or from any financial guarantees or other
130 sources are not sufficient to provide for adequate
131 reclamation of the site: *Provided, however,* That the
132 commissioner, with the concurrence of the secretary,
133 makes either of the above-stated findings, and that the
134 site is eligible, or more urgent than the reclamation
135 priorities set forth in paragraphs (A) and (B), subdivi-
136 sion (1), subsection (a) of this section.

137 (d) One purpose of this article is to provide additional
138 and cumulative remedies to abate the pollution of the
139 waters of the state and nothing herein contained shall
140 abridge or alter rights of action or remedies now or
141 hereafter existing, nor shall any provisions in this
142 article or any act done by virtue of this article be
143 construed as estopping the state, municipalities, public
144 health officers or persons as riparian owners or
145 otherwise in the exercise of their rights to suppress
146 nuisances or to abate any pollution now or hereafter
147 existing or to recover damages.

148 (e) Where the governor certifies that the above
149 objectives of the fund have been achieved and there is
150 a need for construction of specific public facilities in
151 communities impacted by coal development, and other
152 sources of federal funds are inadequate and the secre-
153 tary concurs, then the commissioner may expend money
154 from the fund for such construction.

CHAPTER 2

(H. B. 2627—By Delegates Roop and Gallagher)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fifteen, fifteen-a and fifteen-b, article three, chapter twenty-nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the secretary of state's authority to disapprove amendments to emergency rules; granting the attorney general the authority to disapprove amendments to emergency rules filed by the secretary of state; amending time frames; and changing the effective date of an emergency rule.

Be it enacted by the Legislature of West Virginia:

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

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

§29A-3-15a. Disapproval of emergency rules and amendments to emergency rules by the secretary of state; judicial review.

§29A-3-15b. Disapproval of emergency rules and amendments to emergency rules by the attorney general; judicial review.

§29A-3-15. Emergency legislative rules; procedure for promulgation; definition.

1 (a) Any agency with authority to propose legislative
2 rules may, without hearing, find that an emergency
3 exists requiring that emergency rules be promulgated
4 and promulgate the same in accordance with this
5 section. Such emergency rules, together with a state-
6 ment of the facts and circumstances constituting the
7 emergency, shall be filed in the state register and shall
8 become effective upon the approval of the secretary of
9 state in accordance with section fifteen-a of this article
10 or upon the approval of the attorney general in accord-
11 ance with section fifteen-b or upon the thirty-fifth day
12 following such filing, whichever occurs first. Such

13 emergency rules may adopt, amend or repeal any
14 legislative rule, but the circumstances constituting the
15 emergency requiring such adoption, amendment or
16 repeal shall be stated with particularity and be subject
17 to *de novo* review by any court having original jurisdic-
18 tion of an action challenging their validity. Fourteen
19 copies of the rules and of the required statement shall
20 be filed immediately with the secretary of state and one
21 copy shall be filed immediately with the legislative rule-
22 making review committee.

23 An emergency rule shall be effective for not more
24 than fifteen months and shall expire earlier if any of the
25 following occurs:

26 (1) The secretary of state, acting under the authority
27 provided for in section fifteen-a of this article, or the
28 attorney general, acting under the authority provided
29 for in section fifteen-b of this article, disapproves the
30 emergency rule because (A) the agency has exceeded the
31 scope of its statutory authority in promulgating the
32 emergency rule; (B) an emergency does not exist
33 justifying the promulgation of such rule; or (C) the rule
34 was not promulgated in compliance with the provisions
35 of this section.

36 (2) The agency has not previously filed and fails to file
37 a notice of public hearing on the proposed rule within
38 thirty days of the date the proposed rule was filed as
39 an emergency rule; in which case the emergency rule
40 expires on the thirty-first day.

41 (3) The agency has not previously filed and fails to file
42 the proposed rule with the legislative rule-making
43 review committee within ninety days of the date the
44 proposed rule was filed as an emergency rule; in which
45 case the emergency rule expires on the ninety-first day.

46 (4) The Legislature has authorized or directed pro-
47 mulgation of an authorized legislative rule dealing with
48 substantially the same subject matter since such
49 emergency rule was first promulgated, and in which
50 case the emergency rule expires on the date the
51 authorized rule is made effective.

52 (5) The Legislature has, by law, disapproved of such

53 emergency rule; in which case the emergency rule
54 expires on the date the law becomes effective.

55 (b) Any amendment to an emergency rule made by
56 the agency shall be filed in the state register and does
57 not constitute a new emergency rule for the purpose of
58 acquiring additional time or avoiding the expiration
59 dates in subdivision (1), (2), (3) or (4), subsection (a) of
60 this section: *Provided*, That such emergency amendment
61 shall become effective upon the approval of the secretary
62 of state in accordance with section fifteen-a of this
63 article or upon approval of the attorney general in
64 accordance with section fifteen-b of this article or upon
65 the thirty-fifth day following such filing, whichever
66 occurs first.

67 (c) Once an emergency rule expires due to the
68 conclusion of fifteen months or due to the effect of
69 subdivision (1), (2), (3) or (4), subsection (a) of this
70 section, the agency may not refile the same or similar
71 rule as an emergency rule.

72 (d) Emergency legislative rules currently in effect
73 under the prior provisions of this section may be refiled
74 under the provisions of this section.

75 (e) The provision of this section shall not be used to
76 avoid or evade any provision of this article or any other
77 provisions of this code, including any provisions for
78 legislative review and approval of proposed rules. Any
79 emergency rule promulgated for any such purpose may
80 be contested in a judicial proceeding before a court of
81 competent jurisdiction.

82 (f) The legislative rule-making review committee may
83 review any emergency rule to determine (1) whether the
84 agency has exceeded the scope of its statutory authority
85 in promulgating the emergency rule; (2) whether there
86 exists an emergency justifying the promulgation of such
87 rule; and (3) whether the rule was promulgated in
88 compliance with the requirements and prohibitions
89 contained in this section. The committee may recom-
90 mend to the agency, the Legislature, or the secretary of
91 state such action as it may deem proper.

92 (g) For the purposes of this section, an emergency
93 exists when the promulgation of a rule is necessary for
94 the immediate preservation of the public peace, health,
95 safety or welfare or is necessary to comply with a time
96 limitation established by this code or by a federal statute
97 or regulation or to prevent substantial harm to the
98 public interest.

**§29A-3-15a. Disapproval of emergency rules and amend-
ments to emergency rules by the secretary
of state; judicial review.**

1 (a) Upon the filing of an emergency rule or filing of
2 an amendment to an emergency rule by an agency,
3 under the provisions of section fifteen of this article, by
4 any agency, except for the secretary of state, the
5 secretary of state shall review such rule or such
6 amendment and, within thirty-five days of such filing,
7 shall issue a decision as to whether or not such
8 emergency rule or such amendment to an emergency
9 rule should be disapproved. An emergency rule filed by
10 the secretary of state shall be reviewed by the attorney
11 general as provided for in section fifteen-b of this
12 article.

13 (b) The secretary of state shall disapprove an emer-
14 gency rule or an amendment to an emergency rule if he
15 determines:

16 (1) That the agency has exceeded the scope of its
17 statutory authority in promulgating the emergency rule
18 or in filing an amendment to the emergency rule;

19 (2) That an emergency does not exist justifying the
20 promulgation of the rule or the filing of an amendment
21 to the rule; or

22 (3) That the rule or an amendment to the rule was not
23 promulgated in compliance with the provisions of
24 section fifteen of this article.

25 (c) If the secretary of state determines, based upon the
26 contents of the rule or the supporting information filed
27 by the agency, that the emergency rule should be
28 disapproved, he may disapprove such rule without
29 further investigation, notice or hearing. If, however, the

30 secretary of state concludes that the information
31 submitted by the agency is insufficient to allow a proper
32 determination to be made as to whether the emergency
33 rule should be disapproved, he may make further
34 investigation, including, but not limited to, requiring
35 the agency or other interested parties to submit
36 additional information or comment or fixing a date,
37 time and place for the taking of evidence on the issues
38 involved in making a determination under the provi-
39 sions of this section.

40 (d) If the secretary of state determines, based upon
41 the contents of the amendment to an emergency rule or
42 the supporting information filed by the agency, that the
43 amendment to the emergency rule should be disap-
44 proved, he may disapprove such amendment without
45 further investigation, notice or hearing. If, however, the
46 secretary of state concludes that the information
47 submitted by the agency is insufficient to allow a proper
48 determination to be made as to whether the amendment
49 should be disapproved, he may make further investiga-
50 tion, including, but not limited to, requiring the agency
51 or other interested parties to submit additional informa-
52 tion or comment or fixing a date, time and place for the
53 taking of evidence on the issues involved in making a
54 determination under the provisions of this section.

55 (e) The determination of the secretary of state shall
56 be reviewable by the supreme court of appeals under its
57 original jurisdiction, based upon a petition for a writ of
58 mandamus, prohibition or certiorari, as appropriate.
59 Such proceeding may be instituted by:

60 (1) The agency which promulgated the emergency
61 rule;

62 (2) A member of the Legislature; or

63 (3) Any person whose personal property interests will
64 be significantly affected by the approval or disapproval
65 of the emergency rule by the secretary of state.

**§29A-3-15b. Disapproval of emergency rules and amend-
ments to emergency rules by the attorney
general; judicial review.**

1 (a) Upon the filing of an emergency rule or filing of
2 an amendment to an emergency rule by the secretary
3 of state under the provisions of section fifteen of this
4 article, the attorney general shall review such rule or
5 such amendment and, within thirty-five days of such
6 filing, shall issue a decision as to whether or not such
7 emergency rule or such amendment to an emergency
8 rule should be disapproved.

9 (b) The attorney general shall disapprove an emer-
10 gency rule or an amendment to an emergency rule if he
11 determines:

12 (1) That the secretary of state has exceeded the scope
13 of its statutory authority in promulgating the emer-
14 gency rule or in filing an amendment to the emergency
15 rule;

16 (2) That an emergency does not exist justifying the
17 promulgation of the rule or the filing of an amendment
18 to the rule; or

19 (3) That the rule or an amendment to the rule was not
20 promulgated in compliance with the provisions of
21 section fifteen of this article.

22 (c) If the attorney general determines, based upon the
23 contents of the rule or the supporting information filed
24 by the secretary of state, that the emergency rule should
25 be disapproved, he may disapprove such rule without
26 further investigation, notice or hearing. If, however, the
27 attorney general concludes that the information submit-
28 ted by the secretary of state is insufficient to allow a
29 proper determination to be made as to whether the
30 emergency rule should be disapproved, he may make
31 further investigation, including, but not limited to,
32 requiring the secretary of state or other interested
33 parties to submit additional information or comment or
34 fixing a date, time and place for the taking of evidence
35 on the issues involved in making a determination under
36 the provisions of this section.

37 (d) If the attorney general determines, based upon the
38 contents of the amendment to an emergency rule or the
39 supporting information filed by the agency, that the
40 amendment to the emergency rule should be disap-

41 proved, he may disapprove such amendment without
 42 further investigation, notice or hearing. If, however, the
 43 attorney general concludes that the information submit-
 44 ted by the agency is insufficient to allow a proper
 45 determination to be made as to whether the amendment
 46 should be disapproved, he may make further investiga-
 47 tion, including, but not limited to, requiring the agency
 48 or other interested parties to submit additional informa-
 49 tion or comment or fixing a date, time and place for the
 50 taking of evidence on the issues involved in making a
 51 determination under the provisions of this section.

52 (e) The determination of the attorney general shall be
 53 reviewable by the supreme court of appeals under its
 54 original jurisdiction, based upon a petition for a writ of
 55 mandamus, prohibition or certiorari, as appropriate.
 56 Such proceeding may be instituted by:

57 (1) The secretary of state;

58 (2) A member of the Legislature; or

59 (3) Any person whose personal property interests will
 60 be significantly affected by the approval or disapproval
 61 of the emergency rule by the attorney general.

CHAPTER 3

(H. B. 2210—By Delegates Love and Schadler)

[Passed February 19, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two-b,
 chapter nineteen of the code of West Virginia, one
 thousand nine hundred thirty-one, as amended, relating
 to continuation of the meat inspection program.

Be it enacted by the Legislature of West Virginia:

That section one, article two-b, 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 2B. INSPECTION OF ANIMALS, MEAT AND MEAT
 PRODUCTS.**

§19-2B-1. Purpose and construction; continuation of meat inspection program.

1 Subject to the provisions of subsection (a), section
2 seven hereof, the basic purpose of this article is to
3 provide for the inspection, labeling and disposition of
4 animals, carcasses, meat, meat food products and meat
5 byproducts which are to be sold or offered for sale
6 through commercial outlets for human consumption, the
7 licensing of commercial slaughterers, custom slaughter-
8 ers, and processors, and the inspection of slaughter-
9 houses and processing plants located in the state of West
10 Virginia. This article, being intended to protect the
11 health of the citizens of West Virginia, shall be liberally
12 construed.

13 Pursuant to the provisions of section four, article ten,
14 chapter four of this code, the meat inspection program
15 shall continue to exist until the first day of July, one
16 thousand nine hundred ninety-two, to allow for the
17 completion of an audit by the joint committee on
18 government operations.

CHAPTER 4

(Com. Sub. for S. B. 115—By Senators Spears and Brackenrich)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two-g, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the tree fruit industry self-improvement assessment board.

Be it enacted by the Legislature of West Virginia:

That section ten, article two-g, 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 2G. TREE FRUIT INDUSTRY SELF-IMPROVEMENT ASSESSMENT PROGRAM.

§19-2G-10. Termination of program by law.

1 Pursuant to the provisions of section four, article ten,
 2 chapter four of this code, the tree fruit industry self-
 3 improvement assessment board shall continue to exist
 4 until the first day of July, one thousand nine hundred
 5 ninety-three, to allow for the completion of an audit by
 6 the joint committee on government operations.

CHAPTER 5

(Com. Sub. for S. B. 87—By Senators Hawse and Brackenrich)

(Passed February 14, 1991: in effect ninety days from passage. Approved by the Governor.)

AN ACT to amend article nine, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirty-four-a, relating to authority of the commissioner of agriculture to promulgate rules regulating the disposal of dead poultry.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS.

§19-9-34a. Authority of commissioner to promulgate rules regulating disposal of dead poultry.

1 Notwithstanding any other provision of the law, the
 2 commissioner of agriculture is authorized to promulgate
 3 rules to regulate the disposal of dead poultry or other
 4 domestic fowl by persons, firms or corporations engaged
 5 in growing poultry or other domestic fowl for commer-
 6 cial purposes. Said rules shall encompass disposal
 7 methodologies of composting, incineration and render-
 8 ing and shall include emergency situations of flock
 9 depopulation, abnormal death losses or serious disease
 10 outbreak, all in accordance with the provisions of
 11 chapter twenty-nine-a of this code.

CHAPTER 6

(Com. Sub. for H. B. 2305—By Delegate D. Miller)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, six, seven and ten, article ten-b, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to livestock dealers; definitions; changing bonding requirements; investigation of complaints; establishing a board of review; commissioner's powers and duties; increasing criminal penalties; adding civil penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, four, six, seven and ten, article ten-b, 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 10B. LIVESTOCK DEALER'S LICENSING ACT.

§19-10B-2. Definitions.

§19-10B-4. Applicant to furnish bond.

§19-10B-6. Investigation of complaints; board of review; orders of the commissioner; hearing; review.

§19-10B-7. Refusals, suspensions or revocation of licenses.

§19-10B-10. Penalties.

§19-10B-2. Definitions.

1 Unless the context clearly indicates otherwise, as used
2 in this article:

3 (a) "Bond" means a written instrument guaranteeing
4 that the person bonded shall faithfully fulfill the terms
5 of the contract of purchase and guarantee payment of
6 the purchase price of all livestock purchased by
7 him/her, and made payable to the commissioner for the
8 benefit of persons sustaining loss resulting from the
9 nonpayment of the purchase price or the failure to fulfill
10 the terms of the contract of purchase.

11 (b) "Commissioner" means the commissioner of
12 agriculture of the state of West Virginia and duly
13 authorized representatives.

14 (c) "Department" means the department of agricul-
15 ture of the state of West Virginia.

16 (d) "Livestock" means cattle, horses, swine, sheep,
17 goats or any other animal of the bovine, equine, porcine,
18 ovine or caprine specie, and domestic poultry.

19 (e) "Livestock dealer" means a person other than a
20 livestock producer who buys, receives or assembles
21 livestock for resale, either for his/her own account or
22 that of another person.

23 (f) "Livestock producer" means a person selling
24 livestock which he/she has raised or livestock which
25 he/she has additionally purchased and summered or
26 wintered.

27 (g) "Person" means an individual, partnership, corpo-
28 ration, association or other legal entity.

§19-10B-4. Applicant to furnish bond.

1 Before issuing any livestock dealer's license, the
2 commissioner shall require the applicant to file either:

3 (1) A properly attested sworn statement that he or she
4 is maintaining a valid surety bond pursuant to the
5 requirements of The United States Department of
6 Agriculture Packers and Stockyards Act of 1921, 42
7 Stat 159.7 USCA, 181 as amended; or

8 (2) A fully executed bond in an amount prescribed by
9 the commissioner by regulation, but not less than ten
10 thousand dollars, for the benefit of the sellers of
11 livestock who have been wronged or damaged by any
12 fraud or fraudulent practices of the livestock dealer and
13 so adjudged by a court of competent jurisdiction, and
14 who shall have the rights of action for damage for
15 compensation against such bonds. The bond may
16 include, at the option of the applicant, corporate surety
17 bonding, collateral bonding (including costs and secur-
18 ities), establishment of an escrow account, an irrevoca-
19 ble letter of credit or a combination of these methods.
20 If collateral bonding is used, the livestock dealer may
21 elect to deposit cash, or collateral securities or certifi-
22 cates as follows: Bonds of the United States or its

23 possessions, of the federal land bank, or of the home-
24 owners' loan corporation; full faith and credit general
25 obligation bonds of the state of West Virginia, or other
26 states, and of any county, district, or municipality of the
27 state of West Virginia or other states; the certificates of
28 deposit in a bank in this state which certificates shall
29 be in favor of the department.

30 The cash deposit or market value of such securities or
31 certificates shall be equal to or greater than the sum of
32 the bond. It shall be the duty of the applicant to insure
33 that the market value of such bonds is sufficient.

34 (3) The commissioner shall, upon receipt of any such
35 deposits of cash, securities or certificates, promptly
36 place the same with the treasurer of the state of West
37 Virginia whose duty it shall be to receive and hold the
38 same in the name of the state in trust for the purpose
39 for which the deposit is made when the license is issued.
40 The applicant making the deposit shall be entitled from
41 time to time to receive from the state treasurer, upon
42 written approval of the commissioner, the whole or any
43 portion of any cash, securities or certificates so depos-
44 ited, upon depositing with the treasurer in lieu thereof,
45 cash or other securities or certificates of the classes
46 herein specified having value equal to or greater than
47 the sum of the bond. Such bond shall be open to public
48 inspection.

**§19-10B-6. Investigation of complaints; board of review;
orders of the commissioner; hearing;
review.**

1 (a) The commissioner of agriculture is hereby in-
2 vested with the authority to, and shall upon the verified
3 written complaint of any person or by his/her own
4 initiative, investigate the actions of any livestock dealer,
5 or any person who assumes to act in that capacity. Upon
6 verification of the complaint that there is probable
7 cause, the commissioner shall present the complaint and
8 evidence to the board of review. The board of review
9 shall consider all of the facts and recommend a course
10 of action to the commissioner. The commissioner shall
11 then issue an order.

12 (b) The order by the commissioner shall be served
13 upon all persons affected thereby by registered mail.
14 Within ten days of receipt of such order, any party
15 adversely affected thereby may, in writing, request a
16 hearing before the commissioner. Such hearing and any
17 judicial review thereof shall be conducted in accordance
18 with the applicable provisions of articles five and six,
19 chapter twenty-nine-a of this code, as if the same were
20 set forth herein in extenso. The effect of any order shall
21 be suspended during the course of any hearing or
22 subsequent appeals.

23 (c) The board of review shall be appointed by the
24 commissioner and shall include three persons who are
25 residents of West Virginia and citizens of the United
26 States. One member shall be a licensed livestock dealer,
27 one member shall be a verified livestock producer, and
28 one member shall represent the livestock public market
29 industry. The members shall be appointed for terms of
30 three years and may serve successive terms: *Provided,*
31 That at the inception of the board, one member shall be
32 appointed for a three year term, one member for a two
33 year term and one member for a one year term. The
34 first year term shall expire on the first day of January,
35 one thousand nine hundred ninety-two, and subse-
36 quently thereafter the terms shall expire on the first day
37 of January of each year. There shall be no limit to the
38 number of consecutive terms a member may serve on
39 the board. Board members shall receive no compensa-
40 tion for their service on the board, but shall be entitled
41 to receive reimbursement for expenses in accordance
42 with the department of agriculture's travel regulations.

§19-10B-7. Refusals, suspensions or revocation of licenses.

1 The commissioner may refuse to grant or may
2 suspend or revoke a livestock dealer's license when it is
3 determined from the evidence that there is reasonable
4 cause to believe that any of the following situations
5 exists:

6 (a) Where the applicant or licensee has violated the
7 laws of the state or official regulations governing the
8 interstate or intrastate movement, shipment or trans-
9 portation of livestock.

10 (b) Where there have been false or misleading
11 statements as to the health or physical condition of the
12 animals with regard to the official tests or quality of the
13 animals, or the practice of fraud or misrepresentation
14 in connection therewith; in the buying or receiving of
15 animals; or in the receiving, selling, exchanging,
16 soliciting or negotiation of the sale, resale, exchange,
17 weighing or shipment of animals.

18 (c) Where the applicant or licensee acts as a dealer for
19 a person attempting to conduct business in violation of
20 this article, after the notice of such violation has been
21 given the licensee by the commissioner.

22 (d) Where the applicant or licensee fails to practice
23 measures of sanitation, disinfection and inspection of
24 premises or vehicles used for the yarding, holding or
25 transportation of livestock.

26 (e) Where there has been a failure to keep records
27 required by the commissioner, or where there is a
28 refusal on the part of the applicant or licensee to
29 produce records of transactions in the carrying on of the
30 business for which such license is granted.

31 (f) Where the licensee fails to maintain a bond or to
32 adjust a bond upon thirty days notice, or refuses or
33 neglects to pay the fees or inspection charges required
34 to be paid.

35 (g) Where the licensee has been suspended by order
36 of the secretary of agriculture of the United States
37 department of agriculture under provisions of The
38 United States Department of Agriculture Packers and
39 Stockyards Act of 1921, 42 Stat 159.7 USCA, 181 as
40 amended.

§19-10B-10. Penalties.

1 (a) *Criminal penalties*—Any person who shall violate
2 any of the provisions of this article or rule adopted
3 hereunder is guilty of a misdemeanor, and upon
4 conviction thereof, shall be fined not less than one
5 hundred dollars nor more than one thousand dollars for
6 the first offense, and upon conviction of each subsequent
7 offense, shall be fined not less than five hundred dollars
8 nor more than five thousand dollars. Magistrates have

9 concurrent jurisdiction with circuit courts to enforce the
10 provisions of this article.

11 (b) *Civil penalties.*

12 (1) Any person violating a provision of this article or
13 rule adopted hereunder may be assessed a civil penalty
14 by the commissioner. In determining the amount of any
15 civil penalty, the commissioner shall give due consider-
16 ation to the history of previous violations of any person,
17 the seriousness of the violation, and the demonstrated
18 good faith of any person charged in attempting to
19 achieve compliance with this article before and after
20 written notification of the violation.

21 (2) The commissioner may assess a penalty of not
22 more than five hundred dollars for the first offense, and
23 not less than five hundred dollars nor more than five
24 thousand dollars for the second and subsequent offenses.

25 (3) The civil penalty is payable to the state of West
26 Virginia and is collectible in any manner now or
27 hereafter provided for collection of a debt. Any person
28 liable to pay the civil penalty and neglecting or refusing
29 to pay the same, shall be assessed interest at ten percent
30 from the date the penalty was assessed. Such penalty
31 and interest constitute a lien in favor of the state of West
32 Virginia and shall attach on the person's property when
33 such lien is properly recorded in the county where the
34 property is situated. There shall be no cost as a condition
35 precedent to recording.

36 (c) Notwithstanding any other provision of law to the
37 contrary, the commissioner may promulgate and adopt
38 rules in accordance with the provisions of chapter
39 twenty-nine-a of this code, which permit consent
40 agreements or negotiated settlements for the civil
41 penalties assessed as a result of violation of the
42 provisions of this article, and which deal with the civil
43 penalties and procedures thereunder.

44 (d) No state court may allow for the recovery of
45 damages for any administrative action taken if the court
46 finds that there was a probable cause for such action.

CHAPTER 7

(Com. Sub. for S. B. 381—By Senator Hawse)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact articles eleven and eleven-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto two new articles, designated articles eleven-b and twenty-eight, all relating to bulk milk trade law; purpose; definitions; permit for the purchase of milk; certificates of proficiency; licenses; purchase of milk; adulteration; prohibited acts; powers and duties of commissioner; suspension, revocation or denial of permits, licenses and certificates of proficiency; hearings and appeals; criminal penalties; civil penalties; negotiated agreement; payment of fees; cooperation with other entities; confidentiality of trade secrets; dairy products and imitation dairy products standards law; purpose; definitions; permits; labeling; adulteration; misbranded; prohibited acts; approved sampling and testing methods; approved laboratories; powers and duties of commissioner; suspension, revocation or denial of permits; hearings and appeals; criminal penalties; civil penalties; negotiated agreement; payment of fees; cooperation with other entities; confidentiality of trade secrets; frozen desserts and imitation frozen desserts law; purpose; definitions; frozen dessert manufacturer permit; labeling; adulteration; misbranded; prohibited acts; approved sampling and testing methods; approved laboratories; powers and duties of commissioner; suspension, revocation or denial of permits; hearings and appeals; criminal penalties; civil penalties; negotiated agreement; payment of fees; cooperation with other entities; confidentiality of trade secrets; and moving the article relating to vitamin and mineral enrichment of flour and bread to a new place in the chapter to allow all articles relating to milk and milk products to be sequentially grouped together.

Be it enacted by the Legislature of West Virginia:

That articles eleven and eleven-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto two new articles, designated articles eleven-b and twenty-eight, all to read as follows:

Article

- 11. Bulk Milk Trade Law.
- 11A. Dairy Products and Imitation Dairy Products Law.
- 11B. Frozen Desserts and Imitation Frozen Desserts Law.
- 28. Vitamin and Mineral Enrichment of Flour and Bread.

ARTICLE 11. BULK MILK TRADE LAW.

- §19-11-1. Purpose.
- §19-11-2. Definitions.
- §19-11-3. Permit for the purchase of milk.
- §19-11-4. Certificates of proficiency.
- §19-11-5. Licenses.
- §19-11-6. Purchase of milk.
- §19-11-7. Adulteration.
- §19-11-8. Prohibited acts.
- §19-11-9. Powers and duties of commissioner.
- §19-11-10. Suspension, revocation or denial of permits, licenses and certificates of proficiency.
- §19-11-11. Hearings and appeals.
- §19-11-12. Criminal penalties; civil penalties; negotiated agreement.
- §19-11-13. Payment of fees.
- §19-11-14. Cooperation with other entities.
- §19-11-15. Confidentiality of trade secrets.

§19-11-1. Purpose.

1 It is the intent of the Legislature that this article
 2 regulate the purchase of milk on the basis of weight,
 3 measure or components in the milk; confer powers and
 4 impose duties upon the commissioner of agriculture;
 5 prescribe penalties; and provide for the enforcement
 6 thereof.

7 Furthermore, except where otherwise indicated it is
 8 the intent of the Legislature that this article substan-
 9 tially conform with the federal regulations promulgated
 10 under the authority of the United States secretary of
 11 health and human services in order to provide for the
 12 movement of bulk milk, cream and the products

13 manufactured from milk and cream in interstate and
14 intrastate commerce with a minimum of economic
15 barriers.

§19-11-2. Definitions.

1 (a) "Adulterated" means milk or the products manu-
2 factured from milk meeting one or several of the
3 conditions listed in section seven of this article.

4 (b) "Certified tester" means any person who has
5 passed an examination in milk testing, weighing and
6 sampling conducted by the commissioner.

7 (c) "Certified weigher and sampler" means any person
8 who has passed an examination in milk weighing and
9 sampling conducted by the commissioner.

10 (d) "Clean" means the condition where no residue
11 remains on a surface that will, or is likely to, cause
12 adulteration or other contamination.

13 (e) "Commissioner" means the commissioner of agri-
14 culture of the state of West Virginia or his or her duly
15 authorized agent.

16 (f) "Component" means any of the constituent parts of
17 milk in the solids-not-fat, milk fat or water portion of
18 the milk.

19 (g) "Dairy plant" means any place, premises, or
20 establishment where milk is collected, handled, pro-
21 cessed, stored, pasteurized or prepared for further
22 distribution.

23 (h) "Distribute" means the act of transporting,
24 holding for sale, offering for sale, selling, bartering,
25 parceling out, giving or otherwise disposing of milk.

26 (i) "Embargo" means an order to withdraw milk from
27 distribution. An embargo shall detain such milk or milk
28 product and prohibit the transportation or distribution
29 of milk as provided in section nine of this article.

30 (j) "Manufacture" means pasteurizing, ultrapasteuriz-
31 ing, formulating or compounding milk or packaging or
32 preparing said product for distribution.

- 33 (k) "Milk" means the normal lacteal secretion, prac-
34 tically free from colostrum, obtained by the complete
35 milking of one or more healthy cows or goats prior to
36 pasteurization or ultrapasteurization. The term may
37 include the components of milk, including cream.
- 38 (l) "Milk fat" means fat or butterfat in milk.
- 39 (m) "Milk producer" means any person who operates
40 a dairy farm and who provides, sells or offers milk for
41 sale.
- 42 (n) "Milk hauler" means any person who transports
43 milk in an unpackaged form.
- 44 (o) "Person" means any individual, partnership,
45 association, fiduciary, firm, company, corporation, or
46 any organized group of persons whether incorporated or
47 not. The term "person" extends to the agents, servants,
48 officers and employees of the person.
- 49 (p) "Receiving station" means any place, premises, or
50 establishment where milk in unpackaged form is
51 received, collected, handled, stored or cooled and
52 prepared for further transporting.
- 53 (q) "Sanitization" means the application of any
54 effective method or substance to a clean surface for the
55 destruction of pathogens, and of other organisms as far
56 as practicable. Such treatment shall not adversely affect
57 the equipment, the milk or the health of the consumers
58 consuming the milk or milk products manufactured in
59 the equipment and shall be a method acceptable to the
60 commissioner.
- 61 (r) "Solids-not-fat" means all components of milk that
62 are not milk fat or water.
- 63 (s) "Transport" means the movement of milk or milk
64 products from one facility to another in a manner that
65 maintains adequate temperatures and protects the
66 product from freezing temperatures, exposure to the sun
67 and from sources of contamination.
- 68 (t) "Transfer station" means any place, premises or
69 establishment where milk is transferred directly from
70 one transport tank to another.

71 (u) "Transport tank" means any tank which is used
72 for the pickup of milk or the transportation of milk to
73 or from any milk producer, dairy plant, receiving
74 station, or transfer station.

§19-11-3. Permit for the purchase of milk.

1 (a) A "permit for the purchase of milk" shall be issued
2 by the commissioner to each place of operation of each
3 person receiving or buying milk on the basis of the
4 components in the product or weight or measure
5 regardless of the method of settlement, except that
6 transfer stations are exempt from this provision. The
7 permit shall expire on the thirty-first day of March
8 following date of issue.

9 (b) Permits are not transferable with respect to
10 persons or locations.

11 (c) Permits shall be applied for at least fifteen days
12 before the date that the current permit expires or within
13 fifteen days of the date that the person intends to engage
14 in business. Application for all permits shall be made
15 on forms supplied by the commissioner and provide such
16 information as may be considered reasonably necessary
17 by the commissioner. All applications shall be accom-
18 panied by a fee of fifteen dollars. A penalty of two
19 dollars shall be added to all permits that are not applied
20 for or renewed within the time limits set forth in this
21 subsection.

22 (d) Permits shall be posted prominently at the place
23 of operation.

§19-11-4. Certificates of proficiency.

1 (a) Certificates of proficiency shall be issued by the
2 commissioner to individuals who successfully pass an
3 examination given under the terms of this article.

4 (b) Persons requesting an examination shall pay an
5 examination fee of fifteen dollars at the time of the
6 request. Requests for certification for several tests at
7 one time shall be covered under one examination fee.
8 Reexaminations or examinations for additional tests
9 subsequent to the issuing of a certificate will require an

10 additional fee of fifteen dollars. Only persons of good
11 character shall be allowed to take this examination.
12 Examinations shall be given within thirty days of the
13 request and at the time and place that the commissioner
14 shall designate.

15 (c) The examination to weigh and sample milk shall
16 cover the skills needed to weigh and sample milk for the
17 purpose of establishing a price based on the components
18 or weight or volume of the product.

19 (d) The examination to test milk shall cover the skills
20 needed to test, weigh, measure and sample milk for the
21 purpose of establishing a price based on the components
22 or the weight or measure of the product. The examina-
23 tion will test the proficiency of performing the Babcock
24 test and all other testing methods used by that person
25 for determination of the components of milk. The
26 certificate of proficiency shall state which testing
27 methods the applicant will be certified to perform.
28 Testers will have eight months from the effective date
29 of this article to obtain certificates for specific tests and
30 licenses shall be issued under the former certificates
31 during this time period.

32 (e) Certificates shall be issued under a serial number
33 to the person that passed the examination and shall be
34 permanent, except that in the case where the person
35 does not obtain a license as provided for under section
36 five of this article for five successive years then the
37 certificate will automatically expire.

38 (f) Certificates shall be posted prominently at the
39 person's place of business.

40 (g) Persons who fail the examination may be issued
41 a temporary waiver by the commissioner under terms
42 established by rule. The temporary waiver is intended
43 to give the person the opportunity to learn the skills
44 needed to pass the examination. No temporary waiver
45 will be issued if the interests of milk producers and
46 purchasers of milk are not protected.

47 (h) If the examination to test milk is given at a site
48 that requires travel to an out-of-state location, the

49 expenses incurred by the commissioner to travel to the
50 location shall be paid by the person requesting the
51 examination.

§19-11-5. Licenses.

1 (a) Licenses shall be issued by the commissioner to
2 certified testers, certified weighers and samplers and to
3 laboratories performing tests for the components of
4 milk. Licenses are not transferable.

5 (b) Licenses shall expire on the thirtieth day of June
6 following date of issue: *Provided*, That weighers and
7 samplers licenses issued with an expiration date of the
8 thirty-first day of December, one thousand nine hundred
9 ninety-one, shall be extended, at no additional fee,
10 through the thirtieth day of June, one thousand nine
11 hundred ninety-two. Applications for all licenses shall
12 be made on forms supplied by the commissioner and
13 shall provide such information as may be considered
14 reasonably necessary by the commissioner for the
15 administration of this article. Licenses shall be applied
16 for at least fifteen days previous to the date when the
17 current license expires or at least five days before the
18 person intends to do business, except for persons who
19 operate a laboratory for the testing of milk where the
20 initial application shall be made at least thirty days
21 before the person intends to do business to allow for on-
22 site inspection prior to issuing the license. The applica-
23 tion for licenses shall be accompanied by a fee of ten
24 dollars. A penalty of two dollars shall be added to all
25 licenses that are not applied for or renewed within this
26 time limit.

27 (c) A "milk laboratory license" shall be issued to each
28 laboratory where a licensed milk tester performs
29 analytical operations. The license shall not be issued
30 until the commissioner is satisfied that the tests made
31 in such laboratory shall be conducted by qualified
32 persons, with adequate facilities and that such tests
33 shall be performed accurately and according to methods
34 approved by the commissioner.

35 (d) A "milk tester license" shall be issued to persons
36 who determine the weight, measure or components of

37 milk for the purpose of establishing a purchase price for
38 such milk. The license will cover the performance of
39 each test used to determine the purchase price as listed
40 on the person's certificate of proficiency. No test method
41 may be used under provisions of this license until the
42 person has obtained a certificate of proficiency for that
43 test.

44 (e) A "milk weighers and samplers license" shall be
45 issued to persons who weigh or sample milk for the
46 purpose of establishing a purchase price for such milk
47 and who are not involved in testing the components of
48 milk.

49 (f) Licenses shall be posted prominently at the
50 person's place of business.

§19-11-6. Purchase of milk.

1 (a) No determination of the weight or measure of milk
2 may be made from a milk producer's tank that is not
3 properly calibrated and level.

4 (b) No determination of the weight of milk in a
5 transport tank may be made with a device that is not
6 accurate.

7 (c) Each person obtaining a sample of milk for the
8 purpose of establishing a purchase price shall imme-
9 diately record the sample data on the receipt. The
10 receipt shall contain the milk producer's name or
11 number, the date and time of the sample, the temper-
12 ature of the product, the measuring rod reading, the
13 calculated weight, the name of the employer of the
14 weigher and sampler and the signature of the weigher
15 and sampler. A copy of the receipt shall be left with the
16 milk producer, or seller, at the time of obtaining the
17 sample.

18 (d) No test on milk may be made from a sample which
19 is in such condition as to prevent an accurate reading
20 of the components in the product.

21 (e) Only testing methods approved by the commis-
22 sioner may be used. The Babcock method or other
23 method approved by the commissioner shall be the

24 reference method to establish calibration of other milk
25 fat test methods.

26 (f) Each person making tests of samples of milk for
27 the purpose of establishing a purchase price for such
28 milk shall cause the test results to be accurately
29 recorded in an unalterable or verifiable manner. Each
30 method for recording test results may be examined by
31 the commissioner to determine that the test results are
32 recorded in an unalterable or verifiable manner. All test
33 results shall identify the milk producer or seller of the
34 milk, the results of each test for the components in the
35 product and an identification of the person doing the
36 test. The records shall be filed at the place where the
37 testing occurred for a minimum of one year and shall
38 be available to the milk producer, other seller, or the
39 commissioner upon request.

40 (g) Each person testing milk for its components shall
41 retain the remainder of the sample when the commis-
42 sioner so requests for the purpose of verifying sample
43 results.

44 (h) Each person providing payment to a milk pro-
45 ducer or seller of milk on the basis of component content
46 or weight or measure shall provide to the milk producer
47 or seller at each time of payment a statement showing
48 for each milk producer or seller the pay period, total
49 weight or measure of milk received during this period,
50 and the average content of the component(s) of the milk
51 used to establish the purchase price; except that this
52 statement format shall not apply to sales between milk
53 cooperatives and purchasers of milk from cooperatives.
54 Nothing in this requirement may prohibit persons
55 purchasing or receiving milk from giving a more
56 detailed report to the milk producer or seller.

§19-11-7. Adulteration.

1 Any milk or any milk products are considered
2 adulterated within the meaning of this article if:

3 (a) They bear or contain any poisonous or deleterious
4 substance or compound in a quantity which may render
5 it injurious to health;

6 (b) They bear or contain any added poisonous or
7 deleterious substance for which no safe tolerance has
8 been established by state or federal law or regulation
9 or which is found in the product in excess of an
10 established tolerance;

11 (c) They are or have been produced, transported, or
12 held under unsanitary conditions;

13 (d) They contain any substance added thereto so as to
14 make them appear better or of a greater value than they
15 are; or

16 (e) They meet or have met other conditions of
17 adulteration as established by rule.

§19-11-8. Prohibited acts.

1 (a) No person may have in his possession with the
2 intent to sell, transport or manufacture any milk which
3 is adulterated within the meaning of this article.

4 (b) No person may interfere with or prohibit the
5 commissioner from performing the duties of his office.

6 (c) No person may fail to comply with the provisions
7 of an embargo order issued under this article.

8 (d) No person may fail to comply with the provisions
9 of a revocation, suspension or denial order issued under
10 this article.

11 (e) No person who in any official capacity obtains any
12 information under the provisions of this article that
13 would be considered trade secrets regarding the quality,
14 source and disposition of milk may use this information
15 to his or her own personal gain.

16 (f) No person may purchase milk in this state on the
17 basis of, or in any manner with reference to, the weight
18 or measure or the amount of components in the product
19 without a valid "permit for the purchase of milk" and
20 may not establish the price on the basis of measure-
21 ments or tests that have been performed in a dishonest,
22 incompetent, or inaccurate manner, or falsify the
23 records thereof.

24 (g) No person may weigh, measure, sample or test

25 milk produced in this state for the purpose of establish-
26 ing a purchase price of the product without a valid
27 "milk tester license" and may not perform these duties
28 in a dishonest, incompetent or inaccurate manner,
29 falsify the records thereof, or use a testing method
30 unless he has been certified to use that method.

31 (h) No person may weigh, measure or sample milk
32 produced in this state for the purpose of establishing a
33 purchase price of the product without a valid "milk
34 weighers and samplers license" and may not perform
35 these duties in a dishonest, incompetent manner or
36 falsify the records thereof.

37 (i) No person may haul milk in or through this state
38 in a tank truck that has previously been used to haul
39 a chemical or foreign substance unless such tank truck
40 has been cleaned and sanitized according to the rules
41 promulgated by the commissioner prior to the hauling
42 of such milk.

43 (j) No person may sell, offer for sale or expose for sale
44 any milk that is from a herd that does not meet the
45 requirements for animal health as set by rule under this
46 article.

§19-11-9. Powers and duties of commissioner.

1 The commissioner has the power and duty to:

2 (a) Adopt, promulgate and enforce rules to carry out
3 the purpose of this article;

4 (b) Have access to and enter at all reasonable times
5 all places where milk produced in this state is stored,
6 purchased on the basis of weight or measure or
7 component content, transferred, transported, held or
8 used in the state and have access to all places where
9 samples, records, papers or documents relating to these
10 transactions are kept;

11 (c) Inspect and photograph all places where milk
12 produced in this state is stored, purchased on the basis
13 of weight or measure or component content, transferred,
14 transported, held or used; inspect, audit and copy
15 records and papers relating to these activities and the

16 sampling, testing and purchase of milk; examine
17 measuring and testing apparatus; examine milk and
18 milk samples and examine equipment used in holding
19 and transporting milk, except that inspections per-
20 formed under authority of the provisions of article
21 seven, chapter sixteen of this code will not be duplicated;

22 (d) Examine tanks, holding containers, vehicles, and
23 processing equipment holding or intended to hold milk
24 and collect evidence, including samples, from these
25 areas to establish compliance with this article;

26 (e) Open any tank or other container containing or
27 believed to contain milk or samples of milk, for the
28 purpose of inspecting and sampling;

29 (f) Issue permits, certificates, waivers and licenses;

30 (g) Suspend, revoke or deny permits, licenses or
31 certificates;

32 (h) Collect fees and expend moneys under the terms
33 of this article;

34 (i) Give examinations for proficiency in the weighing,
35 sampling and testing of milk;

36 (j) Issue embargoes for any milk which is or is
37 believed to be adulterated or that is not in compliance
38 with this article and to cause the transportation or
39 distribution of the milk to cease. Nothing in this article
40 may be construed as requiring the commissioner to issue
41 embargoes for minor violations of this article when he
42 or she believes that a written notice will serve the public
43 interest.

44 (1) When an embargo is issued, the commissioner shall
45 affix to such product or holding container in an
46 appropriate manner a tag or other marking giving
47 warning that such product is under embargo.

48 (2) The commissioner shall give written notice to the
49 custodian of the product under embargo describing the
50 violation and stating that the product is prohibited from
51 being transported or distributed and is ordered to be
52 held on the premises. This notice shall notify the
53 custodian of the right to request an immediate hearing

54 under the rules that the commissioner shall adopt.

55 (3) The commissioner may take action to seize and
56 condemn any product that is not brought into com-
57 pliance with this article and the rules issued under this
58 article within ninety days of the notice to the custodian
59 of the product.

60 (4) The commissioner has the authority to issue an
61 embargo against a perishable product, even if the
62 practical result is to bring about the involuntary
63 disposal of the product. The commissioner shall exercise
64 this power using all reasonable means to determine if
65 the product is adulterated or otherwise not in com-
66 pliance with this article in as short a time frame as
67 possible and shall promptly lift the embargo order if the
68 product is found to be in compliance with this article;

69 (k) Establish, maintain and make provision for milk
70 testing facilities; approve testing facilities; establish
71 reasonable fees for such tests; and incur such expenses
72 as may be necessary to maintain and operate these
73 facilities;

74 (l) Conduct all sampling and testing using methods set
75 forth in the fifteenth edition of and supplement to the
76 Official Methods of Analysis of the Association of
77 Official Analytical Chemists, published by the Associa-
78 tion of Official Analytical Chemists; or the fifteenth
79 edition of the Standard Methods for the Examination of
80 Dairy Products, published by the American Public
81 Health Association, Inc.; or methods approved by the
82 commissioner;

83 (m) Obtain from any state court an order directing
84 any person to submit to inspection and sampling
85 subsequent to the refusal of any person to allow
86 inspection and sampling;

87 (n) Investigate complaints, showing good cause, that
88 the weighing and sampling or the testing of the raw
89 bulk milk is incorrect, inaccurate or performed in a
90 deceitful manner;

91 (o) Conduct hearings as provided by this article; and

92 (p) Assess civil penalties and refer violations to a
93 court of competent jurisdiction: *Provided*, That the
94 commissioner is not required to report for prosecution
95 minor violations of the article when he or she believes
96 that the public interest will be best served by a written
97 notice.

**§19-11-10. Suspension, revocation or denial of permits,
licenses and certificates of proficiency.**

1 (a) The commissioner may deny any application for a
2 permit, license or certificate whenever said permit,
3 license or certificate has been applied for fraudulently,
4 the applicant has grossly interfered with the duties of
5 the commissioner or the applicant is determined to be
6 not in compliance with or not able to comply with this
7 article.

8 (b) The commissioner may suspend a permit, license
9 or certificate whenever a health hazard exists, the
10 permit, license, or certificate has been obtained fraud-
11 ulently, the holder has grossly interfered with the duties
12 of the commissioner or it is determined that the permit,
13 license or certificate holder is dishonest, deceitful,
14 incompetent or not in compliance with or is unable to
15 comply with this article. A person whose permit, license
16 or certificate has been suspended shall discontinue
17 operations covered by the permit, license or certificate
18 during the period of the suspension. The commissioner
19 may issue a summary suspension in cases where
20 violations of this article constitute a hazard to the public
21 health, safety or welfare where the public interest
22 requires immediate action.

23 (1) Except for summary suspensions, the commis-
24 sioner shall give written notice to the person(s) affected
25 by the pending suspension, stating that he or she
26 contemplates suspension of the permit, license or
27 certificate and giving reasons therefor. The suspension
28 notice shall appoint a time and place for hearing and
29 shall be mailed by certified mail to the business address
30 of the permit, license, or certificate holder at least ten
31 days before the date set for the hearing. The commis-
32 sioner shall review the evidence presented at the

33 hearing prior to issuing his decision.

34 (2) All summary suspensions shall be followed by a
35 notice of suspension, the reasons therefor, and an
36 opportunity for a hearing in accordance with this
37 article.

38 (3) At the end of the period of suspension, the permit,
39 license or certificate holder may resume operations
40 without reapplication for a permit, license or certificate.

41 (c) The commissioner may revoke any permit, license
42 or certificate issued under this article whenever a health
43 hazard exists, the permit, license or certificate has been
44 obtained fraudulently, the holder has grossly interfered
45 with the duties of the commissioner or it is determined
46 that the holder is dishonest, deceitful, incompetent or
47 not in compliance with or is unable to comply with this
48 article. Any person whose permit, license or certificate
49 has been revoked shall immediately discontinue all
50 operations covered under the permit, license or
51 certificate.

52 (1) Before revoking any permit, license or certificate,
53 the commissioner shall give written notice to the persons
54 affected, stating that the revocation of the permit,
55 license or certificate is being contemplated and giving
56 reasons therefor. The revocation notice shall appoint a
57 time and place for hearing and shall be mailed by
58 certified mail to the business address of the permit,
59 license or certificate holder at least ten days before the
60 date set for the hearing. The commissioner shall review
61 the evidence presented at the hearing prior to issuing
62 his decision.

63 (2) At the end of the period of revocation a new
64 permit, license or certificate will not be issued without
65 the filing of an application, payment of the required fee
66 and compliance with all conditions that the commis-
67 sioner shall require for the reissuing of such permit,
68 license or certificate.

§19-11-11. Hearings and appeals.

1 (a) Any person aggrieved by any action taken under
2 this article shall be afforded the opportunity for a

3 hearing before the commissioner under the rules
4 promulgated by the commissioner.

5 (b) Hearings shall be conducted according to proce-
6 dures set forth by rule.

7 (c) All the testimony and evidence at a hearing shall
8 be recorded by mechanical means, which may include
9 the use of tape recordings.

10 The mechanical record shall be maintained for ninety
11 days from the date of the hearing and a transcript shall
12 be made available to the aggrieved party.

13 (d) Any party who feels aggrieved of the suspension,
14 revocation or denial order may appeal within sixty days
15 to the circuit court of the county in which the person's
16 principal place of business is located.

**§19-11-12. Criminal penalties; civil penalties; negotiated
agreement.**

1 (a) *Criminal penalties.* — Any person violating any
2 provision of this article or rules adopted hereunder is
3 guilty of a misdemeanor, and, upon conviction thereof,
4 shall be fined not less than one hundred dollars nor more
5 than five hundred dollars for the first offense, and for
6 the second or subsequent offense shall be fined not less
7 than five hundred nor more than one thousand dollars,
8 or imprisoned in the county jail not more than six
9 months, or both fined and imprisoned. Magistrates have
10 concurrent jurisdiction with circuit courts to enforce the
11 provisions of this article.

12 (b) *Civil penalties.* —

13 (1) Any person violating a provision of this article or
14 rules adopted hereunder may be assessed a civil penalty
15 by the commissioner. In determining the amount of any
16 civil penalty, the commissioner shall give due consider-
17 ation to the history of previous violations of any person,
18 the seriousness of the violation, including any irrepar-
19 able harm to the environment, any hazards to the health
20 and safety of the public and any economic damages to
21 the public and the demonstrated good faith of any
22 person charged in attempting to achieve compliance

23 with this article before and after written notification of
24 the violation.

25 (2) The commissioner may assess a civil penalty of up
26 to one thousand dollars for any violation.

27 (3) The civil penalty is payable to the state of West
28 Virginia and is collectible in any manner now or
29 hereafter provided for collection of debt. If any person
30 liable to pay the civil penalty neglects or refuses to pay
31 the same, the amount of the civil penalty, together with
32 interest at ten percent, is a lien in favor of the state of
33 West Virginia upon the property, both real and per-
34 sonal, of such a person after the same has been entered
35 and docketed to record in the county where such
36 property is situated. The clerk of the county, upon
37 receipt of the certified copy of such, shall enter same to
38 record without requiring the payment of costs as a
39 condition precedent to recording.

40 (c) Notwithstanding any other provision of law to the
41 contrary, the commissioner may promulgate and adopt
42 rules which permit consent agreements or negotiated
43 settlements for the civil penalties assessed as a result of
44 violation of the provisions of this article.

45 (d) Nothing in this article may be construed as
46 requiring the commissioner or his representative to
47 report for prosecution as a result of minor violations of
48 the article when he believes that the public interest will
49 be best served by a suitable notice of warning in
50 writing.

51 (e) Upon application by the commissioner therefor, the
52 circuit court of the county in which the violation is
53 occurring, has occurred or is about to occur, as the case
54 may be, may grant a temporary or permanent injunc-
55 tion restraining any person from violating or continuing
56 to violate any of the provisions of this article or any rule
57 promulgated under this article, notwithstanding the
58 existence of other remedies at law. Any such injunction
59 shall be issued without bond.

60 (f) No state court may allow for the recovery of
61 damages for any administrative action taken, if the

62 court finds that there was a probable cause for the
63 action.

64 (g) It is the duty of the prosecuting attorney of the
65 county in which the violation occurred to represent the
66 department of agriculture, to institute proceedings and
67 to prosecute the person charged with such violation.

§19-11-13. Payment of fees.

1 All fees, penalties or other moneys collected by the
2 commissioner under the provisions of this article shall
3 be paid into a special account and expended upon the
4 order of the commissioner for the purpose of the
5 enforcement and administration of this article.

§19-11-14. Cooperation with other entities.

1 The commissioner may cooperate with and enter into
2 agreements with governmental agencies of this state,
3 other states, agencies of the federal government,
4 agencies of foreign governments, and private associa-
5 tions in order to carry out the purpose and provisions
6 of this article.

§19-11-15. Confidentiality of trade secrets.

1 The commissioner may not make public information
2 which contains or relates to trade secrets, commercial
3 or financial information obtained from a person or
4 privileged or confidential information: *Provided*, That
5 when revealing the information is necessary to carry out
6 the provisions of this article, this information may be
7 revealed, subject to a protective order, to any federal,
8 state or local agency consultant; or may be revealed,
9 subject to a protective order, at a closed hearing or in
10 findings of fact issued by the commissioner.

ARTICLE 11A. DAIRY PRODUCTS AND IMITATION DAIRY PRODUCTS LAW.

- §19-11A-1. Purpose.
- §19-11A-2. Definitions.
- §19-11A-3. Permits.
- §19-11A-4. Labeling.
- §19-11A-5. Adulteration.
- §19-11A-6. Misbranded.
- §19-11A-7. Prohibited acts.

- §19-11A-8. Approved sampling and testing methods.
- §19-11A-9. Approved laboratories.
- §19-11A-10. Powers and duties of commissioner.
- §19-11A-11. Suspension, revocation or denial of permits.
- §19-11A-12. Hearings and appeals.
- §19-11A-13. Criminal penalties; civil penalties; negotiated agreement.
- §19-11A-14. Payment of fees.
- §19-11A-15. Cooperation with other entities.
- §19-11A-16. Confidentiality of trade secrets.

§19-11A-1. Purpose.

1 Advances in food technology have resulted in the
2 development of a variety of products of similar usage as
3 standardized dairy products that are so similar in
4 appearance, odor and taste that they are difficult to
5 differentiate from dairy products. Therefore, it is the
6 purpose of this article to regulate these products in
7 addition to dairy products and to regulate their
8 marketing, to protect, promote and preserve the public
9 health and general welfare, to prevent fraud and
10 deception in the manufacture and trade of products
11 covered under this article, to establish labeling require-
12 ments and to establish standards of identity for dairy
13 products and imitation dairy products intended primar-
14 ily for human consumption.

15 Except where otherwise indicated, it is the intent of
16 the Legislature that this article substantially conform
17 with the federal regulations promulgated under the
18 authority of the United States secretary of health and
19 human services in order to provide for the movement of
20 milk products, cheeses and frozen desserts and imitation
21 dairy products in interstate and intrastate commerce
22 with a minimum of economic barriers.

§19-11A-2. Definitions.

1 (a) "Adulterated" means dairy products or imitation
2 dairy products meeting one or several of the conditions
3 listed in section five of this article.

4 (b) "Approved laboratory" means a laboratory ap-
5 proved by the commissioner under section nine of this
6 article.

7 (c) "Cheese" means blue, cheddar, cottage, cream,

8 edam, gouda, gruyere, limburg, monterey jack,
9 mozzarella, muenster, neufchatel, romano, roquefort,
10 swiss or cold-pack cheese; pasteurized blended cheese
11 whether made from cow or goat milk; and such other
12 products as established by rule as a cheese.

13 (d) "Clean" means the condition where no residue
14 remains on a surface that will, or is likely to, cause
15 adulteration.

16 (e) "Commissioner" means the commissioner of
17 agriculture of the state of West Virginia or his or her
18 duly authorized agent.

19 (f) "Dairy products" means milk products, frozen
20 desserts and cheeses as defined in this article which are
21 intended for human consumption.

22 (g) "Distributor" means any person who distributes
23 dairy products or imitation dairy products. The term
24 does not include persons who are exclusively retailers.

25 (h) "Distribute" means the act of transporting, holding
26 for sale, offering for sale, selling, bartering, parceling
27 out, giving or otherwise disposing of dairy products or
28 imitation dairy products. This term does not apply to a
29 firm listed as a distributor on the label if the firm is
30 not engaged in the activities listed in this subsection
31 within the state of West Virginia.

32 (i) "Embargo" means an order to withdraw a dairy
33 product or imitation dairy product from distribution or
34 to stop a manufacturing operation. An embargo shall
35 detain such product and prohibit the manufacturing
36 process as provided in section ten of this article.

37 (j) "Freezer" means mechanical equipment used to
38 lower the temperature of a mix, with or without
39 incorporating air into the mix during the freezing
40 process. Freezers may operate on a continuous or batch
41 basis.

42 (k) "Frozen dessert" means ice cream, frozen custard,
43 French ice cream, French custard ice cream, ice milk,
44 goat's milk ice cream, goat's milk ice milk, fruit sherbet,
45 nonfruit sherbets, frozen dietary dessert, frozen yogurt,

46 frozen lowfat yogurt, milkshakes, any mix used to make
47 such frozen desserts whether quiescently frozen or
48 frozen while mixed and such other products as estab-
49 lished by rule as a frozen dessert whether made with
50 milk products from a cow or goat.

51 (l) "Imitation dairy products" means products that are
52 manufactured, packaged or labeled so as to resemble the
53 composition, physical and sensory properties of dairy
54 products, which contain dairy products or milk-derived
55 ingredients and which are intended to be used as a
56 substitute for a dairy product.

57 (m) "Label" means the display of written, printed or
58 graphic matter upon or affixed to the package in which
59 the dairy product or imitation dairy product is
60 distributed.

61 (n) "Labeling" means all representations disseminated
62 in any manner or by any means other than by the label,
63 which induce or which are likely or intended to induce
64 the purchase or use of dairy products or imitation dairy
65 products.

66 (o) "Manufacture" means pasteurizing, ultrapasteuriz-
67 ing, formulating, compounding, freezing, packaging or
68 preparation for distribution of dairy products or
69 imitation dairy products.

70 (p) "Manufacturer" means any person who manufac-
71 tures dairy products or imitation dairy products.

72 (q) "Milk-derived ingredients" means whey, modified
73 whey products, casein, caseinates, lactose, lactalbumins
74 and lactoglobulins used in fluid, concentrated or dry
75 form and such other ingredients established by rule as
76 a milk-derived ingredient.

77 (r) "Milk products" means milk, acidified milk,
78 cultured milk, concentrated milk, sweetened condensed
79 milk, sweetened condensed skim milk, lowfat dry milk,
80 nonfat dry milk, nonfat dry milk fortified with vitamins
81 A and D, evaporated milk, evaporated skim milk, lowfat
82 milk, acidified lowfat milk, cultured lowfat milk, skim
83 milk, acidified skim milk, cultured skim milk, dry
84 whole milk, cream, dry cream, heavy cream, light

85 cream, light whipping cream, sour cream, acidified sour
86 cream, eggnog, half-and-half, sour half-and-half, acidi-
87 fied sour half-and-half, butter, yogurt, lowfat yogurt,
88 nonfat yogurt and such other products established by
89 rule as a milk product whether made with milk
90 products from a cow or goat.

91 (s) "Milk fat" means fat in dairy products or in milk-
92 derived ingredients.

93 (t) "Misbranded" means dairy products or imitation
94 dairy products meeting one or several of the conditions
95 listed in section six of this article.

96 (u) "Mix" means the product that when frozen
97 produces a frozen dessert or an imitation of a frozen
98 dessert.

99 (v) "Official sample" means any sample taken in
100 accordance with the provisions of this article.

101 (w) "Package" means any container holding dairy
102 products or imitation dairy products.

103 (x) "Pasteurized" means the process of uniformly
104 heating every particle of a dairy product or imitation
105 dairy product, holding it in the heated state and cooling
106 it, in equipment under conditions of temperature and
107 time that is established in the Grade "A" Pasteurized
108 Milk Ordinance, 1989 revision, published by the United
109 States department of health and human services:
110 *Provided*, That nothing contained in this definition shall
111 be construed as barring any other process which may
112 be approved by the commissioner or the state director
113 of health that results in products that are free from
114 pathogens.

115 (y) "Person" means any individual, partnership,
116 association, fiduciary, firm, company, corporation, or
117 any organized group of persons whether incorporated or
118 not. The term "person" extends to the agents, servants,
119 officers and employees of the person.

120 (z) "Retailer" means the person who sells dairy
121 products or imitation dairy products only to the ultimate
122 consumer, who does not transport dairy products or

123 imitation dairy products in any manner except between
124 buildings on the same lot or within the retail premises
125 and who sells frozen desserts from a freezer only at the
126 firm where the freezer is located.

127 (aa) "Sanitization" means the application of any
128 effective method or substance to a clean surface for the
129 destruction, as far as practicable, of pathogens and other
130 organisms. Such treatment shall not adversely affect the
131 equipment, the milk or the health of the consumers
132 consuming the products manufactured in the equipment
133 and shall be a method acceptable to the commissioner.

134 (bb) "Transport" means the movement from one
135 facility to another of dairy products and imitation dairy
136 products in a manner that maintains adequate temper-
137 atures and protects the product from freezing temper-
138 atures, exposure to the sun and from sources of
139 contamination.

140 (cc) "Ultrapasteurized" means the process of heating
141 every particle of a dairy product or imitation dairy
142 product at or above two hundred eighty degrees
143 Fahrenheit for at least two seconds either before or after
144 packaging so as to produce a product which has an
145 extended shelf life under refrigerated conditions.

§19-11A-3. Permits.

1 (a) Permits are not transferable with respect to
2 persons or locations.

3 (b) Application for all permits shall be made on forms
4 supplied by the commissioner and shall provide such
5 information as may be considered necessary by the
6 commissioner.

7 (c) Permits shall be posted prominently at the place
8 of operation.

9 (d) A dairy products distributors permit shall be
10 issued by the commissioner to each person distributing
11 dairy products in this state, even if there is no perma-
12 nent location maintained in this state. Persons maintain-
13 ing multiple permanent locations in this state or
14 distributing into this state from several locations shall

15 obtain a permit for each location. Application shall be
16 made at least fifteen days before the date that the
17 current permit expires or within fifteen days of the date
18 that the person intends to engage in business. The
19 application shall be accompanied by a fee of fifteen
20 dollars. A penalty of two dollars shall be added to all
21 permits that are not applied for or renewed within this
22 time limit. Permits shall expire on the thirty-first day
23 of March following date of issue: *Provided*, That firms
24 that have a permit with an expiration date of the
25 thirtieth day of June, one thousand nine hundred ninety-
26 one, on the date of implementation of this article shall
27 be allowed to make application for a dairy products
28 permit for the period of the first day of July, one
29 thousand nine hundred ninety-one, through the thirty-
30 first day of March, one thousand nine hundred ninety-
31 two, at a fee of ten dollars.

32 (e) A dairy products distributors permit is not
33 required for persons who distribute only aseptically
34 processed and hermetically sealed dairy products or
35 frozen desserts, dry dairy products or dry frozen dessert
36 mixes.

37 (f) A temporary marketing permit may be issued by
38 the commissioner for the marketing of dairy products
39 that are not covered by an established standard. The
40 temporary permit may be issued according to proce-
41 dures established by rule. Persons applying for a
42 temporary marketing permit shall have a valid dairy
43 products distributors permit. There is no fee for the
44 permit.

§19-11A-4. Labeling.

1 (a) All packages of dairy products or imitation dairy
2 products shall have a label upon or affixed to the
3 package. The label shall be legible and of a print size
4 and style easily readable by the ordinary citizen. The
5 information required in this section shall be on each
6 label and shall be stated in English.

7 (b) The label shall contain the following information:

8 (1) The name of the product;

9 (2) The quantity of the contents;

10 (3) The name and address of the manufacturer,
11 packer or distributor: *Provided*, That the manufactur-
12 er's plant code or name and address shall always appear
13 on the label for Grade "A" products; and

14 (4) Such other information as the commissioner shall
15 require by rule.

§19-11A-5. Adulteration.

1 Any dairy product or imitation dairy product referred
2 to in this article is considered adulterated within the
3 meaning of this article if it:

4 (a) Bears or contains any poisonous or deleterious
5 substance or compound in a quantity which may render
6 it injurious to health;

7 (b) Contains any coloring substance or flavoring
8 matter that may be deleterious to health;

9 (c) Bears or contains any added poisonous or deleterious
10 substance for which no safe tolerance has been
11 established by state or federal law or regulation or
12 which is found in the product in excess of an established
13 tolerance;

14 (d) Does not meet the quality standards set forth in
15 this article;

16 (e) Is or has been manufactured under conditions not
17 in conformity with the provisions of this article;

18 (f) Is or has been produced, processed, prepared or
19 held under unsanitary conditions;

20 (g) Has not been manufactured according to the
21 provisions of the applicable standard of identity or that
22 contains pathogens after manufacture;

23 (h) Is or has been stored in a package composed, in
24 whole or in part, of any poisonous or deleterious
25 substance which may render the contents injurious to
26 health;

27 (i) Contains any substance added thereto or mixed or
28 packed therewith so as to make it appear better or of
29 greater value than it is; or

- 30 (j) Meets or has met other conditions of adulteration
31 as established by rule.

§19-11A-6. Misbranded.

1 Any dairy product or imitation dairy product referred
2 to in this article is considered misbranded within the
3 meaning of this article if:

4 (a) It is labeled as a product for which there is a
5 standard established by this article and it does not
6 conform to such standards;

7 (b) Its label or labeling is false or misleading in any
8 particular;

9 (c) It is not labeled in accordance with the require-
10 ments of this article;

11 (d) Any word, statement or other information required
12 by this article to appear on the label or the labeling is
13 not prominently placed thereon with such conspicuous-
14 ness as compared with other words, statements, designs
15 or devices in the labeling and in such terms as to render
16 it likely to be read or understood by the ordinary person
17 under customary conditions of purchase and use;

18 (e) Damage or inferiority has been concealed by any
19 means; or

20 (f) It meets or has met other conditions of misbranding
21 as established by rule.

§19-11A-7. Prohibited acts.

1 (a) No person may distribute, sell, offer for sale, hold
2 for sale or have in his possession with the intent to sell
3 any dairy product or imitation dairy product which is
4 adulterated or misbranded within the meaning of this
5 article.

6 (b) No person may interfere with or prohibit the
7 commissioner from performing the duties of his office.

8 (c) No person may fail to comply with the provisions
9 of an embargo order issued under this article.

10 (d) No person may fail to comply with the provisions
11 of a revocation, suspension or denial order issued under

12 this article.

13 (e) No person who, in any official capacity, obtains any
14 information under the provisions of this article that
15 would be considered trade secrets regarding the quality,
16 source and disposition of dairy products or imitation
17 dairy products may use this information to his or her
18 own personal gain.

19 (f) No person may bring into, send into or receive into
20 this state, distribute within this state or have in storage
21 dairy products without a valid dairy products distrib-
22 utors permit, except that retailers are exempt from this
23 requirement.

24 (g) No person may distribute, sell, offer for sale, hold
25 for sale or have in their possession with intent to sell,
26 a dairy product or imitation dairy product in a container
27 if the whole or any part of the item(s) required by this
28 article to be on the label have been altered, mutilated,
29 destroyed, obliterated, removed, concealed, replaced or
30 otherwise falsely represented.

31 (h) No person may alter or deface any part of the
32 items required by this article to be on the label after
33 packaging.

34 (i) No person may offer for sale, transport, or
35 distribution dairy products or imitation dairy products
36 subsequent to packaging that have been allowed to
37 exceed a temperature of forty-five degrees Fahrenheit
38 for refrigerated noncultured products or zero degrees
39 Fahrenheit for frozen products, except that dairy
40 products or imitation dairy products containing active
41 cultures shall not be allowed to exceed a temperature
42 of fifty degrees Fahrenheit; and cheeses or imitations of
43 cheeses shall not be allowed to reach temperatures that
44 will allow for spoilage or mold organisms, other than
45 those mold organisms that may be in the product as a
46 result of the process used to make the product, to grow
47 on or in the product. Dairy products or imitation dairy
48 products that have been aseptically processed and
49 hermetically sealed and dry dairy products or dry
50 imitation dairy products are exempted from the require-
51 ments of this subsection.

52 (j) No person may transport dairy products or
53 imitation dairy products in a vehicle that has previously
54 been used to haul a chemical or foreign substance unless
55 such vehicle has been cleaned according to rules
56 promulgated by the commissioner.

57 (k) No person may sell or reprocess for human
58 consumption dairy products or imitation dairy products
59 that are in, or have been in, broken or opened retail
60 packages that have been out of the possession of the
61 manufacturer. Nothing in this provision prohibits the
62 return of these containers to the distributor for inspec-
63 tion purposes only.

64 (l) No person may distribute or use for human
65 consumption products manufactured from packaged
66 dairy products or imitation dairy products that have
67 been out of the possession of the manufacturer.

68 (m) No person may distribute or use dairy products
69 or imitation dairy products that have been repasteurized
70 subsequent to transportation in bulk, except for prod-
71 ucts that have been handled in a sanitary manner and
72 maintained at forty-five degrees Fahrenheit or less prior
73 to repasteurization.

74 (n) No person may sell, offer for sale or expose for sale
75 any product containing milk products or milk-derived
76 products that are from a herd that does not meet the
77 requirements for animal health as set by rules promul-
78 gated under this article.

79 (o) No person may sell or exchange or have in his
80 possession with intent to sell or exchange in this state
81 any milk powder originating from any country or area
82 outside the United States with reported cases of
83 rinderpest, African swine fever or foot and mouth
84 disease unless that product is imported into this state
85 under conditions set by rules promulgated under this
86 article.

§19-11A-8. Approved sampling and testing methods.

1 (a) All sampling and testing methods shall be those
2 set forth in the fifteenth edition of and supplement to
3 the Official Methods of Analysis of the Association of

4 Official Analytical Chemists, published by the Associa-
5 tion of Official Analytical Chemists; or the fifteenth
6 edition of the Standard Methods for the Examination of
7 Dairy Products, published by the American Public
8 Health Association, Inc.; or methods approved by the
9 commissioner.

10 (b) The Babcock method or other methods approved
11 by the commissioner for determining the milk fat
12 content of dairy products shall be used as the reference
13 method to establish and maintain the calibration of
14 automated testing instruments.

§19-11A-9. Approved laboratories.

1 (a) Each person who desires to have his laboratory
2 approved by the commissioner for testing official dairy
3 product or imitation dairy product samples as herein
4 provided shall first satisfy the commissioner that tests
5 to be made in such laboratory shall be conducted by
6 qualified persons, with adequate facilities and that such
7 tests are performed accurately and according to
8 methods approved by the commissioner.

9 (b) For the purpose of determining whether a labor-
10 atory shall be designated as an approved laboratory the
11 commissioner shall designate a qualified person or
12 persons to inspect the laboratory, its equipment,
13 facilities and personnel at the expense of the applying
14 laboratory, and thereafter may have similar inspections
15 made at the expense of the approved laboratory for the
16 purpose of determining whether or not such approval
17 should be continued.

18 (c) The commissioner may accept the test results of
19 any laboratory that has been approved under this
20 article: *Provided*, That the commissioner shall not
21 accept the test results of any approved laboratory for
22 samples manufactured, distributed or used by a firm the
23 same as or related to the approved laboratory.

§19-11A-10. Powers and duties of commissioner.

1 The commissioner has the power and duty to:

2 (a) Adopt, promulgate and enforce rules to carry out

3 the purpose of this article, including establishing
4 definitions and standards of quality and identity for
5 dairy products and imitation dairy products;

6 (b) Have access to and enter at all reasonable times
7 all places where dairy products or imitation dairy
8 products are manufactured, packaged, stored, held,
9 transported, distributed or used in this state and where
10 records, papers or documents relating to these transac-
11 tions are kept;

12 (c) Inspect and photograph all places where dairy
13 products or imitation dairy products are manufactured,
14 packaged, stored, held, transported, distributed or used,
15 inspect, audit and copy records and papers relating to
16 the manufacturing, distribution, sampling, testing and
17 sale of dairy products or imitation dairy products,
18 examine measuring and testing apparatus; and examine
19 equipment used in manufacturing and transportation of
20 dairy products or imitation dairy products, except that
21 inspections performed under authority of the provisions
22 of article seven, chapter sixteen of this code will not be
23 duplicated;

24 (d) Examine and sample dairy products or imitation
25 dairy products, including, but not limited to, ingredients
26 and packages that are used in the manufacture of these
27 products, and may open any package containing or
28 believed to contain any dairy product or imitation dairy
29 product, or an ingredient to be used in the manufacture
30 of these products for the purpose of inspecting and
31 sampling;

32 (e) Issue, suspend, revoke or deny permits;

33 (f) Collect fees and expend moneys under the terms
34 of this article;

35 (g) Collect evidence, including samples, of the condi-
36 tion of equipment, holding tanks, storage rooms and
37 vehicles used, or intended to be used in the processing,
38 packaging, transporting or holding of dairy products or
39 imitation dairy products;

40 (h) Examine the labels and labeling of dairy products
41 or imitation dairy products;

42 (i) Issue embargoes for any dairy product or imitation
43 dairy product which is or is believed to be adulterated,
44 misbranded or that is not in compliance with this article
45 and to cause the manufacturing and distributing of
46 same to cease. Nothing in this article may be construed
47 as requiring the commissioner to issue embargoes for
48 minor violations of this article when he or she believes
49 that a written notice of the violation will serve the public
50 interest.

51 (1) When an embargo is issued, the commissioner shall
52 affix to such product or manufacturing device in an
53 appropriate manner a tag or other marking giving
54 warning that such product is under embargo.

55 (2) The commissioner shall give written notice to the
56 custodian of the product or process under embargo
57 describing the violation and stating that the product is
58 prohibited from being sold, offered for sale, exposed for
59 sale or distributed and is ordered to be held on the
60 premises and, further, that all manufacturing processes
61 in the state of West Virginia for this product shall cease
62 until the embargo is released. This notice shall notify the
63 custodian of the right to request an immediate hearing
64 under the rules adopted by the commissioner.

65 (3) The commissioner may take action to seize and
66 condemn any product that is not brought into com-
67 pliance with this article and the rules issued within
68 ninety days of the notice to the custodian of the product.

69 (4) The commissioner has the authority to issue an
70 embargo against a perishable product, even if the
71 practical result is to bring about the involuntary
72 disposal of the product. The commissioner shall exercise
73 this power using all reasonable means to determine if
74 the product is adulterated or otherwise not in com-
75 pliance with this article in as short a time frame as
76 possible and shall promptly lift the embargo order if the
77 product is found to be in compliance with this article;

78 (j) Establish, maintain and make provision for dairy
79 product and imitation dairy product testing facilities, to
80 establish reasonable fees for such tests and to incur such
81 expenses as may be necessary to maintain and operate

82 these facilities;

83 (k) Approve sampling and testing methods and
84 evaluate and approve official laboratories;

85 (l) Obtain from any state court an order directing any
86 person to submit to inspection and sampling subsequent
87 to the refusal of any person to allow inspection and
88 sampling;

89 (m) Conduct hearings as provided by this article; and

90 (n) Assess civil penalties and refer violations to a court
91 of competent jurisdiction: *Provided*, That the commis-
92 sioner is not required to report for prosecution minor
93 violations of the article when he or she believes that the
94 public interest will be best served by a written notice
95 of violation.

§19-11A-11. Suspension, revocation or denial of permits.

1 (a) The commissioner may deny any application for a
2 permit whenever said permit has been applied for
3 fraudulently, the applicant has grossly interfered with
4 the duties of the commissioner, or the applicant is
5 determined to be not in compliance with or not able to
6 comply with this article.

7 (b) The commissioner may suspend a permit whenever
8 a health hazard exists or is believed to exist, the permit
9 has been obtained fraudulently, the holder has grossly
10 interfered with the duties of the commissioner or it is
11 determined that the permit holder is dishonest, deceit-
12 ful, incompetent or not in compliance with or is unable
13 to comply with this article. Any person whose permit
14 has been suspended shall immediately discontinue all
15 operations covered under the permit. The commissioner
16 may issue a summary suspension in cases where
17 violations of this article constitute a hazard to the public
18 health, safety or welfare or where the public interest
19 requires immediate action.

20 (1) Except for summary suspensions, the commis-
21 sioner shall give written notice to the persons affected
22 of the pending suspension, stating that the suspension
23 of the permit is being contemplated and giving reasons

24 therefor. The suspension notice shall appoint a time and
25 place for hearing and shall be mailed by certified mail
26 to the business address of the permit holder at least ten
27 days before the date set for the hearing. The commis-
28 sioner shall review the evidence presented at the
29 hearing prior to issuing his decision.

30 (2) All summary suspensions shall be followed by a
31 notice of suspension, the reasons for the suspension, and
32 an opportunity for a hearing in accordance with this
33 article.

34 (3) At the end of the period of suspension, the permit
35 holder may resume operations without reapplication for
36 a permit.

37 (c) The commissioner may revoke any permit issued
38 under this article whenever a health hazard exists, the
39 permit has been obtained fraudulently, the holder has
40 grossly interfered with the duties of the commissioner
41 or it is determined that the holder is dishonest, deceitful,
42 incompetent or not in compliance with or is unable to
43 comply with this article. Any person whose permit has
44 been revoked shall immediately discontinue all opera-
45 tions covered under the permit.

46 (1) Before revoking any permit the commissioner shall
47 give written notice to the persons affected, stating that
48 the revocation of the permit is being contemplated and
49 giving reasons for the revocation. The revocation notice
50 shall appoint a time and place for hearing and shall be
51 mailed by certified mail to the business address of the
52 permit holder at least ten days before the date set for
53 the hearing. The commissioner shall review the evidence
54 presented at the hearing prior to issuing his decision.

55 (2) At the end of the period of revocation the permit
56 will not be issued without an application, payment of
57 required fee and the compliance with all conditions that
58 the commissioner shall require for the reissuing of such
59 permit.

§19-11A-12. Hearings and appeals.

1 (a) Any person aggrieved by any action taken under
2 this article shall be afforded the opportunity for a

3 hearing before the commissioner under rules promul-
4 gated by the commissioner.

5 (b) Hearings shall be conducted according to proce-
6 dures set forth by rule.

7 (c) All the testimony and evidence at a hearing shall
8 be recorded by mechanical means, which may include
9 the use of tape recordings. The mechanical record shall
10 be maintained for ninety days from the date of the
11 hearing and a transcript shall be made available to the
12 aggrieved party.

13 (d) Any party who feels aggrieved of the suspension,
14 revocation or denial order may appeal within sixty days
15 to the circuit court of the county in which the person
16 has located its principal place of business or to the
17 circuit court of Kanawha County.

**§19-11A-13. Criminal penalties; civil penalties; negotiated
agreement.**

1 (a) *Criminal penalties.* — Any person violating any
2 provision of this article or rule adopted hereunder is
3 guilty of a misdemeanor, and, upon conviction thereof,
4 shall be fined not less than one hundred dollars nor more
5 than five hundred dollars for the first offense, and for
6 the second or subsequent offense, shall be fined not less
7 than five hundred nor more than one thousand dollars,
8 or imprisoned in the county jail not more than six
9 months, or both fined and imprisoned. Magistrates have
10 concurrent jurisdiction with circuit courts to enforce the
11 provisions of this article.

12 (b) *Civil penalties.* —

13 (1) Any person violating a provision of this article or
14 rules adopted hereunder may be assessed a civil penalty
15 by the commissioner. In determining the amount of any
16 civil penalty, the commissioner shall give due consider-
17 ation to the history of previous violations of any person,
18 the seriousness of the violation, including any irrepar-
19 able harm to the environment, any hazards to the health
20 and safety of the public and any economic damages to
21 the public and the demonstrated good faith of any
22 person charged in attempting to achieve compliance

23 with this article before and after written notification of
24 the violation.

25 (2) The commissioner may assess a civil penalty of up
26 to one thousand dollars for a violation.

27 (3) The civil penalty is payable to the state of West
28 Virginia and is collectible in any manner now or
29 hereafter provided for collection of debt. If any person
30 liable to pay the civil penalty neglects or refuses to pay
31 the same, the amount of the civil penalty, together with
32 interest at ten percent, is a lien in favor of the state of
33 West Virginia upon the property, both real and per-
34 sonal, of such a person after the same has been entered
35 and docketed to record in the county where such
36 property is situated. The clerk of the county, upon
37 receipt of the certified copy of such, shall enter same to
38 record without requiring the payment of costs as a
39 condition precedent to recording.

40 (c) Notwithstanding any other provision of law to the
41 contrary, the commissioner may promulgate and adopt
42 rules which permit consent agreements or negotiated
43 settlements for the civil penalties assessed as a result of
44 violation of the provisions of this article.

45 (d) Upon application by the commissioner for an
46 injunction, the circuit court of the county in which the
47 violation is occurring, had occurred or is about to occur,
48 as the case may be, may grant a temporary or perma-
49 nent injunction restraining any person from violating or
50 continuing to violate any of the provisions of this article
51 or any rule promulgated under this article, notwith-
52 standing the existence of other remedies at law. Any
53 such injunction shall be issued without bond.

54 (e) No state court may allow for the recovery of
55 damages for any administrative action taken, if the
56 court finds that there was a probable cause for such
57 action.

58 (f) It is the duty of the prosecuting attorney of the
59 county in which the violation occurred to represent the
60 department of agriculture, to institute proceedings and
61 to prosecute the person charged with such violation.

§19-11A-14. Payment of fees.

1 All fees, penalties or other moneys collected by the
2 commissioner under the provisions of this article shall
3 be paid into a special account and expended upon the
4 order of the commissioner for the purpose of the
5 enforcement and administration of this article.

§19-11A-15. Cooperation with other entities.

1 The commissioner may cooperate with and enter into
2 agreements with governmental agencies of this state,
3 other states, agencies of the federal government,
4 agencies of foreign governments, and private associa-
5 tions in order to carry out the purpose and provisions
6 of this article.

§19-11A-16. Confidentiality of trade secrets.

1 The commissioner may not make public information
2 which contains or relates to trade secrets, commercial
3 or financial information obtained from a person or
4 privileged or confidential information: *Provided*, That
5 when the information is necessary to carry out the
6 provisions of this article, this information may be
7 revealed, subject to a protective order, to any federal,
8 state or local agency consultant or may be revealed,
9 subject to a protective order, at a closed hearing or in
10 findings of fact issued by the commissioner.

**ARTICLE 11B. FROZEN DESSERTS AND IMITATION FROZEN
DESSERTS LAW.**

- §19-11B-1. Purpose.
- §19-11B-2. Definitions.
- §19-11B-3. Frozen dessert manufacturer permit.
- §19-11B-4. Labeling.
- §19-11B-5. Adulteration.
- §19-11B-6. Misbranded.
- §19-11B-7. Prohibited acts.
- §19-11B-8. Approved sampling and testing methods.
- §19-11B-9. Approved laboratories.
- §19-11B-10. Powers and duties of commissioner.
- §19-11B-11. Suspension, revocation or denial of permits.
- §19-11B-12. Hearings and appeals.
- §19-11B-13. Criminal penalties; civil penalties; negotiated agreement.
- §19-11B-14. Payment of fees.
- §19-11B-15. Cooperation with other entities.
- §19-11B-16. Confidentiality of trade secrets.

§19-11B-1. Purpose.

1 The legislative intent of this article is to protect,
2 promote and preserve the public health and general
3 welfare and to prevent fraud and deception in the
4 manufacture, sale, offering for sale, exposing for sale,
5 and possession with intent to sell, frozen desserts and
6 products resembling frozen desserts for human con-
7 sumption. Further, the Legislature recognizes that
8 advances in food technology have resulted in the
9 development of a variety of products of similar usage as
10 standardized frozen desserts that are so similar in
11 appearance, odor and taste that they are difficult to
12 differentiate from frozen desserts. Therefore, this article
13 shall regulate these products in addition to frozen
14 desserts, establish definitions and standards for such
15 foods or labeling requirements by rules which effect
16 their orderly marketing and ensure similar sanitary
17 standards for frozen desserts and imitation frozen
18 desserts.

19 Except where otherwise indicated, it is the intent of
20 the Legislature that this article substantially conform
21 with the federal regulations promulgated under the
22 authority of the United States secretary of health and
23 human services in order to provide for the movement of
24 frozen desserts and imitation frozen desserts in inter-
25 state and intrastate commerce with a minimum of
26 economic barriers.

§19-11B-2. Definitions.

1 (a) "Adulterated" means frozen desserts or imitation
2 frozen desserts meeting one or several of the conditions
3 listed in section five of this article.

4 (b) "Approved laboratory" means a laboratory ap-
5 proved by the commissioner under section nine of this
6 article.

7 (c) "Clean" means the condition where no residue
8 remains on a surface that will, or is likely to, cause
9 adulteration.

10 (d) "Commissioner" means the commissioner of

11 agriculture of the state of West Virginia or his or her
12 duly authorized agent.

13 (e) "Distributor" means any person who distributes
14 frozen desserts or imitation frozen desserts. The term
15 does not include persons who are exclusively retailers
16 and who are not engaged in the transportation of frozen
17 desserts or imitation frozen desserts.

18 (f) "Distribute" means the act of transporting, holding
19 for sale, offering for sale, selling, bartering, parceling
20 out, giving or otherwise disposing of frozen desserts or
21 imitation frozen desserts.

22 (g) "Embargo" means an order to withdraw a frozen
23 dessert or imitation frozen dessert from distribution or
24 to stop a manufacturing operation as provided in section
25 ten of this article.

26 (h) "Freezer" means mechanical equipment used to
27 lower the temperature of a mix, with or without
28 incorporating air into the mix during the freezing
29 process. Freezers may operate on a continuous or batch
30 basis.

31 (i) "Frozen dessert" means ice cream, frozen custard,
32 French ice cream, French custard ice cream, ice milk,
33 goat's milk ice cream, goat's milk ice milk, fruit sherbet,
34 nonfruit sherbets, frozen dietary dessert, frozen yogurt,
35 frozen lowfat yogurt, milkshakes, any mix used to make
36 such frozen desserts whether quiescently frozen or
37 frozen while mixed and such other products as estab-
38 lished by rule as a frozen dessert whether made with
39 milk products from a cow or goat.

40 (j) "Imitation frozen desserts" means products that are
41 manufactured, packaged or labeled so as to resemble the
42 composition, physical and sensory properties of frozen
43 desserts which contain milk products or milk-derived
44 ingredients whether from a cow or a goat and which are
45 intended to be used as a substitute for a frozen dessert.
46 This term includes any mix used to manufacture
47 imitation frozen desserts.

48 (k) "Label" means the display of written, printed or

49 graphic matter upon or affixed to the package in which
50 the frozen dessert or imitation frozen dessert is
51 distributed.

52 (l) "Labeling" means all representations disseminated
53 in any manner or by any means other than by the label
54 which induce or which are likely or intended to induce
55 the purchase or use of frozen desserts or imitation frozen
56 desserts.

57 (m) "Manufacture" means pasteurizing, ultrapasteur-
58 izing, formulating, compounding, freezing, processing
59 or packaging a mix into a frozen dessert or imitation
60 frozen dessert.

61 (n) "Manufacturer" means any person who manufac-
62 tured frozen desserts or imitation frozen desserts.

63 (o) "Milk-derived ingredients" means whey, modified
64 whey products, casein, caseinates, lactose, lactalbumins
65 and lactoglobulins used in fluid, concentrated or dry
66 form and other ingredients as established by rule as a
67 milk-derived ingredient.

68 (p) "Milk products" means milk, acidified milk,
69 cultured milk, concentrated milk, sweetened condensed
70 milk, sweetened condensed skim milk, lowfat dry milk,
71 nonfat dry milk, nonfat dry milk fortified with vitamins
72 A and D, evaporated milk, evaporated skim milk, lowfat
73 milk, acidified lowfat milk, cultured lowfat milk, skim
74 milk, acidified skim milk, cultured skim milk, dry
75 whole milk, cream, dry cream, heavy cream, light
76 cream, light whipping cream, sour cream, acidified sour
77 cream, eggnog, half-and-half, sour half-and-half, acidi-
78 fied sour half-and-half, butter, yogurt, lowfat yogurt,
79 nonfat yogurt and such other products as established by
80 rule as a milk product whether made with milk
81 products from a cow or goat.

82 (q) "Milk fat" means fat in frozen desserts or imitation
83 frozen desserts.

84 (r) "Misbranded" means frozen desserts or imitation
85 frozen desserts meeting one or several of the conditions
86 listed in section six of this article.

87 (s) "Mix" means the product made from wholesome
88 ingredients that when frozen shall produce a frozen
89 dessert or imitation frozen dessert.

90 (t) "Official sample" means any sample taken in
91 accordance with the provisions of this article.

92 (u) "Package" means any container holding frozen
93 desserts or imitation frozen desserts.

94 (v) "Pasteurized" means the process of uniformly
95 heating every particle of a mix, holding in the heated
96 state and cooling it, in equipment under conditions of
97 temperature and time that is established in Grade "A"
98 Pasteurized Milk Ordinance, 1989 revision, published by
99 the United States department of health and human
100 services: *Provided*, That nothing contained in this
101 definition may be construed as barring any other
102 process which may be approved by the commissioner or
103 the state director of health that results in products that
104 are free from pathogens.

105 (w) "Person" means any individual, partnership,
106 association, fiduciary, firm, company, corporation or any
107 organized group of persons whether incorporated or not.
108 The term "person" extends to the agents, servants,
109 officers and employees of the person.

110 (x) "Rerun" means a frozen dessert or imitation frozen
111 dessert that is removed from a freezer and is intended
112 to be reprocessed.

113 (y) "Retailer" means the person who sells frozen
114 desserts or imitation frozen desserts to the ultimate
115 consumer and who does not transport frozen desserts or
116 imitation frozen desserts to or from the location of the
117 freezer.

118 (z) "Sanitization" means the application of any
119 effective method or substance to a clean surface for the
120 destruction of pathogens, and other organisms as far as
121 practicable. Such treatment shall not adversely affect
122 the equipment, the dairy product or the health of the
123 consumers consuming the products manufactured in the
124 equipment and shall be a method acceptable to the
125 commissioner.

126 (aa) "Transport" means the movement from one
127 facility to another in a manner that maintains adequate
128 temperatures and protects the product from freezing
129 temperatures, exposure to the sun and from sources of
130 contamination.

131 (bb) "Ultrapasteurized" means the process of heating
132 every particle of a dairy product or mix at or above two
133 hundred eighty degrees Fahrenheit for at least two
134 seconds either before or after packaging so as to produce
135 a product which has an extended shelf life under
136 refrigerated conditions.

§19-11B-3. Frozen desserts manufacturer permit.

1 (a) A "frozen desserts manufacturer permit" shall be
2 issued to each manufacturer of frozen desserts or
3 imitation frozen desserts. Permits shall be issued for
4 each place of operation and shall not be transferable
5 with respect to persons or locations. The permit may be
6 applied to the operation of several freezers at one
7 location. Each mobile unit shall be considered as
8 operating at one location.

9 (b) Application shall be made on forms supplied by the
10 commissioner and provide such information as may be
11 considered necessary by the commissioner. Permits shall
12 be applied for at least fifteen days before the date that
13 the current permit expires or within fifteen days of the
14 date that the person intends to engage in business. The
15 application shall be accompanied by a fee of twenty
16 dollars. A penalty of two dollars shall be added to all
17 permits that are not applied for or renewed within this
18 time limit. The permits shall expire on the thirty-first
19 day of March following date of issue: *Provided*, That
20 firms that have a permit with an expiration date of the
21 thirtieth day of June, one thousand nine hundred ninety-
22 one, on the date of implementation of this article shall
23 be allowed to make application for a frozen desserts
24 manufacturer permit for the period of the first day of
25 July, one thousand nine hundred ninety-one, through the
26 thirty-first day of March, one thousand nine hundred
27 ninety-two, at a fee of ten dollars.

- 28 (c) Permits shall be posted prominently at the place
29 of operation.

§19-11B-4. Labeling.

1 (a) All packages of frozen desserts or imitation frozen
2 desserts shall have a label upon or affixed to the
3 package. The label shall be legible and of a print size
4 and style easily readable by the ordinary citizen. The
5 information required in this section shall be on each
6 label and shall be stated in English.

7 (b) The label shall contain the following information:

8 (1) The name of the product;

9 (2) The quantity of the contents;

10 (3) The name and address of the manufacturer,
11 packer or distributor; and

12 (4) Such other information as the commissioner shall
13 establish by rule.

§19-11B-5. Adulteration.

1 Any frozen dessert or imitation frozen dessert re-
2 ferred to in this article is considered adulterated within
3 the meaning of this article if it:

4 (a) Bears or contains any poisonous or deleterious
5 substance or compound in a quantity which may render
6 it injurious to health;

7 (b) Contains any coloring substance or flavoring
8 matter that may be deleterious to health;

9 (c) Bears or contains any added poisonous or dele-
10 rious substance for which no safe tolerance has been
11 established by state or federal law or regulation or in
12 excess of an established tolerance;

13 (d) Does not meet the quality standards set forth in
14 this article;

15 (e) Is or has been manufactured under conditions not
16 in conformity with the provisions of this article;

- 17 (f) Is or has been produced, processed, prepared or
18 held under unsanitary conditions;
- 19 (g) Is or has been stored in a package composed, in
20 whole or in part, of any poisonous or deleterious
21 substance which may render the contents injurious to
22 health;
- 23 (h) Contains any substance added thereto or mixed or
24 packed therewith so as to make it appear better or of
25 greater value than it is; or
- 26 (i) Meets or has met other conditions of adulteration
27 as established by rule.

§19-11B-6. Misbranded.

- 1 Any frozen dessert or imitation frozen dessert re-
2 ferred to in this article is considered misbranded within
3 the meaning of this article if:
- 4 (a) It is labeled as a product for which there is a
5 standard established by this article and it does not
6 conform to such standards;
- 7 (b) Its label or labeling is false or misleading in any
8 particular;
- 9 (c) It is not labeled in accordance with this article;
- 10 (d) Any word, statement or other information required
11 by this article to appear on the label or the labeling is
12 not prominently placed thereon with such conspicuous-
13 ness as compared with other words, statements, designs,
14 or devices in the labeling and in such terms as to render
15 it likely to be read or understood by the ordinary person
16 under customary conditions of purchase and use;
- 17 (e) If damage or inferiority has been concealed by any
18 means; or
- 19 (f) It meets or has met other conditions of misbranding
20 as established by rule.

§19-11B-7. Prohibited acts.

- 1 (a) No person may distribute, sell, offer for sale, hold
2 for sale or have in his possession with the intent to sell
3 any frozen dessert or imitation frozen dessert which is

4 adulterated or misbranded within the meaning of this
5 article.

6 (b) No person may interfere with or prohibit the
7 commissioner from performing the duties of his office.

8 (c) No person may fail to comply with the provisions
9 of an embargo order issued under section ten of this
10 article.

11 (d) No person may fail to comply with the provisions
12 of a revocation, suspension or denial order issued under
13 section eleven of this article.

14 (e) No person who in any official capacity obtains any
15 information under the provisions of this article that
16 would be considered trade secrets regarding the quality,
17 source and disposition of frozen desserts or imitation
18 frozen desserts may use this information to his or her
19 own personal gain.

20 (f) No person may dispense or manufacture frozen
21 desserts or imitation frozen desserts without a valid
22 frozen desserts manufacturer permit.

23 (g) No person may distribute, sell, offer for sale, hold
24 for sale or have in their possession with intent to sell,
25 a frozen dessert or imitation frozen dessert in a
26 container if the whole or any part of the items required
27 by this article to be on the label have been altered,
28 mutilated, destroyed, obliterated, removed, concealed,
29 replaced or otherwise falsely represented.

30 (h) No person may alter or deface any items required
31 by this article to be on the label after packaging.

32 (i) No person may offer for sale, transport, or
33 distribution, frozen desserts or imitation frozen desserts
34 subsequent to their packaging that have been allowed
35 to exceed a temperature of forty-five degrees Fahrenheit
36 for refrigerated noncultured products or zero degrees
37 Fahrenheit for frozen products, except that mixes
38 containing active cultures shall not be allowed to exceed
39 a temperature of fifty degrees Fahrenheit. Mixes that
40 have been sterilized and hermetically sealed and dry
41 mixes are exempted from this provision.

42 (j) No person may haul frozen desserts or imitation
43 frozen desserts in a vehicle that has previously been
44 used to haul a chemical or foreign substance unless such
45 vehicle has been cleaned according to the rules promul-
46 gated by the commissioner prior to the hauling of such
47 frozen dessert or imitation frozen dessert.

48 (k) No person may sell or reprocess frozen desserts or
49 imitation frozen desserts for human consumption that
50 are in or have been in broken or opened retail packages.
51 Nothing in this provision may prohibit the return of
52 these containers to the manufacturer or distributor for
53 inspection purposes only.

54 (l) No person may distribute or use for human
55 consumption products manufactured from returned
56 packaged frozen desserts or imitation frozen desserts.

57 (m) No person may distribute or use mix that has been
58 repasteurized subsequent to transportation in bulk,
59 except for products that have been handled in a sanitary
60 manner and maintained at forty-five degrees Fahren-
61 heit or less prior to repasteurization.

62 (n) No person may sell, offer for sale or expose for sale
63 any product containing milk products or milk-derived
64 products that are from a herd that does not meet the
65 requirements for animal health as required by rules
66 promulgated under this article.

§19-11B-8. Approved sampling and testing methods.

1 (a) All sampling and testing methods shall be those
2 set forth in the fifteenth edition of and supplement to
3 the Official Methods of Analysis of the Association of
4 Official Analytical Chemists, published by the Associa-
5 tion of Official Analytical Chemists; or the fifteenth
6 edition of the Standard Methods for the Examination of
7 Dairy Products, published by the American Public
8 Health Association, Inc.; or methods approved by the
9 commissioner as provided by rule.

10 (b) The Babcock method or other methods approved
11 by the commissioner for determining the milk fat
12 content of frozen desserts shall be used as the reference

13 method to establish and maintain the calibration of
14 automated testing instruments.

§19-11B-9. Approved laboratories.

1 (a) Each person who desires to have his laboratory
2 approved by the commissioner for testing official frozen
3 dessert or imitation frozen dessert samples as provided
4 in this section shall first satisfy the commissioner that
5 tests to be made in such laboratory shall be conducted
6 by qualified persons with adequate facilities and that
7 such tests shall be performed accurately and according
8 to approved methods.

9 (b) For the purpose of determining whether or not a
10 laboratory shall be designated as an approved labora-
11 tory the commissioner shall designate a qualified person
12 or persons to inspect the laboratory, its equipment,
13 facilities and personnel at the expense of the applying
14 laboratory, and thereafter may have similar inspections
15 made at the expense of the applying laboratory for the
16 purpose of determining whether or not such approval
17 should be continued.

18 (c) The commissioner may accept the test results of
19 any laboratory that has been approved under this
20 article: *Provided*, That the commissioner shall not
21 accept the test results of any approved laboratory for
22 samples manufactured, distributed or used by a firm
23 related to or owned by the approved laboratory.

§19-11B-10. Powers and duties of commissioner.

1 The commissioner has the power and duty to:

2 (a) Adopt, promulgate and enforce rules to carry out
3 the purpose of this article;

4 (b) Have access to and enter at all reasonable times
5 all places where frozen desserts or imitation frozen
6 desserts are manufactured, stored, held, transported,
7 distributed or used in the state and where records,
8 papers or documents relating to these transactions are
9 kept;

10 (c) Inspect and photograph all places where frozen
11 desserts or imitation frozen desserts are manufactured,

12 packaged, stored, held, transported or distributed;
13 inspect, audit and copy records and papers relating to
14 the manufacturing, distribution, sampling, testing and
15 sale of frozen desserts or imitation frozen desserts;
16 examine measuring and testing apparatus; and examine
17 equipment used in manufacturing and transportation of
18 frozen desserts or imitation frozen desserts, except that
19 inspections performed under authority of the provisions
20 of article seven, chapter sixteen of this code will not be
21 duplicated;

22 (d) Sample frozen desserts or imitation frozen des-
23 serts, including, but not limited to, ingredients and
24 packages that are used in the manufacture of these
25 products and may open any package containing or
26 believed to contain any frozen dessert or imitation
27 frozen dessert or an ingredient to be used in the
28 manufacture of a frozen dessert or imitation frozen
29 dessert for the purpose of inspecting and sampling;

30 (e) Issue, suspend, revoke or deny permits;

31 (f) Collect fees and expend moneys under the terms
32 of this article;

33 (g) Collect evidence, including samples, of the condi-
34 tion of equipment, holding tanks, storage rooms and
35 vehicles used, or intended to be used, in the processing,
36 packaging, transporting or holding of frozen desserts or
37 imitation frozen desserts;

38 (h) Examine the labels and labeling of frozen desserts
39 and imitation frozen desserts;

40 (i) Issue embargoes for any product which is or is
41 believed to be adulterated, misbranded or that is not in
42 compliance with this article and to cause the manufac-
43 turing and distributing of same to cease. Nothing in this
44 article may be construed as requiring the commissioner
45 to issue embargoes for minor violations of this article
46 when he or she believes that a written notice of violation
47 will serve the public interest.

48 (1) When an embargo is issued, the commissioner shall
49 affix to such product or manufacturing device in an
50 appropriate manner a tag or other marking giving
51 warning that such product is under embargo.

52 (2) The commissioner shall give written notice to the
53 custodian of the product or process under embargo
54 describing the violation and stating that the product is
55 prohibited from being sold, offered for sale, exposed for
56 sale or distributed and is ordered to be held on the
57 premises and, further, that all manufacturing processes
58 for this product shall cease until the embargo is
59 released. This notice shall notify the custodian of the
60 right to request an immediate hearing under the rules
61 adopted by the commissioner.

62 (3) The commissioner shall take action to seize and
63 condemn any product that cannot be brought into
64 compliance with this article and the rules issued under
65 same within ninety days of notice to the custodian of the
66 product.

67 (4) The commissioner has the authority to issue an
68 embargo against a perishable product, even if the
69 practical result is to bring about the involuntary
70 disposal of the product. The commissioner shall exercise
71 this power using all reasonable means to determine if
72 the product is adulterated or otherwise not in com-
73 pliance with this article in as short a time frame as
74 possible and shall promptly lift the embargo order if the
75 product is found to be in compliance with this article;

76 (j) Establish, maintain and make provision for frozen
77 dessert and imitation frozen dessert testing facilities; to
78 establish reasonable fees for such tests and to incur such
79 expenses as may be necessary to maintain and operate
80 these facilities;

81 (k) Approve sampling and testing methods, and
82 evaluate and approve official laboratories;

83 (l) Obtain from any state court an order directing any
84 person to submit to inspection and sampling subsequent
85 to the refusal of any person to allow inspection and
86 sampling;

87 (m) Conduct hearings as provided by this article; and

88 (n) Assess civil penalties and refer violations to a court
89 of competent jurisdiction: *Provided*, That the commis-
90 sioner is not required to report for prosecution minor

91 violations of the article when he or she believes that the
92 public interest will be best served by a suitable notice
93 in writing.

§19-11B-11. Suspension, revocation or denial of permits.

1 (a) The commissioner may deny any application for a
2 permit whenever said permit has been applied for
3 fraudulently, the applicant has grossly interfered with
4 the duties of the commissioner or the applicant is
5 determined to be not in compliance with or not able to
6 comply with this article.

7 (b) The commissioner may suspend a permit whenever
8 a health hazard exists or is believed to exist, said permit
9 has been obtained fraudulently, the holder has grossly
10 interfered with the duties of the commissioner or it is
11 determined that the permit holder is dishonest, deceit-
12 ful, incompetent or not in compliance with or is unable
13 to comply with the provisions of this article. Any person
14 whose permit has been suspended shall immediately
15 discontinue all operations covered under the permit. The
16 commissioner may issue a summary suspension in cases
17 where violations of this article constitute a hazard to the
18 public health, safety or welfare where the public
19 interest requires immediate action.

20 (1) Except for summary suspensions, the commis-
21 sioner shall give written notice to the persons affected
22 of the pending suspension, stating that suspension of the
23 permit is being contemplated and giving reasons
24 therefor. The suspension notice shall appoint a time and
25 place for hearing and shall be mailed by certified mail
26 to the business address of the permit holder at least ten
27 days before the date set for the hearing. The commis-
28 sioner shall review the evidence presented at the
29 hearing prior to issuing his decision.

30 (2) All summary suspensions shall be followed by a
31 notice of suspension, the reasons for the suspension and
32 an opportunity for a hearing in accordance with the
33 provisions of this article.

34 (3) At the end of the period of suspension, the permit
35 holder may resume operations without reapplication for

36 a permit.

37 (c) The commissioner may revoke any permit issued
38 under this article whenever a health hazard exists, the
39 permit has been obtained fraudulently, the holder has
40 grossly interfered with the duties of the commissioner
41 or it is determined that the holder is dishonest, deceitful,
42 incompetent or not in compliance with or is unable to
43 comply with this article. Any person whose permit has
44 been revoked shall immediately discontinue all opera-
45 tions covered under the permit.

46 (1) Before revoking any permit, the commissioner
47 shall give written notice to the persons affected, stating
48 that revocation of the permit is being contemplated and
49 giving reasons for the revocation. The revocation notice
50 shall appoint a time and place for hearing and shall be
51 mailed by certified mail to the business address of the
52 permit holder at least ten days before the date set for
53 the hearing. The commissioner shall review the evidence
54 presented at the hearing prior to issuing his decision.

55 (2) At the end of the period of revocation, the permit
56 will not be issued without an application, payment of the
57 required fee and compliance with all conditions that the
58 commissioner shall require for the reissuing of such
59 permit.

§19-11B-12. Hearings and appeals.

1 (a) Any person aggrieved by any action taken under
2 this article shall be afforded the opportunity for a
3 hearing before the commissioner under the rules
4 promulgated by the commissioner.

5 (b) Hearings shall be conducted in accordance with
6 procedures set forth by rule.

7 (c) All the testimony and evidence at a hearing shall
8 be recorded by mechanical means, which may include
9 the use of tape recordings. The mechanical record shall
10 be maintained for ninety days from the date of the
11 hearing and a transcript shall be made available to the
12 aggrieved party.

13 (d) Any party who feels aggrieved of the suspension,

14 revocation or denial order may appeal within sixty days
15 to the circuit court of the county in which the person
16 has located its principal place of business.

§19-11B-13. Criminal penalties; civil penalties; negotiated agreement.

1 (a) *Criminal penalties.* — Any person violating any
2 provision of this article or rule adopted hereunder is
3 guilty of a misdemeanor, and, upon conviction thereof,
4 shall be fined not less than one hundred dollars nor more
5 than five hundred dollars for the first offense, and for
6 the second or subsequent offense, shall be fined not less
7 than five hundred nor more than one thousand dollars,
8 or imprisoned in the county jail not more than six
9 months, or both fined and imprisoned. Magistrates have
10 concurrent jurisdiction with circuit courts to enforce the
11 provisions of this article.

12 (b) *Civil penalties.* —

13 (1) Any person violating a provision of this article or
14 rules adopted hereunder may be assessed a civil penalty
15 by the commissioner. In determining the amount of any
16 civil penalty, the commissioner shall give due consider-
17 ation to the history of previous violations of any person,
18 the seriousness of the violation, including any irrepar-
19 able harm to the environment, any hazards to the health
20 and safety of the public and any economic damages to
21 the public and the demonstrated good faith of any
22 person charged in attempting to achieve compliance
23 with this article before and after written notification of
24 the violation.

25 (2) The commissioner may assess a civil penalty of up
26 to one thousand dollars for a violation.

27 (3) The civil penalty is payable to the state of West
28 Virginia and is collectible in any manner now or
29 hereafter provided for collection of debt. If any person
30 liable to pay the civil penalty neglects or refuses to pay
31 the same, the amount of the civil penalty, together with
32 interest at ten percent, is a lien in favor of the state of
33 West Virginia upon the property, both real and per-
34 sonal, of such a person after the same has been entered

35 and docketed to record in the county where such
36 property is situated. The clerk of the county, upon
37 receipt of the certified copy of such, shall enter same to
38 record without requiring the payment of costs as a
39 condition precedent to recording.

40 (c) Notwithstanding any other provision of law to the
41 contrary, the commissioner may promulgate and adopt
42 rules which permit consent agreements or negotiated
43 settlements for the civil penalties assessed as a result of
44 violation of the provisions of this article.

45 (d) Upon application by the commissioner for an
46 injunction, the circuit court of the county in which the
47 violation is occurring, has occurred or is about to occur,
48 as the case may be, may grant a temporary or perma-
49 nent injunction restraining any person from violating or
50 continuing to violate any of the provisions of this article
51 or any rule promulgated under this article, notwith-
52 standing the existence of other remedies at law. Any
53 such injunction shall be issued without bond.

54 (e) No state court may allow for the recovery of
55 damages for any administrative action taken, if the
56 court finds that there was a probable cause for such
57 action.

58 (f) It is the duty of the prosecuting attorney of the
59 county in which the violation occurred to represent the
60 department of agriculture, to institute proceedings and
61 to prosecute the person charged with such violation.

§19-11B-14. Payment of fees.

1 All fees, penalties or other moneys collected by the
2 commissioner under the provisions of this article shall
3 be paid into a special account and expended upon the
4 order of the commissioner for the purpose of the
5 enforcement and administration of this article.

§19-11B-15. Cooperation with other entities.

1 The commissioner may cooperate with and enter into
2 agreements with governmental agencies of this state,
3 other states, agencies of the federal government,
4 agencies of foreign governments and private associa-

5 tions in order to carry out the purpose and provisions
6 of this article.

§19-11B-16. Confidentiality of trade secrets.

1 The commissioner may not make public information
2 which contains or relates to trade secrets, commercial
3 or financial information obtained from a person or
4 privileged or confidential information: *Provided*, That
5 when the information is necessary to carry out the
6 provisions of this article, this information may be
7 revealed, subject to a protective order, to any federal,
8 state or local agency consultant or may be revealed,
9 subject to a protective order, at a closed hearing or in
10 findings of fact issued by the commissioner.

ARTICLE 28. VITAMIN AND MINERAL ENRICHMENT OF FLOUR AND BREAD.

§19-28-1. Definitions.

§19-28-2. Vitamin and mineral requirements for flour; exceptions as to flour sold to distributors, bakers or other processors.

§19-28-3. Vitamin and mineral requirements for white bread or rolls.

§19-28-4. Enforcement of article; authority and duties of commissioner.

§19-28-5. Penalties for violation of article; inconsistent acts repealed; provisions severable.

§19-28-1. Definitions.

1 When used in this article, unless the context otherwise
2 requires:

3 (a) "Flour" includes, and is limited to, the foods
4 commonly known in the milling and baking industries
5 as: (1) White flour, also known as wheat flour or plain
6 flour; (2) bromated flour; (3) self-rising flour, also known
7 as self-rising white flour or self-rising wheat flour; and
8 (4) phosphated flour, also known as phosphated white
9 flour, or phosphated wheat flour, but excludes whole
10 wheat flour and also excludes special flours not used for
11 bread, roll, bun or biscuit baking, such as specialty cake,
12 pancake and pastry flours.

13 (b) "White bread" means any bread made with flour
14 as defined in paragraph (a) whether baked in a pan or
15 on a hearth or screen, which is commonly known or
16 usually represented and sold as white bread, including
17 Vienna bread, French bread and Italian bread.

18 (c) "Rolls" include plain white rolls and buns of the
19 semibread dough type, namely soft rolls, such as
20 hamburger rolls, hot dog rolls, Parker House rolls and
21 hard rolls, such as Vienna rolls, Kaiser rolls, but shall
22 not include yeast-raised sweet rolls or sweet buns made
23 with fillings or coatings, such as cinnamon rolls or buns
24 and butterfly rolls.

25 (d) "Commissioner" means the commissioner of
26 agriculture or his or her duly authorized agent.

27 (e) "Person" means an individual, a corporation, a
28 partnership, an association, a joint stock company, a
29 trust or any group of persons whether incorporated or
30 not, engaged in the commercial manufacture or sale of
31 flour, white bread or rolls.

**§19-28-2. Vitamin and mineral requirements for flour;
exceptions as to flour sold to distributors,
bakers or other processors.**

1 It is unlawful for any person to manufacture, mix,
2 compound, sell or offer for sale, for human consumption
3 in this state, flour as defined in section one of this
4 article, unless the following vitamins and minerals are
5 contained in each pound of such flour: Not less than two
6 and not more than two and five-tenths milligrams of
7 thiamine; not less than one and two-tenths and not more
8 than one and five-tenths milligrams of riboflavin; not
9 less than sixteen and not more than twenty milligrams
10 of niacin or niacinamide; not less than thirteen and not
11 more than sixteen and five-tenths milligrams of iron;
12 except in the case of self-rising flour which in addition
13 to the above ingredients shall contain not less than five
14 hundred and not more than fifteen hundred milligrams
15 of calcium: *Provided*, That the provisions of this section
16 do not apply to flour sold to distributors, bakers or other
17 processors, if the purchaser furnishes to the seller a
18 certificate in such form as the commissioner has
19 prescribed by rule, certifying that such flour will be: (1)
20 Resold to a distributor, baker or other processor; (2)
21 used in the manufacture, mixing or compounding of
22 flour, white bread or rolls enriched to meet the
23 requirements of this article; or (3) used in the manufac-

24 ture of products other than flour, white bread or rolls.
25 It is unlawful for any such purchaser furnishing any
26 such certificate to use or resell the flour purchased in
27 any manner other than as prescribed in this section:
28 *Provided, however,* That the provisions of this section do
29 not apply to noncommercial flour manufactured by
30 small flour mills, located in this state, for persons from
31 wheat harvested in this state or to any other flour
32 produced and sold at retail by such mills.

§19-28-3. Vitamin and mineral requirements for white bread or rolls.

1 It is unlawful for any person to manufacture, bake,
2 sell or offer for sale, for human consumption in this
3 state, any white bread or rolls, as defined in section one
4 of this article, unless the following vitamins and
5 minerals are contained in each pound of such bread or
6 rolls: Not less than one and one-tenth and not more than
7 one and eight-tenths milligrams of thiamine; not less
8 than seven-tenths and not more than one and six-tenths
9 milligrams of riboflavin; not less than ten and not more
10 than fifteen milligrams of niacin; and not less than eight
11 and not more than twelve and five-tenths milligrams of
12 iron.

§19-28-4. Enforcement of article; authority and duties of commissioner.

1 (a) The commissioner is hereby charged with the duty
2 of enforcing the provisions of this article and is hereby
3 authorized and directed to make, amend or rescind rules
4 and orders for the efficient enforcement of this article.

5 (b) Whenever the vitamin and mineral requirements
6 set forth in sections two and three of this article are no
7 longer in conformity with the legally established
8 standards governing the interstate shipment of enriched
9 flour and enriched white bread or enriched rolls, the
10 commissioner, in order to maintain uniformity between
11 the intrastate and interstate vitamin and mineral
12 requirements for the foods within the provisions of this
13 article, and to maintain and protect the health of the
14 citizens of this state, is authorized and directed to

15 modify or revise such requirements to conform with
16 amended standards governing interstate shipments, and
17 there shall be a presumption that the amended stand-
18 ards governing interstate shipments actually represent
19 the standards which will promote the health and well-
20 being of such citizens.

21 (c) In the event of findings by the commissioner that
22 there is an existing or imminent shortage of any
23 ingredient required by section two or three of this
24 article, and that because of such shortage the sale and
25 distribution of flour or white bread or rolls may be
26 impeded by the enforcement of this article, the commis-
27 sioner shall issue an order, to be effective immediately
28 upon issuance, permitting the omission of such ingre-
29 dient from flour or white bread or rolls and, if he finds
30 it necessary or appropriate, excepting such foods from
31 labeling requirements until the further order of the
32 commissioner. Any such findings may be made without
33 hearing, on the basis of an order or of factual informa-
34 tion supplied by the appropriate federal agency or
35 officer. In the absence of any such order of the
36 appropriate federal agency or factual information
37 supplied by it, the commissioner on his motion may, and
38 upon receiving the sworn statement of ten or more
39 persons subject to this article that they believe such a
40 shortage exists or is imminent shall, within twenty days
41 thereafter hold a public hearing with respect thereto at
42 which any interested person may present evidence, and
43 shall make findings based upon the evidence presented.

44 Whenever the commissioner has reason to believe that
45 such shortage no longer exists, he shall hold a public
46 hearing, at which any interested person may present
47 evidence, and he shall make findings based upon the
48 evidence so presented. If his findings be that such
49 shortage no longer exists, he shall issue an order to
50 become effective not less than thirty days after date of
51 issuance, revoking such previous order: *Provided*, That
52 undisposed floor stocks of flour on hand at the effective
53 date of such revocation order, or flour manufactured
54 prior to such effective date, for sale in this state may
55 thereafter be lawfully sold or disposed of.

56 (d) All orders and rules adopted by the commissioner
57 pursuant to this article, and within the limits specified
58 by this article, shall become effective upon a date fixed
59 by the commissioner.

60 (e) It is the duty of the commissioner to furnish to any
61 person or organization, filing a written request for such
62 information, a copy of any and all orders or rules,
63 adopted pursuant to this article, at least ten days prior
64 to the effective date of such orders or rules, and to make
65 copies of same available to the press. In case any
66 interested person files written objections to any pro-
67 posed order or rule, the commissioner shall give an
68 opportunity for a public hearing upon such order or rule
69 before the same shall become effective.

70 (f) For the purpose of this article, the commissioner,
71 or such officers or employees under his supervision as
72 he may designate, is authorized to take samples for
73 analysis and to conduct examinations and investigations,
74 and to enter, at reasonable times, any factory, mill,
75 bakery, warehouse, shop or establishment where flour,
76 white bread or rolls are manufactured, processed,
77 packed, sold or held, or any vehicle being used for the
78 transportation thereof, and to inspect any such place or
79 vehicle and any flour, white bread or rolls therein and
80 all pertinent equipment, material, containers and
81 labeling.

**§19-28-5. Penalties for violation of article; inconsistent
acts repealed; provisions severable.**

1 Any person who violates any of the provisions of this
2 article or the orders or rules promulgated by the
3 commissioner is guilty of a misdemeanor, and, upon
4 conviction thereof, shall be fined for each offense a sum
5 of not less than twenty-five dollars nor more than two
6 hundred dollars, or imprisoned in the county jail not to
7 exceed sixty days, or both fined and imprisoned.
8 Magistrates have jurisdiction to try cases involving
9 violations of any provision of this article, or of the orders
10 or rules promulgated by the commissioner.

CHAPTER 8

(Com. Sub. for S. B. 150—By Senator Hawse)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, fourteen and sixteen, article twelve, 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 eighteen, all relating to plant pests; defining and redefining certain terms; setting forth duties of the commissioner of agriculture; authorizing commissioner to enter into compliance agreements; requiring persons to obtain a state or federal permit; when state permit required; increasing criminal penalties upon a second and subsequent offense; authorizing commissioner to assess civil penalties; providing for the collection of such penalties; mandating commissioner to promulgate legislative rules; making trade secrets confidential; and setting forth exceptions.

Be it enacted by the Legislature of West Virginia:

That sections two, three, fourteen and sixteen, article twelve, 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 eighteen, all to read as follows:

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

§19-12-2. Definitions.

§19-12-3. Commissioner to enforce article; powers and duties generally.

§19-12-14. Permit required to sell, transport, etc., plant pests or noxious weeds.

§19-12-16. Criminal penalties; civil penalties; duties of the prosecuting attorney.

§19-12-18. Confidentiality of trade secrets.

§19-12-2. Definitions.

- 1 The following definitions shall apply in the interpretation and enforcement of this article. All words shall
- 2

3 be construed to import either the plural or the singular,
4 as the case demands:

5 (a) "Agent" means any person soliciting orders for
6 nursery stock under the partial or full control of a
7 nurseryman or dealer.

8 (b) "Certificate" means a document issued or author-
9 ized by the commissioner indicating that a regulated
10 article is not contaminated with a pest.

11 (c) "Commissioner" means the commissioner of
12 agriculture of the state of West Virginia and his or her
13 duly authorized representatives.

14 (d) "Compliance agreement" means a written agree-
15 ment between the department and any person engaged
16 in growing, handling or moving articles, plants or plant
17 products regulated under this article, wherein the
18 person agrees to comply with stipulated requirements.

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

27 (f) "Department" means the department of agriculture
28 of the state of West Virginia.

29 (g) "Genetically modified organism" means any
30 organism altered or produced through genetic modifi-
31 cation from a donor, vector or recipient organism using
32 modern molecular techniques.

33 (h) "Host" means any plant or plant product upon
34 which a pest is dependent for completion of any portion
35 of its life cycle.

36 (i) "Infested area" means any area of uncontrolled
37 growth of insects, plant diseases, noxious weeds or other
38 plant pests.

39 (j) "Noxious weed" means any living plant, or part

40 thereof, declared by the commissioner, after public
41 hearing, to be detrimental to crops, other desirable
42 plants, waterways, livestock, land or other property, or
43 to be injurious to public health or the economy.

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

50 (l) "Nurseryman" means and includes any person who
51 owns, leases, manages or is in charge of a nursery.

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

69 (n) "Permit" means a document issued or authorized
70 by the commissioner to provide for a movement of
71 regulated articles to restricted destinations for limited
72 handling, utilization or processing.

73 (o) "Person" means any individual or combination of
74 individuals, partnership, corporation, company, society,
75 association, governmental organization or other business
76 entity and each officer, agent or employee thereof.

77 (p) "Plant and plant products" means trees, shrubs,
78 vines; forage, fiber, cereal plants and all other plants;

79 cuttings, grafts, scions, buds and lumber and all other
80 parts of plants and plant products; and fruit, vegetables,
81 roots, bulbs, seeds and wood.

82 (q) "Plant pest" means any living stage of: Any insects,
83 mites, nematodes, slugs, snails, protozoa or other
84 invertebrate animals, bacteria, fungi, other parasitic
85 plants or reproductive parts thereof, viruses or any
86 organisms similar to or allied with any of the foregoing,
87 or any infectious substances, and any genetically
88 modified organisms for which there is reason to believe
89 may directly or indirectly injure or cause disease or
90 damage in any plants or parts thereof, or any processed,
91 manufactured or other products of plants.

92 (r) "Quarantine" means a legal declaration by the
93 commissioner which specifies:

94 (1) The plant pest or noxious weeds.

95 (2) The articles to be regulated.

96 (3) Conditions governing movement.

97 (4) The area or areas quarantined.

98 (5) Exemptions.

99 (s) "Regulated article" means any article of any
100 character, as described in quarantine or other order of
101 the commissioner carrying or capable of carrying a pest.

**§19-12-3. Commissioner to enforce article; powers and
duties generally.**

1 (a) It shall be the duty of the commissioner to exercise
2 the powers and duties imposed upon him or her by this
3 article for the purpose of protecting agricultural,
4 horticultural and other interests of the state from plant
5 pests or other insects and noxious weeds and for this
6 purpose the commissioner is hereby authorized and
7 empowered to promulgate such legislative rules, in
8 accordance with the provisions of chapter twenty-nine-
9 a of this code, as are necessary to effectively eradicate,
10 suppress or control plant pests or other insects or
11 noxious weeds or to retard the dissemination of plant
12 pests or other insects or noxious weeds as far as may

13 be practical and to employ or contract with such persons
14 as may be appropriate.

15 (b) The commissioner is hereby authorized and
16 empowered to cooperate with the federal government
17 and any agencies, departments and instrumentalities
18 thereof, the state of West Virginia and any agencies,
19 departments, divisions or political subdivisions thereof
20 and any other state or commonwealth and any agencies,
21 departments or political subdivisions thereof, in order to
22 carry out the effective administration of this article.

23 (c) The commissioner is empowered to enter into
24 compliance agreements with any person engaged in
25 growing, handling or moving articles, plants or plant
26 products regulated by the provisions of this article.

**§19-12-14. Permit required to sell, transport, etc., plant
pests or noxious weeds.**

1 No person may sell, barter, expose, offer for sale or
2 move, transport, deliver, ship or offer for shipment into
3 or within this state any plant pest or other insects or
4 noxious weeds in any living stage without first obtaining
5 either a federal permit, where applicable, or a state
6 permit from the commissioner. A state permit may be
7 issued only after it has been determined that the plant
8 pests or other insects or noxious weeds are not injurious,
9 are generally present already or are for scientific
10 purposes subject to specified safeguards. If a permit,
11 which addresses environmental safety, has been issued
12 by the appropriate federal regulatory agency in consul-
13 tation with the commissioner, no state permit is
14 required. If the appropriate federal regulatory agency
15 determines that a permit is unnecessary, the commis-
16 sioner may, if he or she deems it necessary to protect
17 West Virginia's agricultural interests, require a state
18 permit.

**§19-12-16. Criminal penalties; civil penalties; duties of the
prosecuting attorney.**

1 (a) *Criminal penalties.* — Any person violating any of
2 the provisions of this article, or the rules adopted
3 hereunder, is guilty of a misdemeanor, and, upon

4 conviction thereof, shall be fined not less than one
5 hundred dollars nor more than five hundred dollars for
6 the first offense; and for the second offense, shall be
7 fined not less than five hundred dollars nor more than
8 one thousand dollars, or confined in the county jail not
9 more than six months, or both.

10 (b) *Civil penalties.* —

11 (1) Any person violating a provision of this article or
12 rules adopted hereunder may be assessed a civil penalty
13 by the commissioner. In determining the amount of any
14 civil penalty, the commissioner shall give due consider-
15 ation to the history of previous violations of any person,
16 the seriousness of the violation, including any irrepar-
17 able harm to the environment, any hazards to the health
18 and safety of the public and any economic damages to
19 the public and the demonstrated good faith of any
20 person charged in attempting to achieve compliance
21 with the article before and after written notification of
22 the violation.

23 (2) The commissioner may assess a penalty of not more
24 than five hundred dollars for each first offense or
25 nonserious violation, and not more than one thousand
26 dollars for a serious violation, or for a repeat or
27 intentional violation.

28 (3) The civil penalty is payable to the state of West
29 Virginia and is collectible in any manner now or
30 hereafter provided for collection of debt. If any person
31 liable to pay the civil penalty neglects or refuses to pay
32 the same, the amount of the civil penalty, together with
33 interest at ten percent, is a lien in favor of the state of
34 West Virginia upon the property, both real and per-
35 sonal, of such a person after the same has been entered
36 and docketed to record in the county where such
37 property is situated. The clerk of the county, upon
38 receipt of the certified copy of such, shall enter same to
39 record without requiring the payment of costs as a
40 condition precedent to recording.

41 (4) The commissioner shall promulgate legislative
42 rules, in accordance with the provisions of chapter
43 twenty-nine-a of this code, to provide for the implemen-

44 tation and assessment of civil penalties pursuant to
45 subsection (b) of this section.

46 (5) The commissioner shall promulgate legislative
47 rules, in accordance with the provisions of chapter
48 twenty-nine-a of this code, to permit consent agreements
49 or negotiated settlements for the civil penalties which
50 may be assessed pursuant to the provisions of this
51 section.

52 (c) No state court may allow for the recovery of
53 damages for any administrative action taken, if the
54 court finds that there was a probable cause for such
55 action.

56 (d) It shall be the duty of the prosecuting attorney of
57 the county in which the violation occurred to represent
58 the department of agriculture, to institute proceedings
59 and to prosecute the person charged with such violation.

§19-12-18. Confidentiality of trade secrets.

1 The commissioner may not make public information
2 which contains or relates to trade secrets, commercial
3 or financial information obtained from a person which
4 is privileged or confidential information: *Provided*, That
5 when the information is necessary to carry out the
6 provisions of this article, this information may be
7 revealed, subject to a protective order, to any federal,
8 state or local agency consultant; or may be revealed,
9 subject to a protective order, at a closed hearing or in
10 findings of fact issued by the commissioner.

CHAPTER 9

(Com. Sub. for H. B. 2583—By Delegates D. Miller and Compton)

[Passed February 27, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article fourteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia Commercial Feed Law of 1991; definitions; commissioner's powers and duties; special revenue fund;

permits; registration; refusal of applications; suspension and revocation of registrations and permits; hearings and appeals; labeling; tonnage reports; inspection fees; adulteration; misbranding; embargoes; condemnation and confiscation; injunctions; confidentiality of trade secrets; prohibited acts; criminal and civil penalties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. WEST VIRGINIA COMMERCIAL FEED LAW.

- §19-14-1. Title.
- §19-14-2. Definitions.
- §19-14-3. Powers and duties of the commissioner.
- §19-14-4. Special revenue fund.
- §19-14-5. Permits; registration.
- §19-14-6. Refusal of applications; suspension and revocation of registrations and permits.
- §19-14-7. Hearings and appeals.
- §19-14-8. Labeling.
- §19-14-9. Tonnage reports; inspection fees.
- §19-14-10. Adulteration.
- §19-14-11. Misbranding.
- §19-14-12. Embargoes; condemnation and confiscation; injunctions.
- §19-14-13. Confidentiality of trade secrets.
- §19-14-14. Prohibited acts.
- §19-14-15. Penalties.

§19-14-1. Title.

- 1 This article shall be known as the "West Virginia
- 2 Commercial Feed Law of 1991."

§19-14-2. Definitions.

- 1 (a) "Brand name" means any word, name, symbol or
- 2 device, or any combination thereof, identifying the
- 3 commercial feed of a distributor or manufacturer and
- 4 distinguishing it from all others.
- 5 (b) "Bulk" refers to commercial feed distributed in
- 6 nonpackaged form and accompanied by an invoice or
- 7 delivery slip.
- 8 (c) "Commercial feed" means all materials distributed
- 9 for use as feed or for mixing in feed for animals, other

10 than man, except: (1) Unmixed or unprocessed whole
11 seeds when such whole or unprocessed seeds are not
12 chemically changed or adulterated; (2) unground hay,
13 straw, stover, silage, cobs, husks, hulls, and raw meat
14 when not mixed with other materials and when not
15 adulterated; (3) individual chemical compounds when
16 not mixed with other materials. The term commercial
17 feed shall include the categories of feed ingredients,
18 customer-formula feeds, pet foods and specialty pet
19 foods.

20 (d) "Commissioner" refers to the commissioner of
21 agriculture of the state of West Virginia or a duly
22 authorized employee.

23 (e) "Contract feeder" means a person who, as an
24 independent contractor, feeds commercial feed to
25 animals pursuant to a contract and the commercial feed
26 is supplied, furnished, or provided to the independent
27 contractor and such contractor's remuneration is
28 determined all or in part by feed consumption, mortal-
29 ity, profits, or the amount or quality of the product.

30 (f) "Customer-formula feed" means a commercial feed
31 which is manufactured according to the specific
32 instructions of the final purchaser.

33 (g) "Distribute" means to offer for sale, sell, expose for
34 sale, exchange, or barter commercial feed; or to supply,
35 furnish, or provide commercial feed to a contract feeder.

36 (h) "Distributor" means any person who sells, exposes
37 for sale, offers for sale, exchanges, barter, gives,
38 parcels out, allots, shares, or dispenses a commercial
39 feed.

40 (i) "Domesticated animal" means any species of
41 animal living and bred in a tame condition.

42 (j) "Drug" means any substance intended for use in
43 the diagnosis, cure, mitigation, treatment, or prevention
44 of disease in animals, other than man; and substances,
45 other than nutritive components, intended to affect the
46 structure or any function of the animal body.

47 (k) "Feed ingredient" means each constituent mate-

48 rial making up commercial feed, including individual
49 chemical compounds labeled for use as a feed
50 ingredient.

51 (l) "Label" means a display of written, printed, or
52 graphic matter affixed to the container in which
53 commercial feed is distributed; or affixed to the invoice,
54 delivery slip, or other shipping document which accom-
55 panies bulk shipments of commercial feed or customer-
56 formula feed. All such labels shall be legible and in
57 English.

58 (m) "Labeling" means all written, printed, or graphic
59 matter, or advertising referencing such commercial
60 feed.

61 (n) "Manufacture" means to grind, mix, blend,
62 package, pack, repackage, repack, or process a commer-
63 cial feed for distribution.

64 (o) "Medicated feed" means any commercial feed
65 which contains one or more drugs.

66 (p) "Mineral feed" means a commercial feed designed
67 or intended to supply primarily mineral elements or
68 inorganic nutrients.

69 (q) "Official sample" means any sample of commercial
70 feed taken by the commissioner in accordance with the
71 provisions of this article and rules promulgated
72 hereunder.

73 (r) "Percent" or "percentage" means percentage by
74 weights.

75 (s) "Person" means an individual, partnership, associ-
76 ation, fiduciary, firm, company, corporation or any
77 organized group of persons whether incorporated or not.

78 (t) "Pet" means any domesticated species of animal
79 normally maintained in or near the household of the
80 owner including, but not limited to, dogs, cats and
81 specialty pets.

82 (u) "Pet food" means any commercial feed manufac-
83 tured and distributed for consumption by pets.

84 (v) "Principal display panel" means the part of a label

85 that is intended to be shown and examined when the
86 product is on display for retail sale.

87 (w) "Process" means any treatment that changes a
88 feed ingredient so that it can no longer be restored to
89 its previous form.

90 (x) "Product name" means the name of the commer-
91 cial feed which identifies it, such as: Species of animal,
92 age group of animal, characterizing ingredients, specific
93 use, or other descriptive terms.

94 (y) "Registrant" means any person who registers
95 commercial feed for distribution or use in this state.

96 (z) "Repack" or "repackaging" means to pack and
97 label a previously manufactured and packaged commer-
98 cial feed prior to a specific request of a customer.

99 (aa) "Specialty pet" means any domesticated pet
100 normally maintained in a cage or tank including, but
101 not limited to, gerbils, hamsters, birds, tropical fish,
102 goldfish, snakes and turtles.

103 (bb) "Specialty pet food" means any commercial feed
104 intended for consumption by specialty pets.

105 (cc) "Ton" means a net weight of two thousand pounds
106 avoirdupois.

§19-14-3. Powers and duties of the commissioner.

1 The commissioner has the power and authority to:

2 (a) Enter and inspect, during reasonable hours, any
3 location where commercial feeds are manufactured,
4 distributed, transported or used, and where records
5 relating to the manufacture, distribution, shipment,
6 labeling or sale of commercial feed are kept. Such
7 inspection includes, but is not limited to, examining,
8 photographing, verifying, copying, and auditing records
9 as is necessary to determine compliance with this
10 article, labels, consumer complaints, and papers relat-
11 ing to the manufacturing, distribution, sampling,
12 testing and sale of commercial feeds.

13 (b) Open, examine, sample and test commercial feed,
14 unmixed or unprocessed whole seeds, equipment,

- 15 containers, transport containers, and packages used or
16 intended to be used in the manufacture and distribution
17 of commercial feeds.
- 18 (c) Issue permits and registrations pursuant to this
19 article.
- 20 (d) Refuse, suspend, or revoke permits and registra-
21 tions as provided in this article.
- 22 (e) Issue embargoes as provided in this article.
- 23 (f) Condemn and confiscate any product that is not
24 brought into compliance with this article.
- 25 (g) Collect fees and penalties, and expend moneys
26 under the terms of this article.
- 27 (h) Conduct sampling in accordance with the official
28 methods published in the current edition of the Official
29 Methods of Analysis of the Association of Official
30 Analytical Chemists and supplements thereto, or
31 methods approved by the commissioner by rules.
- 32 (i) Conduct hearings as provided by this article.
- 33 (j) Assess civil penalties and refer violations to a court
34 of competent jurisdiction.
- 35 (k) Obtain court orders directing any person refusing
36 to submit to inspection, sampling, and auditing to
37 submit.
- 38 (l) Establish and maintain feed testing facilities;
39 establish reasonable fees for such tests; incur expenses;
40 and conduct tests in accordance with the official
41 methods published in the current edition of the Official
42 Methods of Analysis of the Association of Official
43 Analytical Chemists and supplements thereto, or
44 methods approved by the commissioner by rules.
- 45 (m) Be guided by the analytical results of the official
46 sample when determining whether the commercial feed
47 is deficient in any component.
- 48 (n) Report the analytical results on all official samples
49 to the registrant and, in the case of deficient samples,
50 also to the dealer and the purchaser, if known.

51 (o) Upon request made within thirty days from the
52 date the official sample results are reported, furnish a
53 portion of the official sample to the registrant.

54 (p) Publish and distribute annually a composite
55 report containing: (1) The sales of commercial feeds and
56 feed ingredients during the preceding period, (2) the
57 results of the analysis of official samples as compared
58 with the guarantee on the label, (3) firms responsible for
59 the product, and (4) such other data the commissioner
60 deems necessary: *Provided*, That the information on
61 production and use so provided does not disclose the
62 operations of any person.

63 (q) To cooperate with and enter into agreements with
64 governmental agencies of this state and other states,
65 agencies of the federal government and foreign govern-
66 ments, and private associations in order to carry out the
67 purpose and provisions of this article.

68 (r) Promulgate rules, in accordance with chapter
69 twenty-nine-a of this code, dealing with commercial
70 feeds and enforcement of this article.

§19-14-4. Special revenue fund.

1 All fees and penalties collected under the provisions
2 of this article shall be deposited with the state treasurer
3 in a special revenue account. Such moneys shall be
4 expended by the commissioner of agriculture for
5 inspection, sampling, analysis, and other expenses
6 necessary for the administration of this article.

§19-14-5. Permits; registration.

1 (a) Permits and registrations shall not be transferra-
2 ble with respect to persons or locations.

3 (b) A person must apply for a permit or registration
4 at least fifteen days prior to the expiration of the current
5 permit or registration expires; or at least fifteen days
6 prior to the date that the person intends to engage in
7 business or market products in this state. All applica-
8 tions shall be accompanied by the fee established in this
9 section. A penalty of two dollars shall be added to the
10 fee for all permits or registrations that are not applied

11 for or renewed within the time limit.

12 (c) Persons manufacturing commercial feed or cus-
13 tomer-formula feed in this state must obtain a Commer-
14 cial Feed Manufacturing Permit, except all persons
15 manufacturing feed for only his/her animals on his/her
16 premises. Application forms shall be provided by the
17 commissioner and include such information as estab-
18 lished by rules. A separate permit shall be obtained for
19 each manufacturing facility or location in this state.
20 Each Commercial Feed Manufacturing Permit applica-
21 tion shall be accompanied by an application fee of fifteen
22 dollars. Each permit issued shall expire on the thirty-
23 first day of December next following the date of issue.

24 (d) Each person first distributing commercial feed
25 into West Virginia trade channels must obtain a
26 Commercial Feed Distributor Permit, except: (1)
27 Persons distributing pet food exclusively, (2) persons
28 holding a valid Commercial Feed Manufacturing
29 Permit, and (3) persons distributing only those feeds
30 that they register. Application forms shall be provided
31 by the commissioner and include such information as
32 established by rules. Each Commercial Feed Distributor
33 Permit application shall be accompanied by an applica-
34 tion fee of ten dollars. Each permit issued shall expire
35 on the thirty-first day of December next following the
36 date of issue.

37 (e) All commercial feed distributed or used in this
38 state, except customer-formula feed, must be registered.
39 Commercial feed that can be uniquely identified by its
40 brand name, product name, physical form or other
41 descriptive term shall be registered as a separate
42 product. Commercial feed that is packaged in such
43 weights as to apply to several categories shall be
44 registered in each applicable category. Application
45 forms shall be provided by the commissioner and
46 include such information as established by rules.

47 (1) Commercial feed, other than pet food, in packages
48 over ten pounds or bulk shall be registered permanently.
49 A registration fee of ten dollars per product shall
50 accompany each application for registration, except that

51 there will be no fee for a revision of a commercial feed
52 already on file that involves a change in the net weight,
53 a change in the list of ingredients, and/or a change in
54 the guarantee for vitamins or minerals.

55 (2) On the thirty-first day of August, 1991, permanent
56 registrations for pet food in packages over ten pounds
57 are void and application for registration and payment
58 of fees will be required. Pet food, including specialty pet
59 foods, in packages over ten pounds or bulk shall be
60 registered annually. A registration fee of fifty dollars
61 per product shall accompany each application for
62 registration. The registration shall expire the thirty-
63 first day of August next following the date of issue.

64 (3) Commercial feed, excluding specialty pet food in
65 packages of one pound or less, in packages of ten pounds
66 and under shall be registered annually. A registration
67 fee of forty dollars per product shall accompany each
68 application for registration. The registration shall
69 expire on the thirty-first day of December next follow-
70 ing the date of issue.

71 (4) Specialty pet food in packages of one pound or less
72 shall be registered annually. A registration fee of twenty
73 dollars per product shall accompany each application
74 for registration. The registration shall expire on the
75 thirty-first day of December next following the date of
76 issue.

77 (f) A person is not required to register any brand
78 name or product name of commercial feed which is
79 already registered by another person.

80 (g) Alteration of commercial feed that changes the
81 label requires a new application for a Commercial Feed
82 Registration be made and approved before distribution.

**§19-14-6. Refusal of applications; suspension and revoca-
tion of registrations and permits.**

1 The commissioner may refuse to grant, or may
2 suspend or revoke registration of any commercial feed;
3 any commercial feed manufacturing permit; or any
4 commercial feed distributor permit when it is deter-
5 mined that: (a) The applicant, permittee, or registrant

6 has violated the provisions of this article or any official
7 rule promulgated hereunder; or (b) this article or the
8 rules promulgated hereunder cannot be or will not be
9 complied with: *Provided*, That the permittee or regis-
10 trant shall have the opportunity to be heard prior to the
11 suspension or revocation of the registration or permit.

§19-14-7. Hearings and appeals.

1 (a) No application shall be refused until the applicant
2 has the opportunity to amend his/her application to
3 comply with the requirements of this article.

4 No registration or permit shall be refused, suspended
5 or revoked until the registrant or permittee shall have
6 the opportunity to have a hearing before the commis-
7 sioner.

8 (b) Any person adversely affected by an act, order or
9 ruling made pursuant to the provisions of this article,
10 may within forty-five days thereafter, bring an action
11 for judicial review in the circuit court of the county in
12 which the violation occurred.

13 Any party aggrieved by a final judgment entered by
14 a circuit court, may appeal to the West Virginia
15 supreme court of appeals.

§19-14-8. Labeling.

1 (a) When commercial feed, except customer-formula
2 feed, is distributed in this state in bags or other
3 containers, the label shall be affixed to the container;
4 when commercial feed is distributed in bulk, the label
5 shall accompany delivery.

6 (b) All commercial feed labels, except customer-
7 formula feeds, shall state the following:

8 (1) The net weight avoirdupois. The net weight may
9 also be stated in metric units.

10 (2) The product name, including brand name, if any,
11 under which the commercial feed is distributed.

12 (3) The guaranteed analysis stating what the commis-
13 sioner determines by rules is required to advise the user
14 of the composition of the feed and other necessary

15 information to support claims made on the label. The
16 substances or elements guaranteed must be determin-
17 able by laboratory methods published by the association
18 of official analytical chemists or by an acceptable
19 method supplied by the registrant.

20 (4) An ingredient statement, except that an ingre-
21 dient statement is not required for single standardized
22 ingredient feeds or when such statement is not in the
23 interest of consumers. An ingredient statement shall
24 include:

25 (A) The common or usual name of each ingredient as
26 officially defined in the annual Official Publication of
27 the Association of American Feed Control Officials;

28 (B) Collective terms as defined in the annual Official
29 Publication of the Association of American Feed Control
30 Officials;

31 (C) The common or usual name of substances gener-
32 ally recognized as safe (GRAS) as authorized by 21 Code
33 of Federal Regulations 570.30 (April 1, 1990) of the
34 Federal Drug and Cosmetic Act as amended August,
35 1985;

36 (D) The common or usual name of substances which
37 are so common so as to not need a definition, have a
38 substantially safe history, and no safety hazard is known
39 to exist after consumption by a significant number of
40 animals, including, but not limited to, salt and sugar;
41 or

42 (E) Other ingredients or additives that the commis-
43 sioner, by rules, deems necessary.

44 (5) The name and principal mailing address of the
45 manufacturer or the distributor.

46 (6) Adequate directions and precautionary statements
47 for safe and effective use.

48 (7) If a drug or drug containing product is used, then
49 the following shall be stated:

50 (A) The established name of each active drug
51 ingredient;

- 52 (B) The level of each drug used in the final mixture;
- 53 (C) The purpose of the medication (claim statement);
- 54 (D) Appropriate cautions and warnings on the use of
55 the medicated commercial feed;
- 56 (E) Withdrawal statements, if applicable;
- 57 (F) The word "medicated" shall appear directly
58 following and below the product name in type size, no
59 smaller than one-half the type size of the product name.
- 60 (c) Pet food labels shall have such additional informa-
61 tion as required by the commissioner through rules.
- 62 (d) All customer-formula feeds shall be labeled at all
63 times and shall be supplied to the purchaser at the time
64 of delivery. The label shall bear the following
65 information:
- 66 (1) Name and address of the manufacturer.
- 67 (2) Name and address of the purchaser.
- 68 (3) Date of manufacture.
- 69 (4) Net weight (avoirdupois) of the commercial feed
70 and each feed ingredient used in the customer-formula
71 feed.
- 72 (5) Adequate directions and precautionary statements
73 for safe and effective use.
- 74 (6) If a drug or drug containing product is used, then
75 the following shall be stated:
- 76 (A) The established name of each active drug
77 ingredient;
- 78 (B) The level of each drug used in the final mixture;
- 79 (C) The purpose of the medication (claim statement);
- 80 (D) Appropriate cautions and warnings on the use of
81 the commercial feed;
- 82 (E) Withdrawal statements, if applicable;
- 83 (F) The word "medicated" shall appear directly
84 following and below the product name in type size no

85 smaller than one-half the type size of the product name.

§19-14-9. Tonnage reports; inspection fees.

1 (a) Each person holding a Commercial Feed Manufac-
2 turing Permit, a Commercial Feed Distributor Permit,
3 and every registrant, except those persons exempted in
4 subsection (b) of this section, shall report the number of
5 tons of commercial feed distributed and pay an inspec-
6 tion fee on all feed distributed, except no inspection fee
7 shall be due on:

8 (1) Commercial feed, if the payment was made by a
9 previous distributor.

10 (2) Customer-formula feeds or commercial feeds
11 manufactured in this state, if the inspection fee was paid
12 on the commercial feed or all the feed ingredients used
13 as ingredients therein. For the purpose of this exemp-
14 tion, the sale of the feed ingredients used in customer-
15 formula feeds are considered to have taken place before
16 the processing of these items.

17 (3) Commercial feeds or commercial feeds manufac-
18 tured in this state which are subsequently used as
19 ingredients in the continuing manufacture of commer-
20 cial feeds in which the end product is registered.

21 (4) Commercial feed supplied to a poultry contract
22 feeder.

23 (5) Commercial feed in packages of ten pounds or less.

24 (6) Pet food or specialty pet food.

25 (7) Commercial feed, where the inspection fee was
26 paid during a previous quarter and is offered for sale
27 in the current quarter.

28 (b) Each person holding a Commercial Feed Manu-
29 facturing Permit, a Commercial Feed Distributor
30 Permit, or a registrant, except those persons: (1)
31 Exclusively distributing or manufacturing pet food or
32 specialty pet food; or (2) exclusively distributing or
33 manufacturing commercial feed in packages of ten
34 pounds or less, shall file a semiannual statement under
35 oath before the thirty-first day of January and July of

36 each year. The statement shall include the number of
37 net tons of commercial feeds and feed ingredients
38 manufactured or first distributed in this state during
39 the preceding six-month period.

40 Each report shall be accompanied by an inspection fee
41 at the rate of thirty-five cents per ton on commercial
42 feed and feed ingredients with the minimum inspection
43 fee being ten dollars each statement. The minimum fee
44 is waived if the total amount of the calculated inspection
45 fee due is two dollars or less. Such fees become effective
46 on the first day of July, 1991.

47 Inspection fees which are due and payable and not
48 remitted to the commissioner within fifteen days
49 following the due date shall be assessed a penalty of ten
50 percent of the amount due, except that semiannual
51 reports with no fees due received fifteen days after the
52 due date shall be assessed a penalty of ten dollars. The
53 assessment of this penalty fee shall not prevent the
54 commissioner from taking other actions as provided in
55 this chapter.

56 (c) All persons must keep accurate records, as may be
57 necessary or required by the commissioner, to indicate
58 the tonnage of commercial feed distributed in this state.

§19-14-10. Adulteration.

1 Commercial feed or feed ingredients is adulterated:

2 (a) If it contains any poisonous, deleterious or nonnu-
3 tritive substance, including pesticide chemical residues,
4 food additives, color additives or drugs which is or may
5 be injurious to animals when fed such feed in accor-
6 dance with the directions, or to humans who consume
7 the resultant food product of the animal;

8 (b) If its composition or quality falls below or differs
9 from what is stated on the label or by its labeling;

10 (c) If it contains viable weed seeds exceeding the
11 limits set by the commissioner by rules;

12 (d) If the facilities, controls, or methods used in the
13 manufacture, processing, or packaging do not conform
14 to industry standards set by the commissioner by rules;
15 or

16 (e) If it was manufactured or held under conditions
17 whereby it became contaminated by dust, dirt, insects,
18 birds, rodents, or animal excretion thereby rendering it
19 injurious to animal health.

§19-14-11. Misbranding.

1 Commercial feed is misbranded:

2 (a) If its label or labeling is false or misleading;

3 (b) If it is not labeled as required by this article;

4 (c) If any word, statement, or other information
5 required by this article to appear on the label is not
6 prominently and conspicuously placed so that it can be
7 read and understood by the ordinary individual under
8 customary conditions of purchase and use;

9 (d) If it purports to or contains a feed ingredient that
10 does not conform to the definition of identity prescribed
11 by the commissioner by rules; or

12 (e) If any damage or inferiority has been concealed.

**§19-14-12. Embargoes; condemnation and confiscation;
injunctions.**

1 (a) Embargo orders: When the commissioner has
2 reasonable cause to believe any lot of commercial feed
3 is being manufactured, distributed, offered for sale,
4 exposed for sale, or used in this state in violation of the
5 provisions of this article or any rule promulgated
6 hereunder, then he/she may issue and enforce a written
7 embargo order, warning the custodian of the commer-
8 cial feed not to manufacture, distribute, use, remove, or
9 dispose of the commercial feed in any manner until the
10 embargo is released by the commissioner or by court
11 order.

12 When the embargo is issued, the commissioner shall
13 affix a tag or other marking to the commercial feed
14 and/or to the manufacturing device warning that such
15 product or process is under embargo and notify the
16 custodian that he/she has a right to request an imme-
17 diate hearing.

18 The commissioner shall release the commercial feed
19 so embargoed when said commercial feed has been
20 brought into compliance with this article and its rules.

21 The commissioner shall have the authority to issue an
22 embargo against a perishable product, even if the result
23 is the involuntary disposal of the product.

24 The commissioner may take action to seize and
25 condemn any product if not brought into compliance
26 with this article and the rules issued hereunder, within
27 ninety days of the notice to the custodian.

28 (b) Condemnation and confiscation: Any commercial
29 feed not in compliance with the provisions of this article
30 or the rules promulgated hereunder shall be subject to
31 condemnation and confiscation on complaint of the
32 commissioner to the circuit court of the county in which
33 the commercial feed in question is located. Jurisdiction
34 is hereby conferred upon the circuit courts to hear and
35 determine such matter.

36 If the court finds that the commercial feed is in
37 violation of the provisions of this article or its rules and
38 should be confiscated, then the court shall order the
39 condemnation and confiscation of such commercial feed
40 and its disposition in a manner consistent with the
41 quality of such commercial feed which is not in violation
42 of any other laws of this state: *Provided*, That the owner
43 thereof must first be given an opportunity to process or
44 relabel such commercial feed or dispose of the same in
45 full compliance with the provisions of this article and
46 its rules.

47 (c) Injunctions: Upon application by the commis-
48 sioner, the circuit court of the county in which the
49 violation is occurring, has occurred or is about to occur,
50 may grant a temporary or permanent injunction
51 restraining any person from violating or continuing to
52 violate any of the provisions of this article or any rule
53 promulgated hereunder. An injunction shall be issued
54 without bond.

§19-14-13. Confidentiality of trade secrets.

1 The commissioner may not make public any informa-

2 tion which contains or relates to trade secrets, acquired
3 under the authority of this article, concerning any
4 methods, formulas, processes, sales, or distribution
5 information: *Provided*, That the commissioner may
6 exchange information of a regulatory nature with duly
7 appointed officials of the United States Government, of
8 other states, or of other foreign governments who are
9 similarly prohibited by law from revealing this informa-
10 tion.

§19-14-14. Prohibited acts.

1 It shall be unlawful:

2 (a) To manufacture, distribute, or knowingly use any
3 commercial feed that is adulterated or misbranded.

4 (b) To adulterate or misbrand any commercial feed.

5 (c) To distribute, use, remove, or dispose of commer-
6 cial feed in violation of an embargo order, or condem-
7 nation and confiscation order provided for under this
8 article.

9 (d) To manufacture, distribute, or use any commercial
10 feed containing a drug or drugs that cause or may cause
11 residue of the drug or drugs in the edible tissues, milk,
12 or eggs of the animals fed such feed in excess of the
13 acceptable residue levels set by the commissioner by
14 rules.

15 (e) To fail or refuse to register commercial feeds.

16 (f) To fail or refuse to obtain permits required under
17 this article.

18 (g) To fail to make an accurate statement of tonnage.

19 (h) To fail to pay inspection fees as required under
20 this article.

21 (i) To distribute or knowingly use any commercial
22 feed that has not had an accurate statement of tonnage
23 reported to the commissioner in the previous reporting
24 period.

25 (j) To use or imply the name West Virginia depart-
26 ment of agriculture, or reference any inspection or

27 sample findings made by the West Virginia department
28 of agriculture on labels or labeling of commercial feed.

29 (k) To interfere with the commissioner's official
30 duties.

§19-14-15. Penalties.

1 (a) *Criminal penalties.*—Any person violating any of
2 the provisions of this article is guilty of a misdemeanor,
3 and, upon conviction thereof, shall be fined not less than
4 one hundred dollars nor more than five hundred dollars
5 for the first offense, and for each subsequent offense,
6 shall be fined not less than five hundred nor more than
7 one thousand dollars, or imprisoned in the county jail
8 not more than six months, or both fined and imprisoned.
9 Magistrates have concurrent jurisdiction with circuit
10 courts to enforce the provisions of this article.

11 (b) *Civil penalties.* —

12 (1) Any person violating any of the provisions of this
13 article or the rules adopted hereunder may be assessed
14 a civil penalty by the commissioner. In determining the
15 amount of any civil penalty, the commissioner shall give
16 due consideration to the history of previous violations of
17 any person; the seriousness of the violation, including
18 any irreparable harm to the environment, any hazards
19 to the health and safety of the public and to the animals
20 consuming or intended to consume the commercial feed;
21 and the demonstrated good faith of any person charged
22 in attempting to achieve compliance with this article
23 after written notification of the violation.

24 (2) The commissioner may assess a penalty of not
25 more than five hundred dollars for the first offense or
26 nonserious violation, as determined by the commissioner
27 in accordance with the rules promulgated in accordance
28 with the provisions of chapter twenty-nine-a of this code,
29 and not more than one thousand dollars for a serious,
30 repeat, or intentional violation, as determined by the
31 commissioner in accordance with such promulgated
32 rules.

33 (3) The civil penalty is payable to the state of West
34 Virginia and is collectible in any manner now or

35 hereafter provided for collection of a debt. Any person
36 liable to pay the civil penalty and neglecting or refusing
37 to pay the same, shall be assessed interest at ten percent
38 from the date the penalty was assessed. Such penalty
39 and interest constitute a lien in favor of the state of West
40 Virginia and shall attach on the person's property when
41 such lien is properly recorded in the county where such
42 property is located. There shall be no cost as a condition
43 precedent to recording.

44 (c) Notwithstanding any other provision of law to the
45 contrary, the commissioner may promulgate and adopt
46 rules which permit consent agreements or negotiated
47 settlements for the civil penalties assessed as a result of
48 a violation of the provisions of this article.

49 (d) It shall be the duty of each prosecuting attorney
50 to whom any violation is reported to cause appropriate
51 proceedings to be instituted and prosecuted in a court
52 of competent jurisdiction without delay.

53 (e) Nothing in this article shall be construed as to
54 require the commissioner to report minor violations of
55 this article when he/she believes that the public interest
56 will be best served by a written notice.

57 (f) No state court may allow the recovery of damages
58 for administrative action taken if the court finds that
59 there was probable cause for such action.

CHAPTER 10

(Com. Sub. for H. B. 2293—By Delegate D. Miller)

[Passed February 28, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact article thirteen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the apiary law; definitions; commissioner's powers and duties generally; apiary education; cooperation with governmental agencies; registration of bees and identifying apiaries; right of entry to inspect apiaries; authorizing

quarantines; abandoned apiaries and equipment; requirements for importing bees; pesticide poisoning to bees; candy for mailing cages; article violations; increasing criminal penalties; adding civil penalties; severability.

Be it enacted by the Legislature of West Virginia:

That article thirteen, 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 13. INSPECTION AND PROTECTION OF APICULTURE.

- §19-13-1. Title.
- §19-13-2. Definitions.
- §19-13-3. Commissioner's powers and duties; apiary education; cooperation with governmental agencies.
- §19-13-4. Registration of bees; identification of apiaries.
- §19-13-5. Right of entry; apiary inspections; quarantines.
- §19-13-6. Abandoned apiaries and equipment; notice.
- §19-13-7. Bees brought into state to carry inspection certificate; commissioner to be notified; interstate movement of bees.
- §19-13-8. Pesticide poisoning to bees.
- §19-13-9. Candy for mailing cages.
- §19-13-10. Violations.
- §19-13-11. Penalties for violations of article; rules.
- §19-13-12. Severability.

§19-13-1. Title.

- 1 This article shall be known by the short title as "The
- 2 West Virginia Apiary Law of 1991."

§19-13-2. Definitions.

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

- 5 (a) "Abandoned apiary" means any apiary in which
- 6 the owner cannot be determined and in which twenty-
- 7 five percent or more of the colonies are dead or diseased,
- 8 or death or disarray of the colonies exposes them to
- 9 robbing, or diseased or potentially diseased abandoned
- 10 equipment which may jeopardize the welfare of neigh-
- 11 boring colonies.

- 12 (b) "Apiary" means any place where one or more

13 colonies or nuclei of bees are kept or where bee
14 equipment is stored.

15 (c) "Appliances" means any apparatus, tool, machine
16 or other device, used in the handling and manipulating
17 of bees, honey, wax and hives. It also means any
18 container of honey and wax that may be used in any
19 apiary or in transporting bees and their products and
20 apiary supplies.

21 (d) "Bees" shall be construed to mean any stage of the
22 common hive or honeybee (*Apis mellifera*), or other
23 species of the genus *Apis*.

24 (e) "Bee diseases" shall be construed to mean Amer-
25 ican foulbrood (*Bacillus larvae*), European foulbrood
26 (*Bacillus pluton*), Varroa mite (*Varroa jacobsoni*), honey
27 bee tracheal mite (*Acarapis woodi*), or any other
28 infection or parasitic infestation determined by the
29 commissioner to be transmissible to other bee colonies
30 and that represents a threat to beekeeping in West
31 Virginia.

32 (f) "Bee equipment" means hives, supers, frames,
33 veils, gloves or any other appliances.

34 (g) "Colony" means the hive and includes bees, comb,
35 honey and equipment.

36 (h) "Commissioner" means the commissioner of the
37 department of agriculture of the state of West Virginia
38 or a duly authorized employee.

39 (i) "Control agents or control mechanisms" means any
40 method of chemical or mechanical control to suppress
41 or eradicate an apiary disease, pest, or parasitic
42 infestation in an apiary or the colonies contained
43 therein.

44 (j) "Department" means the department of agricul-
45 ture of the state of West Virginia.

46 (k) "Hive" shall be construed to mean frame hive, box
47 hive, box, barrel, log, gum, skep or any other receptacle
48 or container, natural or artificial, or any part thereof,
49 which may be used or employed as a domicile for bees.

50 (l) "Nuclei" means the removal of a split portion or
51 division of any colony of honey bees for the express
52 purpose of creating a numerical increase in colonies for
53 honey production, pollination service or monetary gain
54 through sale of honey bees.

55 (m) "Packaged bees" means bees shipped in combless
56 packages which shall bear a valid certificate of health
57 by an authorized state or federal agency verifying the
58 absence or presence of any infectious or communicable
59 diseases or parasitic infestations, and further provides
60 that no honey has been used for food while in transit or
61 that bears an affidavit that any honey used as food in
62 transit was properly sterilized.

63 (n) "Person" shall include all corporations, partner-
64 ships, associations, societies, individuals or group of
65 individuals or any employee, servant or agent acting for
66 or employed by any person as above defined.

67 (o) "Premises" means any parcel of real estate and
68 structures in which bee equipment, bees, bee products
69 and bee appliances can be utilized for storage purposes.

70 (p) "Quarantine" means a specific period of enforced
71 isolation to contain and prevent the spread of contagious
72 bee diseases or parasites, which shall include specific
73 perimeters deemed by the commissioner to be affected
74 or potentially affected by such contagious bee diseases
75 or parasites.

76 (q) "Sterilized or sterilization" means to treat and
77 neutralize contagious bee diseases by means of steam
78 autoclave or ethylene oxide fumigation, boiling at a
79 temperature of two hundred twelve degrees Fahrenheit
80 for thirty minutes, pit incineration, or by any other
81 acceptable method which the commissioner determines
82 effective for control of bee diseases or parasites.

**§19-13-3. Commissioner's powers and duties; apiary
education; cooperation with governmental
agencies.**

1 (a) It shall be the duty of the commissioner of
2 agriculture to exercise the powers and duties imposed
3 by this article for the purpose of protecting agriculture.

4 For this purpose, the commissioner is hereby authorized
5 and empowered to promulgate such rules in accordance
6 with the provisions of chapter twenty-nine-a of this code:
7 (1) To effectively eradicate, suppress or control bee
8 diseases as far as may be practical; (2) to regulate the
9 keeping and maintaining of bees, bee equipment, queen
10 breeding equipment, apiaries and appliances; (3) to
11 regulate treatments, retreatments, and fees for said
12 services; and (4) such other rules as are necessary to
13 effectuate the enforcement of this article.

14 (b) The commissioner is authorized to conduct apiary
15 education in a manner which may advance and promote
16 bee culture in West Virginia.

17 (c) The commissioner is hereby authorized and
18 empowered to cooperate with the federal government
19 and any agencies, departments and instrumentalities
20 thereof; the state of West Virginia and any agencies,
21 departments, divisions, or political subdivisions thereof;
22 and any other state or commonwealth and any agencies,
23 departments or political subdivisions thereof, in order to
24 carry out the effective administration of this article.

§19-13-4. Registration of bees; identification of apiaries.

1 (a) All persons keeping bees in this state shall, within
2 ninety days of the effective date of this article, notify the
3 commissioner in writing of the number and location of
4 colonies they own or rent, or which they keep for
5 someone else, whether the bees are located on their own
6 property or someone else's property. Thereafter, such
7 information shall be provided within ten days of the
8 time the bees are acquired. Bees shall be registered on
9 an annual basis thereafter.

10 (b) All persons owning or operating an apiary which
11 is not located on said owner's or operator's property
12 must post the name and address of the owner or
13 operator in a conspicuous place in the apiary.

§19-13-5. Right of entry; apiary inspections; quarantines.

1 (a) To effectuate the purpose of this article, the
2 commissioner is hereby invested with authority, during
3 reasonable working hours, with prior consent by the

4 owner or person in charge of such apiaries, if known,
5 to enter upon any public or private premises, except
6 private residences, and shall have access to any apiary
7 for the purpose of inspecting or sampling.

8 (b) The commissioner shall inspect, as practical, all
9 colonies of honey bees domiciled within the state of West
10 Virginia. If upon such inspection, it is found that any
11 bee disease or parasite exists in such apiary, the
12 inspector making the inspection shall immediately
13 notify, in writing, the owner or person in charge of such
14 apiary, stating the nature of the disease or parasite and
15 whether the same may be successfully treated or not.

16 In cases where the disease or parasite is subject to
17 treatment, the inspector shall specify and direct the
18 necessary treatment, which shall be administered by the
19 owner or person in charge, within fourteen days
20 thereafter. Otherwise, the colonies contained in the
21 apiary in which such bee diseases or parasites are found
22 shall be depopulated without remuneration to the owner.
23 All bee hives and related equipment found in any
24 diseased apiary shall be destroyed or sterilized under
25 the direction of the commissioner.

26 (c) All queen breeding apiaries shall be thoroughly
27 inspected twice each season. If upon such inspection it
28 shall appear that any bee disease or parasite exists in
29 such apiary, the inspector making the inspection shall
30 immediately notify, in writing, the owner or person in
31 charge thereof, and thereafter it shall be unlawful for
32 any such person to ship, sell or give away any queen bees
33 from such apiary until the disease or parasitic infesta-
34 tion has been eradicated.

35 (d) The commissioner shall have the power to estab-
36 lish interior and exterior quarantines to prevent or
37 contain the spread of contagious bee diseases and
38 parasitic infestations. Such quarantines shall include
39 specific perimeters to encompass any township, area,
40 county or region within the state deemed by the
41 commissioner, which may be affected by such conta-
42 gious diseases or parasitic infestations.

43 Exterior quarantines may be established to prevent
44 diseased or parasitized bees and related equipment from
45 being transported into West Virginia. When the com-
46 missioner issues a quarantine pursuant to this authority,
47 he/she shall issue an order which specifies the type of
48 contagious bee disease or parasitic infestation, the area
49 or areas quarantined, conditions governing movement of
50 bees or bee equipment from the quarantined area and
51 such other information that protects the beekeeping
52 industry as deemed necessary by the commissioner. The
53 commissioner shall post a notice of quarantine at the
54 primary location of the bee disease or parasitic infesta-
55 tion. If the quarantine affects more than three miles in
56 radius, then notice of the order of quarantine shall be
57 published as a Class I legal advertisement in compliance
58 with the provisions of chapter fifty-nine of this code, and
59 the publication area for such publication shall be the
60 quarantined area.

61 All apiaries, bees, bee products, premises, bee
62 equipment and appliances wherein or on which bee
63 diseases and parasites are found to exist shall be
64 quarantined by the commissioner. Such quarantine shall
65 continue until the commissioner declares the same to be
66 apparently free from any such bee diseases and
67 parasites.

68 The commissioner shall have authority to rescind
69 quarantines as he/she determines the need or practic-
70 ability no longer exists by the same notice method
71 utilized to implement the quarantine.

§19-13-6. Abandoned apiaries and equipment; notice.

1 When any apiary or bee equipment is deemed by the
2 commissioner to be abandoned, the commissioner shall
3 give written notice by registered mail to the owner or
4 operator thereof, if such ownership or operator can be
5 determined, that the commissioner deems such apiary
6 or bee equipment abandoned. If the owner or operator
7 of the property cannot be located after reasonable
8 inquiry, said notice shall be provided by the same
9 mailing requirement to the owner of the real property
10 on which the apiary or equipment is located. If such

11 apiary or equipment continues to be abandoned for a
12 period of sixty days thereafter, the commissioner may
13 seize the apiary or equipment and take such action as
14 is necessary to dispose or destroy said apiary or
15 equipment as its condition warrants. In order to halt the
16 spread of bee diseases and parasitic infestation when an
17 abandoned apiary is found upon inspection to be
18 diseased, the commissioner is authorized to cause it to
19 be destroyed.

**§19-13-7. Bees brought into state to carry inspection
certificate; commissioner to be notified;
interstate movement of bees.**

1 (a) It shall be unlawful for any person to transport
2 bees, used hives, used bee equipment or used appliances
3 into West Virginia, unless the same be accompanied by
4 a certificate of inspection signed by an authorized
5 inspection official of the state from which such bees or
6 equipment is being transported. Such certificate shall
7 certify the actual inspection of the bees made within
8 thirty days preceding the date of shipment, and that the
9 bees, hives, equipment and appliances contained in the
10 shipment are apparently free from bee diseases and
11 parasitic infestation.

12 (b) Prior to the movement of any bees, used bee
13 equipment, combs, bee appliances or equipment into
14 West Virginia, and as a prerequisite to the issuance of
15 a permit of entry, the commissioner shall be furnished
16 by the owner, transporter, or lessee the following:

17 (1) The exact location or destination of the bees or
18 equipment.

19 (2) Name and address of the owner of the property
20 where the bees or equipment will be located.

21 (3) The exact number of colonies or amount of bee
22 equipment and appliances in the shipment.

23 (4) A copy of the inspection certificate issued by the
24 inspector of the state of origin.

25 Upon compliance with the mandatory requirements
26 set forth heretofore, the commissioner shall issue a

27 permit of entry not to exceed sixty days, unless said bees
28 and equipment are to be permanently located within
29 West Virginia, then the commissioner shall issue a
30 nonlimited permit.

31 If the commissioner denies the request for an entry
32 permit, then the commissioner shall notify the owner or
33 transporter of said denial and the reasons therefor.

§19-13-8. Pesticide poisoning to bees.

1 Any application or treatment of any pesticide to
2 agricultural crops while in full bloom which is incon-
3 sistent with product labeling of the pesticide and is
4 deemed by the commissioner to be injurious to bees shall
5 be prohibited.

§19-13-9. Candy for mailing cages.

1 Any person who engages in the shipping of bees in
2 combless packages in this state shall, in manufacturing
3 candy for mailing cages, sterilize the same or use candy
4 that does not contain honey.

§19-13-10. Violations.

1 It shall be unlawful for any person to:

2 (a) Knowingly keep in his/her possession without
3 proper treatment, any colony of bees affected with any
4 bee disease or parasitic infestation; or to expose any
5 diseased or infested colony, hive, or appliance so that
6 foraging bees have access to them.

7 (b) To sell, barter, give away, accept, receive or
8 transport any bees that are known to be affected with
9 any bee disease or parasitic infestation.

10 (c) To resist, impede or hinder the commissioner or an
11 authorized employee in the performance of his/her
12 duties under the provision of this article.

13 (d) To use or apply any apiary disease, pest or
14 parasite control chemical by any mechanism which is
15 inconsistent with the product label as approved by the
16 United States Environmental Protection Agency.

§19-13-11. Penalties for violations of article; rules.

1 (a) *Criminal penalties.*—Any person violating any
2 provision of this article or rule adopted hereunder is
3 guilty of a misdemeanor, and, upon conviction thereof,
4 shall be fined not less than fifty dollars for the first
5 offense, and for each subsequent offense, shall be fined
6 not less than five hundred dollars nor more than one
7 thousand dollars, or imprisoned in the county jail not
8 more than six months, or both fined and imprisoned.
9 Magistrates have concurrent jurisdiction with circuit
10 courts to enforce the provisions of this article.

11 (b) *Civil penalties.* —

12 (1) Any person violating the provisions of this article
13 or rule adopted hereunder may be assessed a civil
14 penalty by the commissioner. In determining the
15 amount of any civil penalty, the commissioner shall give
16 due consideration to the history of previous violation of
17 any persons, the seriousness of the violation, including
18 any hazards to agriculture in West Virginia and the
19 demonstrated good faith of any person charged in
20 attempting to achieve compliance with this article after
21 written notification of the violation.

22 (2) The commissioner may assess a penalty of not
23 more than two hundred fifty dollars for the first offense
24 or nonserious violation, as determined by the commis-
25 sioner in accordance with the rules promulgated in
26 accordance with the provisions of chapter twenty-nine-
27 a of this code, and not more than one thousand dollars
28 for a serious, repeat or intentional violation, as deter-
29 mined by the commissioner in accordance with such
30 promulgated rules.

31 (3) The civil penalty is payable to the state of West
32 Virginia and is collectible in any manner now or
33 hereafter provided for collection of a debt. Any person
34 liable to pay the civil penalty and neglecting or refusing
35 to pay the same, shall be assessed interest at ten percent
36 from the date the penalty was assessed. Such penalty
37 and interest constitute a lien in favor of the state of West
38 Virginia and shall attach on the person's property when

39 such lien is properly recorded in the county where the
40 property is situated. There shall be no cost as a condition
41 precedent to recording.

42 (4) Notwithstanding any other provision of law to the
43 contrary, the commissioner may promulgate and adopt
44 rules which permit consent agreements for the civil
45 penalties assessed as a result of violation of the
46 provisions of this article.

47 (5) No state court may allow the recovery of damages
48 for administrative action taken if the court finds that
49 there was probable cause for such action.

50 (6) It shall be the duty of the prosecuting attorney of
51 the county in which the violation occurred to represent
52 the department of agriculture, to institute proceedings,
53 and to prosecute the person charged with such violation.

§19-13-12. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstances is held invalid,
3 such invalidity shall not affect other provisions or
4 applications of this article which can be given effect
5 without the invalid provision or application, and to this
6 end the provisions of the article are declared severable.

CHAPTER 11

(Com. Sub. for S. B. 101—Originating in the Committee on Finance)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, to the West Virginia department of transportation, division of highways, account no. 6700, supplementing chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill.

WHEREAS, The governor submitted to the Legislature the executive budget document dated January 9, 1991, wherein on page X thereof are set forth the revenues and expenditures of the state road fund, including fiscal year 1990-1991; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1990-1991, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriations from the state road fund to the West Virginia department of transportation, division of highways, account no. 6700, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, be supplemented, amended and thereafter read as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 4. Appropriations of federal funds.

3 Sec. 5. Appropriations from other funds.

4 DEPARTMENT OF TRANSPORTATION

5 157—Division of Highways

6 (WV Code Chapters 17 and 17C)

7 Acct. No. 6700

8 TO BE PAID FROM STATE ROAD FUND

9		Federal	Other
10		Funds	Funds
11		Fiscal	Fiscal
12		Year	Year
13		1990-91	1990-91
14	1 Maintenance, Expressway,		
15	2 Trunkline and Feeder ... \$	—	\$ 64,000,000
16	3 Maintenance, State		
17	4 Local Services.....	—	90,500,000

18	5	Maintenance, Contract,		
19	6	Paving and Secondary		
20	7	Road Maintenance.....	—	58,500,000
21	8	Bridge Repair		
22	9	and Replacement.....	—	30,000,000
23	10	Industrial Access Roads ...	—	2,000,000
24	11	Inventory Revolving.....	—	1,250,000
25	12	Equipment Revolving.....	—	15,590,000
26	13	General Operations.....	—	28,830,000
27	14	Annual Increment.....	—	203,000
28	15	Debt Service.....	—	113,300,000
29	16	Interstate Construction....	—	50,000,000
30	17	Other Federal Aid Programs	—	128,500,000
31	18	Appalachian Programs....	—	67,000,000
32	19	Nonfederal Aid Construction	—	21,140,000
33	20	Highway Litter Control....	—	2,000,000
34	21	Railroad Highway Grade		
35	22	Crossing Improvements..	—	100,000
36	23	Total	\$ —	\$672,913,000

37 The purpose of this supplementary appropriation bill
 38 is to supplement and amend the existing items in the
 39 aforesaid account for expenditure in the fiscal year of
 40 1990-1991 and to reflect the new total spending author-
 41 ity of the spending unit for such fiscal year. Such
 42 increased amounts shall be available for expenditure
 43 upon the effective date of this bill.

CHAPTER 12

(Com. Sub. for S. B. 85—Originating in the Committee on Finance)

[Passed February 18, 1991; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the balance of all state road funds remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, to the West Virginia department of transportation, division of motor vehicles, account no. 6710, supplementing chapter ten, acts of the Legisla-

ture, regular session, one thousand nine hundred ninety, known as the budget bill, and chapter three, acts of the Legislature, second extraordinary session, one thousand nine hundred ninety.

WHEREAS, The governor submitted to the Legislature the executive budget document dated January 9, 1991, wherein on page X thereof are set forth the revenues and expenditures of the state road fund, including fiscal year 1990-1991; and

WHEREAS, It appears from such budget that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1990-1991, a part of which balance is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriations from the state road fund to the West Virginia department of transportation, division of motor vehicles, account no. 6710, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-one, as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, and chapter three, acts of the Legislature, second extraordinary session, one thousand nine hundred ninety, be supplemented, amended and thereafter read as follows:

1 **TITLE II—APPROPRIATIONS.**

2 **Sec. 4. Appropriations of federal funds.**

3 **Sec. 5. Appropriations from other funds.**

4 **DEPARTMENT OF TRANSPORTATION**

5 *158—Division of Motor Vehicles*

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

7 Acct. No. 6710

8 **TO BE PAID FROM STATE ROAD FUND**

9		Federal	Other
10		Funds	Funds
11		Fiscal	Fiscal
12		Year	Year

13			1990-91	1990-91
14	1	Personal Services.....	\$ —	\$ 2,429,446
15	2	Annual Increment.....	—	37,278
16	3	Employee Benefits	—	661,133
17	4	Commercial Driver's		
18	5	License Program	—	2,989,288
19	6	Unclassified.....	413,931	3,722,033
20	7	Reimbursement to Division		
21	8	of Public Safety	—	6,000,000
22	9	Total	\$ 413,931	\$ 15,839,178

23 The purpose of this supplementary appropriation bill
 24 is to supplement and amend the unclassified item in the
 25 aforesaid account for expenditure in the fiscal year of
 26 1990-1991 and to reflect the new total spending author-
 27 ity of the spending unit for such fiscal year. Such
 28 increased amount shall be available for expenditure
 29 upon the effective date of this bill.

CHAPTER 13

(Com. Sub. for H. B. 2040—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[Passed March 17, 1991; in effect from passage. Approved by the Governor.]

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

Be it enacted by the Legislature of West Virginia:

Title

- I. General provisions.
- II. Appropriations.
- III. Administration.

TITLE I—GENERAL PROVISIONS.

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

TITLE I—GENERAL PROVISIONS.

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

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

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

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

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

9 The “fiscal year one thousand nine hundred ninety-
10 two” shall mean the period from July first, one thousand
11 nine hundred ninety-one, through June thirtieth, one
12 thousand nine hundred ninety-two.

13 “General Revenue Fund” shall mean the general
14 operating fund of the State and includes all moneys
15 received or collected by the State except as provided in
16 section two, article two, chapter twelve of the code or
17 as otherwise provided.

18 “Special Revenue Funds” shall mean specific revenue
19 sources which by legislative enactments are not re-
20 quired to be accounted for as general revenue, including
21 federal funds.

22 “From collections” shall mean that part of the total
23 appropriation which must be collected by the spending
24 unit to be available for expenditure. If the authorized
25 amount of collections is not collected, the total appropri-
26 ation for the spending unit shall be reduced automat-
27 ically by the amount of the deficiency in the collections.
28 If the amount collected exceeds the amount designated
29 “from collections,” the excess shall be set aside in a
30 special surplus fund and may be expended for the
31 purpose of the spending unit as provided by article two,
32 chapter five-a of the code.

1 **Sec. 3. Classification of appropriations.**—An ap-
2 propriation for:

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

9 From appropriations made to the spending units of
10 state government, upon approval of the governor there
11 may be transferred to a special account an amount
12 sufficient to match federal funds under any federal act.

13 Unless otherwise specified, appropriations for per-
14 sonal services shall include salaries of heads of spending
15 units.

16 “Annual increment” shall mean funds appropriated
17 for “eligible employees” and shall be disbursed only in
18 accordance with article five, chapter five of the code.

19 Funds appropriated for “annual increment” shall be
20 transferred to “personal services” or other designated
21 items only as required.

22 Items designated as “total personal services” shall
23 mean funds appropriated to cover the costs of personal
24 services and annual increment.

25 “Employee benefits” shall mean social security
26 matching, workers’ compensation, unemployment com-
27 pensation, pension and retirement contribution, public
28 employees insurance matching, personnel fees or any
29 other benefit normally paid by the employer as a direct
30 cost of employment. Should the appropriation be
31 insufficient to cover such costs, the remainder of such
32 cost shall be paid by each spending unit from its
33 “personal services” line item or its “unclassified” line
34 item. If there is no appropriation for “employee
35 benefits,” such costs shall be paid by each spending unit
36 from its “personal services” line item, its “total personal
37 services” line item or its “unclassified” line item. Each
38 spending unit is hereby authorized and required to
39 make such payments in accordance with the provisions
40 of article two, chapter five-a of the code.

41 “Current expenses” shall mean operating costs other
42 than personal services and shall not include equipment,
43 repairs and alterations, buildings or lands.

44 Each spending unit shall be responsible for all
45 contributions, payments or other costs related to
46 coverage and claims of its employees for unemployment
47 compensation. Such expenditures shall be considered an
48 employee benefit.

49 Each spending unit shall be responsible for and
50 charged monthly for all postage meter service and shall
51 reimburse the appropriate revolving fund monthly for
52 all such amounts. Such expenditures shall be considered
53 a current expense.

54 “Equipment” shall mean equipment items which have
55 an appreciable and calculable period of usefulness in
56 excess of one year.

57 “Repairs and alterations” shall mean routine mainte-
58 nance and repairs to structures and minor improve-
59 ments to property which do not increase the capital
60 assets.

61 “Buildings” shall include new construction and major
62 alteration of existing structures and the improvement of
63 lands and shall include shelter, support, storage,
64 protection or the improvement of a natural condition.

65 “Lands” shall mean the purchase of real property or
66 interest in real property.

67 “Capital outlay” shall mean and include buildings,
68 lands or buildings and lands, with such category or item
69 of appropriation to remain in effect as provided by
70 section twelve, article three, chapter twelve of the code.

71 Appropriations classified in any of the above catego-
72 ries shall be expended only for the purposes as defined
73 above and only for the spending units herein designated:
74 *Provided*, That the secretary of each department shall
75 have the authority to transfer within the department
76 those funds appropriated to the various agencies of the
77 department: *Provided, however*, That no more than
78 twenty-five percent of the funds appropriated to any one

79 agency or board may be transferred to other agencies
80 or boards within the department: *Provided further*, That
81 no funds may be transferred from a special revenue
82 account, dedicated account, capital expenditure account
83 or any other account or funds specifically exempted by
84 the Legislature from transfer, except that the use of
85 appropriations from the state road fund transferred to
86 the office of the secretary of the department of trans-
87 portation is not a use other than the purpose for which
88 such funds were dedicated and is permitted: *And*
89 *provided further*, That if the Legislature by subsequent
90 enactment consolidates agencies, boards or functions,
91 the secretary may transfer the funds formerly appro-
92 priated to such agency, board or function in order to
93 implement such consideration.

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

1 **Sec. 4. Method of expenditure.**—Money appro-
2 priated by this bill, unless otherwise specifically
3 directed, shall be appropriated and expended according
4 to the provisions of article three, chapter twelve of the
5 code or according to any law detailing a procedure
6 specifically limiting that article.

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

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

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§2. Appropriations of federal funds.

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TITLE II—APPROPRIATIONS.

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

1 **Sec. 2. Appropriations of federal funds.**—In
2 accordance with article eleven, chapter four of the code,
3 from federal funds there are hereby appropriated
4 conditionally upon the fulfillment of the provisions set
5 forth in article two, chapter five-a of the code the
6 following amounts, as itemized, for expenditure during
7 the fiscal year one thousand nine hundred ninety-two.

LEGISLATIVE

1—Senate

Acct. No. 1010

	Federal Funds Fiscal Year 1991-92	General Revenue Fund Fiscal Year 1991-92
1 Compensation of Members .. \$	—	\$ 277,000
2 Compensation and Per		
3 Diem of Officers and		
4 Employees.....	—	1,100,000
5 Expenses of Members	—	258,000
6 Repairs and Alterations	—	33,000
7 Current Expenses and		
8 Contingent Fund.....	—	561,000
9 Computer Supplies.....	—	15,000
10 Computer Systems	—	85,000
11 Printing Blue Book.....	—	190,000
12 Employee Benefits	—	131,400
13 Public Employees Insurance	—	100,200
14 Total	\$ —	\$ 2,750,600

15 The appropriations for the senate for the fiscal year
 16 1990-91 are to remain in full force and effect and are
 17 hereby reappropriated to June 30, 1992. Any balances
 18 so reappropriated may be transferred and credited to
 19 the 1991-92 accounts.

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

24 The clerk of the senate, with the approval of the
 25 president, is authorized to draw his requisitions upon
 26 the auditor, payable out of the Current Expenses and
 27 Contingent Fund of the senate, for any bills for supplies
 28 and services that may have been incurred by the senate
 29 and not included in the appropriation bill, for supplies
 30 and services incurred in preparation for the opening, the
 31 conduct of the business and after adjournment of any

32 regular or extraordinary session, and for the necessary
 33 operation of the senate offices, the requisitions for the
 34 same to be accompanied by bills to be filed with the
 35 auditor.

36 The clerk of the senate, with the written approval of
 37 the president, or the president of the senate shall have
 38 authority to employ such staff personnel during any
 39 session of the Legislature as shall be needed in addition
 40 to staff personnel authorized by the senate resolution
 41 adopted during any such session. The clerk of the senate,
 42 with the written approval of the president, or the
 43 president of the senate shall have authority to employ
 44 such staff personnel between sessions of the Legislature
 45 as shall be needed, the compensation of all staff
 46 personnel during and between sessions of the Legisla-
 47 ture, notwithstanding any such senate resolution, to be
 48 fixed by the president of the senate. The clerk is hereby
 49 authorized to draw his requisitions upon the auditor for
 50 the payment of all such staff personnel for such services,
 51 payable out of the appropriation for Compensation and
 52 Per Diem of Officers and Employees or Current
 53 Expenses and Contingent Fund of the senate.

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

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

2—House of Delegates

Acct. No. 1020

1 Compensation of Members . . \$ — \$ 898,478

2	Compensation and		
3	Per Diem of Officers		
4	and Employees.....	—	583,531
5	Expenses of Members	—	633,825
6	Current Expenses and		
7	Contingent Fund.....	—	1,352,710
8	Total	\$ —	\$ 3,468,544

9 The appropriations for the house of delegates for the
 10 fiscal year 1990-91 are to remain in full force and effect
 11 and are hereby reappropriated to June 30, 1992. Any
 12 balances so reappropriated may be transferred and
 13 credited to the 1991-92 accounts.

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

18 The clerk of the house of delegates, with the approval
 19 of the speaker, is authorized to draw his requisitions
 20 upon the auditor, payable out of the Current Expenses
 21 and Contingent Fund of the house of delegates, for any
 22 bills for supplies and services that may have been
 23 incurred by the house of delegates and not included in
 24 the appropriation bill, for bills for services and supplies
 25 incurred in preparation for the opening of the session
 26 and after adjournment, and for the necessary operation
 27 of the house of delegates' offices, the requisitions for the
 28 same to be accompanied by bills to be filed with the
 29 auditor.

30 The speaker of the house of delegates, upon approval
 31 of the house committee on rules, shall have authority to
 32 employ such staff personnel during and between
 33 sessions of the Legislature as shall be needed, in addition
 34 to personnel designated in the house resolution, and the
 35 compensation of all personnel shall be as fixed in such
 36 house resolution for the session, or fixed by the speaker,
 37 with the approval of the house committee on rules,
 38 during and between sessions of the Legislature, notwith-
 39 standing such house resolution. The clerk of the house
 40 is hereby authorized to draw requisitions upon the
 41 auditor for such services, payable out of the appropri-
 42 ation for the Compensation and Per Diem of Officers

43 and Employees Fund or Current Expenses and Contingent
44 Fund of the house of delegates.

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

3—Joint Expenses

(WV Code Chapter 4)

Acct. No. 1030

1	Joint Committee on			
2	Government and Finance	\$	—	\$ 4,172,701
3	Legislative Printing		—	810,000
4	Legislative Rule-Making			
5	Review Committee		—	170,500
6	Legislative Computer			
7	System		—	350,000
8	Joint Standing Committee			
9	on Education		—	40,000
10	Total	\$	—	\$ 5,543,201

11 The appropriation for Joint Expenses for the fiscal
12 year 1990-91 is to remain in full force and effect and
13 is hereby reappropriated to June 30, 1992. Any balances
14 so reappropriated may be transferred and credited to
15 the 1991-92 accounts.

16 Upon the written request of the clerk of the senate,
17 with the approval of the president of the senate, and the
18 clerk of the house of delegates, with the approval of the
19 speaker of the house of delegates, and a copy to the
20 legislative auditor, the auditor shall transfer amounts
21 between items of the total appropriation in order to
22 protect or increase the efficiency of the service.

JUDICIAL

4—Supreme Court—General Judicial

Acct. No. 1110

1	Personal Services	\$	—	\$	20,665,498
2	Annual Increment		—		181,000
3	Other Expenses		—		2,800,000
4	Judges' Retirement				
5	System		—		1,718,256
6	Other Court Costs		—		2,000,000
7	Judicial Training				
8	Program		—		250,000
9	Mental Hygiene Fund		—		600,000
10	Social Security Matching ...		—		1,581,058
11	Public Employees				
12	Retirement Matching		—		1,777,972
13	Public Employees				
14	Health Insurance				
15	Matching		—		2,428,750
16	Total	\$	—	\$	34,002,534

17 Any unexpended balances remaining in this appropri-
 18 ation at the close of the fiscal year 1990-91 are hereby
 19 reappropriated for expenditure during the fiscal year
 20 1991-92. Any balances so reappropriated may be
 21 transferred and credited to the 1991-92 accounts.

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

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

EXECUTIVE*5—Governor's Office*

(WV Code Chapter 5)

Acct. No. 1200

1	Salary of Governor	\$	—	\$	72,000
2	Unclassified		—		1,245,667
3	Total	\$	—	\$	1,317,667

6—Governor's Office—Custodial Fund

(WV Code Chapter 5)

Acct. No. 1230

1	Unclassified—Total	\$	—	\$	361,651
2	To be used for current general expenses, including				
3	compensation of employees, household maintenance, cost				
4	of official functions and additional household expenses				
5	occasioned by such official functions.				

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

(WV Code Chapter 5)

Acct. No. 1240

1	Civil Contingent				
2	Fund—Total	\$	—	\$	1,851,297

3 Any unexpended balance remaining in the appropri-
4 ation (account no. 1240-06) at the close of the fiscal year
5 1990-91 is hereby reappropriated for expenditure
6 during the fiscal year 1991-92.

7 From this appropriation there may be expended, at
8 the discretion of the governor, an amount not to exceed
9 \$1,000 as West Virginia's contribution to the interstate
10 oil compact commission.

*8—Governor's Office—
Educational Programs*

Acct. No. 1245

1	Early Childhood				
2	Development.....	\$	—	\$	500,000

3	Center for Professional		
4	Development.....	—	1,000,000
5	Total	\$ —	\$ 1,500,000

6 Any unexpended balances remaining in the appropri-
 7 ation for Early Childhood Development (account no.
 8 1245-09) and Center for Professional Development
 9 (account no. 1245-10) at the close of fiscal year 1990-91
 10 is hereby reappropriated for expenditure during the
 11 fiscal year 1991-92.

9—Auditor's Office—General Administration

(WV Code Chapter 12)

Acct. No. 1500

1	Salary of Auditor	\$ —	\$ 46,800
2	Total Personal Services.....	—	—0—
3	Personal Services	—	1,494,038
4	Annual Increment	—	28,728
5	Employee Benefits	—	487,842
6	Office Automation	—	500,000
7	Unclassified	—	553,722
8	Total	\$ —	\$ 3,111,130

10—Treasurer's Office

(WV Code Chapter 12)

Acct. No. 1600

1	Salary of Treasurer	\$ —	\$ 50,400
2	Total Personal Services.....	—	—0—
3	Personal Services	—	458,050
4	Annual Increment	—	5,500
5	Employee Benefits	—	136,532
6	Unclassified	—	228,730
7	Total	\$ —	\$ 879,212

*11—Treasurer's Office—
 School Building Sinking Fund*

Acct. No. 1650

1 Any unexpended balance remaining in the appropri-
 2 ation for Treasurer's Office—School Building Sinking

3 Fund (account no. 1650-06) at the close of the fiscal year
 4 1990-91 is hereby reappropriated for expenditure
 5 during the fiscal year 1991-92 and redesignated as
 6 Board of Investments—School Building Sinking Fund
 7 (account no. 1905-06).

12—Attorney General

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

Acct. No. 2400

1	Salary of Attorney			
2	General.....	\$	—	\$ 50,400
3	Total Personal Services.....		—	—0—
4	Personal Services		—	1,787,640
5	Annual Increment		—	12,132
6	Employee Benefits		—	505,988
7	Unclassified		—	648,882
8	Total	\$	—	\$ 3,005,042

9 When legal counsel or secretarial help is appointed by
 10 the attorney general for any state spending unit, this
 11 account shall be reimbursed from such unit's appropri-
 12 ated account.

13—Secretary of State

(WV Code Chapters 3, 5 and 59)

Acct. No. 2500

1	Salary of Secretary			
2	of State.....	\$	—	\$ 43,200
3	Total Personal Services.....		—	—0—
4	Personal Services		—	434,143
5	Annual Increment		—	4,608
6	Employee Benefits		—	160,603
7	Office Automation		—	52,422
8	Unclassified		—	187,042
9	Total	\$	—	\$ 882,018

14—State Elections Commission

(WV Code Chapter 3)

Acct. No. 2600

1	Unclassified—Total	\$	—	\$	11,058
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15—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 5100

1	Salary of				
2	Commissioner	\$	—	\$	46,800
3	Total Personal Services		—		—0—
4	Personal Services		—		1,983,382
5	Annual Increment		—		37,188
6	Employee Benefits		—		720,380
7	Gypsy Moth Program		—		350,000
8	Unclassified		3,045,257		526,936
9	Total	\$	3,045,257	\$	3,664,686
10	Out of the above general revenue funds a sum may				
11	be used to match federal funds for the eradication and				
12	control of pest and plant disease.				

*16—Department of Agriculture—
Soil Conservation Committee*

(WV Code Chapter 19)

Acct. No. 5120

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		334,734
3	Annual Increment		—		5,184
4	Employee Benefits		—		105,372
5	Soil Conservation Projects ..		—		1,750,000
6	Unclassified		—		341,825
7	Total	\$	—	\$	2,537,115
8	Any unexpended balance remaining in the appropri-				
9	ation for unclassified (account no. 5121-18) at the close				
10	of the fiscal year 1990-91 is hereby reappropriated for				
11	expenditure during the fiscal year 1991-92.				

*17—Department of Agriculture—
Marketing and Development Division
(Matching Fund)*

(WV Code Chapter 19)

Acct. No. 5130

1	Total Personal Services.....	\$	—		\$	—0—
2	Personal Services		—			377,477
3	Annual Increment		—			5,652
4	Employee Benefits		—			145,170
5	Unclassified		17,240			208,846
6	Total	\$	17,240	\$		737,145

7 Any part or all of this appropriation from the general
8 revenue fund may be transferred to a special revenue
9 fund for the purpose of matching federal funds for the
10 above-named program.

*18—Department of Agriculture—
Meat Inspection*

(WV Code Chapter 19)

Acct. No. 5140

1	Total Personal Services.....	\$	—		\$	—0—
2	Personal Services		—			246,012
3	Annual Increment		—			5,184
4	Employee Benefits		—			110,715
5	Unclassified		478,534			14,093
6	Total	\$	478,534	\$		376,004

7 Any part or all of this appropriation from general
8 revenue fund may be transferred to a special revenue
9 fund for the purpose of matching federal funds for the
10 above-named program.

*19—Department of Agriculture—
Agricultural Awards*

(WV Code Chapter 19)

Acct. No. 5150

1	Agricultural Awards.....	\$	—		\$	62,569
2	Fairs and Festivals.....		—			175,598
3	Total	\$	—	\$		238,167

DEPARTMENT OF ADMINISTRATION

*20—Division of Finance
and Administration*

(WV Code Chapter 5A)

Acct. No. 2100

1 Any unexpended balance remaining in the appropri-
2 ation for Urban Mass Transit—Matching Funds (ac-
3 count no. 2100-41) at the close of the fiscal year 1990-
4 91 is hereby reappropriated for expenditure during the
5 fiscal year 1991-92 and redesignated as Department of
6 Transportation—Office of the Secretary—Public Trans-
7 portation (account no. 5376-41).

21—Office of the Secretary

(WV Code Chapter 5F)

Acct. No. 2105

1 Unclassified—Total \$ — \$ 272,184

22—Division of Finance

(WV Code Chapter 5A)

Acct. No. 2110

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		602,626
3	Annual Increment		—		6,000
4	Employee Benefits		—		130,197
5	National Governors'				
6	Association		—		63,580
7	Southern States Energy				
8	Board		—		28,732
9	GAAP Project		—		2,400,000
10	Unclassified		—		522,928
11	Total	\$	—	\$	3,754,063

23—Division of Purchasing

(WV Code Chapter 5A)

Acct. No. 2120

1 Total Personal Services

\$	—	\$	—0—
----	---	----	-----

2	Personal Services	—	585,840
3	Annual Increment	—	5,960
4	Employee Benefits	—	165,120
5	Unclassified	—	98,483
6	Total	\$ —	\$ 855,403

7 The division of highways shall reimburse account no.
8 8148-42 for all actual expenses incurred pursuant to the
9 provisions of section thirteen, article two-a, chapter
10 seventeen of the code.

24—Division of General Services

(WV Code Chapter 5A)

Acct. No. 2130

1	Total Personal Services.....	\$ —	\$ —
2	Personal Services	—	489,484
3	Annual Increment	—	11,160
4	Employee Benefits	—	204,401
5	Fire Service Fee	—	14,000
6	Unclassified	—	804,862
7	Total	\$ —	\$ 1,523,907

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

(WV Code Chapter 5A)

Acct. No. 2140

1	Unclassified—Total	\$ —	\$ 5,000
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*26—Board of Risk and
Insurance Management*

(WV Code Chapter 29)

Acct. No. 2250

1	Total Personal Services.....	\$ —	\$ —
2	Unclassified	—	3,910,537
3	Total	\$ —	\$ 3,910,537

4 Any balance remaining in the appropriation for
5 FEMA reimbursement (account no. 2251-29) at the close
6 of fiscal year 1990-91 is hereby reappropriated for
7 expenditure during the fiscal year 1991-92.

8 The Unclassified item of appropriation herein in-
 9 cludes funding for the purpose of paying premiums, self-
 10 insurance losses, loss adjustment expenses and loss
 11 prevention engineering fees for property, casualty and
 12 fidelity insurance for the various state agencies, except
 13 those operating from special revenue funds, with such
 14 special revenue fund agencies to be billed by the board
 15 of risk and insurance management and with such costs
 16 to be a proper charge against such spending units.

17 These funds may be transferred to a special account
 18 for the payment of premiums, self-insurance losses, loss
 19 adjustment expenses and loss prevention engineering
 20 fees and may be transferred to a special account for
 21 disbursement for payment of premiums and insurance
 22 losses.

27—Commission on Uniform State Laws

(WV Code Chapter 29)

Acct. No. 2450

1	Unclassified—Total	\$	—	\$	14,550
2	To pay expenses of members of the commission on				
3	uniform state laws.				

28—Public Defender Services

(WV Code Chapter 29)

Acct. No. 5900

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		227,547
3	Annual Increment		—		2,232
4	Employee Benefits		—		56,169
5	Appointed Counsel Fees				
6	and Public Defender				
7	Corporations		—		9,515,969
8	Unclassified		—		102,095
9	Total	\$	—	\$	9,904,012

10 Any unexpended balance remaining in the appropri-
 11 ation for Unclassified (account no. 5900-18) at the close
 12 of the fiscal year 1990-91 are hereby reappropriated for
 13 expenditure during the fiscal year 1991-92.

29—Education and State Employees Grievance Board

(WV Code Chapter 18)

Acct. No. 6015

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		410,454
3	Annual Increment		—		3,348
4	Employee Benefits		—		112,548
5	Unclassified		—		138,770
6	Total	\$	—	\$	665,120

30—Public Employees Retirement System

(WV Code Chapter 5)

Acct. No. 6140

1	Supplemental Benefits for				
2	Annuitants—Total	\$	—	\$	1,890,725

3 The division of highways, division of motor vehicles,
 4 workers' compensation commissioner, public service
 5 commission and other departments or divisions operat-
 6 ing from special revenue funds and/or federal funds
 7 shall pay their proportionate share of the retirement
 8 costs for their respective divisions. When specific
 9 appropriations are not made, such payments may be
 10 made from the balances in the various special revenue
 11 funds in excess of specific appropriations.

31—Public Employees Insurance Agency

(WV Code Chapter 5)

Acct. No. 6150

1 The division of highways, division of motor vehicles,
 2 workers' compensation commissioner, public service
 3 commission and other departments or divisions operat-
 4 ing from special revenue funds and/or federal funds
 5 shall pay their proportionate share of the public
 6 employees health insurance cost for their respective
 7 divisions. When specific appropriations are not made,
 8 such payments may be made from the balances in the
 9 various special revenue funds in excess of specific
 10 appropriations.

32—Ethics Commission

(WV Code Chapter 6B)

Acct. No. 6180

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		120,734
3	Employee Benefits		—		26,676
4	Unclassified		—		233,467
5	Total	\$	—	\$	380,877

**DEPARTMENT OF COMMERCE, LABOR
AND ENVIRONMENTAL RESOURCES**

*33—Office of Community and
Industrial Development*

(WV Code Chapter 5B)

Acct. No. 1210

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		2,080,242
3	Annual Increment		—		19,758
4	Employee Benefits		—		586,526
5	Guaranteed Work				
6	Force Grant		—		850,000
7	Partnership Grant		—		2,100,000
8	Unclassified		13,795,339		2,724,591
9	Total	\$	13,795,339	\$	8,361,117

10 Any unexpended balance remaining in the appropri-
 11 ations for Partnership Grants (account no. 1210-15) at
 12 the close of the fiscal year 1990-91 are hereby reappropri-
 13 ated for expenditure during the fiscal year 1991-92.

34—Division of Labor

(WV Code Chapters 21 and 47)

Acct. No. 4500

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		849,677
3	Annual Increment		—		13,371
4	Employee Benefits		—		311,775
5	Unclassified		315,722		245,989
6	Total	\$	315,722	\$	1,420,812

35—Division of Tourism and Parks

(WV Code Chapter 5B)

Acct. No. 4625

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		4,432,455
3	Annual Increment		—		89,676
4	Employee Benefits		—		1,689,368
5	Unclassified		—		—0—
6	Total	\$	—	\$	6,211,499

7 Any revenue derived from mineral extraction at any
8 state park shall be deposited in a special revenue
9 account of the division of tourism and parks, first for
10 bond debt payment purposes and with any remainder
11 to be for park operation and improvement purposes.

36—Division of Forestry

(WV Code Chapter 19)

Acct. No. 4650

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		2,014,731
3	Annual Increment		—		38,484
4	Employee Benefits		—		758,697
5	Unclassified		898,100		217,378
6	Total	\$	898,100	\$	3,029,290

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

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

(WV Code Chapter 22)

Acct. No. 4720

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		43,378
3	Annual Increment		—		310
4	Employee Benefits		—		12,695
5	Unclassified		—		4,288
6	Total	\$	—	\$	60,671

*38—Interstate Commission on
Potomac River Basin*

(WV Code Chapter 29)

Acct. No. 4730

1	West Virginia's			
2	Contribution			
3	to the Interstate			
4	Commission on			
5	Potomac River Basin—			
6	Total	\$	—	\$ 28,250

*39—Ohio River Valley Water
Sanitation Commission*

(WV Code Chapter 29)

Acct. No. 4740

1	West Virginia's Con-			
2	tribution to the Ohio River			
3	Valley Water Sanitation			
4	Commission—Total	\$	—	\$ 92,720

*40—Coal Mine Safety and
Technical Review Committee*

(WV Code Chapter 22)

Acct. No. 4750

1	Total Personal Services	\$	—	\$ —0—
2	Personal Services		—	6,536
3	Employee Benefits		—	3,734
4	Unclassified		—	57,465
5	Total	\$	—	\$ 67,735

*41—Air Pollution
Control Commission*

(WV Code Chapter 16)

Acct. No. 4760

1	Total Personal Services	\$	—	\$ —0—
2	Personal Services		—	428,574
3	Annual Increment		—	6,408
4	Employee Benefits		—	153,700

5	Unclassified	<u>1,133,335</u>	<u>161,854</u>
6	Total	\$ 1,133,335	\$ 750,536

42—Division of Energy

(WV Code Chapter 22)

Acct. No. 4775

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	4,563,782
3	Annual Increment	—	56,000
4	Employee Benefits	—	1,468,874
5	Unclassified	<u>65,105,006</u>	<u>399,286</u>
5	Total	\$65,105,006	\$ 6,487,942

43—Geological and Economic Survey

(WV Code Chapter 29)

Acct. No. 5200

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	1,183,649
3	Annual Increment	—	20,052
4	Employee Benefits	—	371,920
5	Unclassified	<u>220,500</u>	<u>97,171</u>
6	Total	\$ 220,500	\$ 1,672,792

7 The Unclassified appropriation includes funding to
 8 secure federal and other contracts and may be trans-
 9 ferred to a special revenue account for the purpose of
 10 providing advance funding for such contracts.

11 Funds appropriated in prior years To Secure Federal
 12 and Other Contracts (account no. 5220-07) and still in
 13 use on a revolving basis in special and/or federal
 14 accounts to provide advance funding for contracts
 15 entered into by this spending unit shall be transferred
 16 to a special revolving fund account to be established by
 17 the auditor. Such funds may then be transferred to
 18 special and/or federal accounts for the purpose of
 19 providing advance funding for contracts. The advance
 20 funds shall be transferred back to the special revolving
 21 fund account to be established upon receipt of reim-
 22 bursement and/or completion of contractual perform-

- 23 ance and will be available for future advance funding
24 purposes.

*44—Department of Commerce,
Labor and Environmental Resources—
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5321

1 Unclassified—Total \$ — \$ 391,139

45—Water Resources Board

(WV Code Chapter 20)

Acct. No. 5640

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		60,152
3	Annual Increment		—		900
4	Employee Benefits		—		18,690
5	Unclassified		—		40,288
6	Total	\$	—	\$	120,030

46—Division of Natural Resources

(WV Code Chapter 20)

Acct. No. 5650

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		2,359,169
3	Annual Increment		—		47,214
4	Employee Benefits		—		786,820
5	Black Fly Control		—		216,000
6	Waste Water Treatment				
7	Revolving Fund		—		4,100,000
8	Unclassified		41,337,876		314,315
9	Total	\$	41,337,876	\$	7,823,518

- 10 Any part or all of the above appropriation for the
11 Waste Water Treatment Revolving Fund shall be
12 transferred to a special revenue fund for the purpose of
13 matching federal funds for the above-named program.

DEPARTMENT OF EDUCATION

47—State Department of Education

(WV Code Chapters 18 and 18A)

Acct. No. 2860

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		2,548,968
3	Annual Increment		—		37,126
4	Employee Benefits		—		724,416
5	Computer Basic Skills		—		3,500,000
6	Unclassified		2,704,214		11,025,094
7	Education of				
8	Institutionalized				
9	Juveniles		—		1,219,344
10	Total	\$	2,704,214	\$	19,054,948

11 The above appropriation includes the state board of
12 education and their executive office.

13 Any unexpended balance remaining in the unclassi-
14 fied appropriation at the close of fiscal year 1990-91
15 shall be reappropriated for expenditure during fiscal
16 year 1991-92.

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

(WV Code Chapters 18 and 18A)

Acct. No. 2870

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		138,814
3	Annual Increment		—		1,703
4	Employee Benefits		—		44,305
5	Unclassified		50,119,714		1,711,753
6	Total	\$	50,119,714	\$	1,896,575

*49—State Board of Education—
Vocational Division*

(WV Code Chapters 18 and 18A)

Acct. No. 2890

1	Total Personal Services	\$	—	\$	—0—
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2	Personal Services	—	620,000
3	Annual Increment	—	8,831
4	Employee Benefits	—	171,047
5	Unclassified	10,581,913	12,541,754
6	Wood Products—Forestry		
7	Vocational Programs	—	100,000
8	Albert Yanni		
9	Vocational Program	—	160,000
10	Total	\$10,581,913	\$ 13,601,632
11	Any unexpended balance remaining in the appropri-		
12	ation for Wood Products—Forestry Vocational Program		
13	(Acct. No. 2890-47 and Acct. No. 2891-47) at the close		
14	of fiscal year 1990-91 is hereby reappropriated for		
15	expenditure during the fiscal year 1991-92.		

*50—State Department of Education—
State Aid to Schools*

(WV Code Chapters 18 and 18A)

Acct. No. 2950

1	Professional Educators	\$ —	\$557,592,107
2	Service Personnel	—	188,217,739
3	Fixed Charges	—	62,648,027
4	Transportation	—	26,604,625
5	Administration	—	6,869,251
6	Other Current Expenses	—	90,434,617
7	Improve Instructional		
8	Programs	—	62,153,166
9	Basic Foundation		
10	Allowances	—	994,519,532
11	Less Local Share	—	(158,203,891)
12	Total Basic State Aid	—	836,315,641
13	Public Employees Health		
14	Insurance Agency	—	115,341,336
15	Teachers' Retirement		
16	System	—	113,243,931
17	Incentive for Adminis-		
18	trative Efficiency	—	241,459
19	Increased Enrollment	—	1,812,906
20	Rural Counties	—	1,000,000

21	School Media Improvement		
22	Grant Program	—	50,000
23	Unclassified	4,500,000	—0—
24	Total	\$ 4,500,000	\$1,068,005,273

*51—State Department of Education—
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Acct. No. 2960

1	Unclassified—Total	\$25,675,000	\$	—0—
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*52—West Virginia Schools for the
Deaf and the Blind*

(WV Code Chapters 18 and 18A)

Acct. No. 3330

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		4,554,290
3	Annual Increment		—		4,608
4	Employee Benefits		—		1,348,229
5	Unclassified		—		1,088,436
6	Total	\$	—	\$	6,995,563

53—State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Acct. No. 3360

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		127,331
3	Annual Increment		—		2,873
4	Employee Benefits		—		45,572
5	Unclassified		—		46,424
6	Total	\$	—	\$	222,200

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

(WV Code Chapter 18)

Acct. No. 4405

1	Total Personal Services	\$	—	\$	—0—
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2	Personal Services	—	4,002,403
3	Annual Increment	—	85,000
4	Employee Benefits	—	1,296,835
5	Workshop Development	—	1,700,000
6	Case Services	—	2,000,000
7	Unclassified	<u>28,573,483</u>	<u>1,098,402</u>
8	Total	\$28,573,483	\$ 10,182,640

**DEPARTMENT OF EDUCATION
AND THE ARTS**

*55—Board of Directors of the
State College System*

Control Account

(WV Code Chapter 18B)

Acct. No. 2785

1	Unclassified—Total	\$ —	\$ 73,993,465
2	From the above appropriation, no institution shall		
3	receive an allocation from the general fund that is less		
4	than the allocation received from the same fund during		
5	the fiscal year 1990-91.		

*56—Board of Trustees of the
University System of West Virginia*

Control Account

(WV Code Chapter 18B)

Acct. No. 2795

1	Unclassified—Total	\$ —	\$ 136,579,342
2	From the above appropriation, no institution shall		
3	receive an allocation from the general revenue fund that		
4	is less than the percentage allocation received from the		
5	same fund during the fiscal year 1990-91.		

*57—Board of Trustees of the University System
of West Virginia and Board of Directors of the
State College System*

(WV Code Chapter 18B)

Account No. 2800

1	Total Personal Services.....	\$	—		\$	—0—
2	Personal Services					725,000
3	Annual Increment					8,000
4	Employee Benefits					162,000
5	Higher Education					
6	Grant Program					3,795,000
7	Tuition Contract Program ..					606,000
8	Eminent Scholars Program					100,000
9	Underwood—Smith					
10	Scholarship Program—					
11	Student Awards					750,000
12	West Virginia					
13	Humanities Council					100,000
14	Unclassified—Central Office					120,353
15	Total	\$			\$	6,366,353
16	Any unexpended balance remaining in the appropri-					
17	ation for Asbestos Litigation (account no. 2800-21) at the					
18	close of the fiscal year 1990-91 is hereby reappropriated					
19	for expenditures during the fiscal year 1991-92.					

*58—Board of Trustees of the
University System of West Virginia*

University of West Virginia

Health Sciences Account

(WV Code Chapter 18B)

Acct. No. 2855

1	Unclassified—Total	\$	—		\$	—0—
2	School of					
3	Osteopathic Medicine.....					5,263,930
4	Marshall Medical School ...					9,403,523
5	WVU—School of					
6	Health Sciences					33,167,862

7	WVU—School of Health		
8	Sciences—		
9	Charleston Division	—	3,270,790
10	Health Sciences		
11	Scholarship Fund	—	150,000
12	WV—NET	—	425,000
13	Total	\$ —	\$ 51,681,105

14 The Health Sciences Scholarship appropriation above
 15 shall be used to establish a revolving loan fund for
 16 medical students who are West Virginia residents
 17 committed to practicing medicine in an underserved
 18 area and in a specialty in which there is a shortage of
 19 practitioners.

59—Educational Broadcasting Authority

(WV Code Chapter 10)

Acct. No. 2910

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	2,999,090
3	Annual Increment	—	42,984
4	Employee Benefits	—	1,014,049
5	Unclassified	960,000	1,626,899
6	Total	\$ 960,000	\$ 5,683,022

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

10 Effective from passage, from the sum of \$450,000
 11 transferred during fiscal year 1990-91 from the secre-
 12 tary of education and the arts, Unclassified (account no.
 13 5332-23) to the division of culture and history, Unclass-
 14 ified (account no. 3510-22), for the West Virginia history
 15 project, the sum of \$100,000 shall be transferred to the
 16 educational broadcasting authority (account no. 2910)
 17 and redesignated WNPB Transmitter—Capital Outlay.

*57—Board of Trustees of the University System
of West Virginia and Board of Directors of the
State College System*

(WV Code Chapter 18B)

Account No. 2800

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services				725,000
3	Annual Increment				8,000
4	Employee Benefits				162,000
5	Higher Education				
6	Grant Program				3,795,000
7	Tuition Contract Program . .				606,000
8	Eminent Scholars Program				100,000
9	Underwood—Smith				
10	Scholarship Program—				
11	Student Awards				750,000
12	West Virginia				
13	Humanities Council				100,000
14	Unclassified—Central Office				120,353
15	Total	\$		\$	6,366,353
16	Any unexpended balance remaining in the appropri-				
17	ation for Asbestos Litigation (account no. 2800-21) at the				
18	close of the fiscal year 1990-91 is hereby reappropriated				
19	for expenditures during the fiscal year 1991-92.				

*58—Board of Trustees of the
University System of West Virginia*

University of West Virginia

Health Sciences Account

(WV Code Chapter 18B)

Acct. No. 2855

1	Unclassified—Total	\$	—	\$	—0—
2	School of				
3	Osteopathic Medicine				5,263,930
4	Marshall Medical School . . .				9,403,523
5	WVU—School of				
6	Health Sciences				33,167,862

7	WVU—School of Health		
8	Sciences—		
9	Charleston Division	—	3,270,790
10	Health Sciences		
11	Scholarship Fund	—	150,000
12	WV—NET	—	425,000
13	Total	\$ —	\$ 51,681,105

14 The Health Sciences Scholarship appropriation above
 15 shall be used to establish a revolving loan fund for
 16 medical students who are West Virginia residents
 17 committed to practicing medicine in an underserved
 18 area and in a specialty in which there is a shortage of
 19 practitioners.

59—Educational Broadcasting Authority

(WV Code Chapter 10)

Acct. No. 2910

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	2,999,090
3	Annual Increment	—	42,984
4	Employee Benefits	—	1,014,049
5	Unclassified	960,000	1,626,899
6	Total	\$ 960,000	\$ 5,683,022

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

10 Effective from passage, from the sum of \$450,000
 11 transferred during fiscal year 1990-91 from the secre-
 12 tary of education and the arts, Unclassified (account no.
 13 5332-23) to the division of culture and history, Unclass-
 14 ified (account no. 3510-22), for the West Virginia history
 15 project, the sum of \$100,000 shall be transferred to the
 16 educational broadcasting authority (account no. 2910)
 17 and redesignated WNPB Transmitter—Capital Outlay.

60—*Library Commission*

(WV Code Chapter 10)

Acct. No. 3500

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		966,602
3	Annual Increment		—		23,076
4	Employee Benefits		—		321,422
5	Unclassified		1,992,579		6,367,925
6	Total	\$	1,992,579	\$	7,679,025

61—*Division of Culture and History*

(WV Code Chapter 29)

Acct. No. 3510

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		1,292,045
3	Annual Increment		—		17,838
4	Employee Benefits		—		436,492
5	Unclassified		2,407,500		2,548,223
6	Total	\$	2,407,500	\$	4,294,598

7 The Unclassified appropriation includes funding for
 8 the Arts Funds, Department Programming Funds,
 9 Grants, Fairs and Festivals and Washington Carver
 10 Camp and shall be expended only upon authorization of
 11 the division of culture and history and in accordance
 12 with the provisions of chapter five-a and article three,
 13 chapter twelve of the code.

14 All federal moneys received as reimbursement to the
 15 division of culture and history for moneys expended
 16 from the general revenue fund for the Arts Fund and
 17 Historical Preservation are hereby reappropriated for
 18 the purposes as originally made, including personal
 19 services, current expenses and equipment.

20 Effective from passage, from the sum of \$450,000
 21 transferred during fiscal year 1990-91 from the secre-
 22 tary of education and the arts, Unclassified (account no.
 23 5332-23) to the division of culture and history, Unclass-
 24 ified (account no. 3510-22), for the West Virginia history
 25 project, the sum of \$100,000 shall be transferred to the

26 educational broadcasting authority (account no. 2910)
 27 and redesignated WNPB Transmitter—Capital Outlay.
 28

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

(WV Code Chapter 5F)

Acct. No. 5332

1	Unclassified—Total	\$	—	\$	153,399
2	Any unexpended balance remaining in the appropri-				
3	ation for unclassified (account no. 5332-23) at the close				
4	of the fiscal year 1990-91 is hereby reappropriated for				
5	expenditure during the fiscal year 1991-92.				

**DEPARTMENT OF HEALTH
 AND HUMAN RESOURCES**

*63—Division of Health—
 Central Office*

(WV Code Chapter 16)

Acct. No. 4000

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services	—			5,331,820
3	Annual Increment	—			85,000
4	Employee Benefits	—			1,793,178
5	Corporate Nonprofit				
6	Community Health				
7	Centers—F.M.H.A.				
8	Mortgage Finance	—			137,269
9	Appalachian States Low				
10	Level Radiocative Waste				
11	Commission.....	—			58,300
12	Hemophilia Program.....	—			27,689
13	Unclassified	—			3,972,927
14	Total	\$	—	\$	11,406,183

64—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Acct. No. 4050

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		14,866,432
3	Annual Increment		—		326,002
4	Employee Benefits		—		5,743,772
5	OSCAR and FAMIS		6,383,139		1,105,693
6	Medical Services		386,600,590		111,344,356
7	Family Law Masters		—		827,165
8	Women's Commission		—		53,505
9	Commission on				
10	Hearing Impaired		—		43,000
11	Public Assistance		108,781,610		24,544,637
12	Emergency Assistance		15,350,000		1,410,216
13	Social Services		—		28,437,862
14	Family Preservation				
15	Program		—		1,500,000
16	JOBS Program		8,909,058		4,329,058
17	Unclassified		—		13,553,614
18	Total		\$526,024,397		\$208,085,312

19 No funds from this account, or any other department
 20 of health and human resources account, shall be used to
 21 pay family law master salaries or expenses in excess of
 22 the Family Law Masters line item appropriation. It is
 23 anticipated that the family law master program will
 24 generate sufficient revenue from fees and federal child
 25 support funds to cover the remainder of its program
 26 costs.

27 None of the funds from this account shall be used to
 28 perform abortions except where the life of the mother
 29 would be endangered if the fetus were carried to term.

30 The secretary of the department of health and human
 31 resources shall have the authority to transfer funds
 32 within the above account: *Provided*, That no more than
 33 ten percent of the funds appropriated to one line may
 34 be transferred to other lines: *Provided, however*, That no
 35 funds from other lines shall be transferred to the
 36 Personal Services line.

65—Commission on Aging

(WV Code Chapter 29)

Acct. No. 4060

1	Total Personal Services.....	\$	—	\$	—0—
2	Personal Services		—		110,795
3	Annual Increment		—		1,591
4	Employee Benefits		—		52,190
5	Local Programs				
6	Service Delivery Costs....		—		2,650,052
7	Silver Haired Legislature ..		—		15,000
8	Senior Citizens' Centers—				
9	Land Acquisition,				
10	Construction, and				
11	Repairs and Alterations ..		—		75,000
12	Area Agencies:				
13	Administration		—		91,072
14	Substate Ombudsman		—		143,730
15	Unclassified		10,925,500		233,060
16	Total	\$	10,925,500	\$	3,372,490

66—Consolidated Medical Service Fund

Acct. No. 4190

1	Foster Grandparents				
2	Stipends/Travel.....	\$	—	\$	62,000
3	Institutional Facilities				
4	Operations.....		—		42,010,316
5	Employee Benefits		—		15,589,369
6	Poison Control Hotline.....		—		250,000
7	Special Olympics.....		—		28,000
8	State Aid to Local Agencies..		—		7,200,000
9	Women, Infants				
10	and Children.....		—		400,000
11	Maternal and Child Health				
12	Clinics, Clinicians and				
13	Medical Contracts				
14	and Fees.....		—		4,815,670
15	Preventive Re-Vaccination..		—		200,000
16	Primary Care Contracts to				
17	Community Health				
18	Centers		—		2,800,000

19	Epidemiology Research	—	250,000
20	Grants to Counties and		
21	EMS Entities	—	1,725,000
22	Behavioral Health Program..	—	—0—
23	Behavioral Health		
24	Program—Personal		
25	Services	—	1,444,192
26	Behavioral Health		
27	Program—Unclassified...	—	516,800
28	Behavioral Health		
29	Program—Community		
30	Programs	—	33,257,210
31	Family Support Act	—	200,000
32	Unclassified	28,230,761	—0—
33	Total	\$ 28,230,761	\$ 110,748,557

34 The secretary of the department of health and human
 35 resources, prior to the beginning of the fiscal year, shall
 36 file with the legislative auditor an expenditure schedule
 37 for each formerly separate spending unit which has
 38 been consolidated into the above account and which
 39 receives a portion of the above appropriation. The
 40 secretary shall also, within fifteen days after the close
 41 of the six-month period of said fiscal year, file with the
 42 legislative auditor an itemized report of expenditures
 43 made during the preceding six-month period.

44 Additional funds have been appropriated in account
 45 no. 8500 for operation of the medical facilities.

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

(WV Code Chapter 5F)

Acct. No. 5343

1	Unclassified—Total	\$ —	\$ 181,619
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68—*Human Rights Commission*

(WV Code Chapter 5)

Acct. No. 5980

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	367,025

3	Annual Increment	—	6,430
4	Employee Benefits	—	126,419
5	Unclassified	102,190	156,665
6	Total	\$ 102,190	\$ 656,539

DEPARTMENT OF PUBLIC SAFETY

*69—Office of Emergency Services
and Advisory Council—
Division of Emergency Services*

(WV Code Chapter 15)

Acct. No. 1300

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	163,974
3	Annual Increment	—	3,096
4	Employee Benefits	—	54,838
5	Unclassified	2,759,426	30,963
6	Total	\$ 2,759,426	\$ 252,871

70—Board of Probation and Parole

(WV Code Chapter 62)

Acct. No. 3650

1	Salaries of Members of		
2	Board of Probation		
3	and Parole	\$ —	\$ 84,900
4	Total Personal Services	—	—0—
5	Personal Services	—	50,414
6	Annual Increment	—	1,152
7	Employee Benefits	—	36,221
8	Unclassified	—	10,620
9	Total	\$ —	\$ 183,307

*71—Division of Corrections—
Central Office*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3680

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	331,044

3	Annual Increment	—	5,688
4	Employee Benefits	—	99,894
5	Unclassified	—	147,748
6	Total	\$ —	\$ 584,374

*72—Division of Corrections—
Correctional Units*

(WV Code Chapters 25, 28, 29 and 62)

Acct. No. 3770

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	13,325,856
3	Annual Increment	—	205,092
4	Employee Benefits	—	4,672,816
5	Capital Outlay—		
6	Davis Center	—	350,000
7	Unclassified	—	8,844,185
8	Total	\$ —	\$ 27,397,949

9 The commissioner of corrections, prior to the begin-
10 ning of the fiscal year, shall file with the legislative
11 auditor an expenditure schedule for each formerly
12 separate spending unit which has been consolidated into
13 the above account and which receives a portion of the
14 above appropriation. He shall also, within fifteen days
15 after the close of each six-month period of said fiscal
16 year, file with the legislative auditor an itemized report
17 of expenditures made during the preceding six-month
18 period. Such report shall include the total of expendi-
19 tures made for personal services, annual increment,
20 current expenses (inmate medical expenses and other),
21 repairs and alterations and equipment.

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

(WV Code Chapter 9A)

Acct. No. 4010

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	290,904
3	Annual Increment	—	5,800
4	Employee Benefits	—	123,036

5	Unclassified	473,600	22,363
6	Total	\$ 473,600	\$ 442,103

7 Any unexpended balances remaining in the appropri-
 8 ations for Repairs and Alterations (account no. 4010-02)
 9 and Equipment (account no. 4010-03) at the close of the
 10 fiscal year 1990-91 are hereby reappropriated for
 11 expenditure during the fiscal year 1991-92.

74—Division of Veterans' Affairs

(WV Code Chapter 9A)

Acct. No. 4040

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	595,691
3	Annual Increment	—	11,916
4	Employee Benefits	—	265,578
5	Unclassified	—	51,089
6	Total	\$ —	\$ 924,274

*75—Division of Public Safety—
Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5354

1	Unclassified—Total	\$ —	\$ 171,286
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76—Division of Public Safety

(WV Code Chapter 15)

Acct. No. 5700

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	14,407,730
3	Annual Increment	—	81,108
4	Employee Benefits	—	4,365,901
5	Unclassified	538,613	4,545,726
6	Total	\$ 538,613	\$ 23,400,465

77—*Adjutant General—State Militia*

(WV Code Chapter 15)

Acct. No. 5800

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		249,021
3	Annual Increment		—		5,760
4	Employee Benefits		—		99,365
5	College Education Fund		—		750,000
6	Unclassified		4,865,870		3,238,614
7	Total	\$	4,865,870	\$	4,342,760

8 The item designated college education fund shall be
 9 the total annual appropriation for awarding scholar-
 10 ships.

78—*Fire Commission*

(WV Code Chapter 29)

Acct. No. 6170

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		351,336
3	Annual Increment		—		7,740
4	Employee Benefits		—		128,532
5	Unclassified		—		91,563
6	Total	\$	—	\$	579,171

DEPARTMENT OF TAX AND REVENUE79—*Tax Division*

(WV Code Chapter 11)

Acct. No. 1800

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		8,828,263
3	Annual Increment		—		146,124
4	Employee Benefits		—		2,780,250
5	Unclassified		—		5,695,610
6	Total	\$	—	\$	17,450,247
7	Any unexpended balance remaining in the appropri-				

8 ation for Unclassified (account no. 1800-16) at the close
 9 of the fiscal year 1990-91 is hereby reappropriated for
 10 expenditure during the fiscal year 1991-92, not to exceed
 11 \$850,000.

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

(WV Code Chapter 29)

Acct. No. 4790

1 Unclassified—Total \$ — \$ 5,068

81—Racing Commission

(WV Code Chapter 19)

Acct. No. 4950

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		995,862
3	Annual Increment		—		9,252
4	Employee Benefits		—		279,451
5	Unclassified		—		54,029
6	Total	\$	—	\$	1,338,594

*82—Department of Tax and Revenue—
 Office of the Secretary*

(WV Code Chapter 5F)

Acct. No. 5365

1 Unclassified—Total \$ — \$ 183,186

DEPARTMENT OF TRANSPORTATION

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

(WV Code Chapter 5F)

Acct. No. 5376

1	Public Transportation	\$10,226,029	\$	1,384,206
2	Civil Air Patrol	—		82,450
3	Unclassified	—		179,546
4	Total	\$10,226,029	\$	1,646,202

84—Railroad Maintenance Authority

(WV Code Chapter 29)

Acct. No. 5690

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		409,355
3	Annual Increment		—		5,940
4	Employee Benefits		—		259,816
5	Capital Outlay		—		500,000
6	Unclassified		348,000		131,693
7	Total	\$	348,000	\$	1,306,804

**MISCELLANEOUS BOARDS
AND COMMISSIONS**

85—Board of Investments—

(WV Code Chapter 12)

Acct. No. 1900

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		1,176,013
3	Annual Increment		—		10,924
4	Employee Benefits		—		366,332
5	Unclassified		—		2,289,928
6	Total	\$	—	\$	3,843,197

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

(WV Code Chapter 12)

Acct. No. 1905

1	Total	\$	—	\$	12,455,500
2	Total TITLE II, Section 1—				
3	General Revenue	\$	—	\$	1,963,278,698

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

1 **Sec. 4. Appropriations of federal funds.**—In accor-
 2 dance with article eleven, chapter four of the code, from
 3 federal funds there are hereby appropriated condition-
 4 ally upon the fulfillment of the provisions set forth in
 5 article two, chapter five-a of the code of the following
 6 amounts, as itemized, for expenditures during the fiscal
 7 year one thousand nine hundred ninety-two.

LEGISLATIVE

87—Crime Victims Compensation Fund

(WV Code Chapter 14)

Acct. No. 8412

TO BE PAID FROM SPECIAL REVENUE FUND

	Federal Funds Fiscal Year 1991-92	Other Funds Fiscal Year 1991-92
1 Total Personal Services	\$ —	\$ —0—
2 Personal Services	—	105,503
3 Annual Increment	—	684
4 Employee Benefits	—	26,755
5 Unclassified	700,000	34,728
6 Total	\$ 700,000	\$ 167,670

7 These funds are intended to be expended for court
 8 costs and administrative costs and federal reimburse-
 9 ment for compensation paid to crime victims.

EXECUTIVE

88—Auditor's Office—

Land Department Operating Fund

(WV Code Chapters 11A, 12 and 36)

Acct. No. 8120

TO BE PAID FROM SPECIAL REVENUE FUND

1 Total Personal Services	\$ —	\$ —0—
2 Personal Services	—	44,087

3	Annual Increment	—	540
4	Employee Benefits	—	13,974
5	Unclassified	—	11,058
6	Total	\$ —	\$ 69,659

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

89—Department of Agriculture

(WV Code Chapter 19)

Acct. No. 8180

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services.....	\$ —	\$ —0—
2	Personal Services	—	202,315
3	Annual Increment	—	396
4	Employee Benefits	—	61,047
5	Unclassified	—	460,776
6	Total	\$ —	\$ 724,534

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

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

(WV Code Chapter 19)

Acct. No. 8192

TO BE PAID FROM SPECIAL REVENUE FUND

1	Student and Farm Loans—		
2	Total	\$ —	\$ 375,000

91—General John McCausland Memorial Farm

(WV Code Chapter 19)

Acct. No. 8194

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services.....	\$ —	\$ —0—
2	Personal Services	—	8,793

3	Annual Increment	—	324
4	Employee Benefits	—	3,653
5	Unclassified	—	61,599
6	Total	\$ —	\$ 74,369

7 Funds for the above appropriation shall be expended
8 in accordance with article twenty-six, chapter nineteen
9 of the code.

*92—Attorney General—
Anti-Trust Enforcement*

(WV Code Chapter 47)

Acct. No. 8419

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	207,450
3	Annual Increment	—	252
4	Employee Benefits	—	57,387
5	Unclassified	—	179,541
6	Total	\$ —	\$ 444,630

DEPARTMENT OF ADMINISTRATION

*93—Division of Purchasing—
Revolving Fund*

(WV Code Chapter 5A)

Acct. No. 8140

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	667,215
3	Annual Increment	—	15,840
4	Employee Benefits	—	294,146
5	Unclassified	—	515,827
6	Total	\$ —	\$ 1,493,028

7 The total amount of this appropriation shall be paid
8 from a special revenue fund as provided by article two,
9 chapter five-a of the code.

10 The above appropriation includes salaries and operat-
11 ing expenses.

12 There is hereby appropriated from this fund, in
 13 addition to the above appropriation, the necessary
 14 amount for the purchase of supplies for resale.

*94—Division of
 Information Systems and Communications*

(WV Code Chapter 5A)

Acct. No. 8151

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services				2,880,263
3	Annual Increment				45,300
4	Employee Benefits				889,816
5	Unclassified				682,064
6	Total	\$		\$	4,497,443

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

11 There is hereby appropriated from this fund, in
 12 addition to the above appropriation, the necessary
 13 amount for the expenditure of funds other than personal
 14 services or employee benefits to enable IS&C to provide
 15 information processing services to user agencies. These
 16 services include but are not limited to data processing
 17 equipment, office automation and telecommunications.

18 There is hereby established a revolving fund for
 19 postage meter service requirements for all spending
 20 units operating from the general revenue fund, from
 21 special revenue funds or receiving reimbursement for
 22 postage from the federal government.

23 Each spending unit shall be charged monthly for all
 24 postage meter service and shall reimburse the revolving
 25 fund monthly for all such amounts.

95—Division of Personnel

(WV Code Chapter 29)

Acct. No. 8402

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		1,988,570
3	Annual Increment		—		35,352
4	Employee Benefits		—		625,110
5	Unclassified		—		465,968
6	Total	\$	—	\$	3,115,000

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

**DEPARTMENT OF COMMERCE, LABOR
 AND ENVIRONMENTAL RESOURCES**

96—Office of Community and Industrial Development

(WV Code Chapter 5B)

Acct. No. 8045

TO BE PAID FROM SPECIAL REVENUE FUND

1	Energy Assistance—				
2	Total	\$	—	\$	1,000,000

3 These funds shall be transferred to the division of
 4 human services for enhancement of the federal energy
 5 assistance program.

97—Oil and Gas Conservation Commission

(WV Code Chapter 22)

Acct. No. 8097

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		166,435
3	Annual Increment		—		504
4	Employee Benefits		—		38,645

5	Unclassified	—	65,274
6	Total	\$ —	\$ 270,858

98—Division of Natural Resources

(WV Code Chapter 20)

Acct. No. 8300

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	5,202,117
3	Annual Increment	—	89,868
4	Employee Benefits	—	1,954,051
5	Wonderful West		
6	Virginia Magazine	—	150,000
7	Capital Improvements and		
8	Land Purchase	—	1,245,000
9	Unclassified	—	2,008,964
10	Total	\$ —	\$ 10,650,000

11 The total amount of this appropriation shall be paid
 12 from a special revenue fund out of fees collected by the
 13 division of natural resources.

14 Any unexpended balances in the appropriation for
 15 Land Purchases and Buildings and Renovation of Dams
 16 at the close of fiscal year 1990-91 shall be reapprop-
 17 priated for expenditure during fiscal year 1991-92.

*99—Division of Natural Resources—**Underground Storage Tanks**Administrative Fund*

(WV Code Chapter 20)

Acct. No. 8302

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	300,000
3	Annual Increment	—	1,008
4	Employee Benefits	—	93,737
5	Unclassified	—	56,191
6	Total	\$ —	\$ 450,936

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

(WV Code Chapter 20)

Acct. No. 8303

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$	—	\$	35,000
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*101—Division of Natural Resources—
Nongame Fund*

(WV Code Chapter 20)

Acct. No. 8304

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		79,300
3	Annual Increment		—		216
4	Employee Benefits		—		21,618
5	Unclassified		—		148,819
6	Total	\$	—	\$	249,953

*102—Division of Natural Resources—
Use and Development—P.L.C.*

(WV Code Chapter 20)

Acct. No. 8306

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		116,000
3	Annual Increment		—		1,980
4	Employee Benefits		—		42,316
5	Land Purchase		—		75,000
6	Unclassified		—		31,228
7	Total	\$	—	\$	266,524

*103—Division of Natural Resources—
Groundwater Planning*

(WV Code Chapter 20)

Acct. No. 8312

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		55,678
3	Annual Increment		—		216
4	Employee Benefits		—		16,685
5	Unclassified		—		230,081
6	Total	\$	—	\$	302,660

*104—Division of Natural Resources—
Hazardous Waste Emergency and Response Fund*

(WV Code Chapter 20)

Acct. No. 8323

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		340,000
3	Annual Increment		—		648
4	Employee Benefits		—		139,119
5	Unclassified		—		1,624,273
6	Total	\$	—	\$	2,104,040

*105—Division of Natural Resources—
Solid Waste Reclamation and Environmental
Response Fund*

(WV Code Chapter 20)

Acct. No. 8326

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Unclassified		—		840,000
3	Total	\$	—	\$	840,000

*106—Division of Natural Resources—
Solid Waste Enforcement Fund*

(WV Code Chapter 20)

Acct. No. 8327

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		1,598,632
3	Annual Increment		—		12,000
4	Employee Benefits		—		484,368
5	Unclassified		—		400,000
6	Total	\$	—	\$	2,495,000

107—Division of Banking

(WV Code Chapter 47A)

Acct. No. 8393

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		10,586
3	Employee Benefits		—		4,372
4	Unclassified		—		9,680
5	Total	\$	—	\$	24,638

108—Division of Banking

(WV Code Chapter 31A)

Acct. No. 8395

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		854,419
3	Annual Increment		—		4,752
4	Employee Benefits		—		240,868
5	Unclassified		—		400,498
6	Total	\$	—	\$	1,500,537

109—Solid Waste Management Board

(WV Code Chapter 20)

Acct. No. 8461

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		163,284
3	Annual Increment		—		2,340
4	Employee Benefits		—		52,692
5	Unclassified		—		1,808,336
6	Total	\$	—	\$	2,026,652

110—Division of Forestry

(WV Code Chapter 19)

Acct. No. 8478

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		216,000
3	Annual Increment		—		1,296
4	Employee Benefits		—		45,535
5	Unclassified		—		446,996
6	Total	\$	—	\$	709,827

*111—Division of Energy—
Special Reclamation Fund*

(WV Code Chapter 22A)

Acct. No. 8537

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		343,605
3	Annual Increment		—		4,900
4	Employee Benefits		—		121,709
5	Unclassified		—		7,772,905
6	Total	\$	—	\$	8,243,119

7 Notwithstanding any provisions of TITLE I, Sec. 3 of
8 this bill, the secretary of the department of commerce,

9 labor and environmental resources shall have the
 10 authority to transfer spending authority from the
 11 Unclassified line above to the Personal Services and
 12 Employee Benefits lines above in order to comply with
 13 federal mandates to increase inspection personnel.

*112—Division of Energy—
 Oil and Gas Reclamation Trust*

(WV Code Chapter 22B)

Acct. No. 8538

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified— Total	\$	—	\$	250,000
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*113—Division of Energy—
 Oil and Gas Operating Permits*

(WV Code Chapter 22B)

Acct. No. 8539

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services				180,000
3	Annual Increment				2,088
4	Employee Benefits				62,058
5	Unclassified				255,854
6	Total	\$	—	\$	500,000

114—Geological and Economic Survey

(WV Code Chapter 29)

Acct. No. 8589

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	30,000
2	Employee Benefits				2,796
3	Unclassified				105,554
4	Total	\$	—	\$	138,350

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

*115—Bureau of Employment Programs—
Workers' Compensation Fund*

(WV Code Chapter 23)

Acct. No. 9000

TO BE PAID FROM WORKERS' COMPENSATION FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		8,469,489
3	Annual Increment		—		141,138
4	Employee Benefits		—		2,891,667
5	Unclassified		—		6,525,351
6	Total	\$	—	\$	18,027,645

7 There is hereby authorized to be paid out of the above
8 appropriation, the amount necessary for the premiums
9 on bonds given by the treasurer as bond custodian for
10 the protection of the workers' compensation fund. This
11 sum shall be transferred to the state board of insurance.

DEPARTMENT OF EDUCATION

*116—State Board of Rehabilitation—
Division of Rehabilitation Services—
West Virginia Rehabilitation
Center—Special Account*

(WV Code Chapter 18)

Acct. No. 8137

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services—Total . . .	\$	—	\$	300,000
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*117—State Department of Education—
FFA-FHA Conference Center*

(WV Code Chapter 18)

Acct. No. 8244

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		477,369
3	Annual Increment		—		6,812

4	Employee Benefits	—	185,645
5	Unclassified	—	401,860
6	Total	\$ —	\$ 1,071,686

**DEPARTMENT OF EDUCATION
AND THE ARTS**

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

(WV Code Chapters 18 and 18B)

Acct. No. 8830

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$ —	\$ 4,290,000
2	Capital Repairs and		
3	Alterations	—	3,000,000
4	Miscellaneous Projects	—	500,000
5	Total	\$ —	\$ 7,790,000

6 The total amount of this appropriation shall be paid
7 from the special capital improvement fund created in
8 section four, article twenty-four, chapter eighteen of the
9 code. Projects are to be paid on a cash basis and made
10 available from the date of passage.

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

(WV Code Chapters 18 and 18B)

Acct. No. 8835

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$ —	\$ 1,840,000
2	Capital Repairs and		
3	Alterations	—	1,800,000
4	Miscellaneous Projects	—	250,000
5	Total	\$ —	\$ 3,890,000

6 Any unexpended balances remaining in the prior
 7 years' and 1990-91 appropriations are hereby reappro-
 8 priated for expenditure during the fiscal year 1991-92.

9 The total amount of this appropriation shall be paid
 10 from the special capital improvement fund created by
 11 section four, article twenty-four, chapter eighteen of the
 12 code. Projects are to be paid on a cash basis and made
 13 available from the date of passage.

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

(WV Code Chapters 18 and 18B)

Acct. No. 8845

TO BE PAID FROM SPECIAL REVENUE FUND

1 The total amount of this appropriation shall be paid
 2 from the proceeds of revenue bonds issued pursuant to
 3 section four, article twenty-four, chapter eighteen of the
 4 code. Projects are to be available from the date of
 5 passage.

6 Any unexpended balances remaining in the prior
 7 years' and the 1990-91 appropriations are hereby
 8 reappropriated for expenditure during the fiscal year
 9 1991-92.

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

(WV Code Chapters 18 and 18B)

Acct. No. 8855

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$	—	\$	3,310,000
2	Building and				
3	Campus Renewal		—		3,000,000
4	Capital				
5	Improvements (New)		—		1,885,000

6	Facilities Planning		
7	& Administration	—	165,000
8	Total	\$ —	\$ 8,360,000

9 Any unexpended balances remaining in the prior
10 years' and 1990-91 appropriations are hereby reappro-
11 priated for expenditure during the fiscal year 1991-92,
12 except account number 8855-46 fiscal year 1987-88 (debt
13 service), which shall expire on June 30, 1991.

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

*122—State College and University Systems—
State Systems Tuition Fee—
Revenue Bond Construction Fund
(WV Code Chapters 18 and 18B)*

Acct. No. 8860

TO BE PAID FROM SPECIAL REVENUE FUND

1 The total amount of this appropriation shall be paid
2 from the proceeds of revenue bonds issued pursuant to
3 article twelve-b, chapter eighteen of the code. Projects
4 are to be made available from the date of passage.

5 Any unexpended balances remaining in prior years'
6 and 1990-91 appropriations are hereby reappropriated
7 for expenditure during the fiscal year 1991-92.

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

(WV Code Chapters 18 and 18B)

Acct. No. 8865

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$ —	\$ 7,710,000
2	Building and		
3	Campus Renewal	—	10,685,000

4	Capital Improvements (New)	—	2,150,000
5	Facilities Planning &		
6	Administration	—	165,000
7	Total	\$ —	\$ 20,710,000

8 The total amount of this appropriation shall be paid
 9 from the special capital improvement fund created in
 10 article twelve-b, chapter eighteen of the code. Projects
 11 are to be paid on a cash basis and made available from
 12 the date of passage.

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

(WV Code Chapter 18)

Acct. No. 9280

TO BE PAID FROM THE MEDICAL SCHOOL FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	2,992,000
3	Annual Increment	—	8,000
4	Employee Benefits	—	5,375,000
5	Unclassified	—	6,625,000
6	Total	\$ —	\$ 15,000,000

7 Any unexpended balances remaining in the fiscal year
 8 1989-90 and fiscal year 1990-91 appropriations for the
 9 West Virginia University Health Sciences Center at the
 10 close of the fiscal year 1990-91 are hereby reappro-
 11 priated for expenditure during the fiscal year 1991-92.

**DEPARTMENT OF HEALTH AND
 HUMAN RESOURCES**

125—Board of Barbers and Beauticians

(WV Code Chapters 16 and 30)

Acct. No. 8220

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	151,120

3	Annual Increment	—	2,556
4	Employee Benefits	—	47,826
5	Unclassified	—	75,360
6	Total	\$ —	\$ 276,862

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

*126—Health Care Cost Review Authority—
 Planning*

(WV Code Chapter 16)

Acct. No. 8234

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —
2	Unclassified	—	—
3	Total	\$ —	\$ —

*127—Division of Health—
 Vital Statistics*

(WV Code Chapter 16)

Acct. No 8236

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —
2	Personal Services	—	166,314
3	Annual Increment	—	4,896
4	Employee Benefits	—	68,867
5	Unclassified	—	82,540
6	Total	\$ —	\$ 322,617

128—Hospital Finance Authority

(WV Code Chapter 16)

Acct. No. 8330

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —
2	Personal Services	—	47,619
3	Employee Benefits	—	13,901

4	Unclassified	—	64,743
5	Total	\$ —	\$ 126,263

6 The total amount of this appropriation shall be paid
7 from the special revenue fund out of fees and collections
8 as provided by article twenty-nine-a, chapter sixteen of
9 the code.

*129—Division of Health—
Hospital Services Revenue Account
(Special Fund)
(Capital Improvement, Renovation and Operations)
(WV Code Chapter 16)
Acct. No. 8500*

TO BE PAID FROM SPECIAL REVENUE FUND

1	Debt Service	\$ —	\$ 2,740,000
2	Institutional Facilities		
3	Operations	—	21,900,000
4	Total	\$ —	\$ 24,640,000

5 Any unexpended balance remaining in the appropri-
6 ation for hospital services revenue account at the close
7 of the fiscal year 1990-91 is hereby reappropriated for
8 expenditure during the fiscal year 1991-92 except for
9 account number 8500-37 and account no. 8500-40 (fiscal
10 year 1984-85); account no. 8500-16, account no. 8500-49
11 and account no. 8500-51 (fiscal year 1987-88); account
12 no. 8500-52 and account no. 8500-53 (fiscal year 1988-
13 89) which shall expire on June 30, 1991.

14 The total amount of this appropriation shall be paid
15 from the hospital services revenue account special fund
16 created by section fifteen-a, article one, chapter sixteen
17 of the code, and shall be used only for operating
18 expenses and for improvements in connection with
19 existing facilities and bond payments.

20 Projects are to be paid on a cash basis. Items and
21 projects of this appropriation are to begin as funds
22 become available in the special fund or from bond
23 proceeds.

- 24 Necessary funds from the above appropriation may be
 25 used for medical facilities operations, either in connec-
 26 tion with this account or in connection with the item
 27 designated Institutional Facilities Operations in the
 28 Consolidated Medical Services Fund (account no. 4190).

*130—Division of Health—
 Laboratory Services*

(WV Code Chapter 16)

Acct. No. 8509

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		395,820
3	Annual Increment		—		4,788
4	Employee Benefits		—		123,360
5	Unclassified		—		581,378
6	Total	\$	—	\$	1,105,346

*131—Division of Health—
 Health Facility Licensing*

(WV Code Chapter 16)

Acct. No. 8529

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		153,772
3	Annual Increment		—		720
4	Employee Benefits		—		41,000
5	Unclassified		—		35,000
6	Total	\$	—	\$	230,492

*132—West Virginia Health Care
 Planning Commission*

(WV Code Chapter 16)

Acct. No. 8530

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$	—	\$	350,000
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133—Health Care Cost Review Authority

(WV Code Chapter 16)

Acct. No. 8564

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		944,477
3	Annual Increment		—		5,616
4	Employee Benefits		—		312,375
5	Unclassified		—		1,046,519
6	Total	\$	—	\$	2,308,987

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

DEPARTMENT OF PUBLIC SAFETY*134—Regional Jail and Correctional
Facility Authority*

(WV Code Chapter 31)

Acct. No. 8051

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		412,113
3	Annual Increment		—		2,952
4	Employee Benefits		—		139,330
5	Unclassified		—		195,823
6	Debt Service		—		10,000,000
7	Total	\$	—	\$	10,750,218

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

(WV Code Chapter 19A)

Acct. No. 8261

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		489,000

3	Annual Increment	—	9,752
4	Employee Benefits	—	206,821
5	Unclassified	—	—0—
6	Total	\$ —	\$ 705,573

*136—Division of Public Safety—
Inspection Fees*

(WV Code Chapter 15)

Acct. No. 8350

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	522,804
3	Annual Increment	—	1,836
4	Employee Benefits	—	142,087
5	Unclassified	—	139,547
6	Total	\$ —	\$ 806,274

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

*137—Division of Public Safety—
Barracks Construction*

(WV Code Chapter 17C)

Acct. No. 8352

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	58,632
3	Annual Increment	—	1,476
4	Employee Benefits	—	25,428
5	Unclassified	—	411,174
6	Total	\$ —	\$ 496,710

*138—Division of Public Safety—
Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Acct. No. 8355

TO BE PAID FROM SPECIAL REVENUE FUND

1	Unclassified—Total	\$ —	\$ 622,740
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2 The total amount of this appropriation shall be paid
 3 from the special revenue fund out of receipts collected
 4 pursuant to sections nine-a and sixteen, article fifteen,
 5 chapter eleven of the code and paid into a revolving fund
 6 account in the state treasury.

*139—State Armory Board—
 General Armory Fund*

(WV Code Chapter 15)

Acct. No. 8446

TO BE PAID FROM SPECIAL REVENUE FUND

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

(WV Code Chapter 29)

Acct. No. 8465

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		289,280
3	Annual Increment		—		720
4	Employee Benefits		—		118,900
5	Unclassified		—		216,900
6	Total	\$	—	\$	625,800

*141—Agency of Insurance Commissioner
 Consumer Advocate*

(WV Code Chapter 33)

Acct. No. 8015

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	72,500
2	Employee Benefits		—		27,255
3	Unclassified		—		123,000
4	Total	\$	—	\$	222,755

DEPARTMENT OF TAX AND REVENUE

142—Agency of Insurance Commissioner

(WV Code Chapter 33)

Acct. No. 8016

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		1,219,512
3	Annual Increment		—		11,376
4	Employee Benefits		—		421,278
5	Unclassified		—		523,659
6	Total	\$	—	\$	2,175,825

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

*143—Insurance Commission—
Examination Revolving Fund*

(WV Code Chapter 33)

Acct. No. 8018

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	251,000
2	Annual Increment		—		900
3	Employee Benefits		—		70,370
4	Unclassified		—		177,730
5	Total	\$	—	\$	500,000

144—Municipal Bond Commission

(WV Code Chapter 13)

Acct. No. 8040

TO BE PAID FROM SPECIAL REVENUE FUND

1	Personal Services	\$	—	\$	102,270
2	Annual Increment		—		1,404
3	Employee Benefit		—		31,300
4	Unclassified		—		35,000
5	Total	\$	—	\$	169,974

145—Racing Commission

(WV Code Chapter 19)

Acct. No. 8080

TO BE PAID FROM SPECIAL REVENUE FUND

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

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

*146—Racing Commission—
Administration and Promotion*

(WV Code Chapter 19)

Acct. No. 8082

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		46,000
3	Annual Increment		—		180
4	Employee Benefits		—		12,498
5	Unclassified		—		47,408
6	Total	\$	—	\$	106,086

147—Office of Chief Inspector

(WV Code Chapter 6)

Acct. No. 8091

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		1,228,310
3	Annual Increment		—		12,816
4	Employee Benefits		—		349,540
5	Unclassified		—		312,851
6	Total	\$	—	\$	1,903,517

*148—Alcohol Beverage Control Commission—
Wine License Special Fund*

(WV Code Chapter 60)

Acct. No. 8592

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		52,500
3	Annual Increment		—		648
4	Employee Benefits		—		19,460
5	Unclassified		—		326,379
6	Total	\$	—	\$	398,987

*149—Office of Alcohol
Beverage Control Commissioner*

(WV Code Chapter 60)

Acct. No. 9270

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		3,191,972
3	Annual Increment		—		49,032
4	Employee Benefits		—		2,103,861
5	Unclassified		—		2,829,888
6	Total	\$	—	\$	8,174,753

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

9 The above appropriation includes the salary of the
10 commissioner, salaries of store personnel and store
11 inspectors, store operating expenses and equipment, and
12 salaries, expenses and equipment of administration
13 offices.

14 There is hereby appropriated from liquor revenues, in
15 addition to the appropriation, the necessary amount for
16 the purchase of liquor as provided by law.

DEPARTMENT OF TRANSPORTATION

150—Division of Highways

(WV Code Chapters 17 and 17C)

Acct. No. 6700

TO BE PAID FROM STATE ROAD FUND

1	Maintenance, Expressway,			
2	Trunkline and Feeder	\$	—	\$ 66,000,000
3	Maintenance, State			
4	Local Services		—	93,700,000
5	Maintenance, Contract			
6	Paving and Secondary			
7	Road Maintenance		—	36,711,000
8	Bridge Repair and			
9	Replacement		—	32,000,000
10	Industrial Access Roads		—	2,000,000
11	Inventory Revolving		—	1,250,000
12	Equipment Revolving		—	11,950,000
13	General Operations		—	30,675,000
14	Debt Service		—	93,300,000
15	Interstate Construction		—	50,000,000
16	Other Federal Aid			
17	Programs		—	150,000,000
18	Appalachian Programs		—	110,000,000
19	Nonfederal Aid			
20	Construction		—	25,716,000
21	Highway Litter Control		—	1,500,000
22	Railroad Highway Grade			
23	Crossing Improvements		—	200,000
24	Total	\$	—	\$705,002,000

25 The above appropriations are to be expended in
 26 accordance with the provisions of chapters seventeen
 27 and seventeen-c of the code.

28 The commissioner of highways shall have the author-
 29 ity to operate revolving funds within the state road fund
 30 for the operation and purchase of various types of
 31 equipment used directly and indirectly in the construc-
 32 tion and maintenance of roads and for the purchase of
 33 inventories and materials and supplies.

34 There is hereby appropriated within the above items
 35 sufficient money for the payment of claims, accrued or
 36 arising during this budgetary period, to be paid in
 37 accordance with sections seventeen and eighteen, article
 38 two, chapter fourteen of the code.

39 It is the intent of the Legislature to capture and match
 40 all federal funds available for expenditure on the
 41 Appalachian Highway system at the earliest possible
 42 time. Therefore, should amounts in excess of those
 43 appropriated be required for the purposes of Appalachian
 44 programs, funds in excess of the amount appro-
 45 priated may be made available upon recommendation of
 46 the commissioner and approval of the governor.
 47 Further, for the purpose of Appalachian programs,
 48 funds appropriated to line items may be transferred to
 49 other line items upon recommendation of the commis-
 50 sioner and approval of the governor.

151—Division of Motor Vehicles

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

Acct. No. 6710

TO BE PAID FROM STATE ROAD FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		2,547,166
3	Annual Increment		—		39,564
4	Employee Benefits		—		901,442
5	License Plate				
6	Replacement Program		—		881,780
7	Unclassified		387,214		12,261,588
8	Total	\$	387,214	\$	16,631,540

*152—Division of Motor Vehicles—
 Driver's License Reinstatement Fund*

(WV Code Chapter 17B)

Acct. No. 8422

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services		—		148,844

3	Annual Increment	—	1,764
4	Employee Benefits	—	44,238
5	Unclassified	—	85,154
6	Total	\$ —	\$ 280,000

*153—Division of Motor Vehicles—
Driver Rehabilitation*

(WV Code Chapter 17C)

Acct. No. 8423

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	54,766
3	Annual Increment	—	576
4	Employee Benefits	—	21,541
5	Unclassified	—	481,158
6	Total	\$ —	\$ 558,041

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

(WV Code Chapter 17A)

Acct. No. 8424

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	489,504
3	Annual Increment	—	6,768
4	Employee Benefits	—	195,916
5	Unclassified	—	90,433
6	Total	\$ —	\$ 782,621

*155—Division of Motor Vehicles—
Motorboat Licenses*

(WV Code Chapter 20)

Acct. No. 8425

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	62,238

3	Annual Increment	—	1,728
4	Employee Benefits	—	21,733
5	Unclassified	—	64,301
6	Total	\$ —	\$ 150,000

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

(WV Code Chapter 17)

Acct. No. 8426

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	13,898
3	Annual Increment	—	108
4	Employee Benefits	—	4,830
5	Unclassified	—	9,164
6	Total	\$ —	\$ 28,000

MISCELLANEOUS BOARDS AND COMMISSIONS

157—Real Estate Commission

(WV Code Chapter 47)

Acct. No. 8010

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	169,332
3	Annual Increment	—	1,728
4	Employee Benefits	—	54,528
5	Unclassified	—	90,057
6	Total	\$ —	\$ 315,645

7 The total amount of this appropriation shall be paid
8 out of collections of license fees as provided by law.

*158—West Virginia Cable Television—
Advisory Board*

(WV Code Chapter 5)

Acct. No. 8174

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	152,000

3	Annual Increment	—	2,160
4	Employee Benefits	—	39,968
5	Unclassified	—	63,564
6	Total	\$ —	\$ 257,692

159—Public Service Commission

(WV Code Chapter 24)

Acct. No. 8280

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	4,625,423
3	Annual Increment	—	42,523
4	Employee Benefits	—	1,427,307
5	Unclassified	—	1,437,389
6	Total	\$ —	\$ 7,532,642

7 The total amount of this appropriation shall be paid
8 from a special revenue fund out of collections for special
9 license fees from public service corporations as provided
10 by law.

*160—Public Service Commission—
Gas Pipeline Division*

(WV Code Chapter 24B)

Acct. No. 8285

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$ —	\$ —0—
2	Personal Services	—	123,363
3	Annual Increment	—	1,200
4	Employee Benefits	—	32,323
5	Unclassified	172,817	70,369
6	Total	\$ 172,817	\$ 227,255

7 The total amount of this appropriation shall be paid
8 from a special revenue fund out of receipts collected for
9 or by the public service commission pursuant to and in
10 the exercise of regulatory authority over pipeline
11 companies as provided by law.

*161—Public Service Commission—
Motor Carrier Division*

(WV Code Chapter 24A)

Acct. No. 8290

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services				1,116,885
3	Annual Increment				18,000
4	Employee Benefits				365,006
5	Unclassified		628,985		320,678
6	Total	\$	628,985	\$	1,820,569

7 The total amount of this appropriation shall be paid
8 from a special revenue fund out of receipts collected for
9 or by the public service commission pursuant to and in
10 the exercise of regulatory authority over motor carriers
11 as provided by law.

*162—Public Service Commission—
Consumer Advocate*

(WV Code Chapter 24)

Acct. No. 8295

TO BE PAID FROM SPECIAL REVENUE FUND

1	Total Personal Services	\$	—	\$	—0—
2	Personal Services				308,195
3	Annual Increment				1,512
4	Employee Benefits				87,814
5	Unclassified		—		260,795
6	Total	\$	—	\$	658,316

7 The total amount of this appropriation shall be paid
8 from a special revenue fund out of collections made by
9 the public service commission.

1 **Sec. 5. Appropriations from Lottery Net Profits.**
2 —Net profits of the lottery, not to exceed twenty-eight
3 million dollars, are to be deposited by the lottery
4 director to the following accounts in the amounts
5 indicated. The auditor shall prorate each deposit of net
6 profits by the lottery director amount account nos. 8243,

7 8525, 8825, 8546 and 9132 in the proportion the
8 appropriations for each account bear to the total of the
9 appropriations for the five accounts.

163—State Department of Education

(WV Code Chapters 18 and 18A)

Acct. No. 8243

TO BE PAID FROM LOTTERY NET PROFITS

1	Elementary Computer			
2	Education—Total	\$	—	\$ 3,520,000
3	Any unexpended balance remaining in the appropri-			
4	ation Elementary Computer Education (account no.			
5	8243-06) at the close of the fiscal year 1990-91 is hereby			
6	reappropriated for expenditure during the fiscal year			
7	1991-92.			

164—Division of Health

(WV Code Chapter 29)

Acct. No. 8525

TO BE PAID FROM LOTTERY NET PROFITS

1	In-Home Services For			
2	Senior Citizens	\$	—	\$ 1,800,000
3	Unclassified		—	1,600,000
4	Total	\$	—	\$ 3,400,000

165—Division of Tourism and Parks

(WV Code Chapter 5B)

Acct. No. 8546

TO BE PAID FROM LOTTERY NET PROFITS

1	Capital Outlay—Parks	\$	—	\$ 1,340,000
2	Unclassified		—	11,020,000
3	Total	\$	—	\$ 12,360,000
4	Any unexpended balance remaining in the appropri-			
5	ation (account no. 8546-06) at the close of the fiscal year			
6	1990-91 is hereby reappropriated for expenditure			
7	during the fiscal year 1991-92.			

166—Division of Human Services

(WV Code Chapters 9, 48 and 49)

Acct. No. 9132

TO BE PAID FROM LOTTERY NET PROFITS

1	Health Care and Title			
2	XIX Waiver for			
3	Senior Citizens—Total	\$	—	\$ 5,200,000

*167—Board of Trustees of the
University System of West Virginia and
Board of Directors of the
State College System*

(WV Code Chapter 18B)

Acct. No. 8825

TO BE PAID FROM LOTTERY NET PROFITS

1	Unclassified—Total	\$	—	\$ 3,520,000
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1 **Sec. 6. Awards for claims against the state.**—There
2 are hereby appropriated, for the remainder of the fiscal
3 year 1990-91 and to remain in effect until June 30, 1992
4 from the fund as designated in the amounts as specified
5 and for the claimants named in enrolled house bill no.
6 2727, regular session 1991—crime victims compensation
7 funds of \$253,000.00 for payment of claims against the
8 state.

9 There are hereby appropriated for the fiscal year
10 1991-92 from the funds as designated in the amounts
11 specified and for claimants as named in committee
12 substitute for enrolled house bill no. 2726, regular
13 session 1991 and enrolled senate bill no. 625, regular
14 session 1991—workers' compensation funds of
15 \$21,277.71.

16 There are hereby appropriated for the fiscal year
17 1991-92 from the funds as designated in the amounts as
18 specified and for the claimants as named in enrolled
19 house bill no. 2726, regular session 1991 and enrolled
20 senate bill no. 625, regular session 1991—general
21 revenue funds of \$1,842,136.75.

22 The total of general revenue funds above does not
 23 include payment for claims in the amount of \$22,523.65
 24 from the supreme court—general judicial, account no.
 25 1110, specifically made payable from the appropriation
 26 for the current fiscal year 1990-91.

27 There are hereby appropriated for the fiscal year
 28 1991-92 from the funds as designated in the amounts as
 29 specified and for claimants as named in enrolled senate
 30 bill 625, regular session 1991—special revenue funds of
 31 \$9,319.99; state road funds of \$810,668.68 and federal
 32 funds of \$3,558.03.

1 **Sec. 7. Appropriations and reappropriations—**
 2 revenue sharing trust fund.—Any unexpended balance
 3 remaining in the appropriation Chief Mingo Recreation
 4 Park—Capital Outlay (account no. 9705-30) and Build-
 5 ing Repairs and Alterations (account no. 9740-10) at the
 6 close of the fiscal year 1990-91 is hereby reappropriated
 7 for expenditure during the fiscal year 1991-92.

8 The following item is hereby appropriated from the
 9 revenue sharing trust fund and is to be available for
 10 expenditure during the fiscal year 1991-92 out of
 11 surplus funds only, subject to the terms and conditions
 12 set forth in this section.

13 It is the intent and mandate of this Legislature that
 14 the following appropriation made by this section shall
 15 be payable only from the surplus accrued as of July 31,
 16 1991.

17 In the event that surplus funds as of July 31, 1991 are
 18 not sufficient to meet all of the appropriations made by
 19 this section, then the appropriation shall be made to the
 20 extent that surplus funds are available as of July 31,
 21 1991.

*168—Division of Corrections—
 Correctional Units*

(WV Code Chapters 25, 28, 29, and 62)

Acct. No. 9719

1	Unclassified—Total \$	—	\$	238,608
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1 **Sec. 8. Appropriations from surplus accrued.—**
 2 The following items are hereby appropriated from the
 3 state fund, general revenue, and are to be available for
 4 expenditure during the fiscal year 1991-92 out of
 5 surplus funds only, subject to the terms and conditions
 6 set forth in this section.

7 It is the intent and mandate of the Legislature that
 8 the following appropriations be payable only from
 9 surplus accrued as of the thirty-first day of July, one
 10 thousand nine hundred ninety-one.

11 In the event that surplus revenues available on the
 12 thirty-first day of July, one thousand nine hundred
 13 ninety-one are not sufficient to meet all appropriations
 14 made pursuant to this section, then surplus shall be
 15 allocated first to provide the necessary funds to meet the
 16 first appropriation of this section; next, to provide the
 17 funds necessary for the second appropriation of this
 18 section; and subsequently to provide the funds necessary
 19 for each appropriation in succession before any funds
 20 are provided for the next subsequent appropriation.

21 Any surplus balance remaining, after the allocation to
 22 meet the appropriation set forth in this section, shall be
 23 transferred and made available to the state fund,
 24 general revenue during the fiscal year 1991-92. This
 25 transfer of the surplus balance shall be taken into
 26 consideration in making any determination pursuant to
 27 section nine-d, article six, chapter twelve of the code of
 28 West Virginia, one thousand nine hundred thirty-one, as
 29 amended, with respect to the sufficiency or insufficiency
 30 of funds available for the timely payment for necessary
 31 improvements in public education.

169—Division of Human Services
 (WV Code Chapters 9, 48, and 49)

Acct. No. 4050

1 Medical Services \$ 21,000,000

170—Division of Energy

(WV Code Chapter 22)

Acct. No. 4775

1 Unclassified \$ 1,500,000

171—Division of Finance

(WV Code Chapter 5A)

Acct. No. 2110

1 GAAP Project \$ 900,000

1 **Sec. 9. Appropriations from federal block**
 2 **grants.**—The following items are hereby appropriated
 3 from federal block grants to be available for expendi-
 4 ture during the fiscal year 1991-92.

*172—Office of Community and Industrial Development—
Community Development*

Acct. No. 8029

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 14,272,008

*173—Office of Community and Industrial Development—
Community Service*

Acct. No. 8031

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 6,996,154

*174—State Department of Education—
Education Grant*

Acct. No. 8242

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 66,584,609

*175—Division of Employment Security—
Job Training Partnership Act*

Acct. No. 8255

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 46,717,454

*176—Division of Health—
Maternal and Child Health*

Acct. No. 8502

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 6,500,000

*177—Division of Health—
Alcohol, Drug Abuse and Mental Health*

Acct. No. 8503

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 6,500,000

*178—Division of Health—
Community Youth Activity Program*

Acct. No. 8504

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 95,000

*179—Division of Health—
Preventive Health*

Acct. No. 8506

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 900,000

*180—Division of Health—
Mental Health Services for the Homeless*

Acct. No. 8508

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 400,000

*181—Division of Human Services—
Energy Assistance*

Acct. No. 9147

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 10,500,000

*182—Division of Human Services—
Social Services*

Acct. No. 9161

TO BE PAID FROM FEDERAL FUNDS

1 Unclassified—Total \$ 21,000,000

1 **Sec. 10. Special revenue appropriations.**—There
2 are hereby appropriated for expenditure during the
3 fiscal year one thousand nine hundred ninety-two
4 appropriations made by general law from special
5 revenue which are not paid into the state fund as
6 general revenue under the provisions of section two,
7 article two, chapter twelve of the code: *Provided*, That
8 none of the money so appropriated by this section shall
9 be available for expenditure except in compliance with
10 and in conformity to the provisions of articles two and
11 three, chapter twelve and article two, chapter five-a of
12 the code, unless the spending unit has filed with the
13 director of the budget, the auditor and the legislative
14 auditor prior to the beginning of each fiscal year:

15 (a) An estimate of the amount and sources of all
16 revenues accruing to such fund;

17 (b) A detailed expenditure schedule showing for what
18 purposes the fund is to be expended.

1 **Sec. 11. State improvement fund appropri-**
2 **tions.**—Bequests or donations of nonpublic funds,
3 received by the governor on behalf of the state during
4 the fiscal year one thousand nine hundred ninety-two,
5 for the purpose of making studies and recommendations
6 relative to improvements of the administration and
7 management of spending units in the executive branch
8 of state government, shall be deposited in the state
9 treasury in a separate account therein designated state
10 improvement fund.

11 There are hereby appropriated all moneys so depos-
12 ited during the fiscal year one thousand nine hundred
13 ninety-two to be expended as authorized by the gover-
14 nor, for such studies and recommendations which may
15 encompass any problems of organization, procedures,
16 systems, functions, powers or duties of a state spending
17 unit in the executive branch, or the betterment of the
18 economic, social, educational, health and general
19 welfare of the state or its citizens.

1 **Sec. 12. Specific funds and collection accounts.**—
2 A fund or collection account which by law is dedicated
3 to a specific use is hereby appropriated in sufficient

4 amount to meet all lawful demands upon the fund or
5 collection account and shall be expended according to
6 the provisions of article three, chapter twelve of the
7 code.

1 **Sec. 13. Appropriations for refunding erroneous**
2 **payment.**— Money that has been erroneously paid into
3 the state treasury is hereby appropriated out of the fund
4 into which it was paid, for refund to the proper person.

5 When the officer authorized by law to collect money
6 for the state finds that a sum has been erroneously paid,
7 he shall issue his requisition upon the auditor for the
8 refunding of the proper amount. The auditor shall issue
9 his warrant to the treasurer and the treasurer shall pay
10 the warrant out of the fund into which the amount was
11 originally paid.

1 **Sec. 14. Sinking fund deficiencies.**—There is
2 hereby appropriated to the governor a sufficient amount
3 to meet any deficiencies that may arise in the mortgage
4 finance bond insurance fund of the West Virginia
5 housing development fund which is under the supervi-
6 sion and control of the municipal bond commission as
7 provided by section twenty-b, article eighteen, chapter
8 thirty-one of the code, or in the funds of the municipal
9 bond commission because of the failure of any state
10 agency for either general obligations or revenue bonds
11 or any local taxing district for general obligation bonds
12 to remit funds necessary for the payment of interest and
13 sinking fund requirements. The governor is authorized
14 to transfer from time to time such amounts to the
15 municipal bond commission as may be necessary for
16 these purposes.

17 The municipal bond commission shall reimburse the
18 state of West Virginia through the governor from the
19 first remittance collected from the West Virginia
20 housing development fund or from any state agency or
21 local taxing district for which the governor advanced
22 funds, with interest at the rate carried by the bonds for
23 security or payment of which the advance was made.

1 **Sec. 15. Appropriations to pay costs of publica-**
2 **tion of delinquent corporations.**—There is hereby

3 appropriated out of the state fund, general revenue, out
 4 of funds not otherwise appropriated, to be paid upon
 5 requisition of the auditor and/or the governor, as the
 6 case may be, a sum sufficient to pay the cost of
 7 publication of delinquent corporations as provided by
 8 sections eighty-four and eighty-six, article twelve,
 9 chapter eleven of the code.

1 **Sec. 16. Appropriations for local governments.—**

2 There are hereby appropriated for payment to counties,
 3 districts and municipal corporations such amounts as
 4 will be necessary to pay taxes due counties, districts and
 5 municipal corporations and which have been paid into
 6 the treasury:

- 7 (a) For redemption of lands;
- 8 (b) By public service corporations;
- 9 (c) For tax forfeitures.

1 **Sec. 17. Total appropriations.—**Where only a total
 2 sum is appropriated to a spending unit, the total sum
 3 shall include personal services, annual increment,
 4 employee benefits, current expenses, repairs and
 5 alterations, equipment and capital outlay, where not
 6 otherwise specifically provided and except as otherwise
 7 provided in TITLE I—GENERAL PROVISIONS, Sec.
 8 3.

1 **Sec. 18. General school fund.—**The balance of the
 2 proceeds of the general school fund remaining after the
 3 payment of the appropriations made by this act is
 4 appropriated for expenditure in accordance with section
 5 sixteen, article nine-a, chapter eighteen of the code.

TITLE III — ADMINISTRATION.

- §1. Appropriations conditional.
- §2. Constitutionality.

TITLE III — ADMINISTRATION.

1 **Section 1. Appropriations conditional.—**The ex-
 2 penditure of the appropriations made by this act, except
 3 those appropriations made to the legislative and judicial
 4 branches of the state government, are conditioned upon

5 the compliance by the spending unit with the require-
6 ments of article two, chapter five-a of the code.

7 Where spending units or parts of spending units have
8 been absorbed by or combined with other spending
9 units, it is the intent of this act that reappropriations
10 shall be to the succeeding or later spending unit created
11 unless otherwise indicated.

1 **Sec. 2. Constitutionality.**—If any part of this act is
2 declared unconstitutional by a court of competent
3 jurisdiction, its decision shall not affect any portion of
4 this act which remains, but the remaining portion shall
5 be in full force and effect as if the portion declared
6 unconstitutional had never been a part of the act.

CHAPTER 14

(H. B. 2793—By Delegates Rutledge and Williams)

[Passed March 8, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact sections five, fourteen, fifteen and thirty-three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twelve, article eight and section four, article eight-a of said chapter, all relating to banking institutions, increasing certain fees for investigation of bank incorporation; eliminating certificates of unimpaired capital and replacing certificates with annual reports; deposits in trust; limitation on liability of institutions making payments from certain accounts; and reducing investigation fees for mergers and share acquisition.

Be it enacted by the Legislature of West Virginia:

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

Article

- 4. **Banking Institutions and Services Generally.**
- 8. **Hearings; Administrative Procedures; Judicial Review; Unlawful Acts; Penalties.**
- 8A. **Acquisition of Bank Shares.**

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

- §31A-4-5. Requirements and procedure for incorporation of state banks.
- §31A-4-14. Trust powers of banking institutions.
- §31A-4-15. Certificate showing unimpaired capital to be filed before exercising trust powers; penalties; notice of failure to comply.
- §31A-4-33. Deposits in trust; deposits in more than one name; limitation on liability of institutions making payments from certain accounts.

§31A-4-5. Requirements and procedure for incorporation of state banks.

1 A state bank may be organized by five or more
 2 incorporators, a majority of whom shall be residents of
 3 the state of West Virginia. Such banking institution
 4 shall have as a part of its corporate name or title one
 5 or more of the following words indicative of the business
 6 which it is authorized to conduct, namely, "bank,"
 7 "banking company," "banking association," "trust
 8 company," "banking and trust company" or "bank and
 9 trust company."

10 The incorporators shall file with the board an
 11 agreement of incorporation, in duplicate, following
 12 generally the form prescribed by the secretary of state
 13 for chartering corporations under provisions of article
 14 one, chapter thirty-one of this code. The information set
 15 forth in the agreement shall include the following:

- 16 (1) The name of the proposed bank;
- 17 (2) The community and county in which the bank is
 18 to be located, together with the post-office address of the
 19 place of business of the bank;
- 20 (3) Whether such bank proposes also to engage in the
 21 trust business;
- 22 (4) The name, residence and occupation of each
 23 incorporator, and the amount of capital stock subscribed
 24 and paid for by each;

25 (5) The names of the persons who are to serve as
26 officers and directors of the banking institution and the
27 official position proposed to be held by each; and

28 (6) The total authorized capital stock of the institution.

29 The agreement of incorporation shall be signed and
30 acknowledged by each of the incorporators and, when
31 filed with the board, shall be accompanied by the
32 statutory corporation charter fees, and an examination
33 and investigation fee of five thousand dollars payable to
34 the board. However, if the agreement is for the
35 incorporation of a bank to be organized solely for the
36 purpose of facilitating the acquisition of another bank,
37 the examination and investigation fee is five hundred
38 dollars payable to the board. When transmitting the
39 agreement to the board, the incorporators shall design-
40 ate by name and give the address of the attorney, agent
41 or other responsible party with whom the board may
42 communicate, on whom the board may call for further
43 information, and to whom the board may officially
44 report as to action on the agreement so filed with him.
45 The agreement shall constitute and may be considered
46 and treated by the board as an application for the
47 board's approval to incorporate and organize a banking
48 institution in this state.

§31A-4-14. Trust powers of banking institutions.

1 Every state banking institution, except industrial
2 banks created and organized pursuant to the provisions
3 of article seven, chapter thirty-one of this code, which
4 files the reports required in the following section and
5 which is not otherwise prohibited by the commissioner
6 or federal bank regulators from doing so, shall have and
7 exercise the following powers:

8 (a) All the powers, rights and privileges of any state
9 banking institution;

10 (b) To act as trustee, assignee, special commissioner,
11 general or special receiver, guardian, executor, admin-
12 istrator, committee, agent, curator, or in any other
13 fiduciary capacity, and to take, assume, accept and
14 execute trusts of every description not inconsistent with

15 the constitution and laws of the United States of
16 America or of this state; and to receive, hold, manage
17 and apply any sinking fund on the terms and for the
18 purposes specified in the instrument creating such fund;

19 (c) To act as registrar, transfer agent or dividend or
20 coupon paying agent for any corporation;

21 (d) To make, hold and dispose of investments and
22 establish common trust funds, and account therefor,
23 pursuant to the provisions of chapter forty-four of this
24 code;

25 (e) To purchase and sell and take charge of and
26 receive the rents, issues and profits of any real estate
27 for other persons or corporations;

28 (f) To act as trustee or agent in any collateral trust
29 and in order to secure the payment of any obligations
30 of any person, firm, private corporation, public corpo-
31 ration, public body or public agency to receive and hold
32 in trust any items of personal property (including
33 without limitation notes, bonds, debentures, obligations
34 and certificates for shares of stock) with the right in
35 case of default to sell and dispose of such personal
36 property and to collect, settle and adjust any obligations
37 for the payment of money, and at any sale of such
38 personal property held by it, to purchase the same for
39 the benefit of all or any of the holders of the obligations,
40 to secure the payment of which such items of personal
41 property were pledged and delivered to the trustee or
42 agent. Any such sale may be made without any proceed-
43 ings in any court, and at such times and upon such
44 terms as may be specified in the instrument or instru-
45 ments creating the trust, or, in the absence of any
46 specification of terms, at such time and upon such terms
47 as the trustee shall deem reasonable; and

48 (g) To do and perform any act or thing requisite or
49 necessary in, or incidental to, the exercise of the general
50 powers herein set forth.

51 All national banks having their principal offices in
52 this state which have been, or hereafter may be,
53 authorized under the laws of the United States to act

54 as trustee and in other fiduciary capacities in the state
55 of West Virginia shall have all the rights, powers,
56 privileges and immunities conferred hereunder, pro-
57 vided they comply with the requirements hereof.

**§31A-4-15. Certificate showing unimpaired capital to be
filed before exercising trust powers; penal-
ties; notice of failure to comply.**

1 No banking institution shall exercise any of the trust
2 powers mentioned in the preceding section until it shall
3 have filed with the commissioner of banking an annual
4 report of trust assets each calendar year as filed with
5 federal regulators. If any such banking institution shall
6 exercise, or attempt to exercise, any such powers or
7 rights without having complied with the requirements
8 of this section as to the filing of such report, it shall be
9 guilty of a misdemeanor, and, upon conviction thereof,
10 shall be fined not more than five hundred dollars; and
11 in every such case, whether or not there shall have been
12 a prosecution or conviction of the company so offending,
13 the commissioner of banking, being satisfied of the facts,
14 may publish a notice of the fact that it has failed to
15 comply with the requirements of this section and is
16 therefore not entitled to exercise the trust powers and
17 rights mentioned in the preceding section. In the event
18 a notice is published as aforesaid, it shall be published
19 as a Class II legal advertisement in compliance with the
20 provisions of article three, chapter fifty-nine of this code,
21 and the publication area for such publication shall be
22 the county in which such institution is located.

**§31A-4-33. Deposits in trust; deposits in more than one
name; limitation on liability of institutions
making payments from certain accounts.**

1 If any deposit in any banking institution be made by
2 any person describing himself in making such deposit
3 as trustee for another, and no other or further notice of
4 the existence and terms of a legal and valid trust than
5 such description shall be given in writing to the banking
6 institution, in the event of the death of the person so
7 described as trustee, such deposit, or any part thereof,
8 together with the interest thereon, may be paid to the

9 person for whom the deposit was thus stated to have
10 been made.

11 When a deposit is made by any person in the name
12 of such depositor and another or others and in form to
13 be paid to any one of such depositors, or the survivor
14 or survivors of them, such deposit, and any additions
15 thereto, made by any of such persons, upon the making
16 thereof, shall become the property of such persons as
17 joint tenants; and the same, together with all interest
18 thereon, shall be held for the exclusive use of the persons
19 so named, and may be paid to any one of them during
20 the lifetime of them, or to the survivor or survivors after
21 the death of any of them; and such payment and the
22 receipt or the acquittance of the one to whom such
23 payment is made shall be a valid and sufficient release
24 and discharge for all payments made on account of such
25 deposit, prior to the receipt by the banking institution
26 of notice in writing, signed by any one of such joint
27 tenants not to pay such deposit in accordance with the
28 terms thereof. Prior to the receipt of such notice no
29 banking institution shall be liable for the payment of
30 such sums.

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES;
JUDICIAL REVIEW; UNLAWFUL ACTS;
PENALTIES.**

**§31A-8-12. Procedure for authorization of branch banks;
penalties for violation of section.**

1 (a) No banking institution shall engage in business at
2 any place other than at its principal office in this state,
3 at a branch bank in this state permitted by this section
4 as a customer bank communication terminal permitted
5 by section twelve-b of this article or at any loan
6 organization office permitted by section twelve-c of this
7 article: *Provided*, That acceptance of a deposit at the
8 offices of any subsidiary, as defined in section two,
9 article eight-a of this chapter, for credit to the custom-
10 er's account at any other subsidiary of the same bank
11 holding company is permissible and does not constitute
12 branch banking.

13 Any banking institution which on January one, one

14 thousand nine hundred eighty-four, was authorized to
15 operate an off-premises walk-in or drive-in facility,
16 pursuant to the law then in effect, may, as of the seventh
17 day of June, one thousand nine hundred eighty-four,
18 operate such facility as a branch bank and it shall not
19 be necessary, for the continued operation of such branch
20 bank, to obtain additional approvals, notwithstanding
21 the provisions of subsection (d) of this section and
22 subdivision (6), subsection (b), section two, article three
23 of this chapter.

24 (b) Except for a bank holding company, it shall be
25 unlawful for any individual, partnership, society,
26 association, firm, institution, trust, syndicate, public or
27 private corporation, or any other legal entity, or
28 combination of entities acting in concert, to directly or
29 indirectly own, control or hold with power to vote,
30 twenty-five percent or more of the voting shares of each
31 of two or more banks, or to control in any manner the
32 election of a majority of the directors of two or more
33 banks.

34 (c) A banking institution may establish branch banks
35 either by:

36 (1) The construction, lease or acquisition of branch
37 bank facilities as follows:

38 (A) After the seventh of June, one thousand nine
39 hundred eighty-four, within the county in which that
40 banking institution's principal office is located or within
41 the county in which that banking institution had prior
42 to January first, one thousand nine hundred eighty-four,
43 established a branch bank, pursuant to subdivision (2)
44 of this subsection; and

45 (B) After the thirty-first of December, one thousand
46 nine hundred eighty-six, within any county in this state;
47 or

48 (2) The purchase of the business and assets and
49 assumption of the liabilities of, or merger or consolida-
50 tion with, another banking institution.

51 (d) Notwithstanding any other provision of this
52 chapter to the contrary, subject to and in furtherance

53 of the board's authority under the provisions of subdi-
54 vision (6), subsection (b), section two, article three of this
55 chapter, and subsection (g) of this section, the board may
56 approve or disapprove the application of any state
57 banking institution to establish a branch bank.

58 (e) The principal office of a banking institution as of
59 the seventh day of June, one thousand nine hundred
60 eighty-four, shall continue to be the principal office of
61 such banking institution for purposes of establishing
62 branch banks under this section, notwithstanding any
63 subsequent change in the location of such banking
64 institution's principal office.

65 (f) Any banking institution which is authorized to
66 establish branch banks pursuant to this section may
67 provide the same banking services and exercise the
68 same powers at each such branch bank as may be
69 provided and exercised at its principal banking house.

70 (g) The board shall, upon receipt of any application
71 to establish a branch bank, provide notice of such
72 application to all banking institutions. A banking
73 institution may, within ten days after receipt of such
74 notice, file a petition to intervene and shall, if it so files
75 such petition, thereupon become a party to any hearing
76 relating thereto before the board.

77 (h) The commissioner shall prescribe the form of the
78 application for a branch bank and shall collect an
79 examination and investigation fee of one thousand
80 dollars for each filed application for a branch bank that
81 is to be established by the construction, lease or
82 acquisition of a branch bank facility, and two thousand
83 five hundred dollars for a branch bank that is to be
84 established by the purchase of the business and assets
85 and assumption of the liabilities of, or merger or
86 consolidation with another banking institution.
87 Notwithstanding the above, if the merger or consolida-
88 tion is between an existing banking institution and a
89 bank newly incorporated solely for the purpose of
90 facilitating the acquisition of the existing banking
91 institution, the commissioner shall collect an examina-
92 tion and investigation fee of five hundred dollars. The

93 board shall complete the examination and investigation
94 within ninety days from the date on which such
95 application and fee are received, unless the board
96 request in writing additional information and disclo-
97 sures concerning the proposed branch bank from the
98 applicant banking institution, in which event such
99 ninety-day period shall be extended for an additional
100 period of thirty days plus the number of days between
101 the date of such request and the date such additional
102 information and disclosures are received.

103 (i) Upon completion of the examination and investiga-
104 tion with respect to such application, the board shall, if
105 a hearing be required pursuant to subsection (j) of this
106 section, forthwith give notice and hold a hearing
107 pursuant to the following provisions:

108 (1) Notice of such hearing shall be given to the
109 banking institution with respect to which the hearing is
110 to be conducted in accordance with the provisions of
111 section two, article seven, chapter twenty-nine-a of this
112 code, and such hearing and the administrative proce-
113 dures in connection therewith shall be governed by all
114 of the provisions of article five, chapter twenty-nine-a of
115 this code, and shall be held at a time and place set by
116 the board but shall not be less than ten nor more than
117 thirty days after such notice is given.

118 (2) At any such hearing a party may represent himself
119 or be represented by an attorney-at-law admitted to
120 practice before any circuit court of this state.

121 (3) After such hearing and consideration of all the
122 testimony and evidence, the board shall make and enter
123 an order approving or disapproving the application,
124 which order shall be accompanied by findings of fact
125 and conclusions of law as specified in section three,
126 article five, chapter twenty-nine-a of this code, and a
127 copy of such order and accompanying findings and
128 conclusions shall be served upon all parties to such
129 hearing, and their attorneys of record, if any.

130 (j) No state banking institution may establish a branch
131 bank until the board, following an examination, inves-
132 tigation, notice and hearing, enters an order approving

133 an application for that branch bank: *Provided*, That no
134 such hearing shall be required with respect to any
135 application to establish a branch bank which is ap-
136 proved by the board unless a banking institution has
137 timely filed a petition to intervene pursuant to subsec-
138 tion (g) of this section. The order shall be accompanied
139 by findings of fact that:

140 (1) Public convenience and advantage will be pro-
141 moted by the establishment of the proposed branch
142 bank;

143 (2) Local conditions assure reasonable promise of
144 successful operation of the proposed branch bank and of
145 those banks and branches thereof already established in
146 the community;

147 (3) Suitable physical facilities will be provided for the
148 branch bank;

149 (4) The applicant state-chartered banking institution
150 satisfies such reasonable and appropriate requirements
151 as to sound financial condition as the commissioner or
152 board may from time to time establish by regulation;

153 (5) The establishment of the proposed branch bank
154 would not result in a monopoly, nor be in furtherance
155 of any combination or conspiracy to monopolize the
156 business of banking in any section of this state; and

157 (6) The establishment of the proposed branch bank
158 would not have the effect in any section of the state of
159 substantially lessening competition, nor tend to create a
160 monopoly or in any other manner be in restraint of
161 trade, unless the anticompetitive effects of the establish-
162 ment of that proposed branch bank are clearly out-
163 weighed in the public interest by the probable effect of
164 the establishment of the proposed branch bank in
165 meeting the convenience and needs of the community to
166 be served by that proposed branch bank.

167 (k) Any party who is adversely affected by the order
168 of the board shall be entitled to judicial review thereof
169 in the manner provided in section four, article five,
170 chapter twenty-nine-a of this code. Any such party
171 adversely affected by a final judgment of a circuit court

172 following judicial review as provided in the foregoing
173 sentence may seek review thereof by appeal to the
174 supreme court of appeals in the manner provided in
175 article six, chapter twenty-nine-a of this code.

176 (l) Pursuant to the resolution of its board of directors
177 and with the prior written approval of the commis-
178 sioner, a state banking institution may discontinue the
179 operation of a branch bank upon at least thirty days'
180 prior public notice given in such form and manner as
181 the commissioner prescribes.

182 (m) Any violation of any provision of this section shall
183 constitute a misdemeanor offense punishable by appli-
184 cable penalties as provided in section fifteen of this
185 article.

ARTICLE 8A. ACQUISITION OF BANK SHARES.

§31A-8A-4. Acquisition of bank shares; when prior notification of board necessary; exemptions.

1 (a) Unless an order approving such action has been
2 entered by the board, it is unlawful, prior to one
3 hundred and twenty days following the date of the
4 submission to the board of complete, true and accurate
5 copies of the reports required under federal laws or
6 regulations pursuant to Title 12, United States Code,
7 §§1841-1850 (being the act of Congress entitled the Bank
8 Holding Company Act of 1956, as amended), and the
9 payment of an examination and investigation fee to the
10 board of four thousand five hundred dollars:

11 (1) For any action to be taken that causes any
12 company to become a bank holding company;

13 (2) For any action to be taken that causes any bank
14 to become a subsidiary of a bank holding company;

15 (3) For any bank holding company to acquire direct
16 or indirect ownership or control of any shares of any
17 bank if, after such acquisition, such company will
18 directly or indirectly own or control more than five
19 percent of the voting shares of such bank;

20 (4) For any bank holding company or subsidiary

21 thereof, other than a bank, to acquire all or substantially
22 all of the assets of a bank;

23 (5) For any bank holding company to merge or
24 consolidate with any other bank holding company; or

25 (6) For any bank holding company to take any action
26 which would violate the Federal Bank Holding Com-
27 pany Act.

28 (b) If a bank holding company, pursuant to subsection
29 (a), subdivision (3) above, acquires more than five
30 percent, but less than twenty-five percent of the voting
31 shares of a bank, and is not determined to be acquiring
32 control over the bank, the examination and investigation
33 fee to be paid to the board shall be determined by
34 multiplying the examination and investigation fee
35 established in subsection (a) by the percentage of voting
36 shares to be acquired.

37 (c) The provisions of subsection (a) of this section shall
38 not apply to:

39 (1) Shares acquired by a bank:

40 (A) In good faith in a fiduciary capacity, except where
41 shares are held under a trust that constitutes a company
42 as defined in section two of this article and except as
43 provided in subdivisions (2) and (3), subsection (b),
44 section three of this article; or

45 (B) In the regular course of securing or collecting a
46 debt previously contracted in good faith, but any shares
47 acquired after the seventh day of June, one thousand
48 nine hundred eighty-four, in securing or collecting any
49 such previously contracted debt shall be disposed of
50 within a period of five years from the date on which they
51 were acquired; or

52 (2) Additional shares acquired by a bank holding
53 company in a bank in which such bank holding company
54 owned or controlled a majority of the voting shares prior
55 to such acquisition. For the purpose of the preceding
56 sentence, bank shares acquired after the seventh day of
57 June, one thousand nine hundred eighty-four, shall not
58 be deemed to have been acquired in good faith in a

59 fiduciary capacity if the acquiring bank or company has
60 sole discretionary authority to exercise voting rights
61 with respect thereto, but in such instances acquisitions
62 may be made without prior notice to the board if the
63 board, upon notice and submission of information in
64 form and content as it shall approve, filed within ninety
65 days after the shares are acquired, approved retention
66 or, if retention is disapproved, the acquiring bank
67 disposes of the shares or its sole discretionary voting
68 rights within five years after issuance of the order of
69 disapproval.

70 (d) If, within one hundred twenty days from the date
71 of submission pursuant to subsection (a) of this section,
72 after notice and a hearing pursuant to the provisions of
73 section three, article three of this chapter, the board
74 enters an order disapproving the proposed action
75 described in subdivision (1), (2), (3), (4), (5) or (6),
76 subsection (a) of this section, it shall be unlawful to take
77 such action. The board shall disapprove the proposed
78 action described in subdivision (1), (2), (3), (4), (5) or (6),
79 subsection (a) of this section on the following grounds:

80 (1) The action would result in a monopoly, or would
81 be in furtherance of any combination of conspiracy to
82 monopolize or to attempt to monopolize the business of
83 banking in any section of this state;

84 (2) The action would have the effect in any section of
85 the state of substantially lessening competition, or would
86 tend to create a monopoly or in any other manner would
87 be in restraint of trade, unless the anticompetitive
88 effects of the proposed action are clearly outweighed in
89 the public interest by the probable effect of the action
90 in meeting the convenience and needs of the community
91 to be served; or

92 (3) Taking into consideration the financial and
93 managerial resources and further prospects of the
94 company or companies and the banks concerned, the
95 action would be contrary to the best interests of the
96 shareholders or customers of the bank whose shares are
97 affected by such action.

98 (e) Notwithstanding any other provision of law, no

99 bank holding company, or any other company, shall
100 establish, acquire or control any banking institution as
101 defined in section three of this article, when said
102 banking institution does not both (i) accept deposits that
103 the depositor has a legal right to withdraw on demand
104 and (ii) engage in the business of making commercial
105 loans.

106 (f) Nothing contained in this section shall affect the
107 obligation of any person or company to comply with the
108 provisions of any order of any court or the commissioner
109 entered prior to the seventh day of June, one thousand
110 nine hundred eighty-four.

CHAPTER 15

(S. B. 618—Originating in the Committee on Finance)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, five, six, seven, eight, nine, eleven, thirteen and fourteen, article three, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections five-a and seven-a, all relating to the municipal bond commission; exempting the executive secretary of the municipal bond commission from the list of officers whose salaries are set by statute; providing for meetings and voting quorums; authorizing the commission to charge fees for services rendered; changing the powers and duties of the commission; expanding the list of permissible investments; requiring quarterly proration of interest income; permitting escrowing advanced payments of bond principal and interest; requiring notification by issuers of bond sales; providing for collection, deposit and accounting of funds; providing for the determination of levy amount; permitting withdrawal of excess funds; requiring commission to annually estimate the amount of levy necessary for an issuer to make required debt service payments, prescribing rules for making such

estimates; expanding grounds for appointment of substitute paying agents; and requiring sixty days notice for withdrawal of funds.

Be it enacted by the Legislature of West Virginia:

That sections three, five, six, seven, eight, nine, eleven, thirteen and fourteen, article three, chapter thirteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto two new sections, designated sections five-a and seven-a, all to read as follows:

ARTICLE 3. MUNICIPAL BOND COMMISSION.

- §13-3-3. Officers; employees; chief administrative officer; meetings; quorum; compensation and expenses; legal representation.
- §13-3-5. Officer and employee bonds.
- §13-3-5a. Costs and expenses; fees for services.
- §13-3-6. Powers and duties of commission.
- §13-3-7. Permissible investments; limitations and prohibitions on purchase, sale or exchange of securities; public records; combining funds and proration of interest; custody of securities.
- §13-3-7a. Escrowing bond issues.
- §13-3-8. Notification by issuer of bond sale.
- §13-3-9. Collection, deposit and accounting funds; insufficient deposit; withdrawal of additional funds.
- §13-3-11. Statement by commission to political subdivision showing levy required; determination of levy.
- §13-3-13. Substitute paying agents.
- §13-3-14. Authorizing the transfer and investment of funds raised by levy, sale of bonds or otherwise.

§13-3-3. Officers; employees; chief administrative officer; meetings; quorum; compensation and expenses; legal representation.

1 (a) The secretary of the department of tax and revenue
2 or his or her designee shall be chair of the commission.

3 (b) The members of the commission shall appoint a
4 chief administrative officer and may fix his title and
5 duties. Notwithstanding the provisions of section two-a,
6 article seven, chapter six of this code, the commission
7 shall have the authority to set the compensation of the
8 chief administrative officer. The chief administrative
9 officer shall serve as secretary to the board and
10 treasurer of the commission. The chair may designate
11 a board member to serve as secretary in the absence of

12 the chief administrative officer. The chair is authorized,
13 with the approval of the commission, to employ such
14 other employees as may be necessary and such consul-
15 tants as the commission deems advisable and fix their
16 compensation and prescribe their duties.

17 (c) Appointed members of the commission shall be
18 paid fifty dollars for each day or substantial portion
19 thereof that they are engaged in the work of the
20 commission. Each member of the commission may be
21 reimbursed for all reasonable and necessary expenses
22 actually incurred in the performance of duties on behalf
23 of the commission.

24 (d) The commission shall hold at least three meetings
25 in each fiscal year, one of which meetings shall be held
26 within sixty days of the end of the fiscal year and shall
27 be the annual meeting. Such meetings shall be held on
28 such dates and at such places as the chair may
29 prescribe. Additional meetings may be held at the call
30 of the chair or upon the written request of three
31 members at such time and place as designated in such
32 call or request. Three members of the commission
33 constitute a quorum.

34 (e) The attorney general shall be the legal advisor to
35 the commission.

§13-3-5. Officer and employee bonds.

1 The chief administrative officer and the employees
2 designated by the commission shall furnish bonds in
3 such form and in such amounts as the commission shall,
4 from time to time, determine. The costs of such bonds
5 shall be paid by the commission and such bonds shall
6 be filed in the same office as are the bonds of state
7 officers. The attorney general's approval of all bonds
8 required by this section shall be obtained.

§13-3-5a. Costs and expenses; fees for services.

1 The commission shall set a schedule of fees to be
2 charged for the commission's services, sufficient to meet
3 all expenses of the commission. These fees shall be
4 assessed on the basis of debt service paid by the
5 commission for each issuer and shall not exceed one half

6 of one percent of the debt service paid, but in no case
7 shall the fee exceed two thousand dollars per issue or
8 series per annum. The commission may assess additional
9 fees, sufficient to recover the expenses of special projects
10 undertaken to benefit the users of the commission's
11 services, against specific issuers who are the beneficiar-
12 ies of such projects.

13 All sums collected by the commission for its services
14 shall be deposited in a separate account at the state
15 treasury to the credit of the municipal bond commission,
16 and no expenditures for purposes of this article are
17 authorized from collections except in accordance with
18 appropriations by the Legislature and in accordance
19 with the provisions of article three, chapter twelve of
20 this code and upon fulfillment of the provisions set forth
21 in article two, chapter five-a of this code. Any amounts
22 collected which are found from time to time to exceed
23 the funds needed for purposes set forth in this article
24 may be transferred to other accounts or funds and
25 redesignated for other purposes as appropriated by the
26 Legislature. No expenses incurred under this article
27 shall be a charge against the general funds of this state.

§13-3-6. Powers and duties of commission.

1 (a) The commission shall serve as fiscal agent for all
2 issuers of general obligation bonds issued by the
3 counties, municipalities, and school districts of the state
4 of West Virginia when the commission is specifically
5 named as the fiscal agent by statute.

6 (b) The commission shall serve as fiscal agent for all
7 issuers of revenue bonds issued by the counties, munic-
8 ipalities, and school districts of this state when the
9 commission is specifically named as the fiscal agent by
10 statute.

11 (c) The commission shall serve as fiscal agent for the
12 issuers of revenue bonds issued by the state of West
13 Virginia through its departments, commissions, boards,
14 or agencies, when the commission is specifically named
15 as the fiscal agent by statute.

16 (d) The commission may serve as fiscal agent for the

17 issuer of other public purpose revenue bond issues when
18 so provided by bond ordinance.

19 (e) The commission may agree to serve as paying
20 agent for all issuers when so provided by bond
21 ordinance.

22 (f) The commission may conduct business by tele-
23 phonic conference when necessary.

24 (g) The commission is hereby granted, has and may
25 exercise all powers necessary or appropriate to effectuate
26 the purposes of this article.

§13-3-7. Permissible investments; limitations and prohibitions on purchase, sale or exchange of securities; public records; combining funds and proration of interest; custody of securities.

1 (a) Notwithstanding any provisions of this code to the
2 contrary, the commission may invest funds under its
3 control in the following classes of securities and not
4 otherwise:

5 (1) Securities of the United States or any agency
6 thereof which are guaranteed by or for which the full
7 faith and credit of the United States is pledged for the
8 payment of the principal and interest;

9 (2) General obligations of this state or any of its
10 agencies, boards or commissions;

11 (3) General obligations of any county, municipality or
12 school district in this state;

13 (4) Pools of investment operated by the West Virginia
14 board of investments provided that their investments
15 are limited to the above named securities, and provided
16 that securities purchased for these pools following the
17 date of the enactment of this article shall not have
18 maturities greater than five years in length; and

19 (5) Repurchase agreements or similar banking ar-
20 rangements with a member bank of banks of the federal
21 reserve system or a bank, the deposits of which are
22 insured by the federal deposit insurance corporation, or
23 its successor: *Provided*, That such investments shall only

24 be made to the extent insured by the federal deposit
25 insurance corporation or to the extent that the principal
26 amount thereof shall be fully collateralized by direct
27 obligations of or obligations guaranteed by the United
28 States of America.

29 (b) Securities purchased or held under the provisions
30 of this article may be sold or exchanged for other
31 securities: *Provided*, That: (1) No security shall be
32 purchased, sold or exchanged without the concurrence
33 or ratification of a majority of all members of the
34 commission; (2) no security shall be purchased at a price
35 above, nor sold or exchanged at a price below, its
36 prevailing fair market value; (3) no security shall be
37 purchased, sold or exchanged for the purpose of aiding
38 any individual, firm or corporation by the payment of
39 brokerage commissions or fees thereto; (4) no security
40 purchased, sold or exchanged shall benefit any member
41 or employee of the commission; and (5) no security shall
42 be received in exchange which does not comply with the
43 requirements of this article.

44 (c) The commission shall record all pertinent informa-
45 tion related to any purchase, sale or exchange of
46 securities and make such information available for
47 public inspection during normal office hours of the
48 commission.

49 (d) Funds from several or all accounts may be
50 combined for investment and any interest earned shall
51 be prorated and credited quarterly to the various
52 contributing accounts on the basis of amount thereof
53 invested, calculated according to an average periodic
54 balance or other generally accepted accounting
55 principle.

56 (e) All securities purchased by the commission as an
57 investment for the funds shall remain in the custody of
58 the state board of investments until the same are sold,
59 exchanged, retired or mature and are paid.

§13-3-7a. Escrowing bond issues.

1 (a) All bond issues for which the commission is serving
2 as fiscal agent shall be considered to have been canceled

3 and paid in advance of their due date or date of
4 redemption if there shall have been deposited with the
5 commissioner either:

6 (1) Moneys sufficient to pay when and as due all
7 amounts of principal and interest payable on such
8 bonds; or

9 (2) Securities of a quality in which the commission is
10 authorized by law to invest moneys under its control, the
11 principal of and interest on which will provide moneys
12 sufficient to pay when and as due all amounts of
13 principal and interest payable on such bonds.

14 (b) The moneys and securities held by the commission
15 pursuant to this section shall be held by the commission
16 in trust and irrevocably dedicated solely to the payment
17 of principal or redemption price, if applicable, of and
18 interest on the bonds: *Provided*, That this action shall
19 be taken solely at the direction of the issuer. Following
20 such irrevocable commitment of moneys and securities
21 in trust, funds on account with the commission for said
22 bonds which are surplus may be immediately returned
23 to the issuer as specified by statute for paid out
24 surpluses.

§13-3-8. Notification by issuer of bond sale.

1 For any issue for which the commission shall serve as
2 fiscal agent, either by statute or provisions of bond
3 ordinance, or for any issue which refunds an issue for
4 which the commission is currently serving as fiscal
5 agent, the issuer shall notify the commission of the
6 issuance of such bonds not more than five days after
7 closing, and provide the commission with a copy of the
8 official statement and bond ordinance or resolution not
9 more than forty-five days following closing.

§13-3-9. Collection, deposit and accounting funds; insufficient deposit; withdrawal of additional funds.

1 (a) *Deposit of funds.* — All tax receipts and interest
2 belonging to the counties, municipalities or school
3 districts and earmarked for the purpose of amortizing
4 bonded indebtedness, shall be, by the treasurer or
5 collector thereof, forwarded to the commission at least

6 quarterly to be deposited in the state treasury to the
7 credit of the municipal bond commission: *Provided*, That
8 all funds from the prior fiscal year shall be forwarded
9 to the commission not later than the following thirtieth
10 day of September.

11 (b) *Insufficient deposit.* — Whenever the amount
12 deposited for any issuer is not sufficient to meet the
13 interest or principal due, it shall be the duty of the
14 treasurer or collector of such issuer, upon being notified
15 of that fact by the commission, to immediately remit all
16 funds in his possession that have been earmarked by the
17 issuer for the purpose of amortizing bonded indebted-
18 ness plus such additional funds as are necessary to meet
19 the interest or principal due.

20 (c) *Withdrawal of additional funds.* — If an issuer has
21 remitted to the commission funds not earmarked for the
22 purpose of amortizing bonded indebtedness, all or a
23 portion of such funds may be withdrawn by the issuer
24 upon sixty days' written notice to the commission:
25 *Provided*, That such withdrawal shall neither create a
26 deficit in the issuer's account with the commission nor
27 be in conflict with terms of the bond issue.

28 (d) *Payment of taxes.* — Any taxes to provide for the
29 payment of principal, creation of a reserve or sinking
30 fund, or for the payment of interest on bonds by any
31 county, municipality or school district which shall be
32 collected by any state officer, shall be paid by such
33 officer to the commission to be at once applied to the
34 payment of the debt of the county, municipality or school
35 district and the fact of such application of such fund
36 shall be reported by the auditor to the treasurer or
37 collector of such issuer, which report shall be a receipt
38 for the amount therein named.

39 (e) *Municipal bond commission fund.* — The state
40 auditor and the state treasurer shall carry an account
41 to be known as the municipal bond commission fund. All
42 deposits shall be carried as a part of such fund.

43 (f) *Deposit of collections.* — The commission shall
44 deposit all collections and receipts with the treasurer
45 daily.

§13-3-11. Statement by commission to political subdivision showing levy required; determination of levy.

1 The commission shall, annually, at least thirty days
2 before the time for making up the estimate for levy
3 purposes, render to each political subdivision having
4 outstanding general obligation bonds, a statement
5 showing the levy required to pay the interest on and
6 provide for the retirement of the subdivision's outstand-
7 ing general obligation bonds.

8 In determining the levy required, the commission
9 shall be governed by the terms of section thirty-four or
10 section thirty-five, article one of this chapter: *Provided,*
11 That the commission may augment the levy by a
12 reasonable amount to provide for delinquencies and
13 exonerations; and the commissioner may include in the
14 estimate the principal and interest due on bond issues
15 in July, August and September of the following fiscal
16 year. For the purposes of this section, the amount of any
17 moneys, not earmarked for amortizing bonded indebted-
18 ness, but which was forwarded by the issuer to the
19 commission for the purpose of meeting principal and
20 interest due under section nine of this article, shall be
21 considered a deficiency for a prior year.

§13-3-13. Substitute paying agents.

1 The commission may appoint a new paying agent on
2 any issue for which the commission acts as fiscal agent,
3 in the event of the insolvency, threat of insolvency,
4 malfeasance, misfeasance, incompetence, resignation, or
5 discontinuance from business of the paying agent or in
6 the case of discontinuance of the place of payment as
7 designated by the terms of such bonds. Upon appoint-
8 ment of a substitute paying agent, the commission shall
9 publish notice of such action as a Class II legal
10 advertisement in compliance with the provisions of
11 article three, chapter fifty-nine of this code, and the
12 publication area for such publication shall be the county
13 in which the former paying agent had residence. Upon
14 designation of another place of payment, publication of

- 15 notice shall be made in the county in which was located
16 the former place of payment.

§13-3-14. Authorizing the transfer and investment of funds raised by levy, sale of bonds or otherwise.

- 1 Any funds of a political subdivision or of any of the
2 agencies, boards, commission or departments of the
3 state of West Virginia raised by levy, sale of bonds or
4 otherwise and which cannot be used within a reasonable
5 time may be transferred to the municipal bond commis-
6 sion. Any funds so transferred shall be invested by the
7 commission in accordance with the provisions of this
8 article. Any such funds so transferred may be with-
9 drawn by the public body which transferred the same
10 as authorized by this article upon sixty days' notice in
11 writing to the commission.

CHAPTER 16

(Com. Sub. for S. B. 132—Originating in the Committee on Finance)

[Passed March 8, 1991; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections one-a, seven and nine, article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article three of said chapter; to amend and reenact section one, article three, chapter five of said code; to amend and reenact section seventeen, article ten of said chapter; to amend and reenact section sixteen, article eleven of said chapter; to amend and reenact section seven, article sixteen-a of said chapter; to amend and reenact section one, article four, chapter five-b of said code; to amend and reenact section ten, article thirteen, chapter seven of said code; to amend and reenact section six, article sixteen of said chapter; to amend and reenact section twenty-seven, article twenty-seven, chapter eight of said code; to amend and reenact section nineteen, article twenty-nine of said chapter; to amend and reenact section five, article twenty-nine-a of said

chapter; to amend and reenact section eleven, article thirty-three of said chapter; to amend and reenact section twelve, article one-a, chapter eleven of said code; to amend and reenact section four, article six-b of said chapter; to amend and reenact section seven, article twelve of said chapter; to amend and reenact section ten, article twenty-four of said chapter; to amend and reenact section two, article twenty-five of said chapter; to amend and reenact section five, article one-a, chapter twelve of said code; to amend and reenact section sixteen, article one, chapter sixteen of said code; to amend and reenact section three, article twenty-nine-d of said chapter; to amend and reenact section three, article twenty-two, chapter seventeen-c of said code; to amend and reenact section twelve, article four, chapter seventeen-d of said code; to amend and reenact section twenty, article seven-a, chapter eighteen of said code; to amend and reenact section sixteen, article nine-b of said chapter; to amend and reenact section fourteen, article twenty-three, chapter nineteen of said code; to amend and reenact section fourteen, article five, chapter twenty-one of said code; to amend and reenact sections three, four, five, six and seven, article one, chapter twenty-one-a of said code; to amend and reenact sections one, five, six, six-b, eight, eleven, thirteen, sixteen, sixteen-a and twenty-three, article two of said chapter; to amend and reenact sections two and four, article two-a of said chapter; to amend and reenact sections one, two and four, article two-b of said chapter; to amend and reenact section six, article two-c of said chapter; to amend and reenact sections ten-a, sixteen and seventeen-b, article five of said chapter; to amend and reenact section nine, article six of said chapter; to amend and reenact section twenty-three, article seven of said chapter; to amend and reenact sections eleven, nineteen, twenty and twenty-two, article ten of said chapter; to amend and reenact sections one, two, three, six, ten, fourteen, sixteen, seventeen and eighteen, article one, chapter twenty-three of said code; to amend and reenact sections one-c, six, eight and eleven, article two of said chapter; to amend and reenact sections one-a, two and three, article three of said chapter; to amend and

reenact sections one-c, two, seven and fourteen, article four of said chapter; to amend and reenact sections two, three, four, five and eight, article four-a of said chapter; to amend and reenact sections two and seven, article four-b of said chapter; to amend and reenact sections two and five, article four-c of said chapter; to amend and reenact section two, article five of said chapter; to amend and reenact section two, article eight, chapter twenty-six of said code; to amend and reenact section two, article twelve, chapter twenty-nine of said code; to amend and reenact section six, article eighteen of said chapter; to amend and reenact section five, article five, chapter twenty-nine-a of said code; to amend and reenact section sixty-one, article one, chapter thirty-one of said code; to amend and reenact section ten, article eighteen-b of said chapter; to amend and reenact sections one and five, article fifteen, chapter thirty-three of said code; to amend and reenact section one, article sixteen of said chapter; to amend and reenact section three, article twenty-six of said chapter; to amend and reenact section twelve, article five-b, chapter thirty-eight of said code; to amend and reenact sections seventeen and eighteen, article two, chapter forty-eight-a of said code; to amend and reenact section four-d, article five, chapter fifty-seven of said code; and to amend and reenact section thirty, article three-a, chapter sixty of said code, all relating to combining employment security and workers' compensation into the bureau of employment programs and changing references thereto throughout the code; written opinions and advice and other legal services from the attorney general; membership of the West Virginia public employees retirement system; providing that the maintenance of certain records by the bureau of employment programs is not an unlawful discriminatory practice; the availability of data from the bureau of employment programs to the public employees insurance agency and the legislative task force on uncompensated health care and medicaid expenditures; membership of the West Virginia labor-management advisory council; coverage of employees of a community action program organizations, county solid waste

authorities, urban mass transportation authorities, regional airport authorities, county airport authorities and building commissions under the workers' compensation act; functions of the tax commissioner and county assessors in the appraisal of property for periodic statewide appraisals; claims for homestead property tax exemption; reciprocal exchange of information between the tax commissioner and the commissioner of the bureau of employment programs relating to the business registration tax and the corporation net income tax; defining terms relating to tax relief for elderly homeowners and renters; acceptance or rejection of linked deposit loan packages by the state treasurer; defining terms relating to the West Virginia state board of investments; making results of investigations and hearings by the board of health available to the commissioner of the bureau of employment programs; requiring all agencies of the state to cooperate in the development of health care plans; exempting ridesharing from workers' compensation law; defining "motor vehicle liability policy" and setting forth the scope and provisions of such a policy; investment of funds of the state teachers retirement system; transmission and investment of proceeds of permanent improvement funds of county boards of education; disposition of permit fees, registration fees and fines relating to horse and dog racing; employer's bond for wages and benefits; defining terms relating to the bureau of employment programs; placing the bureau under the department of commerce, labor and environmental resources; requiring the bureau to cooperate with the United States department of labor and similar agencies of other states; setting forth duties of the commissioner and the advisory council regarding employment stabilization; creation of the state employment service division within the bureau; setting the salary of the commissioner of the bureau of employment programs; setting forth the powers and duties of the commissioner of the bureau; requiring the tax commissioner to furnish certain information to the commissioner of the bureau of employment programs; compensation of assistants and employees of the bureau; dismissals, terminations,

layoffs and suspensions of bureau employees; appointment of deputies; federal-state cooperation; work incentive program; veteran's training program; defining terms relating to the emergency employment supplemental matching program; providing for notice to private business employers applications for prospective employers and listing of job openings; providing for group insurance plans for regular employees of the bureau and setting forth terms and conditions for such plans; providing for payroll deductions for such plans and allowing employees to continue in group after retirement; administration of the veterans incentive program; optional assessments on employers and employees for unemployment compensation fund; collection of payments from employers and comity for collection of past due payments and overpayments; payment of unemployment benefits; claim procedure and calendar preference for unemployment benefit claims; reports required from employing units; disclosure of certain information to child support and food stamp agencies and the department of housing and urban development; payment of salaries and expenses of commissioner of bureau of employment programs and his employees; allowing the commissioner to employ a secretary and other assistants; payment of fees for officers serving subpoenas; provision of blank forms of applications for workers' compensation benefits; omission to subscribe to workers' compensation fund; annual report by commissioner and occupational pneumoconiosis board; creation of compensation programs advisory board; appointment and terms of members for the advisory board; extraterritorial coverage; furnishing of information by employers, the state tax commissioner and the division of employment compensation and the secrecy of said information; exempting contributing employees from liability to respond in damages for the injury or death of an employee; liability of an employer electing not to pay or defaulting in payment of premiums; election of employer to provide own system of compensation and mandatory participation in second injury reserve of surplus fund; validity of workers' compensation law to

employers adjudicated outside the lawful scope of the workers' compensation law; transfer of silicosis fund to workers' compensation fund; custody investment and disbursement of workers' compensation fund; requiring investment of surplus funds; payment of temporary total disability and medical benefits to claimants; disbursement of workers' compensation fund where injury is self inflicted or intentionally caused by the employer; release of medical information to employer and duty of employer; computation of benefits; specifying to whom benefits may be paid from the disabled workers' relief fund and computation of benefits; providing for payment of benefits from the fund; information required from employers providing own system; funding of disabled workers' relief fund; establishment and administration of coal workers' pneumoconiosis fund; establishment and administration of employers' excess liability fund; creation and membership of workers' compensation appeal board; payment of emergency hospital expenses for entitled persons by commissioner of employment programs; defining terms relating to state insurance for miscellaneous boards and officers; powers, duties and responsibilities of West Virginia railroad maintenance authority; providing exemptions from contested case provisions of state administrative procedures act; issuance of certificates by secretary of state to business and nonprofit corporations; disposition of interest income and repayment of principal of the mortgage and industrial development investment pool; application of the law regarding accident and sickness insurance; optional accident and sickness insurance policy provisions; application of the law regarding group accident and sickness insurance; application of the West Virginia guaranty association act; exemptions relating to the suggestion of the state and political subdivisions; obtaining support from unemployment compensation and workers' compensation benefits to pay child support obligations; exemption for workers' compensation proceedings regarding hospital records and sealed envelopes; requiring certain departments to work with employees whose jobs were terminated by the sale of the state liquor stores; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections one-a, seven and nine, article two, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article three of said chapter be repealed; that section one, article three, chapter five of said code be amended and reenacted; that section seventeen, article ten of said chapter be amended and reenacted; that section sixteen, article eleven of said chapter be amended and reenacted; that section seven, article sixteen-a of said chapter be amended and reenacted; that section one, article four, chapter five-b of said code be amended and reenacted; that section ten, article thirteen, chapter seven of said code be amended and reenacted; that section six, article sixteen of said chapter be amended and reenacted; that section twenty-seven, article twenty-seven, chapter eight of said code be amended and reenacted; that section nineteen, article twenty-nine of said chapter be amended and reenacted; that section five, article twenty-nine-a of said chapter be amended and reenacted; that section eleven, article thirty-three of said chapter be amended and reenacted; that section twelve, article one-a, chapter eleven of said code be amended and reenacted; that section four, article six-b of said chapter be amended and reenacted; that section seven, article twelve of said chapter be amended and reenacted; that section ten, article twenty-four of said chapter be amended and reenacted; that section two, article twenty-five of said chapter be amended and reenacted; that section five, article one-a, chapter twelve of said code be amended and reenacted; that section sixteen, article one, chapter sixteen of said code be amended and reenacted; that section three, article twenty-nine-d of said chapter be amended and reenacted; that section three, article twenty-two, chapter seventeen-c of said code be amended and reenacted; that section twelve, article four, chapter seventeen-d of said code be amended and reenacted; that section twenty, article seven-a, chapter eighteen of said code be amended and reenacted; that section sixteen, article nine-b of said chapter be amended and reenacted; that section fourteen, article twenty-three, chapter nineteen of said code be amended and reenacted; that section fourteen, article five, chapter twenty-one of said code be amended and reenacted; that sections three, four, five, six and seven, article one, chapter twenty-one-a of said code be amended and reenacted; that sections one, five, six, six-b,

eight, eleven, thirteen, sixteen, sixteen-a and twenty-three, article two of said chapter be amended and reenacted; that sections two and four, article two-a of said chapter be amended and reenacted; that sections one, two and four, article two-b of said chapter be amended and reenacted; that section six, article two-c of said chapter be amended and reenacted; that sections ten-a, sixteen and seventeen-b, article five of said chapter be amended and reenacted; that section nine, article six of said chapter be amended and reenacted; that section twenty-three, article seven of said chapter be amended and reenacted; that sections eleven, nineteen, twenty and twenty-two, article ten of said chapter be amended and reenacted; that sections one, two, three, six, ten, fourteen, sixteen, seventeen and eighteen, article one, chapter twenty-three of said code be amended and reenacted; that sections one-c, six, eight and eleven, article two of said chapter be amended and reenacted; that sections one-a, two and three, article three of said chapter be amended and reenacted; that sections one-c, two, seven and fourteen, article four of said chapter be amended and reenacted; that sections two, three, four, five and eight, article four-a of said chapter be amended and reenacted; that sections two and seven, article four-b of said chapter be amended and reenacted; that sections two and five, article four-c of said chapter be amended and reenacted; that section two, article five of said chapter be amended and reenacted; that section two, article eight, chapter twenty-six of said code be amended and reenacted; that section two, article twelve, chapter twenty-nine of said code be amended and reenacted; that section six, article eighteen of said chapter be amended and reenacted; that section five, article five, chapter twenty-nine-a of said code be amended and reenacted; that section sixty-one, article one, chapter thirty-one of said code be amended and reenacted; that section ten, article eighteen-b of said chapter be amended and reenacted; that sections one and five, article fifteen, chapter thirty-three of said code be amended and reenacted; that section one, article sixteen of said chapter be amended and reenacted; that section three, article twenty-six of said chapter be amended and reenacted; that section twelve, article five-b, chapter thirty-eight of said code be amended and reenacted; that sections seventeen and eighteen, article two, chapter forty-eight-a of said code be amended and reenacted; that section four-d, article five, chapter fifty-seven of said code

be amended and reenacted; and that section thirty, article three-a, chapter sixty 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.**
- 5B. Economic Development Act of 1985.**
- 7. Training Programs for County Employees, Etc.; Compensation of Elected County Officials; County Assistants, Deputies and Employees; Their Number and Compensation.**
- 8. Municipal Corporations.**
- 11. Taxation.**
- 12. Public Moneys and Securities.**
- 16. Public Health.**
- 17C. Traffic Regulations and Laws of the Road.**
- 17D. Motor Vehicle Safety Responsibility Law.**
- 18. Education.**
- 19. Agriculture.**
- 21. Labor.**
- 21A. Unemployment Compensation.**
- 23. Workers' Compensation.**
- 26. State Benevolent Institutions.**
- 29. Miscellaneous Boards and Officers.**
- 29A. State Administrative Procedures Act.**
- 31. Corporations.**
- 33. Insurance.**
- 38. Liens.**
- 48A. Enforcement of Family Obligations.**
- 57. Evidence and Witnesses.**
- 60. Alcohol Beverage Control.**

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

- 3. Attorney General.**
- 10. West Virginia Public Employees Retirement Act.**

11. Human Rights Commission.

16A. The West Virginia Health Care Insurance Act.

ARTICLE 3. ATTORNEY GENERAL.

§5-3-1. Written opinions and advice and other legal services; expenditures by state officers, boards and commissions for legal services prohibited.

1 The attorney general shall give his written opinion
 2 and advice upon questions of law, and shall prosecute
 3 and defend suits, actions, and other legal proceedings,
 4 and generally render and perform all other legal
 5 services, whenever required to do so, in writing, by the
 6 governor, the secretary of state, the auditor, the state
 7 superintendent of free schools, the treasurer, the
 8 commissioner of agriculture, the board of public works,
 9 the tax commissioner, the state archivist and historian,
 10 the commissioner of banking, the adjutant general, the
 11 commissioner of the division of energy, the superintend-
 12 ent of public safety, the state commissioner of public
 13 institutions, the state road commission, the commis-
 14 sioner of the bureau of employment programs, the
 15 public service commission, or any other state officer,
 16 board or commission, or the head of any state educa-
 17 tional, correctional, penal or eleemosynary institution;
 18 and it shall be unlawful from and after the time this
 19 section becomes effective for any of the public officers,
 20 commissions, or other persons above mentioned to
 21 expend any public funds of the state of West Virginia
 22 for the purpose of paying any person, firm, or corpora-
 23 tion for the performance of any legal services: *Provided,*
 24 That nothing contained in this section shall impair or
 25 affect any existing valid contracts of employment for the
 26 performance of legal services heretofore made.

27 It shall also be the duty of the attorney general to
 28 render to the president of the Senate and/or the speaker
 29 of the House of Delegates a written opinion or advice
 30 upon any questions submitted to him by them or either
 31 of them whenever he shall be requested in writing so
 32 to do.

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIRE-
 MENT ACT.**

§5-10-17. Retirement system membership.

1 The membership of the retirement system shall
2 consist of the following persons:

3 (a) All employees, as defined in section two of this
4 article, who are in the employ of a political subdivision
5 the day preceding the date it becomes a participating
6 public employer and who continue in the employ of the
7 said participating public employer on and after the said
8 date shall become members of the retirement system;
9 and all persons who become employees of a participating
10 public employer on or after the said date shall thereupon
11 become members of the system; except as provided in
12 subdivisions (b) and (c) of this section.

13 (b) The membership of the retirement system shall not
14 include any person who is a member of, or who has been
15 retired by, the state teachers retirement system, the
16 judges retirement system, the retirement system of the
17 division of public safety, or any municipal retirement
18 system for either, or both, policemen or firemen; and the
19 bureau of employment programs, by the commissioner
20 of such bureau, may elect whether its employees will
21 accept coverage under this article or be covered under
22 the authorization of a separate enactment: *Provided,*
23 That such exclusions of membership shall not apply to
24 any member of the state Legislature, the clerk of the
25 House of Delegates, the clerk of the state Senate or to
26 any member of the legislative body of any political
27 subdivision provided he once becomes a contributing
28 member of the retirement system: *Provided, however,*
29 That any retired member of the retirement system of
30 the division of public safety, and any retired member
31 of any municipal retirement system for either, or both,
32 policemen or firemen may on and after the effective date
33 of this section become a member of the retirement
34 system as provided in this article, without receiving
35 credit for prior service as a municipal policeman or
36 fireman or as a member of the division of public safety.

37 (c) Any member of the state Legislature, the clerk of
38 the House of Delegates, the clerk of the state Senate and
39 any employee of the state Legislature whose employ-

40 ment is otherwise classified as temporary and who is
41 employed to perform services required by the Legisla-
42 ture for its regular sessions or during the interim
43 between regular sessions and who has been or is so
44 employed during regular sessions or during the interim
45 between sessions for ten or more years, or any member
46 of the legislative body of any other political subdivision
47 shall become a member of the retirement system
48 provided he notifies the retirement system in writing of
49 his intention to be a member of the system and files a
50 membership enrollment form as the board of trustees
51 shall prescribe, and each person, upon filing his written
52 notice to participate in the retirement system, shall by
53 said act authorize the clerk of the House of Delegates
54 or the clerk of the state Senate or such person or
55 legislative agency as the legislative body of any other
56 political subdivision shall designate to deduct such
57 member's contribution, as provided in subsection (b),
58 section twenty-nine of this article, and after said
59 deductions have been made from said member's com-
60 pensation, such deductions shall be forwarded to the
61 retirement system.

62 (d) Should any question arise regarding the member-
63 ship status of any employee, the board of trustees has
64 the final power to decide the question.

ARTICLE 11. HUMAN RIGHTS COMMISSION.

§5-11-16. Certain records exempt.

1 Notwithstanding any other provisions of this article,
2 it shall not be an unlawful discriminatory practice for
3 the bureau of employment programs to ascertain and
4 record the age, sex, race, religion, color, national origin,
5 ancestry, blindness or handicap of any individual for the
6 purpose of making such reports as may from time to
7 time be required by agencies of the federal government
8 or be necessary to show compliance with any rule or
9 regulation issued by any such agency. Said records may
10 be made and kept in the manner required by the federal
11 government: *Provided*, That such recording of the age,
12 sex, race, religion, color, national origin, ancestry,
13 blindness or handicap of any individual shall not be used

14 to discriminate, within the meaning of this article,
15 directly or indirectly, against any such individual as
16 prohibited by all other sections of this article.

ARTICLE 16A. THE WEST VIRGINIA HEALTH CARE INSURANCE ACT.

§5-16A-7. Availability of data of bureau of employment programs.

1 In furtherance of the purposes of this article, the
2 bureau of employment programs shall, notwithstanding
3 the provisions of section eleven, article ten, chapter
4 twenty-one-a of this code, cooperate to make available
5 to the public employees insurance agency and the
6 legislative task force on uncompensated health care and
7 medicaid expenditures such information as they may
8 request for purposes consistent with this article to
9 identify and facilitate contact with small business
10 employers who may be eligible for participation in the
11 plan. The provisions of this section shall be liberally
12 construed by the bureau of employment programs in
13 order to effectuate the development of the health care
14 insurance plan.

15 Information thus obtained by the public employees
16 insurance agency and the legislative task force on
17 uncompensated health care and medicaid expenditures
18 shall be maintained as strictly confidential and shall be
19 exempt from disclosure to the public.

**CHAPTER 5B.
ECONOMIC DEVELOPMENT ACT OF 1985.**

ARTICLE 4. LABOR-MANAGEMENT COUNCIL.

**§5B-4-1. Appointment, terms, vacancies, chairman,
quorum of the labor-management council.**

1 The West Virginia labor-management advisory coun-
2 cil, heretofore created under the provisions of article
3 one-c, chapter twenty-one of this code, shall be continued
4 and be so designated as the West Virginia labor-
5 management council. The council shall consist of
6 twenty-six members. One member of the council shall
7 be the commissioner of labor, one member of the council
8 shall be a member of the economic development

9 authority, one member of the council shall be the
10 commissioner of the bureau of employment programs or
11 his designated representative, one member of the
12 council shall be the state superintendent of schools, one
13 member of the council shall be a member of the
14 economic development board to be selected by it
15 annually, and one member of the council shall be a
16 member of the board of regents to be selected by it
17 annually, all of whom shall be ex officio nonvoting
18 members of the council. The other members of the
19 council shall be appointed by the governor by and with
20 the advice and consent of the Senate for terms of four
21 years or until their successors have been appointed and
22 have qualified. The members of the council appointed
23 by the governor shall include one president of a state
24 university, one president of a state college or community
25 college, and two persons representing public secondary
26 schools in the state, who shall be appointed for terms
27 of two, three and four years, respectively, as designated
28 by the governor at the time of their appointment, and
29 until their successors have been appointed and have
30 qualified. The present members of the council shall
31 continue to serve out the terms to which they were
32 appointed.

33 Vacancies shall be filled by appointment by the
34 governor for the unexpired term of the member whose
35 office is vacant and the appointment shall be made
36 within sixty days of the occurrence of the vacancy.

37 In making appointments to the council, the governor
38 shall consider names of persons recommended to him by
39 the West Virginia chamber of commerce, the West
40 Virginia coal association, the West Virginia manufac-
41 turers' association, the West Virginia retailers' associa-
42 tion, utilities, other industrial groups in this state, the
43 West Virginia labor federation, the united mine workers
44 union, the West Virginia building trades council, other
45 labor organizations in the state, the institutional boards
46 of advisors for state colleges and universities, the state
47 board of education, and the West Virginia school board
48 association. Membership shall be composed of, in
49 addition to those of the state or other government

50 agencies and educational institutions, no less than eight
 51 members from industry and eight from labor. The
 52 council shall elect one of its members as chairman and
 53 may elect such other officers as the council may deem
 54 necessary or desirable. Such persons shall serve as such
 55 for one year or until their successors are elected and
 56 shall be eligible for reelection.

57 The council shall meet at least four times each year
 58 and at other times on call of the chairman or a majority
 59 of the members. Thirteen members of the council shall
 60 constitute a quorum for the transaction of business.

**CHAPTER 7. TRAINING PROGRAMS FOR COUNTY
 EMPLOYEES, ETC.; COMPENSATION OF ELECTED
 COUNTY OFFICIALS; COUNTY ASSISTANTS,
 DEPUTIES AND EMPLOYEES, THEIR NUMBER
 AND COMPENSATION.**

Article

- 13. Economic Opportunity Programs.
- 16. County Solid Waste Authorities.

ARTICLE 13. ECONOMIC OPPORTUNITY PROGRAMS.

§7-13-10. Employees covered by workers' compensation.

1 All employees of a community action program organ-
 2 ization eligible thereto shall be considered to be within
 3 the workers' compensation act of West Virginia and
 4 premiums on their compensation shall be paid by the
 5 organization as required by law.

ARTICLE 16. COUNTY SOLID WASTE AUTHORITIES.

**§7-16-6. Employees to be covered by workers' com-
 pensation.**

1 All employees of the authority eligible thereto shall be
 2 considered to be within the workers' compensation act
 3 of West Virginia and premiums on their compensation
 4 shall be paid by the authority as required by law.

CHAPTER 8. MUNICIPAL CORPORATIONS.

Article

- 27. Intergovernmental Relations-Urban Mass Transportation Systems.

- 29. Intergovernmental Relations-Regional Airports.
- 29A. County Airport Authorities.
- 33. Intergovernmental Relations-Building Commissions.

**ARTICLE 27. INTERGOVERNMENTAL RELATIONS-URBAN
MASS TRANSPORTATION SYSTEMS.**

**PART XI. DISSOLUTION OF AUTHORITY; WORKERS'
COMPENSATION.**

**§8-27-27. Employees to be covered by workers'
compensation.**

- 1 All eligible employees of any authority shall be
- 2 considered to be within the workers' compensation
- 3 statute of this state and premiums on their compensa-
- 4 tion shall be paid by the authority as required by law.

**ARTICLE 29. INTERGOVERNMENTAL RELATIONS-REGIONAL
AIRPORTS.**

**§8-29-19. Employees to be covered by workers'
compensation.**

- 1 All eligible employees of any authority shall be
- 2 considered to be within the workers' compensation
- 3 statute of this state and premiums on their compensa-
- 4 tion shall be paid by the authority as required by law.

ARTICLE 29A. COUNTY AIRPORT AUTHORITIES.

***§8-29A-5. Full-time employees of the authority to be
public employees.**

- 1 Any person who serves regularly as an employee, full
- 2 time, on a salary basis, whose tenure is not restricted
- 3 as to temporary or provisional appointment, in the
- 4 service of, and whose compensation is payable in whole
- 5 or in part by the authority, shall be considered to be a
- 6 public employee and shall be subject to any and all
- 7 applicable provisions of law relating thereto, including,
- 8 but not limited to, the workers' compensation act and
- 9 the West Virginia public employees insurance act.

**ARTICLE 33. INTERGOVERNMENTAL RELATIONS-BUILDING
COMMISSIONS.**

PART IV. WORKERS' COMPENSATION; CONSTRUCTION.

***Clerk's Note:** This section was also amended by S.B. 512 (Chapter 113), which passed prior to this act.

§8-33-11. Workers' compensation.

1 Each commission shall subscribe to the workers'
2 compensation fund of this state and pay all necessary
3 premiums thereto, to the end that all eligible employees
4 of such commission shall be covered by workers'
5 compensation.

CHAPTER 11. TAXATION.**Article**

- 1A. Appraisal of Property for Periodic Statewide Reappraisals.
- 6B. Homestead Property Tax Exemption.
- 12. Business Registration Tax.
- 24. Corporation Net Income Tax.
- 25. Tax Relief for Elderly Homeowners and Renters.

ARTICLE 1A. APPRAISAL OF PROPERTY FOR PERIODIC STATEWIDE REAPPRAISALS.**§11-1A-12. Division of functions between the tax commissioner and assessor; local exceptions to value; revisions by tax commissioner; participation by assessor in hearings and appeals.**

1 (a) It is the intent of the Legislature that in carrying
2 out the appraisal functions required by this article, the
3 tax commissioner shall utilize the county assessors and
4 their employees. The county clerk shall prepare a list
5 of all transfers of real property recorded during the
6 calendar year one thousand nine hundred eighty-three
7 for which payment of the excise tax on the privilege of
8 transferring real property, required by article twenty-
9 two of this chapter was required, and forward such list
10 to the tax commissioner during the second month
11 following such transfers' recording with the clerk of the
12 county commission. The assessor shall review the
13 landbooks for his county for the tax year one thousand
14 nine hundred eighty-three and one thousand nine
15 hundred eighty-four, and shall prepare a written
16 property description of every parcel of real property not
17 previously described on a property record card provided
18 to the assessor by the tax commissioner under the
19 provisions of section eleven, article nine-a, chapter
20 eighteen of this code. The assessors may compile lists of
21 comparable property sales and recommend appraisal

22 values with respect to any property in their districts to
23 which the tax commissioner shall give consideration
24 when he fixes values for such property for reappraise-
25 ment purposes to the extent such recommended values
26 are supported by competent evidence.

27 (b) In each county during the reappraisal function, the
28 tax commissioner shall designate a tax department
29 employee as the coordinator of reappraisal functions
30 among the commissioner's personnel, the commissioner's
31 designated agents, and the assessor's personnel so as to
32 ensure that the resulting appraisal shall be complete,
33 equal and uniform. In each county, the tax commis-
34 sioner or his designated agent shall prepare a descrip-
35 tion of the number, job description and minimum
36 qualifications of personnel needed to accomplish the
37 reappraisal, other than permanent employees of the tax
38 commissioner or employees of the assessor. The tax
39 commissioner or his designated agent shall employ
40 qualified individuals to fill the positions giving first
41 preference to persons registered with the bureau of
42 employment programs' job service program, but all such
43 persons shall be residents of the county, or if the tax
44 commissioner finds it necessary for efficiency, any
45 contiguous county, or if none be available, the state. The
46 tax commissioner shall make reasonable efforts to
47 assure that the additional employment required by this
48 article is allocated equitably among the several counties,
49 with attention to the level of unemployment in and the
50 population of each county.

51 (c) To the extent that the tax commissioner concludes
52 that assessors and local employees have overemphasized
53 or underemphasized local aspects in determining value,
54 the tax commissioner may revise information concern-
55 ing such values so as to achieve uniformity in the
56 statewide reappraisal: *Provided*, That in any hearings or
57 appeals under the provisions of this article the assessor
58 or employee who participated in the gathering of such
59 information may be a competent witness as to how
60 tentative values were arrived at in the process of
61 reappraisal before any such revision.

ARTICLE 6B. HOMESTEAD PROPERTY TAX EXEMPTION.

§11-6B-4. Claim for exemption; renewals; waiver of exemption.

1 (a) *General.* — No exemption shall be allowed under
2 this article unless a claim of exemption is filed with the
3 assessor of the county in which the homestead is located,
4 on or before the first day of October following the July
5 first assessment day. In the case of sickness, absence or
6 other disability of the claimant, the claim may be filed
7 by the claimant or his duly authorized agent.

8 (b) *Claims for disability exemption.* — Each claim for
9 exemption based on the owner being permanently and
10 totally disabled shall include one of the following forms
11 of documentation in support of said claim: (1) A written
12 certification by a doctor of medicine or doctor of
13 osteopathy licensed to practice their particular profes-
14 sion in this state that the claimant is permanently and
15 totally disabled; (2) a written certification by the social
16 security administration that the claimant is currently
17 receiving benefits for permanent and total disability; (3)
18 a copy of the letter from the social security administra-
19 tion originally awarding benefits to the claimant for
20 permanent and total disability and a copy of a current
21 check for such benefits, marked void; (4) a current social
22 security health insurance (medicare) card in the name
23 of the claimant and a copy of a current check to the
24 claimant, marked void, for benefits from the social
25 security administration for permanent and total disabili-
26 ty; (5) a written certification signed by the veterans
27 administration certifying that a person is totally and
28 permanently disabled; (6) any lawfully recognized
29 workers' compensation documentation certifying that a
30 person is totally and permanently disabled; (7) any
31 lawfully recognized pneumoconiosis documentation
32 certifying that a person is totally and permanently
33 disabled; or (8) any other lawfully recognized documen-
34 tation certifying that a person is totally and perman-
35 ently disabled.

36 (c) *Renewals.*—

37 (1) *Senior citizens.* — If the claimant is age sixty-five
38 or older, then after the claimant has filed for the

39 exemption once with his assessor, there shall be no need
40 for that claimant to refile unless the claimant moves to
41 a new homestead.

42 (2) *Disabled.* — If the claimant is permanently and
43 totally disabled, then after the claimant has filed for the
44 exemption once with his assessor, and signed a state-
45 ment certifying that he will notify the assessor if he is
46 no longer eligible for an exemption on the basis of being
47 permanently and totally disabled and that the claimant
48 will notify the assessor within thirty days of the
49 discontinuance of the receipt of benefits for permanent
50 and total disability, if the claimant originally claimed
51 receipt of said benefits to document his claim for
52 exemption, there shall be no need for that claimant to
53 refile, unless the claimant moves to a new homestead.

54 (3) *Waiver of exemption.* — Any person not filing his
55 claim for exemption on or before the first day of October
56 shall be determined to have waived his right to
57 exemption for the next tax year.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-7. Display of registration certificate; injunction; public information, reciprocal exchange of information.

1 Any person to whom a certificate of registration shall
2 be issued under the provisions of section four of this
3 article shall keep such certificate posted in a conspic-
4 uous position in the place where the privilege of such
5 business is exercised. Such certificate of registration
6 shall be produced for inspection whenever required by
7 the tax commissioner or by any law-enforcement officers
8 of this state, county or municipality wherein the
9 privileges to conduct business are exercised.

10 No injunction shall issue from any court in the state
11 enjoining the collection of any business registration
12 certificate tax required herein; and any person claiming
13 that any business certificate is not due, for any reason,
14 shall pay the same under protest and petition the tax
15 commissioner for a refund in accordance with the
16 provisions of section fourteen, article ten of this chapter.

17 If any person engaging in or prosecuting any business,
18 or trade, contrary to any other provisions of this article,
19 whether without obtaining a business certificate there-
20 for before commencing the same, or by continuing the
21 same after the termination of the effective period of any
22 such business certificate, the circuit court or the judge
23 thereof in vacation, of the county in which such violation
24 occurred, shall, upon proper application in the name of
25 the state, and after ten days' written notice thereof to
26 such person, grant an injunction prohibiting such person
27 from continuing such business, activity or trade until he
28 has fully complied with the provisions of this article.
29 The remedy provided in this section shall be in addition
30 to all other penalties and remedies provided by law.

31 The tax commissioner shall make available, when
32 requested, information as to whether a person is
33 registered to do business in the state of West Virginia.

34 The tax commissioner shall deliver to the commis-
35 sioner of the bureau of employment programs the
36 information contained in the business franchise registra-
37 tion certificate, when this information is used to
38 implement and administer a single point of registration
39 program for persons engaging in any business activity
40 in the state of West Virginia. The single point of
41 registration program shall provide that, once an
42 individual has received a business franchise registration
43 certificate, the tax commissioner shall notify the
44 commissioner of the bureau of employment programs of
45 the names, addresses and other identifying information
46 of that individual or entity. Upon receiving this
47 information the commissioner of the bureau of employ-
48 ment programs shall contact all businesses receiving a
49 business franchise registration certificate and provide
50 all necessary forms and paperwork to register a
51 business within the bureau, pursuant to subsection (b),
52 section six-b, article two, chapter twenty-one-a and
53 subsection (c), section two, article two, chapter twenty-
54 three of this code.

55 Notwithstanding the provisions of section five, article
56 ten of this chapter, the tax commissioner may enter into
57 a reciprocal agreement with the governor's office of

58 community and industrial development and other
59 departments or agencies of this state for the exchange
60 of information contained in the application for a
61 business franchise registration certificate filed under
62 section four of this article, when the purpose for the
63 exchange is to implement and administer a single-point
64 registration program for persons engaging in business
65 in this state. Such other departments and agencies shall
66 have authority to enter into a reciprocal exchange
67 agreement for this purpose notwithstanding any provi-
68 sion of this code to the contrary.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-10. Credit for hiring of qualified employees by eligible taxpayers engaged in manufacturing.

1 (a) A credit shall be allowed under the provisions of
2 this section against the primary tax liability of the
3 taxpayer under this article to eligible taxpayers who
4 hire qualified employees during the period beginning
5 the first day of April, one thousand nine hundred eighty-
6 three, and ending the thirty-first day of December, one
7 thousand nine hundred eighty-four.

8 (b) For the purpose of this section, the term "eligible
9 taxpayer" means a taxpayer who:

10 (1) Is subject to tax liability under section two-b,
11 article thirteen, chapter eleven of this code, relating to
12 business and occupation tax upon the business of
13 manufacturing, compounding or preparing for sale any
14 articles, substances or commodities; and

15 (2) Hires a qualified employee, as defined herein,
16 during the period beginning the first day of April, one
17 thousand nine hundred eighty-three, and ending the
18 thirty-first day of December, one thousand nine hundred
19 eighty-four; which employee to such employer is not a
20 returning seasonal employee or employee of like type.

21 (c) For the purpose of this section, the term "qualified
22 employee" means an employee who is hired and em-
23 ployed at a location within this state by an eligible
24 taxpayer for full-time employment, which, for the

25 purposes of this section, means employment for at least
26 one hundred twenty hours per month at a wage equal
27 to, or greater than, the prevailing federal minimum
28 wage and:

29 (1) At the time he or she is hired, has either exhausted
30 entitlement to unemployment compensation benefits
31 under the provisions of chapter twenty-one-a of this code
32 or would have exhausted such benefits within a period
33 of six weeks from date of employment; or

34 (2) At the time of employment, he or she is hired so
35 that one or more present employees will not be required
36 to continue working overtime, and with a resultant
37 decrease in the amount of overtime compensation paid
38 by the employer.

39 (d) The term "qualified employee" does not include a
40 person who displaces an employed individual, other than
41 an individual who is discharged for cause, or does not
42 include an individual employed and who is closely
43 related to a person who owns, directly or indirectly,
44 more than fifty percent of the outstanding stock of the
45 business, or an individual employed and who is closely
46 related to the owner or owners of an unincorporated
47 business.

48 (e) Notwithstanding any provision of this code to the
49 contrary, the bureau of employment programs shall
50 disclose, upon request, to the state tax commissioner or
51 his employees, any wage, benefits or eligibility informa-
52 tion with respect to an identified individual which is
53 contained in its records.

54 (f) The maximum total credits allowed to any eligible
55 taxpayer in all taxable years because of the hiring of
56 any one qualified employee shall be one thousand
57 dollars: *Provided*, That the amount of the credit allowed
58 by this section in any one taxable year shall be the lesser
59 of either one thousand dollars for each qualified
60 employee hired in such taxable year or ten percent of
61 the gross wages paid by the eligible taxpayer to each
62 qualified employee hired in such taxable year: *Provided*,
63 *however*, That unused credit for an eligible employee
64 may be carried forward to the next tax year if necessary

65 and until the lesser of either one thousand dollars for
66 each qualified employee or ten percent of the gross
67 wages paid to the eligible employee during his or her
68 first employment year is taken as a credit by the eligible
69 taxpayer. The credit allowable by this section for a
70 taxable year is not subject to the fifty percent limitation
71 specified in section nine of this article, and any unused
72 credit may be carried over to each of the next three
73 taxable years following the unused credit year until
74 used or forfeited due to lapse of time.

ARTICLE 25. TAX RELIEF FOR ELDERLY HOMEOWNERS AND RENTERS.

§11-25-2. Definitions.

1 When used in this article, unless the context clearly
2 requires a different meaning:

3 (1) "Claimant" means a person sixty-five years of age
4 or older who was domiciled in this state during any
5 portion of the calendar year preceding the year in which
6 the claimant is eligible to file a claim for relief under
7 this article and who had a gross household income of not
8 more than five thousand dollars during the calendar
9 year preceding the year in which he is eligible to file
10 a claim for relief under this article. If two or more
11 individuals, who otherwise qualify as claimants under
12 this article, occupy a single homestead, such individuals
13 may determine between themselves as to which individ-
14 ual shall be the claimant; however, if such individuals
15 are unable to agree, the matters shall be referred to the
16 state tax commissioner for determination and his
17 decision shall be final.

18 (2) "Claimant's spouse" means the spouse of the
19 claimant if such spouse resides in the homestead during
20 any portion of the calendar year preceding the year in
21 which the claimant is eligible to file a claim for relief
22 under this article.

23 (3) "Gross household income" means all actual income
24 received by a claimant and the claimant's spouse during
25 the calendar year preceding the year in which he is
26 eligible to file a claim for relief under this article and
27 such actual income shall be computed by adding to the

28 West Virginia adjusted gross income (as that term is
29 defined in section twelve, article twenty-one of this
30 chapter) of such claimant and the claimant's spouse all
31 of the following actually received by the claimant and
32 claimant's spouse during such calendar year:

33 (a) Amount of capital gains excluded from West
34 Virginia adjusted gross income;

35 (b) Support money;

36 (c) Nontaxable strike benefits;

37 (d) Cash public assistance, welfare and relief but not
38 any relief under this article;

39 (e) Gross amount of any pension or annuity, including
40 railroad retirement benefits;

41 (f) Social security benefits;

42 (g) Unemployment compensation benefits;

43 (h) Veterans disability pensions;

44 (i) Workers' compensation benefits; and

45 (j) Private disability insurance benefits.

46 Gross household income does not include gifts from
47 nongovernmental sources, or surplus foods or other
48 relief in kind supplied by a governmental agency.

49 (4) "Gross rent" means the total amount of money or
50 its equivalent actually paid by a claimant during a
51 particular calendar year to his landlord in a bona fide
52 manner solely for the right of occupancy of a homestead,
53 exclusive of any charges for utilities, services, furniture,
54 furnishings or electrical or other appliances furnished
55 by such landlord to such claimant; and if the state tax
56 commissioner determines that the rent charged was
57 excessive for the purposes of this article, he may adjust
58 the same, for the purposes of this article, to a reasonable
59 amount.

60 (5) "Homestead" means a single family residential
61 house and the land surrounding such structure; or a part
62 of a multi-dwelling building, multi-purpose building or
63 apartment house; or a mobile home which is used as a

64 permanent residence and the land upon which such
65 mobile home is situate; and it is immaterial for the
66 purposes of this article whether the foregoing are being
67 purchased, are owned or are rented.

68 (6) "Household" means a claimant, a claimant and the
69 claimant's spouse or a claimant and any other person or
70 persons who resides or reside in a homestead.

71 (7) "Property taxes" means the amount of the real
72 property taxes, exclusive of any interest or charges for
73 delinquency thereof, paid by a claimant on his home-
74 stead beginning with the calendar year one thousand
75 nine hundred seventy-two, and for any particular
76 calendar year thereafter: *Provided*, That if a homestead
77 is owned by a claimant and a person or persons (other
78 than the claimant's spouse) as joint tenants or as tenants
79 in common, and such person or persons owning such
80 interest in such homestead do not reside in such
81 homestead, then for the purposes of this article, the
82 property taxes paid by the claimant shall be prorated
83 according to such claimant's percentage of ownership of
84 such homestead: *Provided, however*, That if the claim-
85 ant's homestead is a single unit within any multi-
86 dwelling building, multi-purpose building or apartment
87 house, and such claimant owns the entirety of any such
88 structure, the property taxes paid by the claimant for
89 the purposes of this article shall be prorated so as to
90 reflect the percentage of value which the claimant's
91 homestead is to the value of the entire structure which
92 is assessed in a single assessment based upon the entire
93 property.

94 (8) "Rent constituting property taxes" means twelve
95 percent of the gross rent paid by a claimant for the right
96 of occupancy of his homestead beginning with the
97 calendar year one thousand nine hundred seventy-two,
98 and for any particular calendar year thereafter.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1A. LINKED DEPOSIT PROGRAM.

§12-1A-5. Acceptance or rejection of loan package; deposit agreement.

1 (a) The board of investments may accept or reject a
2 linked deposit loan package or any portion thereof based
3 on the ratio of state funds to be deposited to jobs
4 sustained or created: *Provided*, That notwithstanding
5 any provision of this article to the contrary, the board
6 of investments may not accept any linked deposit loan
7 package or any portion thereof unless the same has been
8 reviewed and approved by the director in his sole
9 discretion.

10 (b) The board of investments shall reject any linked
11 deposit loan package if the small business requesting
12 such loan is not in good standing with the state tax
13 department and the bureau of employment programs,
14 and these agencies shall provide the board of invest-
15 ments with such information as to the standing of each
16 small business loan applicant, notwithstanding any
17 provision of this code to the contrary.

18 (c) Any linked deposit loan package that is being made
19 to refinance an existing debt, or any portion thereof,
20 must meet one of the following criteria:

21 (1) The small business can demonstrate in good faith
22 that it is experiencing a substantial loss in its current
23 (fiscal or calendar) tax-year period;

24 (2) The small business recently experienced a natural
25 disaster and suffered unreimbursable casualty losses;

26 (3) The small business has filed to recover under the
27 Federal Bankruptcy Act and meets the criteria in (1)
28 above; or

29 (4) The small business can provide compelling infor-
30 mation to the board of investments that jobs will be
31 saved and/or created as a result of loan refinancing.

32 (d) Upon acceptance of the linked deposit loan
33 package or any portion thereof by the board of invest-
34 ments and the director, the board of investments may
35 place certificates of deposit with the eligible lending
36 institution at three percent below current market rates,
37 as determined and calculated by the board of invest-
38 ments. Upon acceptance of the linked deposit loan
39 package for flood victims or any portion thereof, the

40 board of investments may place certificates of deposit
41 with the eligible lending institution at five percent
42 below current market rates, as determined and calcu-
43 lated by the board of investments. When necessary, the
44 board may place certificates of deposit prior to accep-
45 tance of a linked deposit loan package.

46 (e) The eligible lending institution shall enter into a
47 deposit agreement with the board, which shall include
48 requirements necessary to carry out the purposes of this
49 article. Such requirements shall reflect the market
50 conditions prevailing in the eligible lending institution's
51 lending area. The agreement may include a specification
52 of the period of time in which the lending institution is
53 to lend funds upon the placement of a linked deposit and
54 shall include provisions for the certificates of deposit to
55 be placed for up to two-year maturities that may be
56 renewed for up to an additional two years. Interest shall
57 be paid at the times determined by the board.

CHAPTER 16. PUBLIC HEALTH.

Article

1. State Division of Health.
- 29D. State Health Care.

ARTICLE 1. STATE DIVISION OF HEALTH.

§16-1-16. Investigations and hearings; power to adminis- ter oaths, subpoena witnesses, etc.; use of information and material acquired.

1 The state board of health, any member thereof, the
2 director of health, or any officer or employee of the
3 department of health designated by the board of health,
4 shall have the power to hold investigations, inquiries
5 and hearings concerning matters covered by the laws of
6 this state pertaining to public health and within the
7 authority of the state board of health, and the rules,
8 regulations and orders of the board. Hearings shall be
9 open to the public and shall be held upon such call or
10 notice as the board shall deem advisable.

11 Each member of the board, the director and every
12 officer or employee of the department of health desig-
13 nated to hold any inquiry, investigation or hearing shall

14 have the power to administer oaths and affirmations,
15 certify to all official acts, issue subpoenas and order the
16 attendance and testimony of witnesses in the production
17 of papers, books and documents. In case of the failure
18 of any person to comply with any subpoena or order
19 issued under the authority of this section, the board or
20 its authorized representative may invoke the aid of any
21 circuit court of this state. The court may thereupon
22 order such person to comply with the requirements of
23 the subpoena order or to give evidence touching the
24 matter in question. Failure to obey the order of the court
25 may be punished by the court as a contempt thereof.

26 Subject to the foregoing provision the board may in
27 its discretion make available to appropriate federal,
28 state and municipal agencies information and material
29 developed in the course of its investigation and hearings:
30 *Provided*, That information obtained from studies or
31 from any investigation made or hearing held pursuant
32 to the provisions of this article shall not be admissible
33 in evidence in any action at law to recover damages for
34 personal injury or in any action under the workers'
35 compensation act, but such information, if available,
36 shall be furnished upon request to the commissioner of
37 the bureau of employment programs for the sole purpose
38 of adjusting claims presented to the said commissioner.

ARTICLE 29D. STATE HEALTH CARE.

***§16-29D-3. Agencies to cooperate and to provide plan; contents of plan; reports to Legislature; late payments by state agencies and interest thereon.**

1 (a) All departments and divisions of the state,
2 including, but not limited to, the division of health and
3 the division of human services within the department of
4 health and human resources; the bureau of employment
5 programs within the department of commerce, labor
6 and environmental resources; the public employees
7 insurance agency within the department of administra-
8 tion; the division of rehabilitation services or such other
9 department or division as shall supervise or provide
10 rehabilitation; and the West Virginia board of regents

*Clerk's Note: This section was also amended by H. B. 2979 (Chapter 134), which passed subsequent to this act.

11 or such other department or division as shall govern the
12 state medical schools, are authorized and directed to
13 cooperate in order, among other things, to ensure the
14 quality of the health care services delivered to the
15 beneficiaries of such departments and divisions and to
16 ensure the containment of costs in the payment for such
17 services.

18 (b) It is expressly recognized that no other entity may
19 interfere with the discretion and judgment given to the
20 single state agency which administers the state's
21 medicaid program. Thus, it is the intention of the
22 Legislature that nothing contained in this article shall
23 be interpreted, construed, or applied to interfere with
24 the powers and actions of the single state agency which,
25 in keeping with applicable federal law, shall administer
26 the state's medicaid program as it perceives to be in the
27 best interest of that program and its beneficiaries.

28 (c) Such departments and divisions shall develop a
29 plan or plans to ensure that a reasonable and appro-
30 priate level of health care is provided to the beneficiar-
31 ies of the various programs including the public
32 employees insurance agency and the workers' compen-
33 sation fund, the division of rehabilitation services and,
34 to the extent permissible, the state medicaid program.
35 The plan or plans may include, among other things, and
36 the departments and divisions are hereby authorized to
37 enter into:

38 (1) Utilization review and quality assurance pro-
39 grams;

40 (2) The establishment of a schedule or schedules of the
41 maximum reasonable amounts to be paid to health care
42 providers for the delivery of health care services covered
43 by the plan or plans. Such a schedule or schedules may
44 be either prospective in nature or cost reimbursement
45 in nature, or a mixture of both: *Provided*, That any
46 payment methods or schedules for institutions which
47 provide inpatient care shall be institution-specific and
48 shall, at a minimum, take into account a disproportion-
49 ate share of medicaid, charity care and medical
50 education: *Provided, however*, That in no event may any
51 rate set in this article for an institutional health care

52 provider be greater than such institution's current rate
53 established and approved by the health care cost review
54 authority pursuant to article twenty-nine-b of this
55 chapter;

56 (3) Provisions for making payments in advance of the
57 receipt of health care services by a beneficiary, or in
58 advance of the receipt of specific charges for such
59 services, or both;

60 (4) Provisions for the receipt or payment of charges
61 by electronic transfers;

62 (5) Arrangements, including contracts, with preferred
63 provider organizations; and

64 (6) Arrangements, including contracts, with particu-
65 lar health care providers to deliver health care services
66 to the beneficiaries of the programs of the departments
67 and divisions at agreed upon rates in exchange for
68 controlled access to the beneficiary populations.

69 (d) The director of the public employees insurance
70 agency shall contract with an independent actuarial
71 company for a review every four years of the claims
72 experience of all governmental entities whose employees
73 participate in the public employees insurance agency
74 program, including, but not limited to, all branches of
75 state government, all state departments or agencies
76 (including those receiving funds from the federal
77 government or a federal agency), all county and
78 municipal governments, or any other similar entities for
79 the purpose of determining the cost of providing
80 coverage under the program, including administrative
81 cost, to each such governmental entity.

82 (e) Except as provided in subsection (h) of this section,
83 any health care provider who agrees to deliver health
84 care services to any beneficiary of a health care
85 program of a department or division of the state,
86 including the public employees insurance agency, the
87 state medicaid program, the workers' compensation
88 fund and the division of rehabilitation services, the
89 charges for which shall be paid by or reimbursed by any
90 department or division which participates in a plan or

91 plans as described in this section, shall be deemed to
92 have agreed to provide health care services to the
93 beneficiaries of health care programs of all of the other
94 departments and divisions participating in a plan or
95 plans: *Provided*, That a health care provider shall be in
96 compliance with this subsection if the health care
97 provider actually delivers health care services to all
98 such patients who request such services or if the health
99 care provider actually delivers health care services to at
100 least a sufficient number of patients who are beneficiar-
101 ies under the state's medicaid program to equate to at
102 least fifteen percent of the health care provider's total
103 patient population: *Provided, however*, That the delivery
104 of health care services immediately needed to resolve an
105 imminent life-threatening medical or surgical emer-
106 gency shall not be deemed to be an agreement under this
107 subsection: *Provided further*, That nothing contained in
108 this article may be deemed to, or purport to, imply any
109 consent by any physician on the staff of any hospital or
110 other health care institution to accepting or agreeing to
111 deliver health care services to any beneficiary of a
112 health care program of a division or department of this
113 state in any such physician's private office or practice
114 by virtue of the fact that such physician saw such
115 patient in connection with such physician's duties as an
116 on-call staff physician.

117 (f) The administrators of the divisions of health,
118 human services, workers' compensation, and the public
119 employees insurance agency shall report to the Legisla-
120 ture no later than the first day of the regular session
121 of the Legislature of the year one thousand nine hundred
122 ninety concerning the plan or plans developed: *Provided*,
123 That the plan or plans may be implemented prior to the
124 delivery of such report.

125 (g) Nothing in this section shall be construed to give
126 or reserve to the Legislature any further or greater
127 power or jurisdiction over the operations or programs
128 of the various departments and divisions affected by this
129 article than that already possessed by the Legislature in
130 the absence of this article.

131 (h) A health care provider who provides health care

132 services to any beneficiary of a health care program of
133 a department or division of the state pursuant to the
134 plan or plans developed in accordance with this article
135 may withdraw from participation in said plan or plans:
136 *Provided*, That the health care provider shall provide
137 written notice of withdrawal from participation in said
138 plan or plans to the administrator of the public
139 employees insurance agency: *Provided, however*, That a
140 provider who has withdrawn from further participation
141 is not required to render services to any beneficiaries
142 under the plan or plans who are not his or her patients
143 at the time the notice of withdrawal is provided and the
144 provider may continue to provide services to his or her
145 preexisting patients for not more than forty-five days
146 after tendering the notice of withdrawal without
147 obligating his or herself to treat such other
148 beneficiaries.

149 (i) For the purchase of health care or health care
150 services by a health care provider participating in a
151 plan under this section or in a contract under subsection
152 (d) or (e) of section four of this article on or after the
153 first day of September, one thousand nine hundred
154 eighty-nine, by the public employees insurance agency,
155 the division of rehabilitation services and the division of
156 workers' compensation, a state check shall be issued in
157 payment thereof within sixty-five days after a legitimate
158 uncontested invoice is actually received by such division
159 or agency. Any state check issued after sixty-five days
160 shall include interest at the current rate, as determined
161 by the state tax commissioner under the provisions of
162 section seventeen-a, article ten, chapter eleven of this
163 code, which interest shall be calculated from the sixty-
164 sixth day after such invoice was actually received by the
165 division or agency until the date on which the state
166 check is mailed to the vendor.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 22. RIDESHARING.

§17C-22-3. Workers' compensation law does not apply to
ridesharing; exceptions thereto.

1 Chapter twenty-three of this code providing compen-
2 sation for workers injured during the course of their
3 employment shall not apply to a person injured while
4 participating in a ridesharing arrangement between his
5 or her place of residence and place of employment or
6 termini near such places: *Provided*, That if the employer
7 owns, leases or contracts for the motor vehicle used in
8 such arrangement, chapter twenty-three shall apply.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 4. PROOF OF FINANCIAL RESPONSIBILITY FOR THE FUTURE.

§17D-4-12. “Motor vehicle liability policy” defined; scope and provisions of policy.

1 (a) A “motor vehicle liability policy” as said term is
2 used in this chapter means an “owner’s policy” or an
3 “operator’s policy” of liability insurance certified as
4 provided in section ten or section eleven of this article
5 as proof of financial responsibility, and issued, except as
6 otherwise provided in section eleven, by an insurance
7 carrier duly authorized to transact business in this state,
8 to or for the benefit of the person named therein as
9 insured.

10 (b) Such owner’s policy of liability insurance:

11 (1) Shall designate by explicit description or by
12 appropriate reference all vehicles with respect to which
13 coverage is thereby to be granted; and

14 (2) Shall insure the person named therein and any
15 other person, as insured, using any such vehicle or
16 vehicles with the express or implied permission of such
17 named insured, against loss from the liability imposed
18 by law for damages arising out of the ownership,
19 operation, maintenance or use of such vehicle or vehicles
20 within the United States of America or the Dominion
21 of Canada, subject to limits exclusive of interest and
22 costs, with respect to each such vehicle, as follows:
23 Twenty thousand dollars because of bodily injury to or
24 death of one person in any one accident and, subject to
25 said limit for one person, forty thousand dollars because

26 of bodily injury to or death of two or more persons in
27 any one accident, and ten thousand dollars because of
28 injury to or destruction of property of others in any one
29 accident.

30 (c) Such operator's policy of liability insurance shall
31 insure the person named as insured therein against loss
32 from the liability imposed upon him by law for damages
33 arising out of the use by him of any motor vehicle not
34 owned by him, within the same territorial limits and
35 subject to the same limits of liability as are set forth
36 above with respect to an owner's policy of liability
37 insurance.

38 (d) Such motor vehicle liability policy shall state the
39 name and address of the named insured, the coverage
40 afforded by the policy, the premium charged therefor,
41 the policy period, and the limits of liability, and shall
42 contain an agreement or be endorsed that insurance is
43 provided thereunder in accordance with the coverage
44 defined in this chapter as respects bodily injury and
45 death or property damage, or both, and is subject to all
46 the provisions of this chapter.

47 (e) Such motor vehicle liability policy need not insure
48 any liability under any workers' compensation law nor
49 any liability on account of bodily injury to or death of
50 an employee of the insured while engaged in the
51 employment, other than domestic, of the insured, or
52 while engaged in the operation, maintenance or repair
53 of any such vehicle nor any liability for damage to
54 property owned by, rented to, in charge of or trans-
55 ported by the insured.

56 (f) Every motor vehicle liability policy shall be subject
57 to the following provisions which need not be contained
58 therein:

59 (1) The liability of the insurance carrier with respect
60 to the insurance required by this chapter shall become
61 absolute whenever injury or damage covered by said
62 motor vehicle liability policy occurs; said policy may not
63 be canceled or annulled as to such liability by an
64 agreement between the insurance carrier and the
65 insured after the occurrence of the injury or damage;

66 no statement made by the insured or on his behalf and
67 no violation of said policy shall defeat or void said policy.

68 (2) The satisfaction by the insured of a judgment for
69 such injury or damage shall not be a condition precedent
70 to the right or duty of the insurance carrier to make
71 payment on account of such injury or damage.

72 (3) The insurance carrier shall have the right to settle
73 any claim covered by the policy, and if such settlement
74 is made in good faith, the amount thereof shall be
75 deductible from the limits of liability specified in
76 subdivision (2), subsection (b) of this section.

77 (4) The policy, the written application therefor, if any,
78 and any rider or endorsement which does not conflict
79 with the provisions of this chapter shall constitute the
80 entire contract between parties.

81 (g) Any policy which grants the coverage required for
82 a motor vehicle liability policy may also grant any
83 lawful coverage in excess of or in addition to the
84 coverage specified for a motor vehicle liability policy
85 and such excess or additional coverage shall not be
86 subject to the provisions of this chapter. With respect
87 to a policy which grants such excess or additional
88 coverage, the term "motor vehicle liability policy"
89 applies only to that part of the coverage which is
90 required by this section.

91 (h) Any motor vehicle liability policy may provide that
92 the insured shall reimburse the insurance carrier for
93 any payment the insurance carrier would not have been
94 obligated to make under the terms of the policy except
95 for the provisions of this chapter.

96 (i) Any motor vehicle liability policy may provide for
97 the prorating of the insurance thereunder with other
98 valid and collectible insurance.

99 (j) The requirements for a motor vehicle liability
100 policy may be fulfilled by the policies of one or more
101 insurance carriers which policies together meet such
102 requirements.

103 (k) Any binder issued pending the issuance of a motor

104 vehicle policy shall be deemed to fulfill the requirements
105 for such a policy.

CHAPTER 18. EDUCATION.

Article

7A. State Teachers Retirement System.

9B. State Board of School Finance.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-20. Investment of funds.

1 The members of the retirement board shall be the
2 trustees of the several funds created by this article, and
3 shall determine from time to time what part of the
4 moneys belonging to the retirement system shall be
5 invested. When such board shall determine to invest any
6 moneys or to convert or sell any securities, it shall by
7 resolution so direct the custodian. The board of public
8 works is hereby empowered to determine in what
9 securities the investments shall be made, but such
10 investments shall be made only in those securities to
11 which the board of public works is limited in the
12 investment of workers' compensation funds under
13 section two, article three, chapter twenty-three of this
14 code, or in bonds, notes, or other instruments evidencing
15 loans secured by mortgages or deeds of trust insured,
16 or with respect to which commitments to insure have
17 been made by the United States, or by the secretary of
18 agriculture, pursuant to the Bankhead-Jones Farm
19 Tenant Act of 1937, as heretofore or hereinafter
20 amended. It shall be the duty of every county, school
21 district or municipality issuing any bonds to offer them
22 in writing to the board of public works, prior to
23 advertising the bonds for sale. The board of public
24 works, within fifteen days after receipt of such offer,
25 may accept or reject such offer in whole or in part. It
26 shall be the duty of the custodian to collect the principal
27 and the interest on investments when they become due
28 and payable and to credit such collections to the
29 retirement system.

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

§18-9B-16. Transmission and investment of proceeds of permanent improvement fund.

1 If a county board accumulates the permanent im-
2 provement fund for more than two years, the proceeds
3 of the fund shall be transmitted to the state sinking fund
4 commission on or before the first day of December of
5 the year in which the second successive levy for the fund
6 is laid. Amounts subsequently accruing to the fund as
7 of the first day of July of each year shall be transmitted
8 to the state sinking fund commission on or before the
9 first day of December ensuing. The state sinking fund
10 commission shall keep a separate account for the fund
11 of the county and shall invest the proceeds in any
12 obligations authorized for the investment of the state
13 workers' compensation fund. The proceeds of the fund
14 may be withdrawn by the county board of education as
15 authorized by this article upon sixty days' notice in
16 writing to the state sinking fund commission.

CHAPTER 19. AGRICULTURE.

ARTICLE 23. HORSE AND DOG RACING.

§19-23-14. Disposition of permit fees, registration fees and fines.

1 All permit fees, fees paid for the registration of colors
2 or assumed names and fines imposed by the stewards,
3 starters or other racing officials shall be paid into a
4 relief fund and paid out on the order of the racing
5 commission for hospitalization, medical care and funeral
6 expenses occasioned by injuries or death resulting from
7 an accident sustained by any permit holder while in the
8 discharge of his duties under the jurisdiction of the
9 racing commission. No payment shall be made, however,
10 for any hospitalization, medical care or funeral expenses
11 as to any permit holder who is covered under the
12 workers' compensation fund of this state, or any
13 insurance policy providing payments for hospitalization,
14 medical care or funeral expenses. Any balance in said
15 relief fund at any time in excess of five thousand dollars,
16 less any relief obligations then outstanding, shall
17 thereupon be transferred by the racing commission to
18 the state treasurer for deposit to the credit of the
19 general revenue fund of this state.

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-14. Employer's bond for wages and benefits.

1 (a) *Bond required.* — With the exception of those who
2 have been doing business in this state actively and
3 actually engaged in construction work, or the severance,
4 production or transportation of minerals for at least five
5 consecutive years next preceding the posting of the bond
6 required by this section, every employer, person, firm
7 or corporation engaged in or about to engage in
8 construction work, or the severance, production or
9 transportation (excluding railroads and water trans-
10 porters) of minerals, shall, prior to engaging in any
11 construction work, or the severance, production or
12 transportation of minerals, furnish a bond on a form
13 prescribed by the commissioner, payable to the state of
14 West Virginia, with the condition that the person, firm
15 or corporation pay the wages and fringe benefits of his
16 or its employees when due. The amount of the bond shall
17 be equal to the total of the employer's gross payroll for
18 four weeks at full capacity or production, plus fifteen
19 percent of the said total of employer's gross payroll for
20 four weeks at full capacity or production. The amount
21 of the bond shall increase or decrease as the employer's
22 payroll increases or decreases: *Provided*, That the
23 amount of the bond shall not be decreased, except with
24 the commissioner's approval and determination that
25 there are not outstanding claims against the bond.

26 (b) *Waiver.* — The commissioner shall waive the
27 posting of any bond required by subsection (a) of this
28 section upon his determination that an employer is of
29 sufficient financial responsibility to pay wages and
30 fringe benefits. The commissioner shall promulgate
31 rules and regulations according to the provisions of
32 chapter twenty-nine-a of this code which prescribe
33 standards for the granting of such waivers.

34 (c) *Form of bond; filing in office of circuit clerk.* — The
35 bond may include, with the approval of the commis-
36 sioner, surety bonding, collateral bonding (including
37 cash and securities), letters of credit, establishment of

38 an escrow account or a combination of these methods.
39 The commissioner shall accept an irrevocable letter of
40 credit in lieu of any other bonding requirement. If
41 collateral bonding is used, the employer may deposit
42 cash, or collateral securities or certificates as follows:
43 Bonds of the United States or its possessions, or of the
44 federal land bank, or of the homeowner's loan corpora-
45 tion; full faith and credit general obligation bonds of the
46 state of West Virginia or other states, and of any county,
47 district or municipality of the state of West Virginia or
48 other states; or certificates of deposit in a bank in this
49 state, which certificates shall be in favor of the state.
50 The cash deposit or market value of such securities or
51 certificates shall be equal to or greater than the sum of
52 the bond. The commissioner shall, upon receipt of any
53 such deposit of cash, securities or certificates, promptly
54 place the same with the state treasurer whose duty it
55 shall be to receive and hold the same in the name of the
56 state in trust for the purpose for which such deposit is
57 made. The employer making the deposit shall be entitled
58 from time to time to receive from the state treasurer,
59 upon the written approval of the commissioner, the
60 whole or any portion of any cash, securities or certifi-
61 cates so deposited, upon depositing with him in lieu
62 thereof, cash or other securities or certificates of the
63 classes herein specified having value equal to or greater
64 than the sum of the bond. The commissioner shall cause
65 a copy of the bond to be filed in the office of the clerk
66 of the county commission of the county wherein the
67 person, firm or corporation is doing business to be
68 available for public inspection.

69 (d) *Employee cause of action.* — Notwithstanding any
70 other provision in this article, any employee, whose
71 wages and fringe benefits are secured by the bond, as
72 specified in subsection (c) of this section, has a direct
73 cause of action against the bond for wages and fringe
74 benefits that are due and unpaid.

75 (e) *Action of commissioner.* — Any employee having
76 wages and fringe benefits unpaid may inform the
77 commissioner of the claim for unpaid wages and fringe
78 benefits and request certification thereof. If the commis-

79 sioner, upon notice to the employer and investigation,
80 finds that such wages and fringe benefits or a portion
81 thereof are unpaid, he shall make demand of such
82 employer for the payment of such wages and fringe
83 benefits. If payment for such wages and fringe benefits
84 is not forthcoming within the time specified by the
85 commissioner, not to exceed thirty days, the commis-
86 sioner shall certify such claim or portion thereof, and
87 forward the certification to the bonding company or the
88 state treasurer, who shall provide payment to the
89 affected employee within fourteen days of receipt of
90 such certification. The bonding company, or any person,
91 firm or corporation posting a bond, thereafter shall have
92 the right to proceed against a defaulting employer for
93 that part of the claim the employee paid. The procedure
94 specified herein shall not be construed to preclude other
95 actions by the commissioner or employee to seek
96 enforcement of the provisions of this article by any civil
97 proceedings for the payment of wages and fringe
98 benefits or by criminal proceedings as may be deter-
99 mined appropriate.

100 (f) *Posting and reporting by employer.* — With the
101 exception of those exempt under subsection (a) of this
102 section, any employer who is engaged in construction
103 work or the severance, production or transportation
104 (excluding railroad and water transporters) of minerals
105 shall post the following in a place accessible to his or
106 its employees:

107 (1) A copy of the bond or other evidence of surety
108 specifying the number of employees covered as provided
109 under subsection (a) of this section, or notification that
110 the posting of a bond has been waived by the commis-
111 sioner; and

112 (2) A copy of the notice in the form prescribed by the
113 commissioner regarding the duties of employers under
114 this section. During the first two years that any person,
115 firm or corporation is doing business in this state in
116 construction work, or in the severance, production or
117 transportation of minerals, such person, firm or corpo-
118 ration shall on or before the first day of February, May,
119 August and November of each calendar year file with

120 the department a verified statement of the number of
 121 employees, or a copy of the quarterly report filed with
 122 the bureau of employment programs showing the
 123 accurate number of employees, unless the commissioner
 124 waives the filing of the report upon his determination
 125 that the person, firm or corporation is of sufficient
 126 stability that the reporting is unnecessary.

127 (g) *Termination of bond.* — The bond may be termi-
 128 nated, with the approval of the commissioner, after an
 129 employer submits a statement, under oath or affirma-
 130 tion lawfully administered, to the commissioner that the
 131 following has occurred: The employer has ceased doing
 132 business and all wages and fringe benefits have been
 133 paid, or the employer has been doing business in this
 134 state for at least five consecutive years and has paid all
 135 wages and fringe benefits. The approval of the commis-
 136 sioner will be granted only after the commissioner has
 137 determined that the wages and fringe benefits of all
 138 employees have been paid. The bond may also be
 139 terminated upon a determination by the commissioner
 140 that an employer is of sufficient financial responsibility
 141 to pay wages and fringe benefits.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

Article

1. Bureau of Employment Programs.
2. The Commissioner of the Bureau of Employment Programs.
- 2A. Emergency Employment Supplemental Matching Program.
- 2B. Group Insurance Plans for Regular Employees.
- 2C. Veterans Incentive Program.
5. Employer Coverage and Responsibility.
6. Employee Eligibility; Benefits.
7. Claim Procedure.
10. General Provisions.

ARTICLE 1. BUREAU OF EMPLOYMENT PROGRAMS.

§21A-1-3. Definitions.

§21A-1-4. Bureau of employment programs created; division; "bureau" defined.

§21A-1-5. Federal-state cooperation.

§21A-1-6. Employment stabilization.

§21A-1-7. State public employment agency to become state employment service division.

§21A-1-3. Definitions.

1 As used in this chapter, unless the context clearly
2 requires otherwise:

3 "Administration fund" means the employment secur-
4 ity administration fund, from which the administrative
5 expenses under this chapter shall be paid.

6 "Annual payroll" means the total amount of wages for
7 employment paid by an employer during a twelve-
8 month period ending with the thirtieth day of June of
9 any calendar year.

10 "Average annual payroll" means the average of the
11 last three annual payrolls of an employer.

12 "Base period" means the first four out of the last five
13 completed calendar quarters immediately preceding the
14 first day of the individual benefit year.

15 "Base period employer" means any employer who in
16 the base period for any benefit year paid wages to an
17 individual who filed claim for unemployment compen-
18 sation within such benefit year.

19 "Base period wages" means wages paid to an individ-
20 ual during the base period by all his base period
21 employers.

22 "Benefit year" with respect to an individual means the
23 fifty-two-week period beginning with the first day of the
24 calendar week in which a valid claim is effective, and
25 thereafter the fifty-two-week period beginning with the
26 first day of the calendar week in which such individual
27 next files a valid claim for benefits after the termination
28 of his last preceding benefit year; however, if a claim
29 is effective on the first day of a quarter, the benefit year
30 will be fifty-three weeks, in order to prevent an
31 overlapping of the base period wages. An initial claim
32 for benefits filed in accordance with the provisions of
33 this chapter shall be considered to be a valid claim
34 within the purposes of this definition if the individual
35 has been paid wages in his base period sufficient to
36 make him eligible for benefits under the provisions of
37 this chapter.

38 "Benefits" means the money payable to an individual

39 with respect to his unemployment.

40 "Board" means board of review.

41 "Calendar quarter" means the period of three consec-
42 utive calendar months ending on the thirty-first day of
43 March, the thirtieth day of June, the thirtieth day of
44 September, the thirty-first day of December, or the
45 equivalent thereof as the commissioner may by regula-
46 tion prescribe.

47 "Commissioner" means the bureau of employment
48 programs' commissioner.

49 "Computation date" means the thirtieth day of June
50 the year immediately preceding the first day of January
51 on which an employer's contribution rate becomes
52 effective.

53 "Employing unit" means an individual, or type of
54 organization, including any partnership, association,
55 trust, estate, joint-stock company, insurance company,
56 corporation (domestic or foreign), state or political
57 subdivision thereof, or their instrumentalities, as
58 provided in paragraph (b), subdivision (9) of the
59 definition of "employment" in this section, institution of
60 higher education, or the receiver, trustee in bankruptcy,
61 trustee or successor thereof, or the legal representative
62 of a deceased person, which has on the first day of
63 January, one thousand nine hundred thirty-five, or
64 subsequent thereto, had in its employ one or more
65 individuals performing service within this state.

66 "Employer" means:

67 (1) Until the first day of January, one thousand nine
68 hundred seventy-two, any employing unit which for
69 some portion of a day, not necessarily simultaneously, in
70 each of twenty different calendar weeks, which weeks
71 need not be consecutive, within either the current
72 calendar year, or the preceding calendar year, has had
73 in employment four or more individuals irrespective of
74 whether the same individuals were or were not em-
75 ployed on each of such days;

76 (2) Any employing unit which is or becomes a liable

77 employer under any federal unemployment tax act;

78 (3) Any employing unit which has acquired or
79 acquires the organization, trade or business, or substan-
80 tially all the assets thereof, of an employing unit which
81 at the time of such acquisition was an employer subject
82 to this chapter;

83 (4) Any employing unit which, after the thirty-first
84 day of December, one thousand nine hundred sixty-
85 three, and until the first day of January, one thousand
86 nine hundred seventy-two, in any one calendar quarter,
87 in any calendar year, has in employment four or more
88 individuals and has paid wages for employment in the
89 total sum of five thousand dollars or more, or which,
90 after such date, has paid wages for employment in any
91 calendar year in the sum total of twenty thousand
92 dollars or more;

93 (5) Any employing unit which, after the thirty-first
94 day of December, one thousand nine hundred sixty-
95 three, and until the first day of January, one thousand
96 nine hundred seventy-two, in any three-week period, in
97 any calendar year, has in employment ten or more
98 individuals;

99 (6) For the effective period of its election pursuant to
100 section three, article five of this chapter, any employing
101 unit which has elected to become subject to this chapter;

102 (7) Any employing unit which, after the thirty-first
103 day of December, one thousand nine hundred seventy-
104 one, (i) in any calendar quarter in either the current or
105 preceding calendar year paid for service in employment
106 wages of one thousand five hundred dollars or more, or
107 (ii) for some portion of a day in each of twenty different
108 calendar weeks, whether or not such weeks were
109 consecutive, in either the current or the preceding
110 calendar year had in employment at least one individual
111 (irrespective of whether the same individual was in
112 employment in each such day) except as provided in
113 subdivisions (11) and (12) thereof;

114 (8) Any employing unit for which service in employ-
115 ment, as defined in subdivision (9) of the definition of

116 “employment” in this section, is performed after the
117 thirty-first day of December, one thousand nine hundred
118 seventy-one;

119 (9) Any employing unit for which service in employ-
120 ment, as defined in subdivision (10) of the definition of
121 “employment” in this section, is performed after the
122 thirty-first day of December, one thousand nine hundred
123 seventy-one;

124 (10) Any employing unit for which service in employ-
125 ment, as defined in paragraphs (b) and (c) of subdivision
126 (9) of the definition of “employment” in this section, is
127 performed after the thirty-first day of December, one
128 thousand nine hundred seventy-seven;

129 (11) Any employing unit for which agricultural labor,
130 as defined in subdivision (12) of the definition of
131 “employment” in this section, is performed after the
132 thirty-first day of December, one thousand nine hundred
133 seventy-seven; or

134 (12) Any employing unit for which domestic service
135 in employment, as defined in subdivision (13) of the
136 definition of “employment” in this section, is performed
137 after the thirty-first day of December, one thousand nine
138 hundred seventy-seven.

139 “Employment”, subject to the other provisions of this
140 section, means:

141 (1) Service, including service in interstate commerce,
142 performed for wages or under any contract of hire,
143 written or oral, express or implied;

144 (2) Any service performed prior to the first day of
145 January, one thousand nine hundred seventy-two, which
146 was employment as defined in this section prior to such
147 date and, subject to the other provisions of this section,
148 service performed after the thirty-first day of De-
149 cember, one thousand nine hundred seventy-one, by an
150 employee, as defined in section 3306 (i) of the Federal
151 Unemployment Tax Act, including service in interstate
152 commerce;

153 (3) Any service performed prior to the first day of

154 January, one thousand nine hundred seventy-two, which
155 was employment as defined in this section prior to such
156 date and, subject to the other provisions of this section,
157 service performed after the thirty-first day of De-
158 cember, one thousand nine hundred seventy-one, includ-
159 ing service in interstate commerce, by any officer of a
160 corporation;

161 (4) An individual's entire service, performed within or
162 both within and without this state if: (a) The service is
163 localized in this state, or (b) the service is not localized
164 in any state but some of the service is performed in this
165 state and (i) the base of operations, or, if there is no base
166 of operations, then the place from which such service is
167 directed or controlled, is in this state; or (ii) the base of
168 operations or place from which such service is directed
169 or controlled is not in any state in which some part of
170 the service is performed but the individual's residence
171 is in this state;

172 (5) Service not covered under paragraph (4) of this
173 subdivision and performed entirely without this state
174 with respect to no part of which contributions are
175 required and paid under an unemployment compensa-
176 tion law of any other state or of the federal government,
177 is employment subject to this chapter if the individual
178 performing such services is a resident of this state and
179 the commissioner approves the election of the employing
180 unit for whom such services are performed that the
181 entire service of such individual is employment subject
182 to this chapter;

183 (6) Service is localized within a state, if: (a) The
184 service is performed entirely within such state; or (b) the
185 service is performed both within and without such state,
186 but the service performed without such state is inci-
187 dental to the individual's service within this state, as, for
188 example, is temporary or transitory in nature or consists
189 of isolated transactions;

190 (7) Services performed by an individual for wages are
191 employment subject to this chapter unless and until it
192 is shown to the satisfaction of the commissioner that: (a)
193 Such individual has been and will continue to be free

194 from control or direction over the performance of such
195 services, both under his contract of service and in fact;
196 and (b) such service is either outside the usual course
197 of the business for which such service is performed or
198 that such service is performed outside of all the places
199 of business of the enterprise for which such service is
200 performed; and (c) such individual is customarily
201 engaged in an independently established trade, occupa-
202 tion, profession or business;

203 (8) All service performed by an officer or member of
204 the crew of an American vessel (as defined in section
205 three hundred five of an act of Congress entitled Social
206 Security Act Amendment of 1946, approved the tenth
207 day of August, one thousand nine hundred forty-six), on
208 or in connection with such vessel, provided that the
209 operating office, from which the operations of such
210 vessel operating on navigable waters within and without
211 the United States is ordinarily and regularly supervised,
212 managed, directed and controlled, is within this state;

213 (9) (a) Service performed after the thirty-first day of
214 December, one thousand nine hundred seventy-one, by
215 an individual in the employ of this state or any of its
216 instrumentalities (or in the employ of this state and one
217 or more other states or their instrumentalities) for a
218 hospital or institution of higher education located in this
219 state: *Provided*, That such service is excluded from
220 "employment" as defined in the Federal Unemployment
221 Tax Act solely by reason of section 3306 (c) (7) of that
222 act and is not excluded from "employment" under
223 subdivision (11) of the exclusion from employment in
224 this section;

225 (b) Service performed after the thirty-first day of
226 December, one thousand nine hundred seventy-seven, in
227 the employ of this state or any of its instrumentalities
228 or political subdivisions thereof or any of its instrumen-
229 talities or any instrumentality of more than one of the
230 foregoing or any instrumentality of any foregoing and
231 one or more other states or political subdivisions:
232 *Provided*, That such service is excluded from "employ-
233 ment" as defined in the Federal Unemployment Tax Act
234 by section 3306 (c) (7) of that act and is not excluded

235 from "employment" under subdivision (15) of the
236 exclusion from employment in this section; and

237 (c) Service performed after the thirty-first day of
238 December, one thousand nine hundred seventy-seven, in
239 the employ of a nonprofit educational institution which
240 is not an institution of higher education;

241 (10) Service performed after the thirty-first day of
242 December, one thousand nine hundred seventy-one, by
243 an individual in the employ of a religious, charitable,
244 educational or other organization but only if the
245 following conditions are met:

246 (a) The service is excluded from "employment" as
247 defined in the Federal Unemployment Tax Act solely by
248 reason of section 3306 (c) (8) of that act; and

249 (b) The organization had four or more individuals in
250 employment for some portion of a day in each of twenty
251 different weeks, whether or not such weeks were
252 consecutive, within either the current or preceding
253 calendar year, regardless of whether they were em-
254 ployed at the same moment of time;

255 (11) Service of an individual who is a citizen of the
256 United States, performed outside the United States
257 after the thirty-first day of December, one thousand nine
258 hundred seventy-one (except in Canada and in the case
259 of Virgin Islands after the thirty-first day of December,
260 one thousand nine hundred seventy-one, and before the
261 first day of January, the year following the year in
262 which the secretary of labor approves for the first time
263 an unemployment insurance law submitted to him by
264 the Virgin Islands for approval) in the employ of an
265 American employer (other than service which is
266 considered "employment" under the provisions of
267 subdivision (4), (5) or (6) of this definition of "employ-
268 ment" or the parallel provisions of another state's law)
269 if:

270 (a) The employer's principal place of business in the
271 United States is located in this state; or

272 (b) The employer has no place of business in the
273 United States, but (i) the employer is an individual who
274 is a resident of this state; or (ii) the employer is a

275 corporation which is organized under the laws of this
276 state; or (iii) the employer is a partnership or a trust
277 and the number of the partners or trustees who are
278 residents of this state is greater than the number who
279 are residents of any one other state; or

280 (c) None of the criteria of subparagraphs (a) and (b)
281 of this subdivision (11) is met but the employer has
282 elected coverage in this state or, the employer having
283 failed to elect coverage in any state, the individual has
284 filed a claim for benefits, based on such service, under
285 the law of this state.

286 An "American employer", for purposes of this subdi-
287 vision (11), means a person who is (i) an individual who
288 is a resident of the United States; or (ii) a partnership
289 if two thirds or more of the partners are residents of
290 the United States; or (iii) a trust, if all of the trustees
291 are residents of the United States; or (iv) a corporation
292 organized under the laws of the United States or of any
293 state;

294 (12) Service performed after the thirty-first day of
295 December, one thousand nine hundred seventy-seven, by
296 an individual in agricultural labor as defined in
297 subdivision (5) of the exclusions from employment in
298 this section when:

299 (a) Such service is performed for a person who (i)
300 during any calendar quarter in either the current or the
301 preceding calendar year paid remuneration in cash of
302 twenty thousand dollars or more to individuals em-
303 ployed in agricultural labor including labor performed
304 by an alien referred to in paragraph (b) of this
305 subdivision (12); or (ii) for some portion of a day in each
306 of twenty different calendar weeks, whether or not such
307 weeks were consecutive, in either the current or the
308 preceding calendar year, employed in agricultural
309 labor, including labor performed by an alien referred
310 to in paragraph (b) of this subdivision (12), ten or more
311 individuals, regardless of whether they were employed
312 at the same moment of time;

313 (b) Such service is not performed in agricultural labor
314 if performed before the first day of January, one

315 thousand nine hundred ninety-three, by an individual
316 who is an alien admitted to the United States to perform
317 service in agricultural labor pursuant to sections 214 (c)
318 and 101 (a) (15) (H) of the Immigration and Nationality
319 Act;

320 (c) For the purposes of the definition of employment,
321 any individual who is a member of a crew furnished by
322 a crew leader to perform service in agricultural labor
323 for any other person shall be treated as an employee of
324 such crew leader (i) if such crew leader holds a valid
325 certificate of registration under the Migrant and
326 Seasonal Agricultural Worker Protection Act; or
327 substantially all the members of such crew operate or
328 maintain tractors, mechanized harvesting or crop-
329 dusting equipment, or any other mechanized equipment,
330 which is provided by such crew leader; and (ii) if such
331 individual is not an employee of such other person
332 within the meaning of subdivision (7) of the definition
333 of employer;

334 (d) For the purposes of this subdivision (12), in the
335 case of any individual who is furnished by a crew leader
336 to perform service in agricultural labor for any other
337 person and who is not treated as an employee of such
338 crew leader under subparagraph (c) of this subdivision
339 (12), (i) such other person and not the crew leader shall
340 be treated as the employer of such individual; and (ii)
341 such other person shall be treated as having paid cash
342 remuneration to such individual in an amount equal to
343 the amount of cash remuneration paid to such individual
344 by the crew leader (either on his own behalf or on behalf
345 of such other person) for the service in agricultural
346 labor performed for such other person; and

347 (e) For the purposes of this subdivision (12), the term
348 "crew leader" means an individual who (i) furnishes
349 individuals to perform service in agricultural labor for
350 any other person, (ii) pays (either on his own behalf or
351 on behalf of such other person) the individuals so
352 furnished by him for the service in agricultural labor
353 performed by them, and (iii) has not entered into a
354 written agreement with such other person under which
355 such individual is designated as an employee of such

356 other person;

357 (13) The term "employment" includes domestic service
358 after the thirty-first day of December, one thousand nine
359 hundred seventy-seven, in a private home, local college
360 club or local chapter of a college fraternity or sorority
361 performed for a person who paid cash remuneration of
362 one thousand dollars or more after the thirty-first day
363 of December, one thousand nine hundred seventy-seven,
364 in any calendar quarter in the current calendar year or
365 the preceding calendar year to individuals employed in
366 such domestic service.

367 Notwithstanding the foregoing definition of "employ-
368 ment", if the services performed during one half or more
369 of any pay period by an employee for the person
370 employing him constitute employment, all the services
371 of such employee for such period are employment; but
372 if the services performed during more than one half of
373 any such pay period by an employee for the person
374 employing him do not constitute employment, then none
375 of the services of such employee for such period are
376 employment.

377 The term "employment" does not include:

378 (1) Service performed in the employ of this state or
379 any political subdivision thereof, or any instrumentality
380 of this state or its subdivisions, except as otherwise
381 provided herein until the thirty-first day of December,
382 one thousand nine hundred seventy-seven;

383 (2) Service performed directly in the employ of
384 another state, or its political subdivisions, except as
385 otherwise provided in paragraph (a), subdivision (9) of
386 the definition of "employment", until the thirty-first day
387 of December, one thousand nine hundred seventy-seven;

388 (3) Service performed in the employ of the United
389 States or any instrumentality of the United States
390 exempt under the constitution of the United States from
391 the payments imposed by this law, except that to the
392 extent that the Congress of the United States shall
393 permit states to require any instrumentalities of the
394 United States to make payments into an unemployment

395 fund under a state unemployment compensation law. all
396 of the provisions of this law shall be applicable to such
397 instrumentalities and to service performed for such
398 instrumentalities in the same manner, to the same
399 extent and on the same terms as to all other employers,
400 employing units, individuals and services: *Provided,*
401 That if this state shall not be certified for any year by
402 the secretary of labor under section 1603 (c) of the
403 federal Internal Revenue Code, the payments required
404 of such instrumentalities with respect to such year shall
405 be refunded by the commissioner from the fund in the
406 same manner and within the same period as is provided
407 in section nineteen, article five of this chapter, with
408 respect to payments erroneously collected;

409 (4) Service performed after the thirtieth day of June,
410 one thousand nine hundred thirty-nine, with respect to
411 which unemployment compensation is payable under the
412 Railroad Unemployment Insurance Act and service with
413 respect to which unemployment benefits are payable
414 under an unemployment compensation system for
415 maritime employees established by an act of Congress.
416 The commissioner may enter into agreements with the
417 proper agency established under such an act of Congress
418 to provide reciprocal treatment to individuals who, after
419 acquiring potential rights to unemployment compensa-
420 tion under an act of Congress, or who have, after
421 acquiring potential rights to unemployment compensa-
422 tion under an act of Congress, acquired rights to benefit
423 under this chapter. Such agreement shall become
424 effective ten days after such publications which shall
425 comply with the general rules of the department;

426 (5) Service performed by an individual in agricultural
427 labor, except as provided in subdivision (12) of the
428 definition of "employment" in this section. For purposes
429 of this subdivision (5), the term "agricultural labor"
430 includes all services performed:

431 (a) On a farm, in the employ of any person, in
432 connection with cultivating the soil, or in connection
433 with raising or harvesting any agricultural or horticul-
434 tural commodity, including the raising, shearing,
435 feeding, caring for, training and management of

436 livestock, bees, poultry, and fur-bearing animals and
437 wildlife;

438 (b) In the employ of the owner or tenant or other
439 operator of a farm, in connection with the operation,
440 management, conservation, improvement or mainte-
441 nance of such farm and its tools and equipment, or in
442 salvaging timber or clearing land of brush and other
443 debris left by a hurricane, if the major part of such
444 service is performed on a farm;

445 (c) In connection with the production or harvesting of
446 any commodity defined as an agricultural commodity in
447 section fifteen (g) of the Agricultural Marketing Act, as
448 amended, or in connection with the ginning of cotton,
449 or in connection with the operation or maintenance of
450 ditches, canals, reservoirs or waterways, not owned or
451 operated for profit, used exclusively for supplying and
452 storing water for farming purposes;

453 (d) (i) In the employ of the operator of a farm in
454 handling, planting, drying, packing, packaging, process-
455 ing, freezing, grading, storing or delivering to storage
456 or to market or to a carrier for transportation to market,
457 in its unmanufactured state, any agricultural or
458 horticultural commodity; but only if such operator
459 produced more than one half of the commodity with
460 respect to which such service is performed; or (ii) in the
461 employ of a group of operators of farms (or a cooperative
462 organization of which such operators are members) in
463 the performance of service described in clause (i), but
464 only if such operators produced more than one half of
465 the commodity with respect to which such service is
466 performed; but the provisions of clauses (i) and (ii) are
467 not applicable with respect to service performed in
468 connection with commercial canning or commercial
469 freezing or in connection with any agricultural or
470 horticultural commodity after its delivery to a terminal
471 market for distribution for consumption;

472 (e) On a farm operated for profit if such service is not
473 in the course of the employer's trade or business or is
474 domestic service in a private home of the employer. As
475 used in this subdivision (5), the term "farm" includes

476 stock, dairy, poultry, fruit, fur-bearing animals, truck
477 farms, plantations, ranches, greenhouses, ranges and
478 nurseries, or other similar land areas or structures used
479 primarily for the raising of any agricultural or horti-
480 cultural commodities;

481 (6) Domestic service in a private home except as
482 provided in subdivision (13) of the definition of "employ-
483 ment" in this section;

484 (7) Service performed by an individual in the employ
485 of his son, daughter or spouse;

486 (8) Service performed by a child under the age of
487 eighteen years in the employ of his father or mother;

488 (9) Service as an officer or member of a crew of an
489 American vessel, performed on or in connection with
490 such vessel, if the operating office, from which the
491 operations of the vessel operating on navigable waters
492 within or without the United States are ordinarily and
493 regularly supervised, managed, directed and controlled,
494 is without this state;

495 (10) Service performed by agents of mutual fund
496 broker-dealers or insurance companies, exclusive of
497 industrial insurance agents, or by agents of investment
498 companies, who are compensated wholly on a commis-
499 sion basis;

500 (11) Service performed (i) in the employ of a church
501 or convention or association of churches, or an organi-
502 zation which is operated primarily for religious pur-
503 poses and which is operated, supervised, controlled or
504 principally supported by a church or convention or
505 association of churches; or (ii) by a duly ordained,
506 commissioned or licensed minister of a church in the
507 exercise of his ministry or by a member of a religious
508 order in the exercise of duties required by such order;
509 or (iii) prior to the first day of January, one thousand
510 nine hundred seventy-eight, in the employ of a school
511 which is not an institution of higher education; or (iv)
512 in a facility conducted for the purpose of carrying out
513 a program of rehabilitation for individuals whose
514 earning capacity is impaired by age or physical or

515 mental deficiency or injury or providing remunerative
516 work for individuals who because of their impaired
517 physical or mental capacity cannot be readily absorbed
518 in the competitive labor market by an individual
519 receiving such rehabilitation or remunerative work; or
520 (v) as part of an unemployment work-relief or work-
521 training program assisted or financed in whole or in
522 part by any federal agency or an agency of a state or
523 political subdivision thereof, by an individual receiving
524 such work relief or work training; or (vi) prior to the
525 first day of January, one thousand nine hundred
526 seventy-eight, for a hospital in a state prison or other
527 state correctional institution by an inmate of the prison
528 or correctional institution, and after the thirty-first day
529 of December, one thousand nine hundred seventy-seven,
530 by an inmate of a custodial or penal institution;

531 (12) Service performed in the employ of a school,
532 college or university, if such service is performed (i) by
533 a student who is enrolled and is regularly attending
534 classes at such school, college or university; or (ii) by the
535 spouse of such a student, if such spouse is advised, at
536 the time such spouse commences to perform such
537 service, that (I) the employment of such spouse to
538 perform such service is provided under a program to
539 provide financial assistance to such student by such
540 school, college or university; and (II) such employment
541 will not be covered by any program of unemployment
542 insurance;

543 (13) Service performed by an individual who is
544 enrolled at a nonprofit or public educational institution
545 which normally maintains a regular faculty and
546 curriculum and normally has a regularly organized
547 body of students in attendance at the place where its
548 educational activities are carried on as a student in a
549 full-time program, taken for credit at such institution,
550 which combines academic instruction with work expe-
551 rience, if such service is an integral part of such
552 program, and such institution has so certified to the
553 employer, except that this subdivision shall not apply to
554 service performed in a program established for or on
555 behalf of an employer or group of employers;

556 (14) Service performed in the employ of a hospital, if
557 such service is performed by a patient of the hospital,
558 as defined in this section; and

559 (15) Service in the employ of a governmental entity
560 referred to in subdivision (9) of the definition of
561 "employment" in this section if such service is per-
562 formed by an individual in the exercise of duties (i) as
563 an elected official; (ii) as a member of a legislative body,
564 or a member of the judiciary, of a state or political
565 subdivision; (iii) as a member of the state national guard
566 or air national guard; (iv) as an employee serving on a
567 temporary basis in case of fire, storm, snow, earthquake,
568 flood or similar emergency; (v) in a position which,
569 under or pursuant to the laws of this state, is designated
570 as (I) a major nontenured policymaking or advisory
571 position, or (II) a policymaking or advisory position the
572 performance of the duties of which ordinarily does not
573 require more than eight hours per week.

574 Notwithstanding the foregoing exclusions from the
575 definition of "employment", services, except agricultural
576 labor and domestic service in a private home, are in
577 employment if with respect to such services a tax is
578 required to be paid under any federal law imposing a
579 tax against which credit may be taken for contributions
580 required to be paid into a state unemployment compen-
581 sation fund, or which as a condition for full tax credit
582 against the tax imposed by the Federal Unemployment
583 Tax Act are required to be covered under this chapter.

584 "Employment office" means a free employment office
585 or branch thereof, operated by this state, or any free
586 public employment office maintained as a part of a state
587 controlled system of public employment offices in any
588 other state.

589 "Fund" means the unemployment compensation fund
590 established by this chapter.

591 "Hospital" means an institution which has been
592 licensed, certified or approved by the state department
593 of health as a hospital.

593 "Institution of higher education" means an educational
594 institution which:

595 (1) Admits as regular students only individuals having
596 a certificate of graduation from a high school, or the
597 recognized equivalent of such a certificate;

598 (2) Is legally authorized in this state to provide a
599 program of education beyond high school;

600 (3) Provides an educational program for which it
601 awards a bachelor's or higher degree, or provides a
602 program which is acceptable for full credit toward such
603 a degree, or provides a program of post-graduate or
604 post-doctoral studies, or provides a program of training
605 to prepare students for gainful employment in a
606 recognized occupation; and

607 (4) Is a public or other nonprofit institution.

608 Notwithstanding any of the foregoing provisions of
609 this definition all colleges and universities in this state
610 are institutions of higher education for purposes of this
611 section.

612 "Payments" means the money required to be paid or
613 that may be voluntarily paid into the state unemploy-
614 ment compensation fund as provided in article five of
615 this chapter.

616 "Separated from employment" means, for the pur-
617 poses of this chapter, the total severance, whether by
618 quitting, discharge or otherwise, of the employer-
619 employee relationship.

620 "State" includes, in addition to the states of the United
621 States, Puerto Rico, District of Columbia and the Virgin
622 Islands.

623 "Total and partial unemployment" means:

624 (1) An individual is totally unemployed in any week
625 in which such individual is separated from employment
626 for an employing unit and during which he performs no
627 services and with respect to which no wages are payable
628 to him.

629 (2) An individual who has not been separated from

630 employment is partially unemployed in any week in
631 which due to lack of full-time work wages payable to
632 him are less than his weekly benefit amount plus
633 twenty-five dollars: *Provided*, That said individual must
634 have earnings of at least twenty-six dollars.

635 "Wages" means all remuneration for personal service,
636 including commissions, gratuities customarily received
637 by an individual in the course of employment from
638 persons other than the employing unit, as long as such
639 gratuities equal or exceed an amount of not less than
640 twenty dollars each month and which are required to
641 be reported to the employer by the employee, bonuses,
642 and the cash value of all remuneration in any medium
643 other than cash except for agricultural labor and
644 domestic service: *Provided*, That the term "wages" does
645 not include:

646 (1) That part of the remuneration which, after
647 remuneration equal to three thousand dollars has been
648 paid to an individual by an employer with respect to
649 employment during any calendar year, is paid after the
650 thirty-first day of December, one thousand nine hundred
651 thirty-nine, and prior to the first day of January, one
652 thousand nine hundred forty-seven, to such individual
653 by such employer with respect to employment during
654 such calendar year; or that part of the remuneration
655 which, after remuneration equal to three thousand
656 dollars with respect to employment after one thousand
657 nine hundred thirty-eight, has been paid to an individ-
658 ual by an employer during any calendar year after one
659 thousand nine hundred forty-six, is paid to such
660 individual by such employer during such calendar year,
661 except that for the purposes of sections one, ten, eleven
662 and thirteen, article six of this chapter, all remuneration
663 earned by an individual in employment shall be credited
664 to the individual and included in his computation of base
665 period wages: *Provided*, That notwithstanding the
666 foregoing provisions, on and after the first day of
667 January, one thousand nine hundred sixty-two, the term
668 "wages" does not include:

669 That part of the remuneration which, after remuner-
670 ation equal to three thousand six hundred dollars has

671 been paid to an individual by an employer with respect
672 to employment during any calendar year, is paid during
673 any calendar year after one thousand nine hundred
674 sixty-one; and shall not include that part of remunera-
675 tion which, after remuneration equal to four thousand
676 two hundred dollars is paid during a calendar year after
677 one thousand nine hundred seventy-one; and shall not
678 include that part of remuneration which, after remun-
679 eration equal to six thousand dollars is paid during a
680 calendar year after one thousand nine hundred seventy-
681 seven; and shall not include that part of remuneration
682 which, after remuneration equal to eight thousand
683 dollars is paid during a calendar year after one
684 thousand nine hundred eighty, to an individual by an
685 employer or his predecessor with respect to employment
686 during any calendar year, is paid to such individual by
687 such employer during such calendar year unless that
688 part of the remuneration is subject to a tax under a
689 federal law imposing a tax against which credit may be
690 taken for contributions required to be paid into a state
691 unemployment fund. For the purposes of this subdivi-
692 sion (1), the term "employment" includes service
693 constituting employment under any unemployment
694 compensation law of another state; or which as a
695 condition for full tax credit against the tax imposed by
696 the Federal Unemployment Tax Act is required to be
697 covered under this chapter; and, except that for the
698 purposes of sections one, ten, eleven and thirteen, article
699 six of this chapter, all remuneration earned by an
700 individual in employment shall be credited to the
701 individual and included in his computation of base
702 period wages: *Provided*, That the remuneration paid to
703 an individual by an employer with respect to employ-
704 ment in another state or other states upon which
705 contributions were required of and paid by such
706 employer under an unemployment compensation law of
707 such other state or states shall be included as a part of
708 the remuneration equal to the amounts of three thou-
709 sand six hundred dollars or four thousand two hundred
710 dollars or six thousand dollars or eight thousand dollars
711 herein referred to. In applying such limitation on the
712 amount of remuneration that is taxable, an employer

713 shall be accorded the benefit of all or any portion of such
714 amount which may have been paid by its predecessor
715 or predecessors: *Provided, however,* That if the definition
716 of the term "wages" as contained in section 3306 (b) of
717 the Internal Revenue Code of 1954, as amended, is
718 amended: (a) Effective prior to the first day of January,
719 one thousand nine hundred sixty-two, to include remun-
720 eration in excess of three thousand dollars, or (b)
721 effective on or after the first day of January, one
722 thousand nine hundred sixty-two, to include remunera-
723 tion in excess of three thousand six hundred dollars, or
724 (c) effective on or after the first day of January, one
725 thousand nine hundred seventy-two, to include remun-
726 eration in excess of four thousand two hundred dollars,
727 or (d) effective on or after the first day of January, one
728 thousand nine hundred seventy-eight, to include remun-
729 eration in excess of six thousand dollars, or (e) effective
730 on or after the first day of January, one thousand nine
731 hundred eighty, to include remuneration in excess of
732 eight thousand dollars, paid to an individual by an
733 employer under the Federal Unemployment Tax Act
734 during any calendar year, wages for the purposes of this
735 definition shall include remuneration paid in a calendar
736 year to an individual by an employer subject to this
737 article or his predecessor with respect to employment
738 during any calendar year up to an amount equal to the
739 amount of remuneration taxable under the Federal
740 Unemployment Tax Act;

741 (2) The amount of any payment made after the thirty-
742 first day of December, one thousand nine hundred fifty-
743 two (including any amount paid by an employer for
744 insurance or annuities, or into a fund, to provide for any
745 such payment), to, or on behalf of, an individual in its
746 employ or any of his dependents, under a plan or system
747 established by an employer which makes provision for
748 individuals in its employ generally (or for such individ-
749 uals and their dependents), or for a class or classes of
750 such individuals (or for a class or classes of such
751 individuals and their dependents), on account of (A)
752 retirement, or (B) sickness or accident disability
753 payments made to an employee under an approved state
754 workers' compensation law, or (C) medical or hospital-

755 ization expenses in connection with sickness or accident
756 disability; or (D) death;

757 (3) Any payment made after the thirty-first day of
758 December, one thousand nine hundred fifty-two, by an
759 employer to an individual in its employ (including any
760 amount paid by an employer for insurance or annuities,
761 or into a fund, to provide for any such payment) on
762 account of retirement;

763 (4) Any payment made after the thirty-first day of
764 December, one thousand nine hundred fifty-two, by an
765 employer on account of sickness or accident disability,
766 or medical or hospitalization expenses in connection
767 with sickness or accident disability, to, or on behalf of,
768 an individual in its employ after the expiration of six
769 calendar months following the last calendar month in
770 which such individual worked for such employer;

771 (5) Any payment made after the thirty-first day of
772 December, one thousand nine hundred fifty-two, by an
773 employer to, or on behalf of, an individual in its employ
774 or his beneficiary (A) from or to a trust described in
775 section 401 (a) which is exempt from tax under section
776 501 (a) of the Federal Internal Revenue Code at the time
777 of such payments unless such payment is made to such
778 individual as an employee of the trust as remuneration
779 for services rendered by such individual and not as a
780 beneficiary of the trust or (B) under or to an annuity
781 plan which, at the time of such payment, is a plan
782 described in section 403 (a) of the Federal Internal
783 Revenue Code;

784 (6) The payment by an employer of the tax imposed
785 upon an employer under section 3101 of the Federal
786 Internal Revenue Code with respect to remuneration
787 paid to an employee for domestic service in a private
788 home or the employer of agricultural labor;

789 (7) Remuneration paid by an employer after the
790 thirty-first day of December, one thousand nine hundred
791 fifty-two, in any medium other than cash to an individ-
792 ual in its employ for service not in the course of the
793 employer's trade or business;

794 (8) Any payment (other than vacation or sick pay)
795 made by an employer after the thirty-first day of
796 December, one thousand nine hundred fifty-two, to an
797 individual in its employ after the month in which he
798 attains the age of sixty-five, if he did not work for the
799 employer in the period for which such payment is made;

800 (9) Payments, not required under any contract of hire,
801 made to an individual with respect to his period of
802 training or service in the armed forces of the United
803 States by an employer by which such individual was
804 formerly employed; and

805 (10) Vacation pay, severance pay or savings plans
806 received by an individual before or after becoming
807 totally or partially unemployed but earned prior to
808 becoming totally or partially unemployed: *Provided*,
809 That the term totally or partially unemployed shall not
810 be interpreted to include: (A) Employees who are on
811 vacation by reason of the request of the employees or
812 their duly authorized agent, for a vacation at a specific
813 time, and which request by the employees or their agent
814 is acceded to by their employer; (B) employees who are
815 on vacation by reason of the employer's request provided
816 they are so informed at least ninety days prior to such
817 vacation; or (C) employees who are on vacation by reason
818 of the employer's request where such vacation is in
819 addition to the regular vacation and the employer
820 compensates such employee at a rate equal to or
821 exceeding their regular daily rate of pay during the
822 vacation period.

823 The reasonable cash value of remuneration in any
824 medium other than cash shall be estimated and deter-
825 mined in accordance with rules prescribed by the
826 commissioner, except for remuneration other than cash
827 for services performed in agricultural labor and
828 domestic service.

829 "Week" means a calendar week, ending at midnight
830 Saturday, or the equivalent thereof, as determined in
831 accordance with the regulations prescribed by the
832 commissioner.

833 "Weekly benefit rate" means the maximum amount of

834 benefit an eligible individual will receive for one week
835 of total unemployment.

836 "Year" means a calendar year or the equivalent
837 thereof, as determined by the commissioner.

**§21A-1-4. Bureau of employment programs created;
division; "bureau" defined.**

1 There is created an agency designated as the bureau
2 of employment programs, composed of a division of
3 unemployment compensation, a division of employment
4 service, a division of job training programs, a division
5 of workers' compensation, and such other divisions or
6 units as the commissioner determines to be necessary.

7 Wherever, within this chapter, or in chapter twenty-
8 three of this code, the term "department", "bureau",
9 "fund" or "workers' compensation fund" is used, it shall
10 be taken to mean bureau of employment programs.

11 Notwithstanding the provisions of subsection (d) (11)
12 and subsection (d) (12), section one, article two, chapter
13 five-f of this code, the division of employment security
14 and the division of workers' compensation programs are
15 hereby consolidated in an agency designated as the
16 bureau of employment programs, which bureau shall be
17 administered as part of the department of commerce,
18 labor and environmental resources created pursuant to
19 subsection (b), section one, article two, chapter five-f of
20 this code.

§21A-1-5. Federal-state cooperation.

1 The bureau shall cooperate with the United States
2 department of labor, similar agencies of the several
3 states, and such other agencies as are concerned with
4 the problem of employment security and public assist-
5 ance and relief.

§21A-1-6. Employment stabilization.

1 The bureau, through the commissioner and the
2 advisory council, shall take all steps to:

3 (1) Reduce and prevent unemployment.

4 (2) Encourage and assist in the adoption of practical

5 methods of vocational training and guidance.

6 (3) Encourage the establishment by the state and local
7 subdivisions of public works reserves to finance con-
8 struction programs in times of unemployment.

9 (4) Promote reemployment and employment readjust-
10 ment between industries.

11 (5) Conduct researches and investigations toward
12 these ends and publish the results.

**§21A-1-7. State public employment agency to become
state employment service division.**

1 The "state public employment agency" now main-
2 tained in the department of labor shall be transferred
3 on the first day of January, one thousand nine hundred
4 thirty-seven, and shall be made the state employment
5 service division of the bureau of employment programs.

**ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EM-
PLOYMENT PROGRAMS.**

§21A-2-1. Appointment; term of office.

§21A-2-5. Compensation; traveling expenses.

§21A-2-6. Powers and duties generally.

§21A-2-6b. Commissioner to be furnished information by state tax commis-
sioner; secrecy of information; violation a misdemeanor.

§21A-2-8. Assistants and employees.

§21A-2-11. Dismissals, terminations, layoffs and suspensions.

§21A-2-13. Deputies.

§21A-2-16. Federal-state cooperation.

§21A-2-16a. Work incentive program.

§21A-2-23. Veteran's training program.

§21A-2-1. Appointment; term of office.

1 The bureau shall be under the supervision of a
2 commissioner of the bureau of employment programs.
3 The commissioner shall be appointed by the governor,
4 by and with the advice and consent of the Senate, and
5 shall hold his office subject to the will and pleasure of
6 the governor.

§21A-2-5. Compensation; traveling expenses.

1 Notwithstanding the provisions of section two-a,
2 article seven, chapter six of this code, the commissioner
3 of the bureau of employment programs shall receive a

4 yearly salary of sixty-five thousand dollars and the
5 necessary traveling expenses incident to the perform-
6 ance of his duties. Requisition for traveling expenses
7 shall be accompanied by a sworn itemized statement
8 which shall be filed with the auditor and preserved as
9 a public record.

§21A-2-6. Powers and duties generally.

1 The commissioner shall be the executive and adminis-
2 trative head of the bureau and shall have the power and
3 duty to:

4 (1) Exercise general supervision of and make regula-
5 tions for the government of the bureau;

6 (2) Prescribe uniform rules pertaining to investiga-
7 tions, departmental hearings, and promulgate rules and
8 regulations;

9 (3) Supervise fiscal affairs and responsibilities of the
10 bureau;

11 (4) Prescribe the qualifications of, appoint, remove,
12 and fix the compensation of the officers and employees
13 of the bureau, subject to the provisions of section ten,
14 article four of this chapter, relating to the board of
15 review;

16 (5) Organize and administer the bureau so as to
17 comply with the requirements of this chapter and
18 chapter twenty-three of this code and to satisfy any
19 conditions established in applicable federal legislation;

20 (6) Make reports in such form and containing such
21 information as the United States department of labor
22 may from time to time require, and comply with such
23 provisions as the United States department of labor may
24 from time to time find necessary to assure the correct-
25 ness and verification of such reports;

26 (7) Make available to any agency of the United States
27 charged with the administration of public works or
28 assistance through public employment, upon its request,
29 the name, address, ordinary occupation and employment
30 status of each recipient of unemployment compensation,
31 and a statement of the recipient's rights to further

- 32 compensation under this chapter;
- 33 (8) Keep an accurate and complete record of all
34 bureau proceedings; record and file all bonds and
35 contracts and assume responsibility for the custody and
36 preservation of all papers and documents of the bureau;
- 37 (9) Sign and execute in the name of the state, by "The
38 Bureau of Employment Programs", any contract or
39 agreement with the federal government, its agencies,
40 other states, their subdivisions, or private persons;
- 41 (10) Prescribe a salary scale to govern compensation
42 of appointees and employees of the bureau;
- 43 (11) Make the original determination of right in
44 claims for benefits;
- 45 (12) Make recommendations and an annual report to
46 the governor concerning the condition, operation, and
47 functioning of the bureau;
- 48 (13) Invoke any legal or special remedy for the
49 enforcement of orders or the provisions of this chapter
50 and chapter twenty-three of this code;
- 51 (14) Exercise any other power necessary to standard-
52 ize administration, expedite bureau business, assure the
53 establishment of fair rules and regulations and promote
54 the efficiency of the service; and
- 55 (15) Keep an accurate and complete record and
56 prepare a monthly report of the number of persons
57 employed and unemployed in the state, which report
58 shall be made available upon request to members of the
59 public and press.

**§21A-2-6b. Commissioner to be furnished information by
state tax commissioner; secrecy of informa-
tion; violation a misdemeanor.**

- 1 (a) Notwithstanding the provisions of any other statute
2 in this code, specifically, but not exclusively, section five,
3 article ten, chapter eleven of this code, the state tax
4 commissioner shall deliver to the commissioner of the
5 bureau of employment programs the following informa-
6 tion: The names, addresses and other identifying

7 information of all business receiving a business fran-
8 chise registration certificate.

9 (b) All information acquired by the bureau of employ-
10 ment programs commissioner pursuant to subsection (a)
11 of this section shall be used to implement and admin-
12 ister a single point of registration program as created
13 in section seven, article twelve, chapter eleven of this
14 code. The commissioner of the bureau of employment
15 programs, upon receiving the business franchise certif-
16 icate information made available pursuant to subsection
17 (a) of this section, shall contact all businesses receiving
18 a business franchise registration certificate and provide
19 all necessary forms to register the business under the
20 provisions of article five of this chapter.

21 (c) Any officer or employee of this state who uses the
22 aforementioned information in any manner other than
23 the one stated herein or authorized elsewhere in this
24 code or who divulges or makes known in any manner
25 any of the aforementioned information shall be guilty of
26 a misdemeanor, and, upon conviction thereof, shall be
27 fined not more than one thousand dollars or imprisoned
28 in the county jail for not more than one year, or both,
29 together with cost of prosecution.

30 (d) Reasonable cost of compilation and production of
31 any information made available pursuant to subsection
32 (a) of this section shall be charged to the bureau of
33 employment programs.

34 (e) Information acquired by the bureau of employment
35 programs commissioner pursuant to subsection (a) of
36 this section shall not be subject to disclosure under the
37 provisions of chapter twenty-nine-b of this code.

§21A-2-8. Assistants and employees.

1 The commissioner shall appoint, upon a nonpartisan
2 merit basis, the division and unit heads and such
3 assistants and employees as may be necessary to the
4 efficient operation of the bureau. He shall fix their
5 compensation in accordance with the provisions of
6 article six, chapter twenty-nine of this code.

§21A-2-11. Dismissals, terminations, layoffs and suspensions.

1 The commissioner shall establish regulations govern-
2 ing dismissals, terminations, layoffs and suspensions.
3 Severance of employees' relationship with the bureau
4 shall be in accordance with these regulations. All
5 severances shall be for good cause. Failure to maintain
6 technical or professional qualifications shall be a good
7 cause for severance.

§21A-2-13. Deputies.

1 For the original determination of claims under this
2 chapter and chapter twenty-three of this code the
3 commissioner shall appoint a necessary number of
4 deputies as his representatives.

§21A-2-16. Federal-state cooperation.

1 The commissioner shall have all powers and duties
2 necessary to secure to the state the benefits of congres-
3 sional action for the promotion and maintenance of a
4 system of public employment offices. To this end the
5 provisions of the act referred to in the preceding section
6 and such additional congressional action consistent with
7 the above act are accepted by the state and the state
8 pledges its observance and compliance therewith.

9 The bureau of employment programs, by its commis-
10 sioner, is designated the agent of this state for the
11 purpose of compliance with the act of Congress entitled
12 "An act to provide for the establishment of a national
13 employment system and for cooperation with states in
14 the promotion of such systems, and for other purposes,"
15 approved the sixth day of June, one thousand nine
16 hundred thirty-three, as amended: *Provided*, That the
17 functions formerly performed by the advisory council
18 under article three of this chapter, which advisory
19 council was required under the provisions of section
20 eleven of the Wagner-Peyser Act, shall be performed by
21 the state job training coordinating council in accordance
22 with section 122 (c) of the Job Training Partnership Act.

23 The bureau of employment programs, by its commis-
24 sioner, is designated the agent of this state for the
25 purpose of compliance with the act of Congress entitled

26 "An act to provide for a job training program, and for
27 other purposes," enacted the eighteenth day of October,
28 one thousand nine hundred eighty-two, as amended.

29 The bureau of employment programs, by its commis-
30 sioner, is designated the agent of this state for the
31 purpose of complying with and administering sections
32 sixteen and seventeen of an act of Congress entitled "An
33 act to extend and improve the unemployment compen-
34 sation program," approved the first day of September,
35 one thousand nine hundred fifty-four.

36 The bureau of employment programs, by its commis-
37 sioner, is designated the agent of this state for the
38 purpose of complying with and administering an act of
39 Congress entitled "An act to amend Title XV of the
40 Social Security Act to extend the unemployment
41 insurance system to exservicemen, and for other
42 purposes," approved the twenty-eighth day of August,
43 one thousand nine hundred fifty-eight.

44 The bureau of employment programs, by its commis-
45 sioner, is designated the agent of this state for the
46 purpose of complying with and administering an act of
47 Congress entitled "An act relating to manpower require-
48 ments, resources, development, and utilization, and for
49 other purposes," approved the fifteenth day of March,
50 one thousand nine hundred sixty-two.

51 The bureau of employment programs, by its commis-
52 sioner, is designated the agent of this state for the
53 purpose of complying with and administering an act of
54 Congress entitled "An act to establish an effective
55 program to alleviate conditions of substantial and
56 persistent unemployment and under employment in
57 certain economically distressed areas," approved the
58 first day of May, one thousand nine hundred sixty-one.

59 The bureau of employment programs, by its commis-
60 sioner, is designated the agent of this state for the
61 purpose of complying with and administering chapter
62 three of Title III of an act of Congress entitled "An act
63 to promote the general welfare, foreign policy, and
64 security of the United States through international
65 trade agreements and through adjustment assistance to

66 domestic industry, agriculture, and labor, and for other
67 purposes," approved the eleventh day of October, one
68 thousand nine hundred sixty-two.

69 The bureau of employment programs, by its commis-
70 sioner, is designated the agent of this state for the
71 purpose of complying with and administering an act of
72 Congress entitled "An act to provide for the establish-
73 ment of a temporary program of extended unemploy-
74 ment compensation, to provide for a temporary increase
75 in the rate of the federal unemployment tax, and for
76 other purposes," approved the third day of January, one
77 thousand nine hundred sixty-one.

78 The bureau of employment programs, by its commis-
79 sioner, is also designated the agent of this state for the
80 purpose of complying with and administering other
81 programs of the United States government such as the
82 foregoing.

83 The commissioner of the bureau of employment
84 programs is designated as the officer of this state for
85 the purpose of complying with and administering the
86 tasks assigned to the bureau of employment programs
87 pursuant to section six, article two-b, chapter eighteen
88 of this code relating to the area vocational educational
89 program of this state.

90 The commissioner is also authorized to apply for an
91 advance to the unemployment compensation fund in
92 accordance with the conditions specified in Title XII of
93 the "Social Security Act," as amended, in order to secure
94 to this state and its citizens the advantages available
95 under the provisions of that title.

96 In the administration of this chapter the commissioner
97 shall cooperate with the United States department of
98 labor to the fullest extent consistent with the provisions
99 of this chapter, and shall take such action through the
100 adoption of appropriate rules, regulations, administra-
101 tive methods and standards, as may be necessary to
102 secure to this state and its citizens all advantages
103 available under the provisions of the "Social Security
104 Act" which relate to unemployment compensation, the
105 "Federal Unemployment Tax Act," the "Wagner-Peyser

106 Act,” and the “Federal-State Extended Unemployment
107 Compensation Act of 1970.”

108 In the administration of the provisions in article six-
109 a of this chapter, which are enacted to conform with the
110 requirements of the “Federal-State Extended Unem-
111 ployment Compensation Act of 1970,” the commissioner
112 shall take such action as may be necessary (i) to ensure
113 that the provisions are so interpreted and applied as to
114 meet the requirements of such federal act, and (ii) to
115 secure this state the full reimbursement of the federal
116 share of extended and regular benefits paid under this
117 chapter which are reimbursable under said federal act.

§21A-2-16a. Work incentive program.

1 The bureau of employment programs, by its commis-
2 sioner, is hereby designated the sponsor or agent of the
3 United States department of labor for the establishment
4 and operation within the state of West Virginia of the
5 work incentive program for recipients of aid under Part
6 A of Title IV of the Social Security Act. Such work
7 incentive program is provided for in Part C of said Title
8 IV of said Social Security Act. Part C was enacted by
9 the Ninetieth Congress in Social Security Amendments
10 of 1967, Public Law 90-248, under Section 204 thereof.

11 The commissioner, on behalf of the bureau, may do
12 any and all acts necessary to establish and operate such
13 work incentive program within the state of West
14 Virginia.

15 The commissioner is hereby empowered and author-
16 ized to enter into agreements with the secretary of labor,
17 or his designee, for the purpose of establishing and
18 operating said work incentive program, or any part
19 thereof, within the state of West Virginia.

§21A-2-23. Veteran’s training program.

1 (1) The bureau of employment programs, by its
2 commissioner, is hereby authorized and empowered to
3 establish a training program for qualified veteran
4 medical personnel and former military medical corps-
5 men under the “medex” training program for the
6 training of medical assistants or any similar program.

7 (2) The commissioner, on behalf of the bureau, may
8 do any and all acts necessary to establish and operate
9 such training program within the state of West
10 Virginia.

11 (3) The commissioner is hereby empowered and
12 authorized to receive funds to finance such program
13 from agencies of the United States government, includ-
14 ing the department of labor, the veterans administration
15 and the department of health, education and welfare,
16 and from other appropriate fund sources.

17 (4) In order to assist in the administration of this
18 program, the commissioner shall appoint an advisory
19 committee consisting of not more than nine members
20 which members shall be qualified medical professionals
21 and shall consist of representatives of state medical
22 departments and the state medical association. This
23 committee shall be advisory to the commissioner and
24 shall determine general guidelines for the development
25 and promotion of the program.

26 (5) The trainee under this program shall work under
27 the supervision of a licensed physician for a period of
28 one year and shall receive an appropriate training
29 allowance.

ARTICLE 2A. EMERGENCY EMPLOYMENT SUPPLEMENTAL MATCHING PROGRAM.

§21A-2A-2. Definitions.

§21A-2A-4. Notice to private business employers; applications for prospective employers.

§21A-2A-2. Definitions.

1 For the purposes of this article the following terms
2 shall have the following meanings, unless the context in
3 which they are used clearly indicates otherwise:

4 (1) "Commissioner" means the commissioner of the
5 bureau of employment programs.

6 (2) "Private business" means any nongovernmental
7 business or industry in the private sector which
8 maintains an active, bona fide place of business in this
9 state, is duly qualified to do business in the state, and

10 is in good standing under the laws of this state.

11 (3) "Eligible unemployed person" means any person
12 who is a bona fide resident of this state who has been
13 eligible for unemployment compensation benefits and
14 has received all the benefits available to him or her, and
15 who is not gainfully employed.

16 (4) "Head of household" means any person who: (A)
17 Claims one or more persons, other than the filing
18 taxpayer, as a dependent on his or her federal income
19 tax return; (B) has living in the same household one or
20 more dependents; and (C) receives no income from the
21 household and does not have a spouse or dependent
22 living in the same household who is employed in regular
23 full-time employment: *Provided*, That participation in
24 any public assistance program or receipt of public
25 assistance benefits shall not disqualify any person from
26 entitlement to head of household status.

**§21A-2A-4. Notice to private business employers; applica-
tions for prospective employers.**

1 The commissioner, within fifteen days after the
2 effective date of legislation appropriating funds for the
3 implementation of this article, shall publish statewide a
4 notice to private business employers of the opportunity
5 to employ eligible unemployed persons as provided for
6 under this article.

7 Any private business, as defined in section two of this
8 article, seeking to employ eligible unemployed persons
9 may make application at any local job service office on
10 forms to be supplied by the commissioner. Such forms
11 shall provide space for a listing of the nature of the
12 employment position available and the minimum
13 experience, skills and educational requirements there-
14 for. The form shall also provide space for an affidavit
15 by the employer that the employment position to be
16 filled is not being used in lieu of the recall of laid-off
17 workers, to replace existing employees or to supplement
18 the compensation paid existing employees. This affidavit
19 shall also contain a statement by the private business
20 employer that there is a reasonable expectation that this
21 employment may continue beyond the end of the six-

22 month reimbursement period provided for under this
23 article. At each job service office of the bureau of
24 employment programs, the commissioner shall cause to
25 be compiled a list of job openings under this program.
26 The list shall be available for inspection by any eligible
27 unemployed person applying for employment here-
28 under. The commissioner is authorized to require, prior
29 to approval of an application by an employer, examina-
30 tion of such records and documents of the employer as
31 the commissioner may consider necessary to ensure the
32 correctness and truthfulness of the employer's affidavit.

ARTICLE 2B. GROUP INSURANCE PLANS FOR REGULAR EMPLOYEES.

§21A-2B-1. Inaugurating group insurance plans.

§21A-2B-2. Acceptance of grants from United States department of labor, bureau of employment security; state not to pay premiums.

§21A-2B-4. Payroll deductions; employee continuing in group after retirement.

§21A-2B-1. Inaugurating group insurance plans.

1 The commissioner of the bureau of employment
2 programs is hereby authorized and empowered to
3 negotiate for, secure and adopt for the regular em-
4 ployees thereof (other than provisional, temporary,
5 emergency, and intermittent employees) who are in
6 employee status with the bureau of employment pro-
7 grams on and after effective date of this article, a policy
8 or policies of group insurance written by a carrier or
9 carriers chartered under the laws of any state and duly
10 licensed to do business in this state and covering life;
11 health; hospital care; surgical or medical diagnosis,
12 care, and treatment; drugs and medicines; remedial
13 care; other medical supplies and services; or any other
14 combination of these; and any other policy or policies of
15 group insurance which in the discretion of the commis-
16 sioner bear a reasonable relationship to the foregoing
17 coverages; but subject to the terms and conditions of this
18 article.

§21A-2B-2. **Acceptance of grants from United States department of labor, bureau of employment security; state not to pay premiums.**

1 The group insurance plans so authorized to be
2 established shall be subject to the following terms and
3 conditions:

4 The commissioner is hereby authorized and empow-
5 ered to accept on behalf of the regular employees of the
6 bureau of employment programs, who in writing agree
7 to participate in any plan of group insurance, granted
8 funds provided by the United States department of
9 labor, bureau of employment security, to pay the
10 agency's share of the premium cost of said group policy
11 or policies. The state of West Virginia shall not pay, or
12 be liable for the payment of, any portion of said
13 premiums for such group insurance.

**§21A-2B-4. Payroll deductions; employee continuing in
group after retirement.**

1 (a) Whenever the above-described regular employees
2 shall indicate in writing that they have subscribed to
3 any of the aforesaid insurance plans on a group basis,
4 the commissioner of the bureau of employment pro-
5 grams is hereby authorized and empowered to approve
6 periodic premium deductions from the salary payments
7 due such employees as specified in a written assignment
8 furnished the commissioner by each such employee
9 subscribing to a group insurance plan, which deductions
10 shall be made by the auditor of the state of West
11 Virginia.

12 (b) Upon proper requisition of the commissioner, the
13 auditor shall periodically issue a warrant payable as
14 specified in the requisition, for the total deductions from
15 the salaries of employees participating in any such
16 group insurance plan. To promote efficiency and
17 economy in making deductions and issuing warrants as
18 provided herein, the auditor is authorized to promulgate
19 rules and regulations specifying the form and the time
20 and manner of presentation of requisitions issued
21 pursuant to this section.

22 (c) When a participating employee shall retire from
23 his employment, he may, if he so elects and the
24 insurance carrier or carriers agree, remain a member
25 of the group plan by paying the entire premium for the

26 coverage involved.

ARTICLE 2C. VETERANS INCENTIVE PROGRAM.

***§21A-2C-6. Program administration.**

1 The program established by this article shall be
2 conducted primarily under the direction of the division
3 of employment service of the bureau of employment
4 programs. Each veteran who qualifies under this article
5 for participation in this program shall be given, upon
6 request, a voucher from a local employment service
7 office certifying that the veteran is eligible for partic-
8 ipation in the program described in this article. The
9 voucher shall be in a form prescribed by the commis-
10 sioner of the bureau of employment programs and the
11 commissioner may conduct such investigations and
12 collect such data as he considers necessary to ensure that
13 each veteran applying for the voucher is actually
14 qualified for participation in the program.

15 When an employer employs a veteran who presents
16 the voucher herein provided for, the employer shall
17 submit the voucher along with basic information to the
18 bureau of employment programs as may be required for
19 participation in this program. Each year, the commis-
20 sioner of the bureau of employment programs shall
21 certify to the state tax commissioner a list of employers
22 who may be qualified to receive a tax credit under this
23 program. In order to receive the appropriate tax credit,
24 an employer must file for the tax credit provided for
25 under this article as required by section forty-two,
26 article twenty-one, chapter eleven of this code or by
27 section twelve, article twenty-four, chapter eleven of this
28 code.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-10a. Optional assessments on employers and employees.

§21A-5-16. Collection of payments.

§21A-5-17b. Comity in collection of past-due payments and overpayments.

§21A-5-10a. Optional assessments on employers and employees.

1 (a) On and after the first day of July, one thousand
2 nine hundred eighty-seven, if the commissioner deter-

*Clerk's Note: This section was also amended by H.B. 2834 (Chapter 170), which passed subsequent to this act.

3 mines for a given projected quarter that the rates
4 established under the provisions of section ten of this
5 article will not result in payments being made to the
6 unemployment compensation fund in an amount suffi-
7 cient to finance the payment of benefits during such
8 quarter, the commissioner shall certify such fact to the
9 governor, and the governor shall, by executive order,
10 direct the commissioner to establish a level of assess-
11 ment for employees and employers in accordance with
12 the provisions of this section which is sufficient to
13 prevent, to the extent possible, a deficit in the funds
14 available to pay benefits to eligible individuals.

15 (b) Pursuant to such executive order, every employer,
16 contributing and reimbursable, subject to this chapter,
17 shall be required to withhold from all persons in his
18 employment an assessment which shall be in an amount
19 not to exceed fifteen one hundredths (15/100) of one
20 percent of an employee's gross wages, which amount,
21 together with an assessment contributed by the em-
22 ployer in an amount as determined in accordance with
23 the provisions of subsection (c) of this section, except for
24 reimbursable employers who shall not be assessed, shall
25 be paid to the bureau of employment programs on a
26 form prescribed by the commissioner, at the same time
27 and under the same conditions as the quarterly contri-
28 bution payments required under the provisions of
29 section seven, article five, chapter twenty-one-a of this
30 code. The commissioner shall have the right to collect
31 any delinquent assessments under this section in the
32 same manner as provided for in section sixteen, article
33 five, chapter twenty-one-a of this code; and in addition,
34 any delinquency hereunder shall bear interest as set
35 forth in section seventeen, article five, chapter twenty-
36 one-a of this code.

37 (c) The commissioner shall establish the exact
38 amounts of the employers' and employees' assessments
39 at a level sufficient to generate the revenues needed to
40 prevent a deficit which would otherwise result from the
41 payment of benefits to eligible individuals, subject only
42 to the limitation established in the preceding subsection
43 (b) of this section. After determining the level of

44 assessment on the gross wages of employees, the
45 commissioner shall determine a rate of assessment to be
46 imposed upon employers, except reimbursable employ-
47 ers, which rate shall be expressed as a percentage of
48 wages as defined in section three, article one of this
49 chapter, and which is sufficient to cause the total
50 statewide assessment on such employers to equal the
51 total statewide assessment imposed upon employees.

52 Notwithstanding any other provision of this section to
53 the contrary, the solvency assessments on employers and
54 employees established by this section hereby terminate
55 on the first day of April, one thousand nine hundred
56 ninety.

§21A-5-16. Collection of payments.

1 (1) The commissioner in the name of the state shall
2 commence a civil action against an employer who, after
3 due notice, defaults in any payment or interest thereon.
4 If judgment is against the employer he shall pay the
5 costs of the action. Civil actions under this section shall
6 be given preference on the calendar of the court over
7 all other civil actions except petitions for judicial review
8 under article seven of this chapter and cases arising
9 under the workers' compensation law.

10 (2) A payment and interest thereon due and unpaid
11 under this chapter shall be a debt due the state in favor
12 of the commissioner. It shall be a personal obligation of
13 the employer and shall, in addition thereto, be a lien,
14 enforceable by suit in equity, upon all the property of
15 the employer: *Provided*, That no such lien shall be
16 enforceable as against a purchaser (including lien
17 creditor) of real estate or personal property for a
18 valuable consideration, without notice, unless docketed
19 as provided in chapter ninety-nine, acts of the Legisla-
20 ture, regular session, one thousand nine hundred forty-
21 three.

22 (3) In addition to all other civil remedies prescribed
23 herein the commissioner may in the name of the state
24 distraint upon any personal property, including intan-
25 gibles, of any employer delinquent for any payment and
26 interest thereon. If the commissioner has good reason to

27 believe that such property or a substantial portion
28 thereof is about to be removed from the county in which
29 it is situated, he may likewise distrain in the name of
30 the state before such delinquency occurs. For such
31 purpose, the commissioner may require the services of
32 a sheriff of any county in the state in levying such
33 distress in the county in which such sheriff is an officer
34 and in which such personal property is situated. A
35 sheriff so collecting any payments and interest thereon
36 shall be entitled to such compensation as is provided by
37 law for his services in the levy and enforcement of
38 executions.

39 (4) In case a business subject to the payments and
40 interest thereon imposed under this chapter shall be
41 operated in connection with a receivership or insolvency
42 proceeding in any state court in this state, the court
43 under whose direction such business is operated shall,
44 by the entry of a proper order or decree in the cause,
45 make provision, so far as the assets in administration
46 will permit, for the regular payment of such payments
47 as the same become due.

48 (5) The secretary of state of this state shall withhold
49 the issuance of any certificate of dissolution or with-
50 drawal in the case of any corporation organized under
51 the laws of this state, or organized under the laws of
52 another state and admitted to do business in this state,
53 until notified by the commissioner that all payments and
54 interest thereon against any such corporation which is
55 an employer under this chapter have been paid or that
56 provision satisfactory to the commissioner has been
57 made for payment.

58 (6) In any case where an employer defaults in
59 payments, or interest thereon, for as many as two
60 calendar quarters, which quarters need not be consec-
61 utive, and remains delinquent after due notice, and the
62 commissioner has been unable to collect such payments
63 by any of the other civil remedies prescribed herein, the
64 commissioner may bring action in the circuit court of
65 Kanawha county to enjoin such employer from contin-
66 uing to carry on the business in which such liability was
67 incurred: *Provided*, That the commissioner may as an

68 alternative to this action require such delinquent
69 employer to file a bond in the form prescribed by the
70 commissioner with satisfactory surety in an amount not
71 less than fifty percent more than the tax due.

72 (7) All state, county, district and municipal officers
73 and agents making contracts on behalf of the state of
74 West Virginia or any political subdivision thereof shall
75 withhold payment in the final settlement of such
76 contracts until the receipt of a certificate from the
77 commissioner to the effect that all payments and
78 interest thereon accrued against the contractor under
79 this chapter have been paid or that provisions satisfac-
80 tory to the commissioner have been made for payment.
81 Any official violating this section shall be guilty of a
82 misdemeanor, and, on conviction thereof, shall be fined
83 not more than one thousand dollars or imprisoned not
84 exceeding one year in the county jail, or shall be subject
85 to both such fine and imprisonment, in the discretion of
86 the court.

**§21A-5-17b. Comity in collection of past-due payments
and overpayments.**

1 The courts of this state shall recognize and enforce
2 liabilities for unemployment contributions imposed by
3 other states which extend a like comity to this state. The
4 commissioner in the name of this state is hereby
5 empowered to sue in the courts of any other jurisdiction
6 which extends such comity, to collect unemployment
7 contributions and interest due this state. The officials of
8 other states which by statute or otherwise extend a like
9 comity to this state may sue in the courts of this state,
10 to collect for such contributions and interest and
11 penalties if any, due such state; in any such case the
12 commissioner of the bureau of employment programs of
13 this state may through his legal assistant or assistants
14 institute and conduct such suit for such other state.

15 Notwithstanding any other provisions of this chapter,
16 the commissioner may recover an overpayment of
17 benefits paid to any individual under this state or
18 another state law or under an unemployment benefit
19 program of the United States.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.**§21A-6-9. Place of payment.**

1 Benefits shall be paid through employment offices or,
2 if the commissioner by rules so prescribes, through the
3 bureau of employment programs' offices, in accordance
4 with such regulations as the commissioner shall pre-
5 scribe.

ARTICLE 7. CLAIM PROCEDURE.**§21A-7-23. Trial; preference on calendar.**

1 Except as limited by section twenty-one of this article,
2 a decision of the board taken to the circuit court of
3 Kanawha county for judicial review shall be tried as any
4 other civil action: *Provided*, That such actions shall have
5 preference on the calendar of the court over all other
6 civil actions, except cases arising under the workers'
7 compensation law.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-11. Requiring information; use of information; libel and slander actions prohibited.

§21A-10-19. Disclosure of information to child support agencies.

§21A-10-20. Disclosure of information to food stamp agencies.

§21A-10-22. Disclosure of information to department of housing and urban development.

§21A-10-11. Requiring information; use of information; libel and slander actions prohibited.

1 (a) The commissioner may require an employing unit
2 to provide sworn or unsworn reports concerning:

3 (1) The number of individuals in its employ.

4 (2) Individually their hours of labor.

5 (3) Individually the rate and amount of wages.

6 (4) Such other information as is reasonably connected
7 with the administration of this chapter.

8 (b) Information thus obtained shall not be published
9 or be open to public inspection so as to reveal the
10 identity of the employing unit or the individual.

11 (c) Notwithstanding the provisions of subsection (b) of

12 this section, the commissioner may provide information
13 thus obtained to the following governmental entities for
14 purposes consistent with state and federal laws:

15 (1) The United States department of agriculture;

16 (2) The state agency responsible for enforcement of the
17 medicaid program under Title XIX of the Social
18 Security Act;

19 (3) The United States department of health and
20 human services or any state or federal program
21 operating and approved under Title I, Title II, Title X,
22 Title XIV or Title XVI of the Social Security Act;

23 (4) Those agencies of state government responsible for
24 economic and community development; secondary, post-
25 secondary and vocational education; vocational rehabil-
26 itation, employment and training, including, but not
27 limited to, the administration of the perkins act and the
28 job training and partnership act;

29 (5) The tax division, but only for the purposes of
30 collection and enforcement;

31 (6) The division of labor for purposes of enforcing the
32 wage bond provisions of chapter twenty-one of this code;

33 (7) Any agency of this or any other state, or any
34 federal agency, charged with the administration of an
35 unemployment compensation law or the maintenance of
36 a system of public employment offices;

37 (8) Any claimant for benefits or any other interested
38 party to the extent necessary for the proper presentation
39 or defense of a claim; and

40 (9) The division of workers' compensation for purposes
41 of collection and enforcement: *Provided*, That the
42 division of workers' compensation shall provide similar
43 information to the other divisions of the bureau of
44 employment programs.

45 (d) The agencies or organizations which receive
46 information under subsection (c) shall agree that such
47 information shall remain confidential so as not to reveal
48 the identity of the employing unit or the individual

49 consistent with the provisions of this chapter.

50 (e) The commissioner may, before furnishing any
51 information permitted under this section, require that
52 those who request the information shall reimburse the
53 division of employment security for any cost associated
54 therewith.

55 (f) The commissioner may refuse to provide any
56 information requested under this section if the agency
57 or organization making the request does not certify that
58 it will comply with the state and federal law protecting
59 the confidentiality of such information.

60 A person who violates the provisions of this section
61 shall be guilty of a misdemeanor, and, upon conviction
62 thereof, shall be fined not less than twenty dollars nor
63 more than two hundred dollars, or imprisoned not
64 longer than ninety days, or both.

65 No action for slander or libel, either criminal or civil,
66 shall be predicated upon information furnished by any
67 employer or any employee to the commissioner in
68 connection with the administration of any of the
69 provisions of this chapter.

§21A-10-19. Disclosure of information to child support agencies.

1 (1) The bureau of employment programs shall dis-
2 close, upon request, to officers or employees of any state
3 or local child support enforcement agency, to employees
4 of the secretary of health and human services, any wage
5 and benefit information with respect to an identified
6 individual which is contained in its records.

7 The term "state or local child support enforcement
8 agency" means any agency of a state or political
9 subdivision thereof operating pursuant to a plan
10 described in sections 453 and 454 of the Social Security
11 Act, which has been approved by the secretary of health
12 and human services under Part D, Title IV of the Social
13 Security Act.

14 (2) The requesting agency shall agree that such
15 information is to be used only for the purpose of

16 establishing and collecting child support obligations
17 from, and locating, individuals owing such obligations
18 which are being enforced pursuant to a plan described
19 in sections 453 and 454 of the Social Security Act which
20 has been approved by the secretary of health and human
21 services under Part D, Title IV of the Social Security
22 Act.

23 (3) The information shall not be released unless the
24 requesting agency agrees to reimburse the costs
25 involved for furnishing such information.

26 (4) In addition to the requirements of this section, all
27 other requirements with respect to confidentiality of
28 information obtained in the administration of this
29 chapter and the sanctions imposed on improper disclo-
30 sure shall apply to the use of such information by
31 officers and employees of child support agencies.

**§21A-10-20. Disclosure of information to food stamp
agencies.**

1 (1) The bureau of employment programs shall dis-
2 close, upon request, to officers and employees of the
3 United States department of agriculture and any state
4 food stamp agency, with respect to an identified
5 individual, any of the following information which is
6 contained in its records:

7 (a) Wage information;

8 (b) Whether the individual is receiving, has received,
9 or has made application for unemployment compensa-
10 tion and the amount of any compensation being received
11 or to be received by such individual;

12 (c) The current or most recent home address of the
13 individual; and

14 (d) Whether the individual has refused an offer of
15 employment and if so, a description of the employment
16 offered and the terms, conditions and rate of pay
17 therefor.

18 (2) The term "state food stamp agency" means any
19 agency described in section (3) (n) (1) of the Food Stamp
20 Act of 1977 which administers the food stamp program

21 established under such act.

22 (3) The requesting agency shall agree that such
23 information shall be used only for purposes of determin-
24 ing the applicant's eligibility for benefits, or the amount
25 of benefits, under the food stamp program established
26 under the Food Stamp Act of 1977.

27 (4) In addition to the requirements of this section, all
28 other requirements with respect to confidentiality of
29 information obtained in the administration of this
30 chapter and the sanctions imposed for improper disclo-
31 sure of information obtained in the administration of
32 this article shall apply to the use of such information by
33 the officers and employees of any food stamp agency or
34 the United States department of agriculture.

**§21A-10-22. Disclosure of information to department of
housing and urban development.**

1 (1) The bureau of employment programs shall dis-
2 close, upon request, to officers and employees of the
3 department of housing and urban development and to
4 representatives of public housing agencies, any wage
5 and benefit information with respect to an identified
6 individual which is contained in its records. The term
7 "public housing agencies" means any agency described
8 in section 3 (b) (6) of the United States Housing Act of
9 1937.

10 (2) The requesting agency shall agree that such
11 information is to be used only for the purpose of
12 determining an individual's eligibility for benefits, or
13 the amount of benefits under any housing assistance
14 program of the department of housing and urban
15 development.

16 (3) The information shall not be released unless the
17 requesting agency agrees to reimburse the costs
18 involved for furnishing such information.

19 (4) In addition to the requirements of this section, all
20 other requirements with respect to confidentiality of
21 information obtained in the administration of this
22 chapter and the sanctions imposed on improper disclo-
23 sure shall apply to the use of such information by

- 24 officers and employees of any public housing agency or
25 the department of housing and urban development.

CHAPTER 23. WORKERS' COMPENSATION.

Article

1. General Administrative Provisions.
2. Employers and Employees Subject to Chapter; Extraterritorial Coverage.
3. Workers' Compensation Fund.
4. Disability and Death Benefits.
- 4A. Disabled Workers' Relief Fund.
- 4B. Coal-Workers' Pneumoconiosis Fund.
- 4C. Employers' Excess Liability Fund.
5. Review.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

- §23-1-1. Commissioner of the bureau of employment programs; official seal; legal services.
- §23-1-2. Payment of salaries and expenses — Generally.
- §23-1-3. Payment of salaries and expenses — Manner; limitation.
- §23-1-6. Employment of secretary and other assistants; compensation and travel expenses thereof.
- §23-1-10. Fee of officer serving subpoena; fees and mileage of witnesses.
- §23-1-14. Blank forms.
- §23-1-16. Omission to subscribe to workers' compensation fund or to perform duty required by commissioner; perjury.
- §23-1-17. Annual report by commissioner and occupational pneumoconiosis board.
- §23-1-18. Compensation programs advisory board created; membership; appointment; terms; meetings; duties; annual reports.

§23-1-1. Commissioner of the bureau of employment programs; official seal; legal services.

1 The commissioner of the bureau of employment
2 programs appointed under the provisions of section one,
3 article two of chapter twenty-one-a, has the sole
4 responsibility for the administration of this chapter. In
5 the administration of this chapter, the commissioner
6 shall exercise all the powers and duties described in this
7 chapter and in article two of chapter twenty-one-a of
8 this code. The commissioner shall have an official seal
9 for the authentication of orders and proceedings, upon
10 which seal shall be engraved the words "West Virginia
11 Commissioner of Employment Programs" and such
12 other design as the commissioner may prescribe. The
13 courts in this state shall take judicial notice of the seal

14 of the commissioner and in all cases copies of orders,
15 proceedings or records in the office of the West Virginia
16 commissioner of employment programs shall be equal to
17 the original in evidence.

18 The attorney general shall perform all legal services
19 required by the commissioner under the provisions of
20 this chapter: *Provided*, That in any case in which an
21 application for review is prosecuted from any final
22 decision of the workers' compensation appeal board to
23 the supreme court of appeals, as provided by section
24 four, article five of this chapter, or in any court
25 proceeding before the workers' compensation appeal
26 board, or in any proceedings before the office of judges,
27 in which such representation shall appear to the
28 commissioner to be desirable, the commissioner may
29 designate a regular employee of this office, qualified to
30 practice before such court to represent the commissioner
31 upon such appeal or proceeding, and in no case shall the
32 person so appearing for the commissioner before the
33 court receive remuneration therefor other than such
34 person's regular salary.

§23-1-2. Payment of salaries and expenses — Generally.

1 All expenses peculiar to the administration of this
2 chapter, and, when on official business, the traveling
3 and incidental expenses of the commissioner and
4 salaries or other compensation, traveling and other
5 expenses of all officers or employees of the commis-
6 sioner, and all expenses for furniture, books, maps,
7 stationery, appliances, property of all kinds and dues for
8 membership in all organizations pertaining to workers'
9 compensation or safety in which the commissioner
10 considers it advisable to maintain membership, shall be
11 paid out of the workers' compensation fund.

**§23-1-3. Payment of salaries and expenses — Manner;
limitation.**

1 All payments of salaries and expenses in the admin-
2 istration of this chapter shall be made by the state
3 treasurer upon requisitions signed by the commissioner,
4 directed to the auditor of the state, who shall draw his
5 warrant therefor, and any such payment shall be

6 charged to the workers' compensation fund: *Provided,*
7 That the total charges against such fund under this
8 section for any one fiscal year shall not exceed the
9 amount appropriated therefor.

**§23-1-6. Employment of secretary and other assistants;
compensation and travel expenses thereof.**

1 The commissioner may employ a secretary, actuary,
2 accountants, inspectors, examiners, experts, clerks,
3 stenographers and other assistants, and fix their
4 compensation, which shall be paid as provided in
5 sections two and three of this article. The commissioner,
6 secretary, actuaries, accountants, inspectors, examiners,
7 experts, clerks, stenographers and other assistants who
8 may be employed shall be entitled to receive from the
9 workers' compensation fund their actual and necessary
10 expense while traveling on business of the commis-
11 sioner. Such expenses shall be itemized and sworn to by
12 the person who incurred the expense, and shall be
13 subject to the approval of the commissioner.

**§23-1-10. Fee of officer serving subpoena; fees and
mileage of witnesses.**

1 Each officer who serves such subpoenas shall receive
2 the same fee as a sheriff, and each witness who appears
3 in obedience to a subpoena before the commissioner, or
4 an inspector, or an examiner, shall receive for his
5 attendance the fees and mileage provided for witnesses
6 in civil cases in the circuit court, which shall be audited
7 and paid out of the workers' compensation fund in the
8 same manner as other expenses are audited and paid,
9 if such witness was subpoenaed without the request of
10 either claimant or employer at the instance of the
11 commissioner or an inspector or an examiner. The
12 witness fees and mileage of any witness subpoenaed by,
13 or at the instance of, either claimant or employer shall
14 be paid by the party who subpoenas such witness.

§23-1-14. Blank forms.

1 The commissioner shall prepare and furnish free of
2 cost blank forms (and provide in his rules for their
3 distribution so that the same may be readily available)

4 of applications for benefits for compensation from the
5 workers' compensation fund, or directly from employers,
6 as the case may be, notices to employers, proofs of injury
7 or death, of medical attendance, of employment and
8 wage earnings, and such other blanks as may be deemed
9 proper and advisable, and it shall be the duty of
10 employers to constantly keep on hand a sufficient supply
11 of such blanks.

§23-1-16. Omission to subscribe to workers' compensation fund or to perform duty required by commissioner; perjury.

1 Any person, firm or corporation which is required by
2 the provisions of this chapter to subscribe to the
3 workers' compensation fund, and which knowingly fails
4 to subscribe thereto, or which knowingly fails to make
5 any report or perform any other act or duty required
6 by the commissioner within the time specified by the
7 commissioner, shall be guilty of a misdemeanor, and,
8 upon conviction thereof, shall be fined not more than
9 five thousand dollars. Any person or firm, or the officer
10 of any corporation, who knowingly makes a false report
11 or statement under oath, affidavit or certification
12 respecting any information required by the commis-
13 sioner, or who shall knowingly testify falsely in any
14 proceeding before the commissioner, shall be considered
15 guilty of perjury, and, upon conviction thereof, shall be
16 punished as provided by law.

§23-1-17. Annual report by commissioner and occupational pneumoconiosis board.

1 Annually, on or about the fifteenth day of September
2 in each year, the commissioner and the occupational
3 pneumoconiosis board shall make a report as of the
4 thirtieth day of June addressed to the governor, which
5 shall include a statement of the causes of the injuries
6 for which the awards were made, an explanation of the
7 diagnostic techniques used by the occupational pneumo-
8 coniosis board and all examining physicians to deter-
9 mine the presence of disease, the extent of impairment
10 attributable thereto, a description of the scientific
11 support for such techniques, and a summary of public

12 and private research relating to problems and preven-
13 tion of occupational diseases. The report shall include a
14 detailed statement of all disbursements, and the
15 condition of the fund, together with any specific
16 recommendations for improvements in the workers'
17 compensation law and for more efficient and responsive
18 administration thereof, which the commissioner may
19 consider appropriate. Copies of all annual reports shall
20 be filed with the secretary of state and shall be made
21 available to the Legislature and to the public at large.

**§23-1-18. Compensation programs advisory board
created; membership; appointment; terms;
meetings; duties; annual reports.**

1 There is hereby created an advisory board to the
2 commissioner of the bureau of employment programs to
3 be known as "the compensation programs advisory
4 board".

5 The compensation programs advisory board consists
6 of thirteen members. The commissioner of the bureau
7 of employment programs is an ex officio member of the
8 board whose term as such member continues for that
9 period in which he holds that office. The other twelve
10 members of the board shall be appointed by the
11 governor with three members representing employees
12 subject to this chapter and chapter twenty-one-a of this
13 code, three members representing employers subject to
14 this chapter and chapter twenty-one-a of this code, three
15 members representing providers of medical services to
16 such employees for which such providers are compen-
17 sated under the provisions of this chapter, and three
18 members representing the citizens of this state. The
19 term of each member except the commissioner shall be
20 three years. Of the persons originally appointed, four
21 members, including one member of each of the four
22 representative groups, shall be designated to serve for
23 terms of one year each, four members, including one
24 member of each of the four representative groups, shall
25 be designated to serve for terms of two years each and
26 four members, including one member of each of the four
27 representative groups, shall be designated to serve for
28 a term of three years each. The terms of all the initially

29 appointed members of the board shall begin on the first
30 day of July, one thousand nine hundred ninety-one.
31 Upon the expiration of each of such initial appointments
32 the term of each new appointee shall be three years, but
33 any person appointed to fill a vacancy occurring prior
34 to the expiration of the term for which his predecessor
35 was appointed shall be appointed only for the remainder
36 of such term. Each member shall serve until the
37 appointment and qualification of his successor.
38 Members shall be eligible for reappointment. No more
39 than seven of the twelve members appointed by the
40 governor may be of the same political party.

41 The commissioner shall serve as chairman of the
42 board. The other twelve members shall select one of
43 their number to serve as vice chairman of the board and
44 to preside in the absence of the commissioner. Meetings
45 may be held at any time at the call of the commissioner.
46 The commissioner shall call a meeting whenever a
47 majority of the other members of the board request the
48 commissioner to do so. At least one meeting shall be held
49 annually.

50 The purpose of the board and the duty of its members
51 are to advise the commissioner on matters pertinent to
52 the administration of the workers' compensation pro-
53 gram and the unemployment compensation program,
54 and such other matters as the commissioner may desire.
55 The board shall consider any matter brought before it
56 by the commissioner or any appointed member and may
57 consider any matter referred to it by a person not a
58 member of the board. At the conclusion of its consider-
59 ation of any proposal the board shall make its recom-
60 mendation to the commissioner. The commissioner is not
61 bound by any recommendation of the board. The board
62 also may formulate general or long-range plans for
63 improvements in the administration of the programs for
64 the consideration of the commissioner.

65 By the second Wednesday of January of each year the
66 board shall prepare and deliver to the commissioner and
67 to the Legislature a report of all the matters it
68 considered, recommendations it made and plans it
69 formulated during the preceding calendar year. The

70 report shall include any recommendations it may have
71 for changes in the law which would be necessary to
72 implement any of its administrative recommendations.

**ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER;
EXTRATERRITORIAL COVERAGE.**

§23-2-1c. Extraterritorial coverage.

§23-2-6. Exemption of contributing employers from liability.

§23-2-8. Liability of employer electing not to pay or defaulting in payment
of premiums; certain common-law defenses prohibited;
exceptions.

§23-2-11. Partial invalidity of chapter.

§23-2-1c. Extraterritorial coverage.

1 Whenever, with respect to an employee of an employer
2 who is a subscriber in good standing to the workers'
3 compensation fund or an employer who has elected to
4 pay compensation directly, as provided in section nine
5 of this article, there is a possibility of conflict with
6 respect to the application of workers' compensation laws
7 because the contract of employment is entered into and
8 all or some portion of the work is performed or is to be
9 performed in a state or states other than this state, the
10 employer and the employee may agree to be bound by
11 the laws of this state or by the laws of such other state
12 in which all or some portion of the work of the employee
13 is to be performed. Such agreement shall be in writing
14 and filed with the commissioner within ten days after
15 execution thereof and shall remain in effect until
16 terminated or modified by agreement of the parties
17 similarly filed. If the parties agree to be bound by the
18 laws of this state, an employee injured within the terms
19 and provisions of this chapter shall be entitled to
20 benefits under this chapter regardless of the situs of the
21 injury or exposure to occupational pneumoconiosis or
22 other occupational disease, and the rights of the
23 employee and his dependents under the laws of this state
24 shall be the exclusive remedy against the employer on
25 account of injury, disease or death in the course of and
26 as a result of the employment.

27 If the parties agree to be bound by the laws of another
28 state and the employer has complied with the laws of
29 that state, the rights of the employee and his dependents

30 under the laws of that state shall be the exclusive
31 remedy against the employer on account of injury,
32 disease or death in the course of and as a result of the
33 employment without regard to the situs of the injury or
34 exposure to occupational pneumoconiosis or other
35 occupational disease.

36 If the employee is a resident of a state other than this
37 state and is subject to the terms and provisions of the
38 workers' compensation law or similar laws of a state
39 other than this state, such employee and his dependents
40 shall not be entitled to the benefits payable under this
41 chapter on account of injury, disease or death in the
42 course of and as a result of employment temporarily
43 within this state, and the rights of such employee and
44 his dependents under the laws of such other state shall
45 be the exclusive remedy against the employer on
46 account of such injury, disease or death.

47 If any employee or his dependents be awarded
48 workers' compensation benefits or recover damages
49 from the employer under the laws of another state for
50 an injury received in the course of and resulting from
51 the employment, the amount so awarded or recovered,
52 whether paid or to be paid in future installments, shall
53 be credited against the amount of any benefits payable
54 under this chapter for the same injury.

§23-2-6. Exemption of contributing employers from liability.

1 Any employer subject to this chapter who shall
2 subscribe and pay into the workers' compensation fund
3 the premiums provided by this chapter or who shall
4 elect to make direct payments of compensation as herein
5 provided shall not be liable to respond in damages at
6 common law or by statute for the injury or death of any
7 employee, however occurring, after so subscribing or
8 electing, and during any period in which such employer
9 shall not be in default in the payment of such premiums
10 or direct payments and shall have complied fully with
11 all other provisions of this chapter. The continuation in
12 the service of such employer shall be considered a
13 waiver by the employee and by the parents of any minor

14 employee of the right of action as aforesaid, which the
15 employee or his or her parents would otherwise have:
16 *Provided*, That in case of employers not required by this
17 chapter to subscribe and pay premiums into the
18 workers' compensation fund, the injured employee has
19 remained in such employer's service with notice that his
20 employer has elected to pay into the workers' compen-
21 sation fund the premiums provided by this chapter, or
22 has elected to make direct payments as aforesaid.

**§23-2-8. Liability of employer electing not to pay or
defaulting in payment of premiums; certain
common-law defenses prohibited; exceptions.**

1 All employers required by this chapter to subscribe
2 to and pay premiums into the workers' compensation
3 fund, except the state of West Virginia, the governmen-
4 tal agencies or departments created by it, and munic-
5 ipalities and political subdivisions of the state, and who
6 do not subscribe to and pay premiums into the workers'
7 compensation fund as required by this chapter and have
8 not elected to pay individually and directly or from
9 benefit funds compensation and expenses to injured
10 employees or fatally injured employees' dependents
11 under the provisions of section nine of this article, or
12 having so subscribed or elected, shall be in default in
13 the payment of same, or not having otherwise fully
14 complied with the provisions of section five or section
15 nine of this article, shall be liable to their employees
16 (within the meaning of this article) for all damages
17 suffered by reason of personal injuries sustained in the
18 course of employment caused by the wrongful act,
19 neglect or default of the employer or any of the
20 employer's officers, agents or employees while acting
21 within the scope of their employment and in the course
22 of their employment and also to the personal represen-
23 tatives of such employees where death results from such
24 personal injuries, and in any action by any such
25 employee or personal representative thereof, such
26 defendant shall not avail himself of the following
27 common-law defenses: The defense of the fellow-servant
28 rule; the defense of the assumption of risk; or the defense
29 of contributory negligence; and further shall not avail

30 himself of any defense that the negligence in question
31 was that of someone whose duties are prescribed by
32 statute: *Provided*, That such provision depriving a
33 defendant employer of certain common-law defenses
34 under the circumstances therein set forth shall not apply
35 to an action brought against a county court, board of
36 education, municipality, or other political subdivision of
37 the state or against any employer not required to cover
38 his employees under the provisions of this chapter.

§23-2-11. Partial invalidity of chapter.

1 If any employer shall be adjudicated to be outside the
2 lawful scope of this chapter, the chapter shall not apply
3 to him or his employee; or if any employee shall be
4 adjudicated to be outside the lawful scope of this
5 chapter, because of remoteness of his work from the
6 hazard of his employer's work, any such adjudication
7 shall not impair the validity of this chapter in other
8 respects, and in every such case an accounting in
9 accordance with the justice of the case shall be had of
10 moneys received. If the provisions of this chapter for the
11 creation of the workers' compensation fund, or the
12 provisions of this chapter making the compensation to
13 the employee provided in it exclusive of any other
14 remedy on the part of the employee, shall be held
15 invalid, the entire chapter shall be thereby invalidated
16 and an accounting according to the justice of the case
17 shall be had of money received. In other respects an
18 adjudication of invalidity of any part of this chapter
19 shall not affect the validity of the chapter as a whole
20 or any part thereof.

ARTICLE 3. WORKERS' COMPENSATION FUND.

§23-3-1a. Transfer of silicosis fund to workers' compensation fund; claims under former article six.

§23-3-2. Custody, investment and disbursement of fund.

§23-3-3. Investment of surplus funds required.

§23-3-1a. Transfer of silicosis fund to workers' compensation fund; claims under former article six.

1 Ten percent of the funds collected and held as the
2 workers' compensation silicosis fund under the provi-
3 sions of former article six of this chapter, which article

4 is by this act repealed, shall be transferred to and made
5 a part of the workers' compensation fund provided for
6 in the preceding section, and the balance thereof shall
7 be refunded to the subscribers thereto in proportion to
8 their contributions to the same under the provisions of
9 said former article six; and all awards heretofore made
10 under the provisions of article six shall be paid from the
11 workers' compensation fund, or directly by the em-
12 ployer, under order of the commissioner, if the employer
13 has elected to carry his own risk under the provisions
14 of section nine, article two of this chapter: *Provided,*
15 That notwithstanding the repeal of said article six, the
16 provisions thereof shall be applicable in all cases of the
17 disease or death, because of silicosis, or an employee
18 whose last exposure to silicon dioxide dust has occurred
19 prior to the effective date of this section, whose claim
20 or application for compensation benefits for silicosis, or
21 that of his dependent, has not been filed prior to said
22 date, and whose employer, at the time of such exposure,
23 was subject to the provisions of said article six.

§23-3-2. Custody, investment and disbursement of fund.

1 The state treasurer shall be the custodian of the
2 workers' compensation fund and all premiums, deposits
3 or other moneys paid thereto shall be deposited in the
4 state treasury to the credit of the workers' compensation
5 fund in the manner prescribed in section five, article
6 two of this chapter. The workers' compensation fund
7 shall consist of the premiums and deposits provided by
8 this chapter and all interest accruing thereto upon
9 investments and deposits in the state depositories, and
10 any other moneys or funds which may be given,
11 appropriated or otherwise designated or accruing
12 thereto. Said fund shall be a separate and distinct fund
13 and shall be so kept upon the books and records of the
14 auditor and treasurer and the state depositories in
15 which any part is deposited. Disbursements therefrom
16 shall be made upon requisitions signed by the secretary
17 and approved by the commissioner of the bureau of
18 employment programs.

19 The board of investments shall have authority to
20 invest the surplus, reserve or other moneys belonging to

21 the fund in the bonds of the United States, notes or
22 bonds of this state, bridge revenue bonds of this state
23 issued prior to the first day of January, one thousand
24 nine hundred thirty-nine, or any bonds issued to refund
25 the same, bonds of any county, city, town, village or
26 school district of the state. No such investment shall be
27 made, nor any investment sold or otherwise disposed of
28 without the concurrence of a majority of all members
29 of the board of investments. It shall be the duty of every
30 county, school district or municipality issuing any
31 bonds, to offer the same in writing to the board of
32 investments, prior to advertising the same for sale, and
33 the board of investments shall, within fifteen days after
34 receipt of such offer, accept the same and purchase such
35 bonds, or any portion thereof at par and accrued
36 interest, or reject such offer. All securities purchased by
37 the board of investments for investment for the workers'
38 compensation fund shall be placed in the hands of the
39 state treasurer as the custodian thereof, and it shall be
40 his duty to keep and account for the same as he keeps
41 and accounts for other securities of the state, and to
42 collect the interest thereon as the same becomes due and
43 payable and the principal when the same is due. No
44 notes, bonds or other securities shall be purchased by
45 the board of investments until and unless the attorney
46 general shall investigate the issuance of such notes,
47 bonds or securities and shall give a written opinion to
48 the board that the same have been regularly issued
49 according to the constitution and the laws of this state,
50 which opinion, if such notes, bonds or securities be
51 purchased, shall be filed with the treasurer with such
52 bonds or securities.

§23-3-3. Investment of surplus funds required.

1 Whenever there shall be in the state treasury any
2 funds belonging to the workers' compensation fund not
3 likely, in the opinion of the commissioner, to be required
4 for immediate use, it shall be the duty of the board of
5 investments to invest the same as prescribed in the
6 preceding section. Whenever it may become necessary
7 or expedient to use any of the funds so invested, the
8 board of investments, at the direction of the commis-

9 sioner, shall collect, sell or otherwise realize upon any
10 investment to the amount considered necessary or
11 expedient to use.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; "deliberate intention" defined.

§23-4-7. Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.

§23-4-14. Computation of benefits.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commissioner to collect payments improperly made.

1 (a) In any claim for benefits under this chapter, the
2 commissioner shall determine whether the claimant has
3 sustained a compensable injury within the meaning of
4 section one of this article, and he shall enter an order
5 giving all parties immediate notice of such decision. Any
6 party shall have the right to protest the order of the
7 commissioner and obtain an evidentiary hearing as
8 provided in section one, article five of this chapter.

9 (b) Where it appears from the employer's report, or
10 from proper medical evidence, that a compensable
11 injury will result in a disability which will last longer
12 than three days as provided in section five of this article,
13 the commissioner may immediately enter an order
14 commencing the payment of temporary total disability
15 benefits to the claimant in the amounts provided for in
16 sections six and fourteen of this article, and payment of
17 the expenses provided for in subdivision (a), section
18 three of this article, relating to said injury, without
19 waiting for the expiration of the thirty-day period
20 during which objections may be filed to such findings
21 as provided in section one, article five of this chapter.
22 The commissioner shall enter an order commencing the

23 payment of temporary total disability or medical
24 benefits within fifteen days of receipt of either the
25 employee's or employer's report of injury, whichever is
26 received sooner, and also upon receipt of either a proper
27 physician's report or any other information necessary
28 for a determination. The commissioner shall give to the
29 parties immediate notice of any order granting tempor-
30 ary total disability or medical benefits.

31 (c) The commissioner may enter orders granting
32 temporary total disability benefits upon receipt of
33 medical evidence justifying the payment of such
34 benefits. In no claim shall the commissioner enter an
35 order granting prospective temporary total disability
36 benefits for a period of more than ninety days: *Provided,*
37 That when the commissioner determines that the
38 claimant remains disabled beyond the period specified
39 in the prior order granting temporary total disability
40 benefits, the commissioner shall enter an order contin-
41 uing the payment of temporary total disability benefits
42 for an additional period not to exceed ninety days, and
43 shall give immediate notice to all parties of such
44 decision.

45 (d) Upon receipt of the first report of injury in claim,
46 the commissioner shall request from the employer or
47 employers any wage information necessary for deter-
48 mining the rate of benefits to which the employee is
49 entitled. If an employer does not furnish the commis-
50 sioner with this information within fifteen days from the
51 date the commissioner received the first report of injury
52 in the case, the employee shall be paid temporary total
53 disability benefits for lost time at the rate the commis-
54 sioner believes would be justified by the usual rate of
55 pay for the occupation of the injured employee. The
56 commissioner shall adjust the rate of benefits both
57 retroactively and prospectively upon receipt of proper
58 wage information. The commissioner shall have access
59 to all wage information in the possession of any state
60 agency, including wage information received by the
61 unemployment compensation commission under chapter
62 twenty-one-a of this code, pertinent to such
63 determination.

64 (e) Upon a finding of the commissioner that a claim-
65 ant who has sustained a previous compensable injury
66 which has been closed by any order of the commissioner,
67 or by the claimant's return to work, suffers further
68 temporary total disability or requires further medical or
69 hospital treatment resulting from the compensable
70 injury, the commissioner shall immediately enter an
71 order commencing the payment of temporary total
72 disability benefits to the claimant in the amount
73 provided for in sections six and fourteen of this article,
74 and the expenses provided for in subdivision (a), section
75 three of this article, relating to said disability, without
76 waiting for the expiration of the thirty-day period
77 during which objections may be filed to such findings
78 as provided in section one, article five of this chapter.
79 The commissioner shall give immediate notice to the
80 parties of his order.

81 (f) Where the employer is a subscriber to the workers'
82 compensation fund under the provisions of article three
83 of this chapter, and upon the findings aforesaid, the
84 commissioner shall mail all workers' compensation
85 checks paying temporary total disability benefits
86 directly to the claimant and not to the employer for
87 delivery to the claimant.

88 (g) Where the employer has elected to carry his own
89 risk under section nine, article two of this chapter, and
90 upon the findings aforesaid, the commissioner shall
91 immediately issue a pay order directing the employer
92 to pay such amounts as are due the claimant for
93 temporary total disability benefits. A copy of the order
94 shall be sent to the claimant. The self-insured employer
95 shall commence such payments by mailing or delivering
96 the payments directly to the employee within ten days
97 of the date of the receipt of the pay order by the
98 employer. If the self-insured employer believes that his
99 employee is entitled to benefits, he may start payments
100 before receiving a pay order from the commissioner.

101 (h) In the event that an employer files a timely
102 objection to any order of the commissioner with respect
103 to compensability, or any order denying an application
104 for modification with respect to temporary total

105 disability benefits, or with respect to those expenses
106 outlined in subdivision (a), section three of this article,
107 the commissioner shall continue to pay to the claimant
108 such benefits and expenses during the period of such
109 disability. Where it is subsequently found by the
110 commissioner that the claimant was not entitled to
111 receive such temporary total disability benefits or
112 expenses, or any part thereof, so paid, the commissioner
113 shall, when the employer is a subscriber to the fund,
114 credit said employer's account with the amount of the
115 overpayment; and, when the employer has elected to
116 carry its own risk, the commissioner shall refund to such
117 employer the amount of the overpayment. The amounts
118 so credited to a subscriber or repaid to a self insurer
119 shall be charged by the commissioner to the surplus
120 fund created in section one, article three of this chapter.

121 (i) When the employer has protested the compensabil-
122 ity or applied for modification of a temporary total
123 disability benefit award or expenses and the final
124 decision in such case determines that the claimant was
125 not entitled to such benefits or expenses, the amount of
126 such benefits or expenses shall be considered overpaid.
127 The commissioner may only recover the amount of such
128 benefits or expenses by withholding, in whole or in part,
129 as determined by the commissioner, future permanent
130 partial disability benefits payable to the individual in
131 the same or other claims and credit such amount against
132 the overpayment until it is repaid in full.

133 (j) In the event that the commissioner finds that based
134 upon the employer's report of injury, the claim is not
135 compensable, the commissioner shall provide a copy of
136 such employer's report in addition to the order denying
137 the claim.

**§23-4-2. Disbursement where injury is self-inflicted or
intentionally caused by employer; legislative
declarations and findings; "deliberate inten-
tion" defined.**

1 (a) Notwithstanding anything hereinbefore or here-
2 inafter contained, no employee or dependent of any
3 employee shall be entitled to receive any sum from the

4 workers' compensation fund, or to direct compensation
5 from any employer making the election and receiving
6 the permission mentioned in section nine, article two of
7 this chapter, or otherwise under the provisions of this
8 chapter, on account of any personal injury to or death
9 to any employee caused by a self-inflicted injury or the
10 intoxication of such employee. For the purpose of this
11 chapter, the commissioner may cooperate with the
12 division of energy and the state department of labor in
13 promoting general safety programs and in formulating
14 rules and regulations to govern hazardous employments.

15 (b) If injury or death result to any employee from the
16 deliberate intention of his employer to produce such
17 injury or death, the employee, the widow, widower, child
18 or dependent of the employee shall have the privilege
19 to take under this chapter, and shall also have cause of
20 action against the employer, as if this chapter had not
21 been enacted, for any excess of damages over the
22 amount received or receivable under this chapter.

23 (c) (1) It is declared that enactment of this chapter
24 and the establishment of the workers' compensation
25 system in this chapter was and is intended to remove
26 from the common law tort system all disputes between
27 or among employers and employees regarding the
28 compensation to be received for injury or death to an
29 employee except as herein expressly provided, and to
30 establish a system which compensates even though the
31 injury or death of an employee may be caused by his
32 own fault or the fault of a co-employee; that the
33 immunity established in sections six and six-a, article
34 two of this chapter, is an essential aspect of this workers'
35 compensation system; that the intent of the Legislature
36 in providing immunity from common law suit was and
37 is to protect those so immunized from litigation outside
38 the workers' compensation system except as herein
39 expressly provided; that, in enacting the immunity
40 provisions of this chapter, the Legislature intended to
41 create a legislative standard for loss of that immunity
42 of more narrow application and containing more specific
43 mandatory elements than the common law tort system
44 concept and standard of willful, wanton and reckless

45 misconduct; and that it was and is the legislative intent
46 to promote prompt judicial resolution of the question of
47 whether a suit prosecuted under the asserted authority
48 of this section is or is not prohibited by the immunity
49 granted under this chapter.

50 (2) The immunity from suit provided under this
51 section and under section six-a, article two of this
52 chapter, may be lost only if the employer or person
53 against whom liability is asserted acted with "deliberate
54 intention". This requirement may be satisfied only if:

55 (i) It is proved that such employer or person against
56 whom liability is asserted acted with a consciously,
57 subjectively and deliberately formed intention to
58 produce the specific result of injury or death to an
59 employee. This standard requires a showing of an
60 actual, specific intent and may not be satisfied by
61 allegation or proof of (A) conduct which produces a
62 result that was not specifically intended; (B) conduct
63 which constitutes negligence, no matter how gross or
64 aggravated; or (C) willful, wanton or reckless miscon-
65 duct; or

66 (ii) The trier of fact determines, either through
67 specific findings of fact made by the court in a trial
68 without a jury, or through special interrogatories to the
69 jury in a jury trial, that all of the following facts are
70 proven:

71 (A) That a specific unsafe working condition existed
72 in the workplace which presented a high degree of risk
73 and a strong probability of serious injury or death;

74 (B) That the employer had a subjective realization
75 and an appreciation of the existence of such specific
76 unsafe working condition and of the high degree of risk
77 and the strong probability of serious injury or death
78 presented by such specific unsafe working condition;

79 (C) That such specific unsafe working condition was
80 a violation of a state or federal safety statute, rule or
81 regulation, whether cited or not, or of a commonly
82 accepted and well-known safety standard within the
83 industry or business of such employer, which statute,

84 rule, regulation or standard was specifically applicable
85 to the particular work and working condition involved,
86 as contrasted with a statute, rule, regulation or standard
87 generally requiring safe workplaces, equipment or
88 working conditions;

89 (D) That notwithstanding the existence of the facts set
90 forth in subparagraphs (A) through (C) hereof, such
91 employer nevertheless thereafter exposed an employee
92 to such specific unsafe working condition intentionally;
93 and

94 (E) That such employee so exposed suffered serious
95 injury or death as a direct and proximate result of such
96 specific unsafe working condition.

97 (iii) In cases alleging liability under the provisions of
98 the preceding paragraph (ii):

99 (A) No punitive or exemplary damages shall be
100 awarded to the employee or other plaintiff;

101 (B) Notwithstanding any other provision of law or
102 rule to the contrary, and consistent with the legislative
103 findings of intent to promote prompt judicial resolution
104 of issues of immunity from litigation under this chapter,
105 the court shall dismiss the action upon motion for
106 summary judgment if it shall find, pursuant to Rule 56
107 of the Rules of Civil Procedure that one or more of the
108 facts required to be proved by the provisions of
109 subparagraphs (A) through (E) of the preceding
110 paragraph (ii) do not exist, and the court shall dismiss
111 the action upon a timely motion for a directed verdict
112 against the plaintiff if after considering all the evidence
113 and every inference legitimately and reasonably raised
114 thereby most favorably to the plaintiff, the court shall
115 determine that there is not sufficient evidence to find
116 each and every one of the facts required to be proven
117 by the provisions of subparagraphs (A) through (E) of
118 the preceding paragraph (ii); and

119 (C) The provisions of this paragraph and of each
120 subparagraph thereof shall be severable from the
121 provisions of each other subparagraph, subsection,
122 section, article or chapter of this code so that if any

123 provision of a subparagraph of this paragraph be held
124 void, the remaining provisions of this act and this code
125 shall remain valid.

126 (d) The reenactment of this section in the regular
127 session of the Legislature during the year one thousand
128 nine hundred eighty-three shall not in any way affect
129 the right of any person to bring an action with respect
130 to or upon any cause of action which arose or accrued
131 prior to the effective date of such reenactment.

**§23-4-7. Release of medical information to employer;
legislative findings; effect of application for
benefits; duty of employer.**

1 (a) The Legislature hereby finds and declares that
2 two of the primary objectives of the workers' compen-
3 sation system established by this chapter are to provide
4 benefits to an injured claimant promptly and to
5 effectuate his return to work at the earliest possible
6 time; that the prompt dissemination of medical informa-
7 tion to the commissioner and employer as to diagnosis,
8 treatment and recovery is essential if these two objec-
9 tives are to be achieved; that claimants are increasingly
10 burdened with the task of contacting their treating
11 physicians to request the furnishing of detailed medical
12 information to the commissioner and their employers;
13 that the commissioner is increasingly burdened with the
14 administrative responsibility of providing copies of
15 medical reports to the employer involved, whereas in
16 other states the employer can obtain the necessary
17 medical information direct from the treating physician;
18 that much litigation is occasioned in this state because
19 of a lack of medical information having been received
20 by the employer as to the continuing disability of a
21 claimant; and that detailed narrative reports from the
22 treating physician are often necessary in order for the
23 commissioner, the claimant's representatives and the
24 employer to evaluate a claim and determine whether
25 additional or different treatment is indicated.

26 (b) In view of the foregoing findings, on and after the
27 effective date of this section, a claimant shall irrevocably
28 agree by the filing of his application for benefits

29 that any physician may release, to the claimant's
30 employer or its representative, from time to time to such
31 claimant's employer medical reports containing detailed
32 information as to the claimant's condition, treatment,
33 prognosis and anticipated period of disability and dates
34 as to when the claimant will reach or has reached his
35 maximum degree of improvement or will be or was
36 released to return to work. Whenever a copy of any such
37 medical report is obtained by the employer or their
38 representative and the physician has not also forwarded
39 a copy of the same to the commissioner, the employer
40 shall forward a copy of such medical report to the
41 commissioner within ten days from the date such
42 employer received the same from such physician.

§23-4-14. Computation of benefits.

1 The average weekly wage earnings, wherever earned,
2 of the injured person at the date of injury, and the
3 average weekly wage in West Virginia as determined
4 by the commissioner, in effect at the date of injury, shall
5 be taken as the basis upon which to compute the
6 benefits.

7 In cases involving occupational pneumoconiosis or
8 other occupational diseases, the "date of injury" shall be
9 the date of the last exposure to the hazards of occupa-
10 tional pneumoconiosis or other occupational diseases.

11 In computing benefits payable on account of occupa-
12 tional pneumoconiosis, the commissioner shall deduct
13 the amount of all prior workers' compensation benefits
14 paid to the same claimant on account of silicosis, but a
15 prior silicosis award shall not, in any event, preclude an
16 award for occupational pneumoconiosis otherwise
17 payable under this article.

18 The expression "average weekly wage earnings,
19 wherever earned, of the injured person, at the date of
20 injury", within the meaning of this chapter, shall be
21 computed based upon the daily rate of pay at the time
22 of the injury or upon the average pay received during
23 the two months, six months or twelve months imme-
24 diately preceding the date of the injury, whichever is
25 most favorable to the injured employee, except for the

26 purpose of computing temporary total disability benefits
27 for part-time employees pursuant to the provisions of
28 section six-d of this article.

29 The expression "average weekly wage in West Virgi-
30 nia", within the meaning of this chapter, shall be the
31 average weekly wage in West Virginia as determined
32 by the commissioner in accordance with the provisions
33 of sections ten and eleven, article six, chapter twenty-
34 one-a of this code, and other applicable provisions of said
35 chapter twenty-one-a.

36 In any claim for injuries, including occupational
37 pneumoconiosis and other occupational diseases, occur-
38 ring on or after the first day of July, one thousand nine
39 hundred seventy-one, any award for temporary total,
40 permanent partial or permanent total disability benefits
41 or for dependent benefits, shall be paid at the weekly
42 rates or in the monthly amount in the case of dependent
43 benefits applicable to the claimant therein in effect on
44 the date of such injury. If during the life of such award
45 for temporary total, permanent partial or permanent
46 total disability benefits or for dependent benefits, the
47 weekly rates or the monthly amount in the case of
48 dependent benefits are increased or decreased, the
49 claimant shall receive such increased or decreased
50 benefits beginning as of the effective date of said
51 increase or decrease.

ARTICLE 4A. DISABLED WORKERS' RELIEF FUND.

§23-4A-2. To whom benefits paid.

§23-4A-3. Computation of benefits.

§23-4A-4. Mode of payment.

§23-4A-5. Employers providing own system of compensation.

§23-4A-8. Disabled workers' relief fund; how funded.

§23-4A-2. To whom benefits paid.

1 In order to participate in the disabled workers' relief
2 fund, an individual must be receiving workers' compen-
3 sation benefits by virtue of and under the laws of this
4 state in amounts less than those set forth in section one
5 of this article, and be receiving such benefits under a
6 permanent total disability award or be receiving such
7 benefits because of the death of an employee: *Provided,*

8 That a child of an employee deceased before the first day
9 of July, one thousand nine hundred sixty-seven, who is
10 under the age of twenty-three and is a full-time student,
11 and, who, at the time of injury causing death, was
12 dependent in whole or part upon the earnings of the
13 deceased employee, shall be eligible for benefits payable
14 from the fund established by this article in the same
15 manner and amount as if death had occurred after the
16 first day of July, one thousand nine hundred sixty-seven.

§23-4A-3. Computation of benefits.

1 Each individual entitled to participate in the disabled
2 workers' relief fund shall be entitled to receive pay-
3 ments without application (except that an application
4 shall be required under section five of this article) from
5 said fund of an amount equal to the difference between
6 the amounts set forth in section one of this article, and
7 the amount said individual is in fact receiving by virtue
8 of and under the laws of this state. The first such
9 payment shall be made concurrently with the payment
10 to him of workers' compensation on the first day of
11 August, one thousand nine hundred seventy-six and
12 subsequent payments shall be made during the period
13 thereafter in which such participant shall be entitled to
14 workers' compensation benefits by virtue of and under
15 the laws of this state.

§23-4A-4. Mode of payment.

1 Payments to an individual entitled to participate in
2 the disabled workers' relief fund may be made from said
3 fund by separate check or may be made from said fund
4 and from the workers' compensation fund by one check,
5 but each such check drawn on the two funds shall be
6 so written as to show plainly the payments made from
7 each fund. No disbursements shall be made from the
8 workers' compensation fund on account of any provisions
9 of this article.

§23-4A-5. Employers providing own system of compensation.

1 The commissioner shall promptly require of each
2 employer who has elected to pay compensation direct
3 under the provisions of section nine, article two of this

4 chapter a verified list of the names and addresses of all
5 persons to whom such employer is paying workers'
6 compensation on account of permanent total disability
7 or because of the death of an employee and such
8 evidence respecting such persons as the commissioner
9 may reasonably consider necessary to determine the
10 eligibility of any such person to participate in the
11 disabled workers' relief fund. Any person claiming the
12 right to participate in said fund under the provisions of
13 this section may file his application therefor with the
14 commissioner and shall be accorded a hearing thereon.

§23-4A-8. Disabled workers' relief fund; how funded.

1 For the purpose of carrying out the provisions of this
2 article, the commissioner shall transfer annually, out of
3 the interest earned during the previous year on invest-
4 ments held by the workers' compensation fund, and out
5 of the amount assessed against self-insured employers
6 pursuant to the provisions of article two, section nine,
7 an amount estimated by the commissioner to be neces-
8 sary to carry out the provisions of this article for one
9 year.

10 Such money shall be deposited by the commissioner
11 in the disabled workers' relief fund, as required by this
12 article.

ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.

§23-4B-2. Coal-workers' pneumoconiosis fund established.

§23-4B-7. Administration.

**§23-4B-2. Coal-workers' pneumoconiosis fund estab-
lished.**

1 / For the relief of persons who are entitled to receive
2 benefits by virtue of Title IV of the Federal Coal Mine
3 Health and Safety Act of 1969, as amended, there is
4 hereby established a fund to be known as the coal-
5 workers' pneumoconiosis fund, which fund shall be
6 separate from the workers' compensation fund. The coal-
7 workers' pneumoconiosis fund shall consist of premiums
8 and other funds paid thereto by employers, subject to
9 the provisions of Title IV of the Federal Coal Mine
10 Health and Safety Act of 1969, as amended, who shall

11 elect to subscribe to such fund to ensure the payment
12 of benefits required by such act.

13 The state treasurer shall be the custodian of the coal-
14 workers' pneumoconiosis fund, and all premiums,
15 deposits or other moneys paid thereto shall be deposited
16 in the state treasury to the credit of the coal-workers'
17 pneumoconiosis fund. Disbursements from such fund
18 shall be made upon requisition signed by the commis-
19 sioner to those persons entitled to participate therein.
20 The West Virginia state board of investments shall have
21 authority to invest any surplus, reserve or other moneys
22 belonging to the coal-workers' pneumoconiosis fund in
23 accordance with article six, chapter twelve of this code.

§23-4B-7. Administration.

1 The coal-workers' pneumoconiosis fund shall be
2 administered by the commissioner of the bureau of
3 employment programs, who shall employ such em-
4 ployees as may be necessary to discharge his duties and
5 responsibilities under this article. All payments of
6 salaries and expenses of such employees and all
7 expenses peculiar to the administration of this article
8 shall be made by the state treasurer from the coal-
9 workers' pneumoconiosis fund upon requisitions signed
10 by the commissioner.

ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.

§23-4C-2. Employers' excess liability fund established.

§23-4C-5. Administration.

§23-4C-2. Employers' excess liability fund established.

1 To provide insurance coverage for employers subject
2 to this chapter who may be subjected to liability for any
3 excess of damages over the amount received or receiv-
4 able under this chapter, there is hereby established a
5 fund to be known as the employers' excess liability fund,
6 which fund shall be separate from the workers' compen-
7 sation fund. The employers' excess liability fund shall
8 consist of premiums paid thereto by employers who may
9 voluntarily elect to subscribe to the fund for coverage
10 of potential liability to any person who may be entitled

11 to any excess of damages over the amount received or
12 receivable under this chapter.

§23-4C-5. Administration.

1 The employers' excess liability fund shall be admin-
2 istered by the commissioner of employment programs,
3 who shall employ such employees as may be necessary
4 to discharge his duties and responsibilities under this
5 article. All payments of salaries and expenses of the
6 employees and all expenses peculiar to the administra-
7 tion of this article shall be made by the state treasurer
8 from the employers' excess liability fund upon requis-
9 itions signed by the commissioner.

ARTICLE 5. REVIEW.

**§23-5-2. Workers' compensation appeal board — Gener-
ally.**

1 There shall be a board to be known as the "Workers'
2 Compensation Appeal Board", which shall be referred
3 to in this article as the "board", to be composed of three
4 members.

5 Two members of such board shall be of opposite
6 politics to the third, and all three shall be citizens of this
7 state who have resided therein for a period of at least
8 five years. All members of the board shall be appointed
9 by the governor and shall receive an annual salary in
10 accordance with the provisions of section two-a, article
11 seven, chapter six of this code. The salaries shall be
12 payable in monthly installments, and the members shall
13 also be entitled to all reasonable and necessary traveling
14 and other expenses actually incurred while engaged in
15 the performance of their duties. The governor shall
16 designate one of the members of the board as chairman
17 thereof, and the board shall meet at the capitol or at
18 such other places throughout the state as it may consider
19 proper at regular sessions designated as "Appeal Board
20 Hearing Days" commencing on the first Tuesday of
21 every month or the next regular business day, for a
22 period of at least three days, for the purpose of
23 conducting hearings on appeals, and continuing as long
24 as may be necessary for the proper and expeditious

25 transaction of the hearings, decisions and other business
26 before it. All clerical services required by the board
27 shall be paid for by the commissioner from any funds
28 at his disposal. The board shall, from time to time,
29 compile and promulgate such rules of practice and
30 procedure as to it shall appear proper for the prompt
31 and efficient discharge of its business and such rules
32 shall be submitted to the supreme court of appeals for
33 approval, and if approved by such court shall have the
34 same force and effect as the approved rules of procedure
35 of circuit courts. The board shall employ such clerical
36 staff as may be necessary for the efficient conduct of its
37 business but the number of such employees shall not
38 exceed four. Salaries of the board, and its employees,
39 and all of its necessary operating expenses shall be paid
40 from the workers' compensation fund. The board shall
41 submit its annual budget to the commissioner for
42 inclusion as a separate item in the budget estimates
43 prepared by him annually and within the limits of such
44 budget, all expenses of the board shall be by the
45 requisition of the commissioner. Salaries of the em-
46 ployees of the board shall be fixed by the board.

47 The board shall report monthly to the governor and
48 commissioner on the status of all claims on appeal.

CHAPTER 26. STATE BENEVOLENT INSTITUTIONS.

ARTICLE 8. EMERGENCY HOSPITALS.

§26-8-2. Patients; expenses; disposition of receipts.

1 The state commissioner of public institutions shall
2 admit to said hospitals, under its rules and regulations,
3 persons requiring hospital care, and shall treat free of
4 charge persons accidentally injured in this state while
5 engaged in their usual employment, but preference at
6 all times shall be given to persons accidentally injured:
7 *Provided*, That the commissioner of the bureau of
8 employment programs shall pay to said hospitals for the
9 treatment of anyone entitled to benefits or aid out of the
10 workers' compensation fund the same fee or expenses as
11 would be paid to a private hospital for similar treat-
12 ment. All moneys collected under this section shall be

13 paid into the state treasury through the state commis-
14 sioner of public institutions as required in section
15 thirteen, article one, chapter twenty-five of this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article

12. State Insurance.

18. West Virginia Railroad Maintenance Authority.

ARTICLE 12. STATE INSURANCE.

§29-12-2. Definitions.

1 As used in this article, unless the context otherwise
2 clearly requires:

3 (a) "Board" means the "State Board of Insurance of
4 West Virginia".

5 (b) "Company" means and includes corporations,
6 associations, partnerships and individuals.

7 (c) "Insurance" means all forms of insurance and
8 bonding services available for protection and indemni-
9 fication of the state and its officials, employees,
10 properties, activities and responsibilities against loss or
11 damage or liability, including fire, marine, casualty,
12 and surety insurance.

13 (d) "Insurance company" means all insurers or
14 insurance carriers, including, but not limited to, stock
15 insurance companies, mutual insurance companies,
16 reciprocal and interinsurance exchanges, and all other
17 types of insurers and insurance carriers, including life,
18 accident, health, fidelity, indemnity, casualty, hospital-
19 ization and other types and kinds of insurance compa-
20 nies, organizations and associations, but excepting and
21 excluding workers' compensation coverage.

22 (e) "State property activities" and "state responsibil-
23 ities" shall mean and include all operations, boards,
24 commission, works, projects and functions of the state,
25 its properties, officials, agents and employees which,
26 within the scope and in the course of governmental
27 employment, may be subject to liability, loss, damage,

28 risks and hazards recognized to be and normally
29 included within insurance and bond coverages.

30 (f) "State property" means all property belonging to
31 the state of West Virginia and any boards or commis-
32 sions thereof wherever situated and which is the subject
33 of risk or reasonably considered to be subject to loss or
34 damage or liability by any single occurrence of any
35 event insured against.

ARTICLE 18. WEST VIRGINIA RAILROAD MAINTENANCE
AUTHORITY.

§29-18-6. Powers, duties and responsibilities of authority
generally.

1 The West Virginia railroad maintenance authority is
2 hereby granted, has and may exercise all powers
3 necessary or appropriate to carry out and effectuate its
4 corporate purpose.

5 (a) The authority shall have the power and capacity
6 to:

7 (1) Adopt, and from time to time, amend and repeal
8 bylaws necessary and proper for the regulation of its
9 affairs and the conduct of its business and rules and
10 regulations to implement and make effective its powers
11 and duties, such rules and regulations to be promul-
12 gated in accordance with the provisions of chapter
13 twenty-nine-a of this code.

14 (2) Adopt an official seal.

15 (3) Maintain a principal office and, if necessary,
16 regional suboffices at locations properly designated or
17 provided.

18 (4) Sue and be sued in its own name and plead and
19 be impleaded in its own name, and particularly to
20 enforce the obligations and covenants made under
21 sections ten, eleven and sixteen of this article. Any
22 actions against the authority shall be brought in the
23 circuit court of Kanawha County. The location of the
24 principal office of the authority shall be determined by
25 the governor.

26 (5) Make loans and grants to governmental agencies

27 and persons for carrying out railroad projects by any
28 such governmental agency or person and, in accordance
29 with chapter twenty-nine-a of this code, adopt rules and
30 procedures for making such loans and grants.

31 (6) Acquire, construct, reconstruct, enlarge, improve,
32 furnish, equip, maintain, repair, operate, lease or rent
33 to, or contract for operation by a governmental agency
34 or person, railroad projects, and, in accordance with
35 chapter twenty-nine-a of this code, adopt rules and
36 regulations for the use of such projects.

37 (7) Make available the use or services of any railroad
38 project to one or more persons, one or more governmen-
39 tal agencies, or any combination thereof.

40 (8) Issue railroad maintenance authority bonds and
41 notes and refunding bonds of the state, payable solely
42 from revenues as provided in section ten of this article
43 unless the bonds are refunded by refunding bonds, for
44 the purpose of paying any part of the cost of one or more
45 railroad projects or parts thereof.

46 (9) Acquire, by gift or purchase, hold and dispose of
47 real and personal property in the exercise of its powers
48 and the performance of its duties as set forth in this
49 article.

50 (10) Acquire in the name of the state, by purchase or
51 otherwise, on such terms and in such manner as it
52 deems proper, or by the exercise of the right of eminent
53 domain in the manner provided in chapter fifty-four of
54 this code, rail properties and appurtenant rights and
55 interests necessary for carrying out railroad projects.

56 (11) Make and enter into all contracts and agreements
57 and execute all instruments necessary or incidental to
58 the performance of its duties and the execution of its
59 powers. When the cost under any such contract or
60 agreement, other than compensation for personal
61 services, involves an expenditure of more than two
62 thousand dollars, the authority shall make a written
63 contract with the lowest responsible bidder after public
64 notice published as a Class II legal advertisement in
65 compliance with the provisions of article three, chapter

66 fifty-nine of this code, the publication area for such
67 publication to be the county wherein the work is to be
68 performed or which is affected by the contract, which
69 notice shall state the general character of the work and
70 the general character of the materials to be furnished,
71 the place where plans and specifications therefor may
72 be examined and the time and place of receiving bids,
73 but a contract or lease for the operation of a railroad
74 project constructed and owned by the authority or an
75 agreement for cooperation in the acquisition or construc-
76 tion of a railroad project pursuant to section sixteen of
77 this article is not subject to the foregoing requirements
78 and the authority may enter into such contract or lease
79 or such agreement pursuant to negotiation and upon
80 such terms and conditions and for such period as it finds
81 to be reasonable and proper under the circumstances
82 and in the best interests of proper operation or of
83 efficient acquisition or construction of such railroad
84 project. The authority may reject any and all bids. A
85 bond with good and sufficient surety, approved by the
86 authority, shall be required of all contractors in an
87 amount equal to at least fifty percent of the contract
88 price, conditioned upon the faithful performance of the
89 contract.

90 (12) Appoint a director and employ managers, super-
91 intendants and other employees and retain or contract
92 with consulting engineers, financial consultants, accoun-
93 tants, attorneys and such other consultants and inde-
94 pendent contractors as are necessary in its judgment to
95 carry out the provisions of this article, and fix the
96 compensation or fees thereof. All expenses thereof shall
97 be payable from the proceeds of railroad maintenance
98 authority revenue bonds or notes issued by the authority,
99 from revenues and funds appropriated for such purpose
100 by the Legislature or from grants from the federal
101 government which may be used for such purpose.

102 (13) Receive and accept from any state or federal
103 agency, grants for or in aid of the construction of any
104 railroad project or for research and development with
105 respect to railroads and receive and accept aid or
106 contributions from any source of money, property, labor

107 or other things of value, to be held, used and applied
108 only for the purposes for which such grants and
109 contributions are made.

110 (14) Engage in research and development with
111 respect to railroads.

112 (15) Purchase fire and extended coverage and liability
113 insurance for any railroad project and for the principal
114 office and suboffices of the authority, insurance protect-
115 ing the authority and its officers and employees against
116 liability, if any, for damage to property or injury to or
117 death of persons arising from its operations and be a
118 member of, and to participate in, the state workers'
119 compensation program.

120 (16) Charge, alter and collect rates, rentals and other
121 charges for the use or services of any railroad project
122 as provided in this article.

123 (17) Do all acts necessary and proper to carry out the
124 powers expressly granted to the authority in this article.

125 (b) In addition, the authority shall have the power to:

126 (1) Acquire rail properties both within and not within
127 the jurisdiction of the interstate commerce commission
128 and rail properties within the purview of the federal
129 Regional Rail Reorganization Act of 1973, any amend-
130 ments to it and any other relevant federal legislation.

131 (2) Enter into agreements with owners of rail prop-
132 erties for the acquisition of rail properties or use, or both
133 of rail properties upon such terms, conditions, rates or
134 rentals as can best effectuate the purposes of this article.

135 (3) Acquire rail properties and other property of a
136 railroad in concert with another state or states as is
137 necessary to ensure continued rail service in this state.

138 (4) Establish a state plan for rail transportation and
139 local rail services.

140 (5) Administer and coordinate such state plan.

141 (6) Provide in such state plan for the equitable
142 distribution of federal rail service continuation subsidies
143 among state, local and regional transportation
144 authorities.

- 145 (7) Promote, supervise and support safe, adequate and
146 efficient rail services.
- 147 (8) Employ sufficiently trained and qualified person-
148 nel for these purposes.
- 149 (9) Maintain adequate programs of investigation,
150 research, promotion and development in connection with
151 such purposes and to provide for public participation
152 therein.
- 153 (10) Provide satisfactory assurances on behalf of the
154 state that fiscal control and fund accounting procedures
155 will be adopted by the state necessary to assure proper
156 disbursement of and accounting for federal funds paid
157 to the state as rail service continuation subsidies.
- 158 (11) Comply with the regulations of the secretary of
159 transportation of the United States department of
160 transportation affecting federal rail service continuation
161 programs.
- 162 (12) Do all things otherwise necessary to maximize
163 federal assistance to the state under Title IV of the
164 federal Regional Rail Reorganization Act of 1973 and to
165 qualify for rail service continuation subsidies pursuant
166 to the federal Regional Rail Reorganization Act of 1973.

CHAPTER 29A.

STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 5. CONTESTED CASES.

§29A-5-5. Exceptions.

- 1 The provisions of this article shall not apply to the
2 workers' compensation fund, the bureau of employment
3 programs, the state tax commissioner, the state road
4 commissioner, the state road commission, and the
5 teachers' retirement board.

CHAPTER 31. CORPORATIONS.

Article

1. Business and Nonprofit Corporations.

18B. Mortgage and Industrial Development Investment Pool.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

19 (d) Reinsurance.

§33-15-5. Optional policy provisions.

1 Except as provided in section six of this article, no
2 such policy delivered or issued for delivery to any person
3 in this state shall contain provisions respecting the
4 matters set forth below unless such provisions are in the
5 words in which the same appear in this section:
6 *Provided*, That the insurer may, at its option, use in lieu
7 of any such provision a corresponding provision of
8 different wording approved by the commissioner which
9 is not less favorable in any respect to the insured or the
10 beneficiary. Any such provision contained in the policy
11 shall be preceded individually by the appropriate
12 caption appearing in this section or, at the option of the
13 insurer, by such appropriate individual or group
14 captions or subcaptions as the commissioner may
15 approve.

16 (a) A provision as follows:

17 "Change of Occupation: If the insured be injured or
18 contract sickness after having changed his occupation to
19 one classified by the insurer as more hazardous than
20 that stated in this policy or while doing for compensa-
21 tion anything pertaining to an occupation so classified,
22 the insurer will pay only such portion of the indemnities
23 provided in this policy as the premium paid would have
24 purchased at the rates and within the limits fixed by
25 the insurer for such more hazardous occupation. If the
26 insured changes his occupation to one classified by the
27 insurer as less hazardous than that stated in this policy,
28 the insurer, upon receipt of proof of such change of
29 occupation, will reduce the premium rate accordingly,
30 and will return the excess pro rata unearned premium
31 from the date of change of occupation or from the policy
32 anniversary date immediately preceding receipt of such
33 proof, whichever is the more recent. In applying this
34 provision, the classification of occupational risk and the
35 premium rates shall be such as have been last filed by
36 the insurer prior to the occurrence of the loss for which
37 the insurer is liable or prior to date of proof of change
38 in occupation with the state official having supervision

39 of insurance in the state where the insured resided at
40 the time this policy was issued; but if such filing was
41 not required, then the classification of occupational risk
42 and the premium rates shall be those last made effective
43 by the insurer in such state prior to the occurrence of
44 the loss or prior to the date of proof of change in
45 occupation.”

46 (b) A provision as follows:

47 “Misstatement of Age: If the age of the insured has
48 been misstated, all amounts payable under this policy
49 shall be such as the premium paid would have pur-
50 chased at the correct age.”

51 (c) A provision as follows:

52 “Other Insurance in This Insurer: If an accident or
53 sickness or accident and sickness policy or policies
54 previously issued by the insurer to the insured be in
55 force concurrently herewith, making the aggregate
56 indemnity for _____ (insert type of coverage or
57 coverages) in excess of \$ _____ (insert maximum
58 limit of indemnity or indemnities) the excess insurance
59 shall be void and all premiums paid for such excess shall
60 be returned to the insured or to his estate.”

61 Or, in lieu thereof:

62 “Insurance effective at any one time on the insured
63 under a like policy or policies in this insurer is limited
64 to the one such policy elected by the insured, his
65 beneficiary or his estate, as the case may be, and the
66 insurer will return all premiums paid for all other such
67 policies.”

68 Provided that no policy hereafter issued for delivery
69 in this state which provides, with or without other
70 benefits, for the payment of benefits or reimbursement
71 for expenses with respect to hospitalization, nursing
72 care, medical or surgical examination or treatment, or
73 ambulance transportation shall contain any provision
74 for a reduction of such benefits or reimbursement, or
75 any provision for avoidance of the policy, on account of
76 other insurance of such nature carried by the same
77 insured with the same or another insurer.

78 (d) A provision as follows:

79 "Insurance with Other Insurers: If there be other
80 valid coverage, not with this insurer, providing benefits
81 for the same loss on other than an expense incurred
82 basis and of which this insurer has not been given
83 written notice prior to the occurrence or commencement
84 of loss, the only liability for such benefits under this
85 policy shall be for such proportion of the indemnities
86 otherwise provided hereunder for such loss as the like
87 indemnities of which the insurer had notice (including
88 the indemnities under this policy) bear to the total
89 amount of all like indemnities for such loss, and for the
90 return of such portion of the premium paid as shall
91 exceed the pro rata portion for the indemnities thus
92 determined."

93 The insurer may, at its option, include in this
94 provision a definition of "other valid coverage", ap-
95 proved as to form by the commissioner, which defini-
96 tions shall be limited in subject matter to coverage
97 provided by organizations subject to regulation by
98 insurance law or by insurance authorities of this or any
99 other state of the United States or any province of
100 Canada, and to any other coverage the inclusion of
101 which may be approved by the commissioner. In the
102 absence of such definition such term shall not include
103 group insurance, or benefits provided by union welfare
104 plans or by employer or employee benefit organizations.
105 For the purpose of applying the foregoing policy
106 provisions with respect to any insured any amount of
107 benefit provided for such insured pursuant to any
108 compulsory benefit statute (including any workers'
109 compensation or employer's liability statute) whether
110 provided by a governmental agency or otherwise shall
111 in all cases be deemed to be "other valid coverage" of
112 which the insurer has had notice. In applying the
113 foregoing policy provision no third party liability
114 coverage shall be included as "other valid coverage".

115 (e) A provision as follows:

116 "Relation of Earnings to Insurance: If the total
117 monthly amount of loss of time benefits promised for the

118 same loss under all valid loss of time coverage upon the
119 insured, whether payable on a weekly or monthly basis,
120 shall exceed the monthly earnings of the insured at the
121 time disability commenced or his average monthly
122 earnings for the period of two years immediately
123 preceding a disability for which claim is made, which-
124 ever is the greater, the insurer will be liable only for
125 such proportionate amount of such benefits under this
126 policy as the amount of such monthly earnings or such
127 average monthly earnings of the insured bears to the
128 total amount of monthly benefits for the same loss under
129 all such coverage upon the insured at the time such
130 disability commences and for the return of such part of
131 the premiums paid during such two years as shall
132 exceed the pro rata amount of the premiums for the
133 benefits actually paid hereunder; but this shall not
134 operate to reduce the total monthly amount of benefits
135 payable under all such coverage upon the insured below
136 the sum of two hundred dollars or the sum of the
137 monthly benefits specified in such coverages, whichever
138 is the lesser, nor shall it operate to reduce benefits other
139 than those payable for loss of time."

140 The foregoing policy provision may be inserted only
141 in a policy which the insured has the right to continue
142 in force subject to its terms by the timely payment of
143 premiums (1) until at least age fifty, or (2) in the case
144 of a policy issued after age forty-four, for at least five
145 years from its date of issue. The insurer may, at its
146 option, include in this provision a definition of "valid loss
147 of time coverage", approved as to form by the commis-
148 sioner, which definition shall be limited in subject
149 matter to coverage provided by governmental agencies
150 or by organizations subject to regulation by insurance
151 law or by insurance authorities of this or any other state
152 of the United States or any province of Canada, or to
153 any other coverage the inclusion of which may be
154 approved by the commissioner or any combination of
155 such coverages. In the absence of such definition such
156 term shall not include any coverage provided for such
157 insured pursuant to any compulsory benefit statute
158 (including any workers' compensation or employer's
159 liability statute), or benefits provided by union welfare

160 plans or by employer or employee benefit organizations.

161 (f) A provision as follows:

162 "Unpaid Premium: Upon the payment of a claim
163 under this policy, any premiums then due and unpaid
164 or covered by any note or written order may be deducted
165 therefrom."

166 (g) A provision as follows:

167 "Return of Premium on Cancellation: If the insured
168 cancels this policy, the earned premium shall be
169 computed by the use of the short-rate table last filed
170 with the state official having supervision of insurance
171 in the state where the insured resided when the policy
172 was issued. Cancellation shall be without prejudice to
173 any claim originating prior to the effective date of
174 cancellation."

175 (h) A provision as follows:

176 "Conformity with State Statutes: Any provision of this
177 policy which, on its effective date, is in conflict with the
178 statutes of the state in which the insured resides on such
179 date is hereby amended to conform to the minimum
180 requirements of such statutes."

181 (i) A provision as follows:

182 "Illegal Occupation: The insurer shall not be liable for
183 any loss to which a contributing cause was the insured's
184 commission of or attempt to commit a felony or to which
185 a contributing cause was the insured's being engaged in
186 an illegal occupation."

187 (j) A provision as follows:

188 "Intoxicants and Narcotics: The insurer shall not be
189 liable for any loss sustained or contracted in conse-
190 quence of the insured's being intoxicated or under the
191 influence of any narcotic unless administered on the
192 advice of a physician."

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-1. Scope of article.

1 (a) Nothing in this article shall apply to or affect any

2 policy of liability or workers' compensation insurance,
3 or any policy of individual accident and sickness
4 insurance issued in accordance with article fifteen of
5 this chapter, or any policy issued by a fraternal benefit
6 society.

7 (b) Nothing in this article shall apply to or in any way
8 affect life insurance, endowment or annuity contracts or
9 contracts supplemental thereto which contain no
10 provisions relating to accident or sickness insurance
11 except (a) such as provide additional benefits in case of
12 death by accidental means and except (b) such as
13 operate to safeguard such contracts against lapse, or to
14 give a special surrender value or special benefit or an
15 annuity in the event that the insured or annuitant shall
16 become totally and permanently disabled as defined by
17 the contract or supplemental contract.

18 (c) No accident and sickness policy or certificate shall
19 be delivered or issued for delivery in this state insuring
20 more than one individual (subject to the same exceptions
21 provided for group life insurance in section one of article
22 fourteen of this chapter) unless to one of the groups set
23 forth in section two of this article and unless otherwise
24 in compliance with this article.

ARTICLE 26. WEST VIRGINIA GUARANTY ASSOCIATION ACT.

§33-26-3. Scope.

1 This article shall apply to all kinds of direct insu-
2 rance, except life, title, surety, disability, credit,
3 mortgage guaranty, ocean marine, and workers' com-
4 pensation insurance.

CHAPTER 38. LIENS.

ARTICLE 5B. SUGGESTION OF THE STATE AND POLITICAL SUBDIVISIONS; GARNISHMENT AND SUGGES- TION OF PUBLIC OFFICERS.

§38-5B-12. Exemptions.

1 A judgment debtor to whom money is due or to
2 become due which would otherwise be subject to
3 suggestion under this article may have the same
4 exempted from levy in the manner and to the extent
5 provided by article eight of this chapter. In the case of

6 salary or wages the exemption may be claimed for sums
7 currently accruing but must be asserted anew as to any
8 salary or wages which shall begin to accrue after the
9 next payment date. Such exemption shall not be binding
10 upon the state, state agency or political subdivision of
11 which the judgment debtor is an officer or employee
12 unless and until a certificate of exemption or true copy
13 thereof shall have been delivered to the proper officer
14 upon whom to make service of a suggestee execution
15 under this article.

16 Money due to any lawful beneficiary thereof from any
17 workers' compensation, unemployment compensation,
18 pension or retirement, public assistance or relief fund
19 or system, or under the state's emergency employment
20 program as provided by section six, Title II of Enrolled
21 Senate Bill No. 1 (Budget Bill), enacted by the Legis-
22 lature of West Virginia, regular session, one thousand
23 nine hundred sixty-one, or any laws amendatory of,
24 supplementary or successor to, such program that may
25 hereafter be enacted, shall not be subject to suggestion
26 under this article.

27 Public obligations, whether in the form of bonds,
28 notes, certificates of indebtedness, or otherwise, and
29 whether negotiable or nonnegotiable, shall not be
30 subject to suggestion under this article.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48-2-17. Obtaining support from unemployment compensation benefits.

§48-2-18. Obtaining support from workers' compensation.

§48A-2-17. Obtaining support from unemployment com- pensation benefits.

1 (a) The director shall determine on a periodic basis
2 whether individuals receiving unemployment compensa-
3 tion owe child support obligations which are being
4 enforced or have been requested to be enforced by the
5 office. If an individual is receiving such compensation
6 and owes any such child support obligation which is not
7 being met, the office shall enter into an agreement with

8 such individual to have specified amounts withheld
9 otherwise payable to such individual, and shall submit
10 a copy of such agreement to the bureau of employment
11 programs. In the absence of such agreement, the office
12 shall bring legal process to require the withholding of
13 amounts from such compensation.

14 (b) The director shall enter into a written agreement
15 with the bureau of employment programs for the
16 purpose of withholding unemployment compensation
17 from individuals with unmet support obligations being
18 enforced by the office. The office shall agree only to a
19 withholding program that it expects to be cost effective,
20 and, as to reimbursement, shall agree only to reimburse
21 the bureau of employment programs for its actual,
22 incremental costs of providing services to the office.

23 (c) The director shall establish and use written
24 criteria for selecting cases to pursue through the
25 withholding of unemployment compensation for support
26 purposes. These criteria shall be designed to insure
27 maximum case selection and minimal discretion in the
28 selection process.

29 (d) The director shall, not less than annually, provide
30 a receipt to an individual who requests a receipt for the
31 support paid through the withholding of unemployment
32 compensation, if receipts are not provided through other
33 means.

34 (e) The director shall, through direct contact with the
35 bureau of employment programs, process cases through
36 the bureau of employment programs in this state, and
37 shall process cases through support enforcement agen-
38 cies in other states. The director shall receive all
39 amounts withheld by the bureau of employment pro-
40 grams in this state, forwarding any amounts withheld
41 on behalf of support enforcement agencies in other
42 states to those agencies.

43 (f) The director shall, not less than annually, review
44 and document program operations, including case
45 selection criteria established under subsection (c) of this
46 section, and the costs of the withholding process versus
47 the amounts collected and, as necessary, modify proce-

48 dures and renegotiate the services provided by the
49 bureau of employment programs to improve program
50 and cost effectiveness.

51 (g) For the purposes of this section:

52 (1) "Legal process" means a writ, order, summons or
53 other similar process in the nature of garnishment
54 which is issued by a court of competent jurisdiction or
55 by an authorized official pursuant to an order to such
56 court or pursuant to state or local law.

57 (2) "Unemployment compensation" means any com-
58 pensation under state unemployment compensation law
59 (including amounts payable in accordance with agree-
60 ments under any federal unemployment compensation
61 law). It includes extended benefits, unemployment
62 compensation for federal employees, unemployment
63 compensation for ex-servicemen, trade readjustment
64 allowances, disaster unemployment assistance, and
65 payments under the Federal Redwood National Park
66 Expansion Act.

**§48A-2-18. Obtaining support from workers' compen-
sation.**

1 (a) The director shall determine on a periodic basis
2 whether individuals receiving workers' compensation
3 benefits owe child support obligations which are being
4 enforced or have been requested to be enforced by the
5 office. If an individual is receiving such compensation
6 and owes any such child support obligation which is not
7 being met, the office shall enter into an agreement with
8 such individual to have specified amounts withheld
9 otherwise payable to such individual, and shall submit
10 a copy of such agreement to the commissioner of the
11 bureau of employment programs. In the absence of such
12 agreement, the office shall bring legal process to require
13 the withholding of amounts from such compensation.

14 (b) The director shall enter into a written agreement
15 with the commissioner of the bureau of employment
16 programs for the purpose of withholding workers'
17 compensation benefits from individuals with unmet

18 support obligations being enforced by the office. The
19 office shall agree only to a withholding program that it
20 expects to be cost effective, and, as to reimbursement,
21 shall agree only to reimburse the commissioner of the
22 bureau of employment programs for the commissioner's
23 actual, incremental costs of providing services to the
24 support enforcement agency.

25 (c) The director shall establish and use written
26 criteria for selecting cases to pursue through the
27 withholding of workers' compensation benefits for
28 support purposes. These criteria shall be designed to
29 insure maximum case selection and minimal discretion
30 in the selection process.

31 (d) The director shall, not less than annually, provide
32 a receipt to an individual who requests a receipt for the
33 support paid through the withholding of workers'
34 compensation benefits, if receipts are not provided
35 through other means.

36 (e) The director shall, through direct contact with the
37 commissioner of the bureau of employment programs,
38 process cases through the commissioner of the bureau
39 of employment programs in this state, and shall process
40 cases through support enforcement agencies in other
41 states. The director shall receive all amounts withheld
42 by the commissioner of the bureau of employment
43 programs in this state, forwarding any amounts with-
44 held on behalf of support enforcement agencies in other
45 states to those agencies.

46 (f) The director shall, not less than annually, review
47 and document program operations, including case
48 selection criteria established under subsection (c) of this
49 section, and the costs of the withholding process versus
50 the amounts collected and, as necessary, modify proce-
51 dures and renegotiate the services provided by the
52 commissioner of the bureau of employment programs to
53 improve program and cost effectiveness.

54 (g) For the purposes of this section:

55 (1) "Legal process" means a writ, order, summons or
56 other similar process in the nature of garnishment
57 which is issued by a court of competent jurisdiction or
58 by an authorized official pursuant to an order of such
59 court or pursuant to state or local law.

60 (2) "Workers' compensation benefits" means any
61 compensation payable under state workers' compensa-
62 tion law as temporary total disability benefits.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

57-5-4d. Hospital records; opening of sealed envelopes.

1 Unless the sealed envelope or wrapper is returned to
2 a witness who is to appear personally, the copy of the
3 records shall remain sealed and shall be opened only at
4 the time of trial, deposition, or other hearing, upon the
5 direction of the judge, court, officer, body or tribunal
6 conducting the proceeding, in the presence of all parties
7 who have appeared in person or by counsel at such trial,
8 deposition or hearing. Before directing that such inner-
9 envelope or wrapper be opened, the judge, court, officer,
10 body or tribunal shall first ascertain that either (1) the
11 records have been subpoenaed at the insistence of the
12 patient involved or his counsel of record, or (2) the
13 patient involved or someone authorized in his behalf to
14 do so for him has consented thereto and waived any
15 privilege of confidence involved. Records which are not
16 introduced in evidence or required as part of the record
17 shall be returned to the person or entity from whom
18 received.

19 The provisions of this section shall not apply in a
20 workers' compensation proceeding if the pertinent
21 record is the record of the claimant therein or a
22 claimant's decedent: *Provided*, That nothing in this
23 section, or the preceding section, shall limit in any
24 manner the availability of and access to documents as

25 provided in the rules of civil procedure or elsewhere in
26 this code by the parties to any civil action and their
27 counsel.

CHAPTER 60. ALCOHOL BEVERAGE CONTROL.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-30. Employees.

1 The department of health and human resources, the
2 bureau of employment programs, the public employees
3 retirement system, the public employees insurance
4 agency, any state agency or local community action
5 agency receiving job training partnership act funds and
6 any other agency of the state involved with benefits or
7 services to the unemployed, shall work individually with
8 all employees whose jobs have been terminated by this
9 chapter in order to recommend benefits, services,
10 training, interagency employment transfer or other
11 employment. The alcohol beverage control commission
12 director and directors of all other state agencies shall
13 use best efforts to employ qualified employees who were
14 employed at the facility immediately prior to such sale
15 or transfer: *Provided*, That notwithstanding any other
16 provision of the code to the contrary, in filling vacancies
17 at other facilities or other state agencies the director and
18 the directors of other agencies shall, for a period of
19 twenty-four months after such transfer or sale give
20 preference over all but existing employees to qualified
21 employees who were permanently employed at the
22 facility immediately prior to such transfer or sale:
23 *Provided, however*, That qualified persons who were
24 permanently employed at an alcohol beverage control
25 commission facility immediately prior to such transfer
26 or sale shall not supersede those employees with recall
27 rights in other state agencies.

CHAPTER 17

(H. B. 2837—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections eighteen, nineteen, twenty and twenty-one, all relating to the West Virginia capital company act; declaration of policy and purposes; definitions; rules; standards; tax credits; recapture provisions; unqualified investments; disclosure requirements; application requirements; qualified investments; liquidation and dissolution; restrictions on investments; conflict of interest; investment reporting and record keeping; examinations; results of failure to comply; ruling procedure; effective date; transition rules; limitation on financial institutions and confidentiality.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, ten, twelve, thirteen, fourteen, fifteen, sixteen and seventeen, article one, chapter five-e of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article one be further amended by adding thereto four new sections, designated sections eighteen, nineteen, twenty and twenty-one, all to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

- §5E-1-2. Declaration of policy.
- §5E-1-3. Purposes.
- §5E-1-4. Definitions.
- §5E-1-5. Rules.
- §5E-1-6. Qualification of West Virginia capital companies.
- §5E-1-7. Minimum standards of qualified West Virginia capital companies.
- §5E-1-8. Tax credits.

- §5E-1-9. Recaptures; unqualified investments.
- §5E-1-10. Application requirements.
- §5E-1-12. Qualified investments; liquidation or dissolution.
- §5E-1-13. Restrictions on investment.
- §5E-1-14. Conflict of interest.
- §5E-1-15. Investment reporting and record keeping.
- §5E-1-16. Examination.
- §5E-1-17. Failure to comply.
- §5E-1-18. Ruling procedure.
- §5E-1-19. Effective date; transition rules.
- §5E-1-20. Limitation on financial institutions.
- §5E-1-21. Confidentiality.

§5E-1-2. Declaration of policy.

1 (a) The Legislature finds and declares that the West
2 Virginia economy can be strengthened by promoting
3 private investment in West Virginia businesses.

4 (b) The Legislature further finds that:

5 (1) Investment of capital in the West Virginia
6 economy can be promoted by making tax credits
7 available to taxpayers investing in West Virginia capital
8 companies;

9 (2) Demands on state revenues restrict the financial
10 ability of this state to make unlimited tax credits
11 available for investment purposes and require that this
12 state place reasonable limits on the total amount of tax
13 credits to be made available for investment incentives;

14 (3) Establishment of a tax credit program, which
15 gives priority to investments in capital companies in the
16 order in which they are qualified as such, will encourage
17 investment in West Virginia businesses; and

18 (4) The promotion of private investment in West
19 Virginia businesses will tend to reduce unemployment
20 by creating new or maintaining existing employment
21 opportunities for the citizens of this state.

§5E-1-3. Purposes.

1 (a) The purpose of this article is to promote the
2 development of the human resources and the diversifi-
3 cation of the economy of West Virginia. The investment
4 capital generated by this article must be used to
5 encourage and assist the strengthening of the economy

6 through loans, equity investments, and other business
7 transactions for purposes of developing new business
8 and industry in West Virginia, rehabilitating existing
9 business and industry, and stimulating and assisting in
10 the expansion of business activities that promote and
11 maintain the economic stability of this state by provid-
12 ing maximum opportunities for employment of West
13 Virginians and improving the standard of living of the
14 people of this state.

15 (b) This article is aimed at:

16 (1) Increasing the availability of development capital
17 in order to encourage and assist in the creation,
18 development and expansion of businesses based in West
19 Virginia;

20 (2) Developing, preserving, diversifying, expanding
21 and strengthening the agricultural, industrial and
22 business base of West Virginia's economy, particularly
23 for those businesses utilizing this state's technical,
24 managerial and research resources in domestic and
25 international markets; and

26 (3) Providing the residents of West Virginia with
27 greater opportunities to invest and participate in the
28 economic development and potential of this state.

§5E-1-4. Definitions.

1 As used in this article, the following terms have the
2 meanings ascribed to them in this section, unless the
3 context in which the term is used clearly requires
4 another meaning or a specific different definition is
5 provided:

6 (a) "Authority" means the West Virginia economic
7 development authority, provided for in article fifteen,
8 chapter thirty-one of this code.

9 (b) "Capital base" means equity capital or net worth.

10 (c) "Certified West Virginia capital company" means:

11 (1) A West Virginia business development corporation
12 created pursuant to article fourteen, chapter thirty-one
13 of this code; or

14 (2) A profit or nonprofit entity organized and existing
15 under the laws of this state, created for the purpose of
16 making venture or risk capital available to qualified
17 investments that has been certified by the authority.

18 (d) "Qualified investment" means a debt or equity
19 financing of a West Virginia business, but only if the
20 business is engaged in one or more of the following
21 activities: Manufacturing; agricultural production or
22 processing; forestry production or processing; mineral
23 production or processing, except for conventional oil and
24 gas exploration; service industry; transportation;
25 research and development of products or processes
26 associated with any of the activities previously enumer-
27 ated above; tourism; computer software development
28 companies engaged in the creation of computer soft-
29 ware; and wholesale or retail distribution activities
30 within the state. The investment by a West Virginia
31 capital company in purchases of property to be leased
32 by it, as lessor, through a capital lease to a West
33 Virginia business lessee engaged in one of the above
34 enumerated activities is a qualified investment.

35 (e) "Qualified West Virginia capital company" means
36 a West Virginia capital company that has been desig-
37 nated by the authority as a qualified capital company
38 under the provisions of section six of this article.

39 (f) "State" means the state of West Virginia.

40 (g) "Capital lease" means a lease meeting one or more
41 of the following criteria:

42 (1) The lease transfers ownership of the property to
43 the lessee at the end of the lease term by the lessee's
44 exercise of a purchase option which is de minimis in
45 amount; or

46 (2) The lease term is equal to seventy-five percent or
47 more of the estimated economic life of the leased
48 property. However, if the beginning of the lease term
49 falls within the last twenty-five percent of the total
50 estimated economic life of the leased property, including
51 earlier years of use, this criterion shall not be used; or

52 (3) Under generally accepted accounting principles,

53 the lessee cannot treat payments to the capital company
54 as payments under an operating lease; or

55 (4) For federal income tax purposes, the parties are
56 required to treat payments as amortization of principal
57 and interest.

§5E-1-5. Rules.

1 The authority shall promulgate rules in accordance
2 with article three, chapter twenty-nine-a of this code, to
3 carry out the policy and purposes of this article, to
4 provide any necessary clarification of the provisions of
5 this article, and to efficiently provide for the general
6 administration of this article.

**§5E-1-6. Qualification of West Virginia capital com-
panies.**

1 (a) The authority shall qualify West Virginia capital
2 companies commencing after the effective date of this
3 article. A company seeking to be qualified as a West
4 Virginia capital company must make written applica-
5 tion to the authority on forms provided by the authority.
6 The application must contain the information required
7 by section ten of this article. Further, the application
8 must specify the level of capitalization of the company.

9 (b) The application shall set forth the applicant's
10 purpose.

11 (c) The authority may certify West Virginia capital
12 companies in existence after the first day of July, one
13 thousand nine hundred eighty-six.

14 (d) An applicant shall establish an escrow account
15 located in West Virginia, into which account funds
16 invested in the applicant shall be deposited and held for
17 the period of time between their receipt by the applicant
18 and the designation of the applicant as a qualified
19 company. Such funds shall not be invested by the
20 applicant until such designation by the authority. In the
21 event the authority does not designate the applicant a
22 qualified company, such funds shall be returned to the
23 investors, if requested by the investors.

24 (e) A West Virginia capital company may not qualify

25 or be issued a certification under this article unless the
26 company holds a valid business registration certificate
27 issued pursuant to article twelve, chapter eleven of this
28 code. A company exempt from registration under said
29 article twelve may qualify and be certified under this
30 article upon proof of its exemption.

§5E-1-7. Minimum standards of qualified West Virginia capital companies.

1 The following requirements apply to all qualified
2 companies:

3 (a) A qualified company shall be a certified West
4 Virginia capital company.

5 (b) A qualified company shall have a reasonably
6 accessible business office located within the state of
7 West Virginia, which office shall have a listed telephone
8 number and shall be open to the public during normal
9 business hours.

10 (c) A qualified company shall maintain all of its
11 capital base, except that which has been invested to
12 meet the purposes of this article, in bank accounts and
13 financial institutions which are located in the state of
14 West Virginia, or in such other interest bearing
15 instruments with a maturity of less than one year which
16 are obtained from and managed by a West Virginia
17 corporation.

18 (d) A qualified company shall have a capital base of
19 at least one million dollars, but not greater than four
20 million dollars, which capital base must be raised after
21 the first day of July, one thousand nine hundred eighty-
22 six. If the amount of the investment in a qualified
23 company in any fiscal year exceeds four million dollars,
24 such amount in excess of four million dollars is not
25 eligible for tax credits under this article.

26 (e) No more than twenty-five percent of each separate
27 capital base of a qualified company shall be in the form
28 of full recourse, interest bearing demand notes, backed
29 by an irrevocable letter of credit or bond from a
30 reputable source, as determined by the authority.

31 (f) A qualified company's stated purpose must be to
32 encourage and assist in the creation, development or
33 expansion of West Virginia businesses.

34 (g) A qualified company, seeking to establish a
35 separate capital base or increase its capital base, shall
36 establish an escrow account located in West Virginia,
37 into which account funds invested in the qualified
38 company shall be deposited and held for the period of
39 time between their receipt by the qualified company and
40 the designation as qualified of a separate capital base
41 or an increase to capital base. Such funds shall not be
42 invested by the qualified company until such designa-
43 tion by the authority. In the event the authority does not
44 designate as qualified a separate capital base or an
45 increase to capital base, such funds shall be returned to
46 the investors, if requested by the investors.

47 (h) A qualified company, when soliciting funds for its
48 capital base, must disclose that no tax credit for the
49 investor's investment will be available until the author-
50 ity designates as qualified a capital base or an increase
51 to capital base and issues to the qualified company
52 notice of such qualification and a certificate of tax
53 credit.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a
2 single qualified company may not exceed two million
3 dollars. Capitalization of the company may be increased
4 pursuant to rule of the authority.

5 (b) The total credits authorized by the authority for
6 all companies may not exceed a total of ten million
7 dollars each fiscal year. The authority shall allocate
8 these credits to qualified companies in the order that
9 said companies are qualified.

10 (c) Any investor, including an individual, partnership
11 or corporation who makes a capital investment in a
12 qualified West Virginia capital company is entitled to
13 a tax credit equal to fifty percent of the investment. The
14 credit allowed by this article shall be taken after all
15 other credits allowed by chapter eleven of this code. It

16 shall be taken against the same taxes and in the same
17 order as set forth in subsections (c) through (i), section
18 five, article thirteen-c, chapter eleven of this code. The
19 credit for investments by a partnership or by a
20 corporation electing to be treated as a Subchapter S
21 corporation may be divided pursuant to election of
22 partners or shareholders.

23 (d) The tax credit allowed under this section is to be
24 credited against the taxpayer's tax liability for the
25 taxable year in which the investment in a qualified West
26 Virginia capital company is made. If the amount of the
27 tax credit exceeds the taxpayer's tax liability for the
28 taxable year, the amount of the credit which exceeds the
29 tax liability for the taxable year may be carried to
30 succeeding taxable years until used in full, or until
31 forfeited: *Provided*, That (i) tax credits may not be
32 carried forward beyond fifteen years, and (ii) tax credits
33 may not be carried back to prior taxable years. Any tax
34 credit remaining after the fifteenth taxable year is
35 forfeited.

36 (e) The tax credit provided for in this section is
37 available only to those taxpayers whose investment in a
38 qualified West Virginia capital company occurs after
39 the first day of July, one thousand nine hundred eighty-
40 six.

41 (f) The tax credit allowed under this section may not
42 be used against any liability the taxpayer may have for
43 interest, penalties or additions to tax.

44 (g) Notwithstanding any provision in this code to the
45 contrary, the tax commissioner shall publish in the state
46 register the name and address of every taxpayer, and
47 the amount, by category, of any credit asserted under
48 this article for any tax year beginning on or after the
49 first day of January, one thousand nine hundred ninety-
50 one. The categories by dollar amount of credit received
51 shall be as follows:

- 52 (1) More than \$1.00, but not more than \$50,000;
- 53 (2) More than \$50,000, but not more than \$100,000;
- 54 (3) More than \$100,000, but not more than \$250,000;

- 55 (4) More than \$250,000, but not more than \$500,000;
56 (5) More than \$500,000, but not more than \$1,000,000;
57 (6) More than \$1,000,000.

§5E-1-9. Recaptures; unqualified investments.

1 A taxpayer receiving a credit hereunder is not subject
2 to a recapture provision for any credit claimed by the
3 taxpayer but the company is subject to the civil penalty
4 provided for in subsection (e), section twelve of this
5 article.

§5E-1-10. Application requirements.

1 Each company shall make application to the authority
2 on forms provided therefor, which shall set forth:

- 3 (1) Capitalization level of capital company;
4 (2) Purpose of the company;
5 (3) Names of investors;
6 (4) A process for disclosing to investors the tax credit
7 available pursuant to this article. Such disclosure shall
8 clearly set forth that no tax credit will be available until
9 the qualification of said company shall be granted by the
10 authority and the disclosure of immunity of the state for
11 damages is provided to said investors; and
12 (5) The location of the escrow account which has been
13 established for investors for the period of time between
14 the investment and the qualification of the capital
15 company by the authority.

§5E-1-12. Qualified investments; liquidation or dissolution.

1 (a) A qualified West Virginia capital company must
2 use its capital base to make qualified investments
3 according to the following schedule:

- 4 (1) At least thirty-five percent of its capital base
5 within the first year of the date on which the capital
6 company was designated as qualified by the authority;
7 (2) At least fifty-five percent of its capital base within
8 two years of the date on which the capital company was
9 designated as qualified by the authority; and

10 (3) At least seventy-five percent of its capital base
11 within three years of the date on which the capital
12 company was designated as qualified by the authority.

13 (b) A qualified West Virginia capital company shall
14 maintain its qualified investments for a period of at
15 least five years, except that a qualified West Virginia
16 capital company receiving repayment or return of a
17 qualified investment (exclusive of interest, dividends or
18 other earnings on such investment) shall reinvest the
19 company's repaid or returned cost basis in the invest-
20 ment in a qualified investment which remains outstand-
21 ing for a period of time at least equal to the remainder
22 of the initial five-year term, such reinvestment to be
23 made within twenty-four months from the date of
24 repayment or return, unless a waiver is obtained from
25 the authority prior to the end of said twenty-four month
26 period: *Provided*, That such returned amounts may be
27 accumulated for six months before the aforesaid twenty-
28 four month period commences.

29 (c) A qualified West Virginia capital company may be
30 dissolved or liquidated only after notice and approval of
31 such dissolution or liquidation by the authority. The
32 authority shall provide by rule a procedure for applica-
33 tion for approval to dissolve or liquidate a capital
34 company and such approval shall not be unreasonably
35 withheld, the intention of this provision being to ensure
36 compliance with subsection (b) of this section. Unless
37 waived by the authority, no dissolution or liquidation of
38 any qualified West Virginia capital company may be
39 made if such dissolution or liquidation would cause the
40 provisions of subsection (b) of this section to be violated.

41 (d) The authority shall annually audit the certified
42 audit of each qualified company, as required by section
43 sixteen of this article, and the results of said audit shall
44 be used to notify the tax commissioner of any companies
45 that are not in compliance with this section.

46 (e) A qualified West Virginia capital company that
47 fails to make or maintain qualified investments pursu-
48 ant to this section shall pay to the tax commissioner a
49 penalty equal to all of the tax credits allowed to the

50 taxpayers investing in said company with interest at the
51 rate of one and one-half percent per month, compounded
52 monthly, from the date the tax credits were certified as
53 allocated to the qualified West Virginia capital com-
54 pany. The tax commissioner shall give notice to the
55 company of any penalties under this section. The tax
56 commissioner may abate said penalty upon written
57 request if the capital company establishes reasonable
58 cause for the failure to make qualified investments. The
59 tax commissioner shall deposit any amounts received
60 under this subsection in the state general fund.

§5E-1-13. Restrictions on investment.

1 (a) No more than thirty percent of the equity raised
2 by a West Virginia capital company under this article
3 may be invested in any one West Virginia business.

4 (b) No portion of the capital base of a West Virginia
5 capital company may be invested in a business that is
6 the "alter ego" of that West Virginia capital company.
7 Furthermore, after the effective date of this article no
8 investments shall be made by a West Virginia capital
9 company to a business that is an "alter ego" of the West
10 Virginia capital company: *Provided*, That this restric-
11 tion on investments shall not effect any contracts
12 entered into prior to the effective date of this article. For
13 purposes of this subsection, a business is an "alter ego"
14 of the West Virginia capital company if any one or more
15 of the following criteria are satisfied:

16 (1) The ownership of the business is substantially
17 related to the ownership of the capital company; or

18 (2) The board of directors of the business is controlled
19 by the capital company: *Provided*, That a capital
20 company may control the board of directors of a
21 business if control consists of no more than a simple
22 majority of the board.

23 (c) No owner, director, officer or employee of a West
24 Virginia capital company may occupy any management
25 position in any business in which that capital company
26 has invested, unless such person is filling that manage-
27 ment position in an effort to remedy problems arising

28 from a lack of profitability of the business or from
29 dishonesty of the persons otherwise managing the
30 business.

31 (d) Each qualified West Virginia capital company
32 may not invest any of its capital base in any of the
33 following businesses:

34 (1) Banks;

35 (2) Savings and loan associations;

36 (3) Credit companies;

37 (4) Financial or investment advisors;

38 (5) Brokerage or financial firms;

39 (6) Other capital companies;

40 (7) Charitable and religious institutions;

41 (8) Conventional oil and gas exploration;

42 (9) Insurance companies;

43 (10) Residential housing or development; or

44 (11) Any other business which the authority deter-
45 mines to be against the public interest, the purposes of
46 this article or in violation of any law.

47 The authority, by the promulgation of rules in
48 accordance with section five of this article, may
49 designate, in addition to those listed in this subsection,
50 other businesses in which capital companies may not
51 invest any of their capital base.

§5E-1-14. Conflict of interest.

1 No officer, member or employee of the authority shall
2 be financially interested, directly or indirectly, in any
3 capital company.

§5E-1-15. Investment reporting and record keeping.

1 (a) Each qualified West Virginia capital company
2 shall report, at a minimum, to the tax commissioner and
3 the authority on a semiannual basis:

4 (1) The name of each investor in the qualified West

5 Virginia capital company who is entitled to a tax credit;

6 (2) The amount of each investor's investment in the
7 capital company;

8 (3) The amount of the tax credit allowed to the
9 investor and the date on which the qualified investment
10 that generated the tax credit was made;

11 (4) All qualified investments the company has made;

12 (5) An affidavit for each business invested in, pre-
13 pared by any officer or partner of each such respective
14 business which sets forth (A) that it is a business located
15 in or principally based in West Virginia; (B) that more
16 than fifty percent of its assets, operations and employees
17 are located in West Virginia; and (C) a brief description
18 of the activities the business is engaged in; and

19 (6) An affidavit pertaining to each business invested
20 in, prepared by an officer, partner or trustee of the
21 qualified West Virginia capital company which demon-
22 strates with respect to such business (A) that the
23 business invested in is not a business engaged in an
24 activity prohibited by subsection (d), section thirteen of
25 this article; (B) that more than fifty percent of the
26 assets, operations and employees of the business invested
27 in are located in West Virginia; and (C) that, if a
28 qualified investment, the business invested in is engaged
29 in activities that meet the requirements of a qualified
30 investment as listed in subdivision (d), section four of
31 this article.

32 (b) The authority, by the promulgation of rules, in
33 accordance with section five of this article, may require
34 that each qualified West Virginia capital company, in
35 its semiannual report to the tax commissioner and the
36 authority, disclose information in addition to the
37 disclosures required by subsection (a) of this section.

38 (c) The company shall provide each investor in a
39 qualified West Virginia capital company with a certif-
40 icate authorizing the tax credits, and a true copy of the
41 certificate shall be submitted with each taxpayer's tax
42 return claiming a credit under section eight of this
43 article.

§5E-1-16. Examination.

1 (a) Annually each qualified capital company shall
2 cause its books and records to be audited by an
3 independent certified public accountant in accordance
4 with generally accepted auditing and accounting
5 principles. In addition to the performance of a financial
6 audit, the audit shall address the methods of operation
7 and conduct of the business of the West Virginia capital
8 company to determine compliance with this article and
9 that the funds received by the company have been
10 invested within the time limits required by this article.
11 Upon completion, a copy of the audit report shall be
12 certified and sent to the authority.

13 (b) The authority may examine, under oath, any of the
14 officers, directors, agents, employees or investors of a
15 West Virginia capital company regarding the affairs
16 and business of the company. The authority may issue
17 subpoenas and subpoenas duces tecum and administer
18 oaths. Refusal to obey such a subpoena or subpoena
19 duces tecum may at once be reported to the circuit court
20 of the county in which the company is located or the
21 persons subpoenaed reside and the circuit court shall
22 enforce obedience to the subpoena or subpoena duces
23 tecum in the manner provided by law for compliance
24 with a subpoena or subpoena duces tecum issued by a
25 circuit court of this state.

26 (c) In addition to the audits herein required, the
27 authority and the tax commissioner may jointly audit
28 any capital company or number of capital companies in
29 any year on a random basis, or for cause, or for any
30 other basis the authority or the tax commissioner may
31 select. The tax commissioner may also audit any
32 company or business in which a capital company has
33 made an investment, or which a capital company
34 proposes to invest, on a random audit selection basis, or
35 for cause, or on any other basis the tax commissioner
36 may select. Nothing herein shall be construed to
37 prohibit the tax commissioner from conducting any
38 audit relating to the administration or enforcement of
39 the tax laws of this state which the tax commissioner
40 may, in his discretion, determine to be appropriate.

§5E-1-17. Failure to comply.

1 (a) If the examination conducted pursuant to section
2 sixteen discloses that a West Virginia capital company
3 is not in compliance with the provisions of this article,
4 the authority may exercise any of the powers necessary
5 and appropriate to protect the authority's interest.

6 (b) The authority shall give a West Virginia capital
7 company written notice of any inadequacies in its
8 compliance with the provisions of this article, and
9 specify a period of time the company has to redress such
10 inadequacies. Failure within said time period to make
11 corrections will result in further action by the authority
12 pursuant to this section.

§5E-1-18. Ruling procedure.

1 (a) The authority may issue an informal ruling as to
2 its position on the application of this article and the
3 rules promulgated thereunder to a stated transaction or
4 event.

5 (b) Such rulings will only be issued after receipt of
6 a written request and payment of a nonrefundable filing
7 fee.

8 (c) Such rulings shall not constitute binding prece-
9 dent, and are issued solely for the guidance of those
10 persons requesting the ruling. Such rulings may be
11 modified prospectively at any time with notice to the
12 recipient of the ruling at said recipient's last address
13 known to the authority and may be published or
14 released by the authority with facts or characteristics
15 identifying the person or persons requesting the ruling
16 omitted or modified.

17 (d) Notwithstanding any provision of this section,
18 rulings relating to issues of taxation may be issued only
19 by the state tax commissioner and may not be issued by
20 the authority.

§5E-1-19. Effective date; transition rules.

1 (a) The provisions of subsection (d), section eight of
2 this article relating to credit carryback that were in
3 effect on the first day of January, one thousand nine

4 hundred ninety, apply to any credit earned prior to the
5 effective date of the amendments to that subsection,
6 notwithstanding the fact that the taxpayer's taxable
7 year does not end until a date on or after the effective
8 date of the amendments to that subsection. The provi-
9 sions of subsections (d) and (f), section eight of this
10 article, as amended, prohibiting credit carryback and
11 application of credit against interest, penalties and
12 additions to tax apply to any credit earned on or after
13 the effective date of the amendments to that subsection.

14 (b) The provisions of section twelve of this article
15 relating to minimum investment time limitations that
16 were in effect on the first day of January, one thousand
17 nine hundred ninety, apply to any capital base qualified
18 prior to the effective date of the amendments to that
19 subsection. The provisions of subsection (a), subsection
20 (b), subsection (c), section twelve of this article, as
21 amended, apply to any capital base qualified on a date
22 on or after the effective date of the amendments to that
23 section.

24 (c) The provisions of section twenty of this article
25 relating to financial institutions are applicable to
26 investments by financial institutions made on a date on
27 or after the effective date of that section. Investments
28 made on a date prior to the effective date of that section
29 remain unaffected by the provisions of that section.

30 (d) The provisions of subsections (b) through (d),
31 section thirteen of this article relating to investment
32 restrictions are applicable to investments made on a
33 date on or after the effective date of those subsections.
34 Investments made on dates prior to the effective date of
35 those subsections remain unaffected by the provisions of
36 those subsections.

37 (e) As used in this section "amendments" means
38 changes made in this article during the regular session
39 of the Legislature in the year one thousand nine hundred
40 ninety-one.

§5E-1-20. Limitation on financial institutions.

1 Not more than forty-nine percent of the total capital

2 base of any capital company may be owned by banks,
3 savings and loan associations, savings banks or other
4 financial institutions, or any affiliate thereof, as
5 investors. No officer, employee or director of any such
6 financial institution may serve on the board of any
7 capital company formed under the provisions of this
8 article.

§5E-1-21. Confidentiality.

1 (a) The authority shall, by the promulgation of rules,
2 determine which records, reports, or information
3 obtained from any person or entity under this article are
4 to be treated by the agency as confidential and not
5 subject to disclosure, except as hereinafter provided in
6 subsection (c) of this section: *Provided*, That notwith-
7 standing any other provision of law to the contrary, the
8 authority shall make available to the public the name
9 of any business or company receiving a qualified
10 investment from a capital company and the name of the
11 capital company so investing.

12 (b) Any other records, reports, or information ob-
13 tained from any person or entity under this article shall
14 be made available to the public, except that upon a
15 showing at the time of submission, satisfactory to the
16 authority, by any person or entity, that records, reports
17 or information, or a particular part thereof, to which the
18 authority or any officer, employee or representative
19 thereof has or will have access under this section, if
20 made public, would divulge information entitled to
21 protection under Section 1905 of Title 18 of the United
22 States Code as said section reads on the twentieth day
23 of December, one thousand nine hundred ninety, such
24 information or particular portion thereof is confidential
25 in accordance with the purposes of this section. In
26 submitting data under this article, a person required to
27 provide such data may designate the data which he or
28 she believes is entitled to protection under this subsec-
29 tion and submit such designated data separately from
30 other data submitted under this article. A designation
31 under this subsection shall be made in writing and in
32 such manner as the authority may prescribe.

33 (c) Notwithstanding the foregoing provisions of this
34 section, any record, report, document, or information
35 may be disclosed to other officers, employees, or
36 authorized representatives of this state charged with
37 administering the provisions of this article and may be
38 disclosed pursuant to proceeding under subsection (b),
39 section sixteen of this article. Notwithstanding the
40 previous sentence, and notwithstanding any provision of
41 this article, the provisions of this code regarding
42 confidentiality and the disclosure of tax returns and tax
43 information, including specifically section five-d, article
44 ten, chapter eleven of this code, apply to the authority,
45 its agents and employees and to information submitted
46 to the authority under this article.

CHAPTER 18

(S. B. 108—By Senators Spears and Brackenrich)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the child advocate office.

Be it enacted by the Legislature of West Virginia:

That section one, article two, chapter forty-eight-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. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-1. Reestablishment of the West Virginia child advocate office.

1 (a) There is hereby established within the department
2 of human services the child advocate office.

3 (b) Pursuant to the provisions of section four, article
4 ten, chapter four of this code, the child advocate office
5 shall continue to exist until the first day of July, one
6 thousand nine hundred ninety-two, to allow for the
7 completion of an audit by the joint committee on
8 government operations.

CHAPTER 19

(S. B. 393—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article four, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the administration of programs for handicapped children by the bureau of public health.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. HANDICAPPED CHILDREN.

- §49-4-1. Purpose.
- §49-4-2. Children to whom article applies.
- §49-4-3. Powers of state bureau.
- §49-4-4. Report of birth of handicapped child.
- §49-4-5. Assistance by other agencies.
- §49-4-6. Cost of treatment.

§49-4-1. Purpose.

1 The purpose of this article is to provide for the
2 continuation and development of services for handi-
3 capped children. The state bureau of public health
4 within the department of health and human resources
5 shall formulate and apply administrative policies
6 concerning the care and treatment of physically handi-
7 capped children and shall cooperate with other agencies
8 responsible for such care and treatment.

9 In the development of administrative policies, the
10 state bureau shall cooperate with the United States
11 department of health and human services and shall
12 comply with the regulations that agency prescribes
13 under the authority of the "Social Security Act", and is
14 hereby authorized to receive and expend federal funds
15 for these services.

§49-4-2. Children to whom article applies.

1 It is the intention of this article that services for
2 handicapped children shall be extended only to those
3 children for whom adequate care, treatment and
4 rehabilitation are not available from other than public
5 sources.

§49-4-3. Powers of state bureau.

1 In the care and treatment of handicapped children the
2 state bureau of public health shall, so far as funds are
3 available for the purpose:

4 (1) Locate handicapped children requiring medical,
5 surgical, or other corrective treatment and provide
6 competent diagnosis to determine the treatment
7 required.

8 (2) Supply to handicapped children treatment, includ-
9 ing hospitalization and aftercare leading to correction
10 and rehabilitation.

11 (3) Guide and supervise handicapped children to
12 assure adequate care and treatment.

§49-4-4. Report of birth of handicapped child.

1 Within thirty days after the birth of a child with a
2 congenital deformity, the physician, midwife, or other
3 person attending the birth shall report to the state
4 bureau of public health, on forms prescribed by them,
5 the birth of such child.

6 The report shall be solely for the use of the state
7 department of health and human resources and shall not
8 be open for public inspection.

§49-4-5. Assistance by other agencies.

1 So far as practicable, the services and facilities of the
2 state departments of health, education, vocational
3 rehabilitation and corrections or their successors shall
4 be available to the state bureau of public health for the
5 purposes of this article.

§49-4-6. Cost of treatment.

1 All payments from any corporation, association,
2 program or fund providing insurance coverage or other

- 3 payment for medicine, medical, surgical and hospital
4 treatment, crutches, artificial limbs and such other and
5 additional approved mechanical appliances and devices
6 as may be reasonably required for a handicapped child,
7 shall be applied toward the total cost of treatment.

CHAPTER 20

(Com. Sub. for S. B. 29—By Senators Burdette, Mr. President, Holliday,
M. Manchin, Pritt, Wehrle and J. Manchin)

[Passed March 7, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating to providing services to families of people with developmental disabilities through the West Virginia family support program; setting forth findings; defining terms; specifying services which may be provided under the program; setting forth eligibility criteria; setting forth the primary focus of the program; specifying the administering agency and setting forth its duties; providing for the establishment of state and regional family support councils; and providing for the reimbursement of certain expenses.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. WEST VIRGINIA FAMILY SUPPORT PROGRAM.

- §49-4A-1. Findings.
- §49-4A-2. Definitions.
- §49-4A-3. Family support services.
- §49-4A-4. Eligibility; primary focus.
- §49-4A-5. Program administration.
- §49-4A-6. Regional and state family support councils.

§49-4A-1. Findings.

1 (a) The West Virginia Legislature finds that families
2 are the greatest resource available to individuals with
3 developmental disabilities, and they must be supported
4 in their role as primary caregivers. It further finds that
5 supporting families in their effort to care for their
6 family members at home is more efficient, cost effective
7 and humane than placing the developmentally disabled
8 person in an institutional setting.

9 (b) The Legislature accepts the following as basic
10 principles for providing services to support families of
11 people with developmental disabilities:

12 (1) The quality of life of children with developmental
13 disabilities, their families and communities is enhanced
14 by caring for the children within their own homes.
15 Children with disabilities benefit by growing up in their
16 own families, families benefit by staying together and
17 communities benefit from the inclusion of people with
18 diverse abilities.

19 (2) Adults with developmental disabilities should be
20 afforded the opportunity to make decisions for them-
21 selves, live in typical homes and communities and
22 exercise their full rights as citizens. Developmentally
23 disabled adults should have the option of living sepa-
24 rately from their families but when this is not the case,
25 families of disabled adults should be provided the
26 support services they need.

27 (3) Services and support for families should be
28 individualized and flexible, should focus on the entire
29 family and should promote the inclusion of people with
30 developmental disabilities in all aspects of school and
31 community life.

32 (4) Families are the best experts about what they
33 need. The service system can best assist families by
34 supporting families as decision makers as opposed to
35 making decisions for them.

36 (c) The Legislature finds that there are at least ten
37 thousand West Virginians with developmental disabili-
38 ties who live with and are supported by their families,

39 and that the state's policy is to prevent the institution-
40 alization of people with developmental disabilities.

41 (d) To maximize the number of families supported by
42 this program, each family will contribute to the cost of
43 goods and services based on their ability to pay, taking
44 into account their needs and resources.

45 (e) Therefore, it is the intent of the Legislature to
46 initiate, within the resources available, a program of
47 services to support families who are caring for family
48 members with developmental disabilities in their homes.

§49-4A-2. Definitions.

1 (a) "Family or primary caregiver" means the person
2 or persons with whom the developmentally disabled
3 person resides and who is primarily responsible for the
4 physical care, education, health and nurturing of the
5 disabled person. The term does not include hospitals,
6 sanitariums, nursing homes, personal care homes or any
7 other such institution.

8 (b) "Legal guardian" means the person who is
9 appointed legal guardian of a developmentally disabled
10 person and who is responsible for the physical and
11 financial aspects of caring for such person, regardless
12 of whether the disabled person resides with his or her
13 legal guardian or another family member.

14 (c) "Family support" means goods and services needed
15 by families to care for their family members with
16 developmental disabilities and to enjoy a quality of life
17 comparable to other community members.

18 (d) "Family support program" means a coordinated
19 system of family support services administered by the
20 department of health and human resources through
21 initial contracts with agencies within four of the state's
22 behavioral health regions.

23 (e) "Developmental disability" means a severe, chronic
24 disability of a person which:

25 (1) Is attributable to a mental or physical impairment
26 or a combination of mental and physical impairments;

27 (2) Is manifested before the person attains age twenty-
28 two;

29 (3) Results in substantial functional limitations in
30 three or more of the following areas of major life
31 activity: (A) Self-care; (B) receptive and expressive
32 language; (C) learning; (D) mobility; (E) self-direction;
33 (F) capacity for independent living; and (G) economic
34 self-sufficiency; and

35 (4) Reflects the person's need for services and supports
36 which are of lifelong or extended duration and are
37 individually planned and coordinated.

38 The term "developmental disability", when applied to
39 infants and young children, means individuals from
40 birth to age five, inclusive, who have substantial
41 developmental delays or specific congenital or acquired
42 conditions with a high probability of resulting in
43 developmental disabilities if services are not provided.

44 (f) "Regional family support council" means the
45 council established by the regional family support
46 agency under the provisions of section six of this article
47 to carry out the responsibilities specified in this article.

48 (g) "State family support council" means the council
49 established by the department of health and human
50 resources under section six of this article to carry out
51 the responsibilities specified in this article.

§49-4A-3. Family support services.

1 (a) The regional family support agency, designated
2 under section five of this article, shall direct and be
3 responsible for the individual assessment of each
4 developmentally disabled person which it has desig-
5 nated and shall prepare a service plan with such
6 developmentally disabled person's family. The needs and
7 preferences of the family will be the basis for determin-
8 ing what goods and services will be made available
9 within the resources available.

10 (b) The family support program may provide funds to
11 families to purchase goods and services included in the
12 family service plan. Such goods and services related to

13 the care of the developmentally disabled person may
14 include, but are not limited to:

- 15 (1) Respite care;
- 16 (2) Personal and attendant care;
- 17 (3) Child care;
- 18 (4) Architectural and vehicular modifications;
- 19 (5) Health-related costs not otherwise covered;
- 20 (6) Equipment and supplies;
- 21 (7) Specialized nutrition and clothing;
- 22 (8) Homemaker services;
- 23 (9) Transportation;
- 24 (10) Utility costs;
- 25 (11) Integrated community activities; and
- 26 (12) Training and technical assistance.

27 (c) As part of the family support program, the
28 regional family support agency, designated under
29 section five of this article, shall provide case manage-
30 ment for each family to provide information, service
31 coordination and other assistance as needed by the
32 family.

33 (d) The family support program shall assist families
34 of developmentally disabled adults in planning and
35 obtaining community living arrangements, employment
36 services and other resources needed to achieve, to the
37 greatest extent possible, independence, productivity and
38 integration of the developmentally disabled adult into
39 the community.

40 (e) The family support program shall conduct out-
41 reach to identify families in need of assistance and shall
42 maintain a waiting list of individuals and families in the
43 event that there are insufficient resources to provide
44 services to all those who request them.

45 (f) The family support program may provide for
46 differential fees for services under the program or for

47 appropriate cost participation by the recipient families
48 consistent with the goals of the program and the overall
49 financial condition of the family.

50 (g) Funds, goods or services provided to eligible
51 families by the family support program under this
52 article shall not be considered as income to those
53 families for any purpose under this code or under the
54 rules and regulations of any agency of state government.

§49-4A-4. Eligibility; primary focus.

1 (a) To be eligible for the family support program, a
2 family must have at least one family member who has
3 a developmental disability, as defined in this article,
4 living with the family.

5 (b) The primary focus of the family support program
6 is supporting: (1) Developmentally disabled children,
7 school age and younger, within their families; (2) adults
8 with developmental disabilities who choose to live with
9 their families; and (3) adults with developmental
10 disabilities for whom other community living arrange-
11 ments are not available and who are living with their
12 families.

§49-4A-5. Program administration.

1 (a) The administering agency for the family support
2 program is the department of health and human
3 resources.

4 (b) The department of health and human resources
5 shall initially implement the family support program
6 through contracts with an agency within four of the
7 state's behavioral health regions, with the four regions
8 to be determined by the department of health and
9 human resources in consultation with the state family
10 support council. These regional family support agencies
11 of the family support program will be responsible for
12 implementing the provisions of this article and subse-
13 quent policies for the families of persons with develop-
14 mental disabilities residing within their respective
15 regions. Each regional family support agency must
16 serve at least twenty-five families from each fifty
17 thousand dollars allocated. The total appropriation from

18 general revenue funds for this program shall not exceed
19 two hundred thousand dollars for the fiscal year
20 beginning the first day of July, one thousand nine
21 hundred ninety-one.

22 (c) The department of health and human resources, in
23 conjunction with the state family support council, shall
24 adopt policies and procedures regarding:

25 (1) Development of annual budgets;

26 (2) Program specifications;

27 (3) Criteria for awarding contracts for operation of
28 regional family support programs and the role of
29 regional family support councils;

30 (4) Annual evaluation of services provided by each
31 regional family support agency, including consumer
32 satisfaction;

33 (5) Coordination of the family support program and
34 the use of its funds, throughout the state and within each
35 region, with other publicly funded programs, including
36 medicaid;

37 (6) Performance of family needs assessments and
38 development of family service plans;

39 (7) Methodology for allocating resources to families
40 within the funds available; and

41 (8) Resolution of grievances filed by families pertain-
42 ing to actions of the family support program.

43 (d) The department of health and human resources
44 shall submit a report to the governor and the Legisla-
45 ture on the family support program, by the fifteenth day
46 of January, one thousand nine hundred ninety-two, and
47 by the fifteenth day of September every year thereafter,
48 so long as the program is funded.

§49-4A-6. Regional and state family support councils.

1 (a) Each regional family support agency shall estab-
2 lish a regional family support council comprised of at

3 least seven members, of whom at least a majority shall
4 be persons with developmental disabilities or their
5 parents or primary caregivers. Each regional family
6 support council shall meet at least quarterly to advise
7 the regional family support agency on matters related
8 to local implementation of the family support program
9 and to communicate information and recommendations
10 regarding the family support program to the state
11 family support council.

12 (b) The secretary of the department of health and
13 human resources shall appoint a state family support
14 council comprised of at least twenty-two members, of
15 whom at least a majority shall be persons with devel-
16 opmental disabilities or their parents or primary
17 caregivers. A representative elected by each regional
18 council shall serve on the state council. The state council
19 shall also include a representative from each of the
20 following agencies: The state developmental disabilities
21 planning council, the state protection and advocacy
22 agency, the university affiliated center for developmen-
23 tal disabilities, the office of special education, the
24 association of community mental health/mental retarda-
25 tion programs and the early intervention interagency
26 coordinating council.

27 (c) The state council shall meet at least quarterly. The
28 state council will participate in the development of
29 program policies and procedures, annual contracts and
30 perform such other duties as are necessary for statewide
31 implementation of the family support program.

32 (d) Members of the state and regional councils who are
33 a member of the family or the primary caregiver of a
34 developmentally disabled person shall be reimbursed for
35 travel and lodging expenses incurred in attending
36 official meetings of their councils. Child care expenses
37 related to the developmentally disabled person shall also
38 be reimbursed. Members of regional councils who are
39 eligible for expense reimbursement shall be reimbursed
40 by their respective regional family support agencies.

CHAPTER 21

(Com. Sub. for H. B. 2897—By Delegates Douglas and Staton)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article five, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to noncustodial counseling of a child and his or her parent or guardian.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-3. Noncustodial counseling of a child.

1 The court at any time, or the state department or
2 other official upon a request from a parent, guardian,
3 or custodian, may, without institution of proceedings
4 under this article, refer a child alleged to be delinquent
5 to a counselor at the state department or a community
6 mental health center or other professional counselor in
7 the community. In the event the child refuses to respond
8 to such reference the state department may serve a
9 notice by first-class mail or personal service of process
10 upon the child, setting forth the facts and stating that
11 the department will seek a noncustodial order from the
12 court directing the child to submit to counseling. The
13 notice shall set forth the time and place for the hearing
14 on the matter. The court or referee after hearing may
15 direct the child to participate in a noncustodial period
16 of counseling not to exceed six months. Upon recommen-
17 dation of the department, and with the consent of the
18 child's parent or guardian, the court or referee may also
19 allow the participation of such parent or guardian in
20 said counseling. No information obtained as the result
21 of such counseling shall be admissible in a subsequent
22 proceeding under this article except a dispositional
23 proceeding.

CHAPTER 22

(S. B. 584—By Senator Pritt)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-six, relating to employee representative organization bulletin boards.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-26. Employee representative organization bulletin boards.

1 A bulletin board of a limited size shall be provided
2 for posting notices of employee representative organiza-
3 tions. Such bulletin boards will be placed in convenient
4 and generally accessible locations in all workplaces
5 where the members of such organizations are employed.
6 Provisions shall be made for separate bulletin boards for
7 each employee representative organization. The cost of
8 such bulletin boards will be assumed by the requesting
9 employee or the employee's representative organization.
10 Such boards shall be used exclusively by the employee
11 representative organization and for organization pur-
12 poses only.

CHAPTER 23

(Com. Sub. for H. B. 2726—By Delegates Murensky and Stemple)

[Passed March 5, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

- §1. Finding and declaring certain claims against the department of administration; department of education; department of health and human resources; division of corrections; and Workers' Compensation Fund, to be moral obligations of the state and directing payments thereof.**

1 The Legislature has heretofore made findings of fact
2 that the state has received the benefit of the commod-
3 ities received and/or services rendered by certain
4 claimants herein and has considered these claims
5 against the state and agencies thereof, which have
6 arisen due to over-expenditures of the departmental
7 appropriations by officers of such state spending units,
8 such claims having been previously considered by the
9 court of claims which also found that the state has
10 received the benefit of the commodities received and/or
11 services rendered by the claimants, but were denied by
12 the court of claims on the purely statutory grounds that
13 to allow such claims would be condoning illegal acts
14 contrary to the laws of the state. The Legislature,
15 pursuant to its findings of fact and also by the adoption
16 of the findings of fact by the court of claims as its own,
17 and, while not condoning such illegal acts, hereby
18 declares it to be the moral obligation of the state to pay
19 these claims in the amounts specified below, and directs
20 the auditor to issue warrants upon receipt of properly
21 executed requisitions supported by itemized invoices,
22 statements or other satisfactory documents as required

23 by section ten, article three, chapter twelve of the code
 24 of West Virginia, one thousand nine hundred thirty-one,
 25 as amended, for the payments thereof out of any fund
 26 appropriated and available for the purpose.

27 (a) *Claim against the Department of Administration:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

29 (1) Xerox Corporation \$ 444.90

30 (b) *Claims against the Department of Education:*

31 (TO BE PAID FROM GENERAL REVENUE FUND)

32 (1) Trilla J. Daubenspeck \$ 295.00

33 (2) Sherry S. Hetzel \$ 212.00

34 (3) Steven J. Klos \$ 517.00

35 (4) Patricia F. Stine \$ 250.00

36 (5) Dennis L. Venderlic \$ 485.00

37 (6) Salena M. Williams..... \$ 250.00

38 (c) *Claims against the Department of Health and*
 39 *Human Resources:*

40 (TO BE PAID FROM GENERAL REVENUE FUND)

41 (1) Blue Ridge Funeral Homes ... \$ 800.00

42 (2) Copeland & Associates of
 43 West Virginia \$ 100,000.00

44 (d) *Claims against the Division of Corrections:*

45 (TO BE PAID FROM GENERAL REVENUE FUND)

46 (1) Fisher Auto Parts \$ 203.71

47 (2) General Anesthesia
 48 Services, Inc..... \$ 2,200.00

49 (3) Richard E. McCray, DDS..... \$ 185.00

50 (4) Reynolds Memorial Hospital \$ 43.00

51 (e) *Claims against the Workers' Compensation Fund:*

52 (TO BE PAID FROM WORKERS' COMPENSATION FUND)

53 (1) James W. Lane, M.D \$ 3,666.66

54 (2) Tameran, Inc. \$ 12,087.60

55 (3) Xerox Corporation \$ 3,416.08

56 (4) West Virginia American
 57 Water Company \$ 839.27

CHAPTER 24

(H. B. 2727—By Delegates Murensky and Stemple)

[Passed March 7, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

1 The Legislature has duly considered the findings of
2 fact and recommendations for awards reported to it by
3 the court of claims in respect to the following named
4 claimants who were innocent victims of crime within
5 this state and entitled to compensation; and in respect
6 to each of such named claimants the Legislature adopts
7 those findings of fact as its own, hereby declares it to
8 be the moral obligation of the state to pay each such
9 claimant in the amount specified below, and directs the
10 auditor to issue warrants for the payment thereof out
11 of any fund appropriated and available for the purpose.

12 *Claims for crime victims compensation awards:*

13 (To be paid from Crime Victims Compensation Fund)

14	(1) Adkins, Debra L.	\$ 5,000.00
15	(2) Adkins, Debra L., as guardian of 16 Eric Wayne Adkins	\$ 5,000.00
17	(3) Adkins, Debra L., as guardian of 18 Tracy Lynn Adkins	\$ 5,000.00
19	(4) Ball, Juanita	\$ 5,000.00
20	(5) Barrett, Edna S.	\$ 15,000.00
21	(6) Clark, Jacquelyn M.	\$ 15,000.00
22	(7) Davison, Joyce E.	\$ 2,500.00

23	(8) Edwards, Rodney L.	\$ 15,000.00
24	(9) Escue, Jesse A.	\$ 5,000.00
25	(10) Escue, Noah A.	\$ 5,000.00
26	(11) Escue, Shirley	\$ 5,000.00
27	(12) Farrar, Debra M.	\$ 5,000.00
28	(13) Fields, Rickey L.	\$ 15,000.00
29	(14) Fowler, Joseph E.	\$ 10,000.00
30	(15) Hitchings, Susan F., as guardian of	
31	Cheryl E. Hitchings	\$ 10,000.00
32	(16) Honaker, Sueanne B.	\$ 5,000.00
33	(17) Jackson, Margaret L.	\$ 5,000.00
34	(18) Jackson, Margaret L., as guardian of	
35	Jamey S. Jackson	\$ 5,000.00
36	(19) Jackson, Margaret L., as guardian of	
37	Matthew D. Jackson	\$ 5,000.00
38	(20) Johnson, Eunice D., as guardian of	
39	Faith A. Coles	\$ 10,000.00
40	(21) Kerry, Thomas E.	\$ 5,000.00
41	(22) Kimbler, Brady	\$ 500.00
42	(23) Lowe, Dennie L.	\$ 5,000.00
43	(24) Mason, Floyd L., III	\$ 5,000.00
44	(25) Mason, L. Hope, as guardian of	
45	the estate of Brandon C. Mason	\$ 5,000.00
46	(26) Mason, L. Hope, as guardian of	
47	the estate of Lisa C. Mason	\$ 5,000.00
48	(27) Mays, James A.	\$ 1,000.00
49	(28) McEwan, Jane, as guardian of	
50	Amanda Beth Murphy	\$ 5,000.00
51	(29) Miller, Charles W., as guardian of	
52	Joshua W. Miller	\$ 5,000.00
53	(30) Norman, Cheryl, as guardian of	
54	Casey Nuckols	\$ 5,000.00
55	(31) Radcliffe, Rex A.	\$ 15,000.00
56	(32) Rhodes, Patricia S.	\$ 2,500.00
57	(33) Rinard, Phyllis J.	\$ 15,000.00
58	(34) Stafford, Judy Nuckols	\$ 5,000.00
59	(35) Stafford, Judy Nuckols, as guardian of	
60	Brittany Nuckols	\$ 5,000.00
61	(36) Stafford, Judy Nuckols, as guardian of	
62	Christopher Bennett	\$ 5,000.00
63	(37) Townsend, Joyce A.	\$ 10,000.00
64	(38) Wallace, Reginald N.	\$ 500.00

65	(39) Watts, Warren C.	\$ 1,000.00
66	TOTAL	\$253,000.00

67 The Legislature finds that the above moral obligations
 68 and the appropriations made in satisfaction thereof shall
 69 be the full compensation for all claimants herein.

CHAPTER 25

(S. B. 625—Originating in the Committee on Finance)

[Passed March 8, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the adjutant general; alcohol beverage control administration; attorney general; board of education; board of trustees of the university of West Virginia; commission on aging; department of administration; department of health and human resources; department of public safety; department of tax and revenue; department of veterans affairs; division of corrections; division of culture and history; division of forestry; division of highways; division of motor vehicles; division of tourism and parks; ethics commission; farm management commission; governor's office of community and industrial development; human rights commission; public employees insurance agency; railroad maintenance authority; real estate commission; state treasurer; supreme court of appeals; and West Virginia public defender services; workers' compensation fund, to be moral obligations of the state and directing payment thereof.

1 The Legislature has considered the findings of fact
 2 and recommendations reported to it by the court of
 3 claims concerning various claims against the state and
 4 agencies thereof, and in respect to each of the following
 5 claims the Legislature adopts those findings of fact as
 6 its own, and in respect of certain claims herein, the
 7 Legislature has independently made findings of fact and
 8 determinations of award and hereby declares it to be the
 9 moral obligation of the state to pay each such claim in
 10 the amount specified below, and directs the auditor to
 11 issue warrants for the payment thereof out of any fund
 12 appropriated and available for the purpose.

13 (a) *Claims against the Adjutant General:*

14 (TO BE PAID FROM GENERAL REVENUE FUND)

15	(1) Appalachian Power Company	\$	1,971.62
16	(2) Enviro-San, Inc.	\$	33.00
17	(3) West Virginia Power Gas Service . . .	\$	3,171.71

18 (b) *Claims against the Alcohol Beverage Control*
 19 *Administration:*

20 (TO BE PAID FROM SPECIAL REVENUE FUND)

21	(1) Greenbrier County Public		
22	Service District No. 2	\$	235.17
23	(2) J. Don McClung	\$	76.80
24	(3) Ryder Truck Rental, Inc.	\$	1,607.17

25 (c) *Claims against the Attorney General:*

26 (TO BE PAID FROM GENERAL REVENUE FUND)

27	(1) American Telephone and		
28	Telegraph Company	\$	1,378.77
29	(2) Federal Express Corporation	\$	39.00
30	(3) Government Institutes, Inc.	\$	52.50
31	(4) National Association of		
32	Attorneys General	\$	225.00
33	(5) National Business Institute, Inc.	\$	420.00
34	(6) Barbara Steinke	\$	381.75
35	(7) Viking Way Limited Partnership . . .	\$	74.59
36	(8) Xerox Corporation	\$	2,864.47

37 (d) *Claims against the Board of Education:*

38 (TO BE PAID FROM GENERAL REVENUE FUND)

39 (1) The Board of Education of the
40 County of McDowell et al.\$ 461,163.32

41 That \$461,163.32 shall be paid during the time period
42 beginning the first day of July, one thousand nine
43 hundred ninety-one, and ending the last day of June, one
44 thousand nine hundred ninety-two; that \$461,163.32
45 shall be paid during the time period beginning the first
46 day of July, one thousand nine hundred ninety-two, and
47 ending the last day of June, one thousand nine hundred
48 ninety-three; that \$461,163.32 shall be paid during the
49 time period beginning the first day of July, one thousand
50 nine hundred ninety-three, and ending the last day of
51 June, one thousand nine hundred ninety-four; that
52 \$461,163.32 shall be paid during the time period
53 beginning the first day of July, one thousand nine
54 hundred ninety-four, and ending the last day of June,
55 one thousand nine hundred ninety-five: *Provided*, That
56 the Board of Education of the County of McDowell shall
57 be paid the full amount provided for in this bill no later
58 than the last day of June, one thousand nine hundred
59 ninety-five.

60 (2) The Board of Education of the
61 County of Grant\$ 336,049.05

62 That \$336,049.05 shall be paid during the time period
63 beginning the first day of July, one thousand nine
64 hundred ninety-one, and ending the last day of June, one
65 thousand nine hundred ninety-two: *Provided*, That the
66 Board of Education of the County of Grant shall be paid
67 the full amount provided for in this bill no later than
68 the last day of June, one thousand nine hundred ninety-
69 two.

70 (3) The Board of Education of the
71 County of Ritchie\$ 198,318.00

72 That \$198,318.00 shall be paid during the time period
73 beginning the first day of July, one thousand nine
74 hundred ninety-one, and ending the last day of June, one
75 thousand nine hundred ninety-two: *Provided*, That the
76 Board of Education of the County of Ritchie shall be

77 paid the full amount provided for in this bill no later
 78 than the last day of June, one thousand nine hundred
 79 ninety-two.

80 (e) *Claims against the Board of Trustees of the*
 81 *University of West Virginia:*

82 (TO BE PAID FROM SPECIAL REVENUE FUND)

83	(1) Larry James Williams	\$	844.23
84	(2) Xerox Corporation	\$	6,001.45

85 (f) *Claim against the Commission on Aging:*

86 (TO BE PAID FROM GENERAL REVENUE FUND)

87	(1) Robert C. Bianchinotti	\$	576.00
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88 (g) *Claim against the Department of Administration:*

89 (TO BE PAID FROM GENERAL REVENUE FUND)

90	(1) William F. Moore	\$	32.78
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91 (h) *Claims against the Department of Health*
 92 *and Human Resources:*

93 (TO BE PAID FROM GENERAL REVENUE FUND)

94	(1) Area Psychiatric and		
95	Psychotherapy Group	\$	2,205.00
96	(2) The Douglas Mortuary	\$	325.00
97	(3) Greenbrier Medical		
98	Arts Pharmacy	\$	290.62
99	(4) Hamilton Business Systems	\$	375.00
100	(5) HCA River Park Hospital,		
101	formerly known as		
102	HCA Huntington Hospital	\$	2,979.00
103	(6) Manpower Temporary Services	\$	105.40
104	(7) Res-Care, Inc.	\$	182,299.45
105	(8) Saint Albans		
106	Psychiatric Hospital	\$	18,560.00
107	(9) Allan Saoud, D.O.	\$	450.00
108	(10) Scott Funeral Home, Inc.	\$	800.00
109	(11) Mary Swim	\$	10,000.00
110	(12) Xerox Corporation	\$	7,639.76

111 (i) *Claims against the Department of Public Safety:*

112	(TO BE PAID FROM GENERAL REVENUE FUND)	
113	(1) Kanawha Valley Radiologists	\$ 42.00
114	(2) Richard Wayne Kocher	\$ 25,000.00
115	(3) Orthopaedic Associates, Inc.	\$ 74.00
116	(4) Charles Winkler, Sr.	\$ 35,000.00
117	(j) <i>Claim against the Department of Tax and Revenue:</i>	
118	(TO BE PAID FROM GENERAL REVENUE FUND)	
119	(1) F.W. Dodge	\$ 354.77
120	(k) <i>Claim against the Department of Veterans Affairs:</i>	
121	(TO BE PAID FROM GENERAL REVENUE FUND)	
122	(1) AT&T	\$ 125.81
123	(l) <i>Claims against the Division of Corrections:</i>	
124	(TO BE PAID FROM GENERAL REVENUE FUND)	
125	(1) Michael W. Blatt, M.D.	\$ 865.00
126	(2) Builders Service and	
127	Supply Company	\$ 542.46
128	(3) Cabell Huntington	
129	Surgery Center	\$ 676.00
130	(4) County Commission of	
131	Barbour County	\$ 2,850.00
132	(5) County Commission of	
133	Cabell County	\$ 25,470.00
134	(6) County Commission of	
135	Fayette County	\$ 35,184.17
136	(7) County Commission of	
137	Gilmer County	\$ 2,415.00
138	(8) County Commission of	
139	Greenbrier County	\$ 34,286.86
140	(9) County Commission of	
141	Logan County	\$ 23,505.00
142	(10) County Commission of	
143	Marion County	\$ 27,594.06
144	(11) County Commission of	
145	Marshall County	\$ 1,669.97
146	(12) County Commission of	
147	McDowell County	\$ 25,407.90
148	(13) County Commission of	

149	Mercer County	\$ 46,605.00
150	(14) County Commission of	
151	Mineral County	\$ 44,751.46
152	(15) County Commission of	
153	Mingo County	\$ 15,290.00
154	(16) County Commission of	
155	Morgan County	\$ 8,160.00
156	(17) County Commission of	
157	Nicholas County	\$ 13,880.89
158	(18) County Commission of	
159	Pendleton County	\$ 1,530.00
160	(19) County Commission of	
161	Putnam County	\$ 5,295.00
162	(20) County Commission of	
163	Raleigh County	\$ 31,597.62
164	(21) County Commission of	
165	Randolph County	\$ 10,050.00
166	(22) County Commission of	
167	Roane County	\$ 19,232.44
168	(23) County Commission of	
169	Wirt County	\$ 1,407.29
170	(24) Nephrology Associates, Inc.	\$ 1,378.00
171	(25) Pinewood Medical Corporation	\$ 212.00
172	(26) Princeton Community Hospital	\$ 250.78
173	(27) Radiology, Inc.	\$ 27.00
174	(28) West Virginia	
175	University Hospital	\$ 1,325.00
176	(29) James D. Weinstein	\$ 150.00
177	(30) Wheeling Clinic	\$ 410.75
178	(m) <i>Claims against the Division of Culture and History:</i>	
179	(TO BE PAID FROM GENERAL REVENUE FUND)	
180	(1) Alpine Festival, Inc.	\$ 4,282.83
181	(2) Charleston Cash Register	
182	Co., Inc.	\$ 1,688.00
183	(3) Xerox Corporation	\$ 310.00
184	(n) <i>Claims against the Division of Forestry:</i>	
185	(TO BE PAID FROM GENERAL REVENUE FUND)	
186	(1) Robert E. Smith	\$ 483.04
187	(2) Juergen Wildman	\$ 718.00

188	(3) John L. Anderson	\$ 102.52
189	(4) Phillip T. Carnell	\$ 481.85
190	(5) James P. Owens	\$ 33.62
191	(6) Joseph S. Jelich	\$ 354.91
192	(7) Michael McWhorter	\$ 586.33
193	(8) James P. Schaffner	\$ 3,192.37
194	(9) Arthur J. Yagel, III	\$ 1,334.99
195	(10) Charles E. Bowling	\$ 397.19
196	(11) George P. Clarkson	\$ 400.98
197	(12) Lawrence E. Cook	\$ 1,352.16
198	(13) Robert S. Dameron	\$ 1,865.53
199	(14) Walter L. Lester	\$ 596.27
200	(15) Kevin I. Arnold	\$ 1,053.65
201	(16) Howard M. Dempsey	\$ 361.44
202	(17) James L. Dickerson	\$ 713.39
203	(18) Tex Fields	\$ 950.59
204	(19) Robert L. Hannah	\$ 522.27
205	(20) John F. Looney	\$ 345.15
206	(21) Craig M. Minton	\$ 649.43
207	(22) Alan G. Sowards	\$ 662.15
208	(23) Richard H. Strickland	\$ 1,246.34
209	(24) Thomas E. Withrow	\$ 237.99
210	(25) Edward D. Walker	\$ 1,307.24
211	(26) Bernard R. Boggs	\$ 468.04
212	(27) Marla Clifton	\$ 139.79
213	(28) Thomas Halki	\$ 52.02
214	(29) David Warner	\$ 652.72
215	(30) Scott Eggerud	\$ 1,669.52
216	(31) Stephen Forry	\$ 433.22
217	(32) Jane Ohi	\$ 1,280.82
218	(33) Earl Reaves, Jr.	\$ 1,358.81
219	(34) Joseph Taylor	\$ 996.24
220	(35) Billy Sirk	\$ 42.36
221	(36) John M. Gibson	\$ 526.06
222	(37) Earl Bibb	\$ 214.04
223	(38) Joseph Lilly	\$ 157.27
224	(39) Avary McMillian	\$ 414.46
225	(40) Woodrow Smith	\$ 449.59
226	(41) Division of Forestry	\$ 4,073.27

227 (o) *Claims against the Division of Highways:*

228

(TO BE PAID FROM STATE ROAD FUND)

229	(1) Paul H. Anderson	\$	1,666.67
230	(2) Joe O. Baldwin and		
231	Elaine Baldwin	\$	200.00
232	(3) Edith R. Bence	\$	1,666.67
233	(4) Mary Berkley.....	\$	11,153.40
234	(5) Craig Callison	\$	500.00
235	(6) Trudy L. Corr	\$	341.78
236	(7) Esther Deal	\$	1,400.00
237	(8) Angela M. DeMary	\$	88.99
238	(9) Berniece E. Fatony	\$	6,425.00
239	(10) Kimberly D. Golden.....	\$	170.97
240	(11) Neva D. Graziani	\$	231.28
241	(12) David T. Holcomb, Jr.....	\$	800.00
242	(13) Rodney Shawn Johnson	\$	3,000.00
243	(14) L. G. DeFelice, Inc.	\$	142,513.88
244	(15) Connie Michael	\$	220.39
245	(16) Mathilda Mae Miller	\$	1,666.66
246	(17) Virgil O'Neal	\$	98.57
247	(18) Junior J. Orsburn.....	\$	10,312.11
248	(19) Margaret Orsburn	\$	1,000.00
249	(20) Blanche Osborne and		
250	Arthur Osborne	\$	818.00
251	(21) Wanita Sommerville	\$	100.00
252	(22) Tri-State Asphalt Corporation	\$	10,030.45
253	(23) Sheri Waggoner	\$	500.00
254	(24) Westbrook Construction, Inc.	\$	613,245.92
255	(25) Bonnie H. Woody	\$	151.62
256	(26) Chiquita Rose Yanero	\$	116.32
257	(27) Betty J. Zator.....	\$	2,250.00

258 (p) *Claims against the Division of Tourism and Parks:*

259 (TO BE PAID FROM GENERAL REVENUE FUND)

260	(1) Avis/Checker Leasing, Inc.	\$	1,234.78
261	(2) Hamilton Business Systems	\$	23.72
262	(3) Cecil E. Lacy	\$	300.00

263 (q) *Claim against the Ethics Commission:*

264 (TO BE PAID FROM GENERAL REVENUE FUND)

265	(1) Lyne Ranson.....	\$	2,037.50
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266 (r) *Claims against the Farm Management Commission:*

267	(TO BE PAID FROM GENERAL REVENUE FUND)		
268	(1) Associated Fabricators, Inc.	\$	81.18
269	(2) Beckley Veterinary Hospital.....	\$	265.50
270	(3) MGM/Farm City, Inc.....	\$	330.36
271	(s) <i>Claim against the Governor's Office of Community</i>		
272	<i>and Industrial Development:</i>		
273	(TO BE PAID FROM FEDERAL FUNDS)		
274	from Account No. 7755-40		
275	(1) Xerox Corporation	\$	3,558.03
276	(t) <i>Claim against the Human Rights Commission:</i>		
277	(TO BE PAID FROM GENERAL REVENUE FUND)		
278	(1) Bickley, Jacobs and Barkus,		
279	Attorneys at Law	\$	1,200.00
280	(u) <i>Claims against the Public Employees</i>		
281	<i>Insurance Agency:</i>		
282	(TO BE PAID FROM GENERAL REVENUE FUND)		
283	(1) Donald A. Lewis	\$	1,105.00
284	(2) Dewell D. White	\$	12,060.00
285	(v) <i>Claim against the Railroad Maintenance Authority:</i>		
286	(TO BE PAID FROM SPECIAL REVENUE FUND)		
287	from Account No. 8344		
288	(1) The Potomac Edison Company.....	\$	480.17
289	(w) <i>Claim against the Real Estate Commission:</i>		
290	(TO BE PAID FROM SPECIAL REVENUE FUND)		
291	(1) Hamilton Business Systems	\$	75.00
292	(x) <i>Claims against the State Treasurer:</i>		
293	(TO BE PAID FROM GENERAL REVENUE FUND)		
294	(1) Ricoh Corporation	\$	863.62
295	(2) H. John Rogers	\$	1,194.00
296	(y) <i>Claims against the Supreme Court of Appeals:</i>		
297	(TO BE PAID FROM GENERAL REVENUE FUND)		

298	(1) Gary E. Keller, Sheriff of		
299	Tyler County	\$	11,003.65
300	(2) Roche Biomedical Laboratories, Inc.	\$	4,938.00
301	(3) Strategic Ventures, Inc.	\$	6,582.00
302	(z) <i>Claim against the West Virginia Public</i>		
303	<i>Defender Services:</i>		
304		(TO BE PAID FROM GENERAL REVENUE FUND)	
305	(1) Earl F. Young	\$	1,000.00
306	(aa) <i>Claims against the Workers' Compensation Fund:</i>		
307		(TO BE PAID FROM WORKERS' COMPENSATION FUND)	
308	(1) American Telephone and		
309	Telegraph Company	\$	46.98
310	(2) Phyllis Haynes Edens, CCR, Inc.	\$	43.20
311	(3) Donna Sue Warman	\$	62.50
312	(4) Xerox Corporation	\$	1,115.42

313 The Legislature finds that the above moral obligations
 314 and the appropriations made in satisfaction thereof shall
 315 be the full compensation for all claimants, and that prior
 316 to the payments to any claimant provided for in this bill,
 317 the court of claims shall receive a release from said
 318 claimant releasing any and all claims for moral
 319 obligations arising from the matters considered by the
 320 Legislature in the finding of the moral obligations and
 321 the making of the appropriations for said claimant. The
 322 court of claims shall deliver all releases obtained from
 323 claimants to the department against which the claim
 324 was allowed.

CHAPTER 26

(S. B. 620—By Senator Felton)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fourteen, nineteen and twenty-six, article two-a, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to appointment of guardian when a

minor has received an award; attorneys' fees to be the same as those allowed attorneys in indigent criminal cases; and rules and regulations of court of claims.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards; awards for emotional distress; mental anguish, etc.

§14-2A-19. Attorney and witness fees.

§14-2A-26. Rules and regulations.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum awards; awards for emotional distress; mental anguish, etc.

1 (a) Except as provided in subsection (b), section ten
2 of this article, the judge or commissioner shall not
3 approve an award of compensation to a claimant who
4 did not file his application for an award of compensation
5 within two years after the date of the occurrence of the
6 criminally injurious conduct that caused the injury or
7 death for which he is seeking an award of compensation.

8 (b) An award of compensation shall not be approved
9 if the criminally injurious conduct upon which the claim
10 is based was not reported to a law-enforcement officer
11 or agency within seventy-two hours after the occurrence
12 of the conduct, unless it is determined that good cause
13 existed for the failure to report the conduct within the
14 seventy-two hour period.

15 (c) The judge or commissioner shall not approve an
16 award of compensation to a claimant who is the offender
17 or an accomplice of the offender who committed the
18 criminally injurious conduct, nor to any claimant if the
19 award would unjustly benefit the offender or his
20 accomplice.

21 (d) A judge or commissioner, upon a finding that the
22 claimant or victim has not fully cooperated with

23 appropriate law-enforcement agencies, or the claim
24 investigator, may deny a claim, reduce an award of
25 compensation, and may reconsider a claim already
26 approved.

27 (e) An award of compensation shall not be approved
28 if the injury occurred while the victim was confined in
29 any state, county or city jail, prison, private prison or
30 correctional facility.

31 (f) After reaching a decision to approve an award of
32 compensation, but prior to announcing such approval,
33 the judge or commissioner shall require the claimant to
34 submit current information as to collateral sources on
35 forms prescribed by the clerk of the court of claims. The
36 judge or commissioner shall reduce an award of
37 compensation or deny a claim for an award of compen-
38 sation that is otherwise payable to a claimant to the
39 extent that the economic loss upon which the claim is
40 based is or will be recouped from other persons,
41 including collateral sources, or if such reduction or
42 denial is determined to be reasonable because of the
43 contributory misconduct of the claimant or of a victim
44 through whom he claims. If an award is reduced or a
45 claim is denied because of the expected recoupment of
46 all or part of the economic loss of the claimant from a
47 collateral source, the amount of the award or the denial
48 of the claim shall be conditioned upon the claimant's
49 economic loss being recouped by the collateral source:
50 *Provided*, That if it is thereafter determined that the
51 claimant will not receive all or part of the expected
52 recoupment, the claim shall be reopened and an award
53 shall be approved in an amount equal to the amount of
54 expected recoupment that it is determined the claimant
55 will not receive from the collateral source, subject to the
56 limitation set forth in subsection (g) of this section.

57 (g) Except in the case of death, compensation payable
58 to a victim and to all other claimants sustaining
59 economic loss because of injury to that victim shall not
60 exceed thirty-five thousand dollars in the aggregate.
61 Compensation payable to a victim of criminally injur-
62 ious conduct which causes permanent injury may
63 include, in addition to economic loss, an amount up to

64 fifteen thousand dollars for emotional distress and pain
65 and suffering which are proximately caused by such
66 conduct. Compensation payable to all claimants because
67 of the death of the victim shall not exceed fifty thousand
68 dollars in the aggregate, but may include, in addition
69 to economic loss, compensation to the claimants specified
70 in paragraph (2), subdivision (a), section three of this
71 article, for sorrow, mental anguish and solace.

72 (h) If an award of compensation of five thousand
73 dollars or more is made to a minor, a guardian shall be
74 appointed pursuant to the provisions of article ten,
75 chapter forty-four of this code to manage the minor's
76 estate.

§14-2A-19. Attorney and witness fees.

1 (a) By separate order, the court, or a judge or
2 commissioner thereof, shall determine and award
3 reasonable attorney's fees, commensurate with services
4 rendered and reimbursement for reasonable and neces-
5 sary expenses actually incurred shall be paid from the
6 crime victims compensation fund to the attorney
7 representing a claimant in a proceeding under this
8 article at the same rates as set forth in section thirteen-
9 a, article twenty-one, chapter twenty-nine of this code.
10 Attorney's fees and reimbursement may be denied upon
11 a finding that the claim or appeal is frivolous. Awards
12 of attorney's fees and reimbursement shall be in
13 addition to awards of compensation, and attorney's fees
14 and reimbursement may be awarded whether or not an
15 award of compensation is approved. An attorney shall
16 not contract for or receive any larger sum than the
17 amount allowed under this section. In no event may a
18 prosecuting attorney or assistant prosecuting attorney
19 represent any victim seeking compensation under this
20 article.

21 (b) Each witness called by the court to appear in a
22 hearing on a claim for an award of compensation shall
23 receive compensation and expenses in an amount equal
24 to that received by witnesses in civil cases as provided
25 in section sixteen, article one, chapter fifty-nine of this
26 code to be paid from the crime victims compensation
27 fund.

§14-2A-26. Rules and regulations.

1 (a) The court of claims may promulgate rules and
2 regulations to implement the provisions of this article.

3 (b) The court of claims shall promulgate rules and
4 regulations to govern the award of compensation to the
5 spouse of, person living in the same household with,
6 parent, child, brother or sister of the offender or his
7 accomplice in order to avoid an unjust benefit to or the
8 unjust enrichment of the offender or his accomplice.

CHAPTER 27

(Com. Sub. for H. B. 2873—By Delegate Rollins)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred nine, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to West Virginia consumer credit and protection act.

Be it enacted by the Legislature of West Virginia:

That section one hundred nine, article three, chapter forty-six-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. FINANCE CHARGES AND RELATED PROVISIONS.**§46A-3-109. Additional charges; insurance; when refund required; civil penalty; rules relating to insurance.**

1 (1) In addition to the sales finance charge or loan
2 finance charge permitted by this chapter, a creditor
3 may contract for and receive the following additional
4 charges in connection with a consumer credit sale or a
5 consumer loan:

6 (a) Official fees and taxes;

7 (b) Charges for insurance as described in subsection
8 (2): *Provided*, That nothing contained in this section
9 with respect to insurance shall be construed as in any
10 way limiting the power and jurisdiction of the insurance
11 commissioner of this state in the premises;

12 (c) Annual charges, payable in advance, for the
13 privilege of using a lender credit card or similar
14 arrangement which entitles the user to purchase goods
15 or services from at least one hundred persons not related
16 to the issuer of the lender credit card or similar
17 arrangement, under an arrangement pursuant to which
18 the debts resulting from the purchases are payable to
19 the issuer;

20 (d) Charges for other benefits, including insurance,
21 conferred on the consumer, if the benefits are of value
22 to him/her and if the charges are reasonable in relation
23 to the benefits, are of a type which is not for credit, and
24 are excluded as permissible additional charges from the
25 sales finance charge or loan finance charge by rule
26 adopted by the commissioner: *Provided*, That as to
27 insurance, the policy as distinguished from a certificate
28 of coverage thereunder must be issued by an individual
29 licensed under the laws of this state to sell such
30 insurance and the determination of whether the charges
31 therefor are reasonable in relation to the benefits shall
32 be determined by the insurance commissioner of this
33 state;

34 (e) Reasonable closing costs with respect to a debt
35 secured by an interest in land; and

36 (f) Documentary charge or any other similar charge
37 for documentary services in relation to securing a title,
38 so long as said charge is applied equally to cash
39 customers and credit customers alike and so long as
40 such documentary charge does not exceed fifty dollars.

41 (2) A creditor may take, obtain or provide reasonable
42 insurance on the life and earning capacity of any
43 consumer obligated on the consumer credit sale or
44 consumer loan, reasonable insurance on any real or

45 personal property offered as security subject to the
46 provisions of this subsection, and vendor's or creditor's
47 single interest insurance with respect to which the
48 insurer has no right of subrogation. Only one policy of
49 life insurance and/or one policy of health and accident
50 insurance and/or one policy of accident insurance and/or
51 one policy of loss of income insurance on any one
52 consumer may be in force with respect to any one
53 contract or agreement at any one time, but one policy
54 may cover both a consumer and his/her spouse:

55 (a) The amount, terms and conditions of property
56 insurance shall have a reasonable relation to the existing
57 hazards or risk of loss, damage or destruction and be
58 reasonable in relation to the character and value of the
59 property insured or to be insured; and the term of such
60 insurance shall be reasonable in relation to the terms of
61 credit: *Provided*, That nothing shall be deemed to
62 prohibit the consumer from obtaining, at his/her option,
63 greater coverages for longer periods of time if he/she so
64 desires;

65 (b) Life insurance shall be in an initial amount not to
66 exceed the total amount repayable under the consumer
67 credit agreement, and where a consumer credit sale or
68 consumer loan is repayable in installments, such
69 insurance shall at no time exceed the scheduled or
70 actual amount of unpaid indebtedness, whichever is
71 greater. Life insurance authorized by this subdivision
72 shall provide that the benefits shall be paid to the
73 creditor to reduce or extinguish the unpaid indebted-
74 ness: *Provided*, That if a separate charge is made for
75 such insurance and the amount of insurance exceeds the
76 unpaid indebtedness, where not prohibited, then such
77 excess shall be payable to the estate of the consumer.
78 The initial term of such life insurance in connection with
79 a consumer credit sale, other than a sale pursuant to a
80 revolving charge account, or in connection with a
81 consumer loan, other than a loan pursuant to a revolving
82 loan account, shall not exceed the scheduled term of the
83 consumer credit agreement by more than fifteen days.
84 The aggregate amount of periodic benefits payable by

85 credit accident and health insurance in the event of
86 disability, as defined in the policy, and loss of income
87 insurance in the event of involuntary loss of employ-
88 ment, as defined in the policy, shall not exceed the
89 unpaid amount of such indebtedness; periodic benefits
90 payable in connection with a consumer credit sale
91 pursuant to a revolving charge account or of a consumer
92 loan pursuant to a revolving loan account may be based
93 upon the authorized credit limit;

94 (c) When the insurance is obtained or provided by or
95 through a creditor, the creditor may collect from the
96 consumer or include as part of the cash price of a
97 consumer credit sale or as part of the principal of a
98 consumer loan, or deduct from the proceeds of any
99 consumer loan the premium, or in the case of group
100 insurance, the identifiable charge. The premium or
101 identifiable charge for such insurance required or
102 obtained by a creditor may equal, but shall not exceed
103 the premium rate filed by the insurer with the insur-
104 ance commissioner. In any case, when the creditor
105 collects the entire premium for such insurance in
106 advance, such premium shall be remitted by such
107 creditor to the insurer or the insurance agent, as
108 specified by the insurer, within ten days from or after
109 the end of the month in which such collection was made;

110 (d) With respect to insurance against loss of or
111 damage to property, or against liability, the creditor
112 shall furnish a clear and specific statement in writing
113 to the debtor, setting forth the cost of the insurance if
114 obtained from or through the creditor, and stating that
115 the debtor may choose the person through whom the
116 insurance is to be obtained;

117 (e) With respect to consumer credit insurance provid-
118 ing life, accident, health or loss of income coverage, no
119 creditor shall require a consumer to purchase such
120 insurance or to purchase such insurance from such
121 creditor or any particular agent, broker or insurance
122 company as a condition precedent to extending credit to
123 or on behalf of such consumer; and

124 (f) With respect to consumer credit insurance provid-
125 ing life, accident, health or loss of income coverage, and
126 when a consumer credit sale or consumer loan, refinanc-
127 ing or consolidation is paid in full, the creditor receiving
128 such payment shall inform the debtor of his/her right
129 to cancel any such insurance and to receive a refund of
130 unearned premiums: *Provided*, That notice shall be sent
131 in a form as prescribed by the insurance commissioner
132 as provided in chapter twenty-nine-a of this code. Such
133 notice shall contain the name and address of the seller
134 and the insurer. On the request of the debtor-insured of
135 the seller of such insurance, the seller shall notify or
136 shall cause the insurer to be notified of the debtor-
137 insured's request for cancellation of such insurance. On
138 receipt by the insurer of notification of the debtor-
139 insured's requested cancellation of such insurance, the
140 insurer shall cancel such insurance effective no later
141 than thirty days from the date of payment in full of such
142 consumer credit sale, consumer loan, refinancing or
143 consolidation. Within forty-five days following the date
144 of notification of cancellation of such insurance and if
145 the debtor-insured has not received repayment of or a
146 credit for the amount of any unearned premiums by the
147 seller of such insurance, the insurer shall pay any
148 refund of unearned premiums to the debtor-insurer or
149 such other person as directed by the debtor-insurer. An
150 insurer, seller or creditor who fails to refund any unused
151 insurance premium or provide the proper notification of
152 payoff shall be liable for civil damages up to three times
153 the amount of the unused premium as well as other
154 remedies as provided for by section one hundred nine,
155 article seven of this chapter.

156 (3) The insurance commissioner of this state shall
157 promulgate legislative rules in accordance with the
158 provisions of chapter twenty-nine-a of this code to
159 implement the provisions of this article relating to
160 insurance, and the authority of the insurance commis-
161 sioner to promulgate the same shall be exclusive
162 notwithstanding any other provisions of this code to the
163 contrary.

CHAPTER 28

(Com. Sub. for H. B. 2632—By Delegates Susman and Rutledge)

[Passed March 8, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-c, relating to the regulation of credit services organizations; definitions; conduct prohibited; requiring a bond or surety account; registration with secretary of state, disclosure statement; form and terms of contracts; waiver action for damages; criminal penalties; examinations; and providing that the remedies are cumulative.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6C. CREDIT SERVICES ORGANIZATIONS.

- §46A-6C-1. Definitions.
- §46A-6C-2. Credit services organization.
- §46A-6C-3. Prohibited conduct.
- §46A-6C-4. Bond; surety account.
- §46A-6C-5. Registration.
- §46A-6C-6. Disclosure statement.
- §46A-6C-7. Form and terms of contract.
- §46A-6C-8. Waiver.
- §46A-6C-9. Action for damages.
- §46A-6C-10. Criminal penalty.
- §46A-6C-11. Burden of proving exemption.
- §46A-6C-12. Remedies cumulative.

§46A-6C-1. Definitions.

- 1 (1) "Buyer" means an individual who is solicited to
- 2 purchase or who purchases the services of a credit
- 3 services organization as defined in section two of this
- 4 article.
- 5 (2) "Consumer reporting agency" has the meaning
- 6 assigned by Section 603(f), Fair Credit Reporting Act

7 (15 U.S.C. Section 1681a(f)).

8 (3) "Extension of credit" means the "right to defer
9 payment of debt or to incur debt and defer its payment
10 offered or granted primarily for personal, family,
11 household or agriculture purposes."

§46A-6C-2. Credit services organization.

1 (a) A credit services organization is a person who,
2 with respect to the extension of credit by others and in
3 return for the payment of money or other valuable
4 consideration, provides, or represents that the person
5 can or will provide, any of the following services:

6 (1) Improving a buyer's credit record, history or
7 rating;

8 (2) Obtaining an extension of credit for a buyer; or

9 (3) Providing advice or assistance to a buyer with
10 regard to subdivision (1) or (2) of this subsection.

11 (b) The following are exempt from this article:

12 (1) A person authorized to make loans or extension of
13 credit under the law of this state or the United States
14 who is subject to regulation and supervision by this state
15 or the United States, or a lender approved by the United
16 States secretary of housing and urban development for
17 participation in a mortgage insurance program under
18 the National Housing Act (12 U.S.C. Section 1701 et
19 seq.);

20 (2) A bank or savings and loan association whose
21 deposit or accounts are eligible for insurance by the
22 federal deposit insurance corporation or the federal
23 savings and loan insurance corporation, or a subsidiary
24 of such a bank or savings and loan association;

25 (3) A credit union doing business in this state;

26 (4) A nonprofit organization exempt from taxation
27 under Section 501(c)(3) of the Internal Revenue Code of
28 1986;

29 (5) A person licensed as a real estate broker or
30 salesman under the Real Estate Brokers License Act

31 acting within the course and scope of that license;

32 (6) A person licensed to practice law in this state
33 acting within the course and scope of the person's
34 practice as an attorney;

35 (7) A broker-dealer registered with the securities and
36 exchange commission or the commodity future trading
37 commission acting within the course and scope of that
38 regulation;

39 (8) A consumer reporting agency;

40 (9) A person whose primary business is making loans
41 secured by liens on real property; and

42 (10) A person licensed to practice public accounting
43 in this state acting within the course and scope of the
44 person's practice as an accountant.

§46A-6C-3. Prohibited conduct.

1 A credit services organization, a salesperson, agency
2 or representative of a credit services organization or an
3 independent contractor who sells or attempts to sell the
4 services of a credit services organization may not:

5 (1) Charge a buyer or receive from a buyer money or
6 other valuable consideration before completing perform-
7 ance of all services the credit services organization has
8 agreed to perform for the buyer, unless the credit
9 services organization has obtained in accordance with
10 section four of this article a surety bond in the amount
11 required by section four of this article issued by a surety
12 company authorized to do business in this state or
13 established and maintained a surety account at a
14 federally insured bank or savings and loan association
15 located in this state in which the amount required is
16 held in trust as required by section four of this article;

17 (2) Charge a buyer or receive from a buyer money or
18 other valuable consideration solely for referral of the
19 buyer to a retail seller who will or may extend credit
20 to the buyer if the credit that is or will be extended to
21 the buyer is substantially the same as that available to
22 the general public from other sources;

23 (3) Make or use a false or misleading representation
24 in the offer or sale of the services of a credit services
25 organization, including:

26 (A) Guaranteeing to “erase bad credit” or words to
27 that effect unless the representation clearly discloses
28 that this can be done only if the credit history is
29 inaccurate or obsolete; and

30 (B) Guaranteeing an extension of credit regardless of
31 the person’s previous credit problem or credit history
32 unless the representation clearly discloses the eligibility
33 requirements for obtaining an extension of credit.

34 (4) Engage, directly or indirectly, in an unfair or
35 deceptive act, practice, or course of business in connec-
36 tion with the offer or sale of the services of a credit
37 services organization;

38 (5) Make, or advise a buyer to make a statement with
39 respect to a buyer’s credit worthiness, credit standing,
40 or credit capacity that is false or misleading or that
41 should be known by the exercise of reasonable care to
42 be false or misleading, to a consumer reporting agency
43 or to a person who has extended credit to a buyer or
44 to whom a buyer is applying for an extension of credit;

45 (6) Advertise or cause to be advertised, in any manner
46 whatsoever, the services of a credit services organization
47 without filing a registration statement with the secre-
48 tary of state, unless otherwise provided by this chapter.

§46A-6C-4. Bond; surety account.

1 (a) This section applies to a credit services organiza-
2 tion required by section three of this article to obtain
3 a surety bond or establish a surety account.

4 (b) If a bond is obtained, a copy of it shall be filed
5 with the secretary of state. If a surety account is
6 established, notification of the depository, the trustee,
7 and the account number shall be filed with the secretary
8 of state.

9 (c) The bond or surety account required must be in
10 favor of the state of the benefit of any person who is
11 damaged by any violation of this article. The bond or

12 surety account must also be in favor of any person
13 damaged by such a violation.

14 (d) Any person claiming against the bond or surety
15 account for a violation of this article may maintain an
16 action at law against the credit services organization
17 and against the surety or trustee. The surety or trustee
18 shall be liable only for damages awarded under section
19 nine of this article and not the punitive damages
20 permitted under that section. The aggregate liability of
21 the surety or trustee to all persons damaged by a credit
22 services organization's violation of this chapter may not
23 exceed the amount of the surety account or bond.

24 (e) The bond or the surety account shall be in the
25 amount of fifteen thousand dollars.

26 (f) A depository holding money in a surety account
27 under this chapter may not convey money in the account
28 to the credit services organization that established the
29 account or a representative of the credit services
30 organization unless the credit services organization or
31 representative presents a statement issued by the
32 secretary of state indicating that section five of this
33 article has been satisfied in relation to the account. The
34 secretary of state may conduct investigations and
35 require submission of information as necessary to
36 enforce this subsection.

§46A-6C-5. Registration.

1 (a) A credit services organization shall file a registra-
2 tion statement with the secretary of state before
3 conducting business in this state. The registration
4 statement must contain:

5 (1) The name and address of the credit services
6 organization; and

7 (2) The name and address of any person who directly
8 or indirectly owns or controls ten percent or more of the
9 outstanding shares of stock in the credit services
10 organization.

11 (b) The registration statement must also contain
12 either:

13 (1) A full and complete disclosure of any litigation or
14 unresolved complaint filed with a governmental author-
15 ity of this state relating to the operation of the credit
16 services organization; or

17 (2) A notarized statement that states that there has
18 been no litigation or unresolved complaint filed with a
19 governmental authority of this state relating to the
20 operation of the credit services organization.

21 (c) The credit services organization shall update the
22 statement not later than the ninetieth day after the date
23 on which a change in the information required in the
24 statement occurs.

25 (d) Each credit services organization registering
26 under this section shall maintain a copy of the registra-
27 tion statement in the files of the credit services
28 organization. The credit services organization shall
29 allow a buyer to inspect the registration statement on
30 request.

31 (e) The secretary of state may charge each credit
32 services organization that files a registration statement
33 with the secretary of state a reasonable fee not to exceed
34 one hundred dollars to cover the cost of filing. The
35 secretary of state may not require a credit services
36 organization to provide information other than that
37 provided in the registration statement.

38 (f) The bond or surety account shall be maintained
39 until two years after the date that the credit services
40 organization ceases operations.

§46A-6C-6. Disclosure statement.

1 (a) Before executing a contract or agreement with a
2 buyer or receiving money or other valuable considera-
3 tion, a credit services organization shall provide the
4 buyer with a statement in writing, containing:

5 (1) A complete and detailed description of the services
6 to be performed by the credit services organization for
7 the buyer and the total cost of the services;

8 (2) A statement explaining the buyer's right to
9 proceed against the bond or surety account required by

10 section three of this article;

11 (3) The name and address of the surety company that
12 issued the bond, or the name and address of the
13 depository and the trustee, and the account number of
14 the surety account;

15 (4) A complete and accurate statement of the buyer's
16 right to review any file on the buyer maintained by a
17 consumer reporting agency, as provided by the Fair
18 Credit Reporting Act. (15 U.S.C. Sec. 1681 et seq.);

19 (5) A statement that the buyer's file is available for
20 review at no charge on request made to the consumer
21 reporting agency within thirty days after the date of
22 receipt of notice that credit has been denied, and that
23 the buyer's file is available for a minimal charge at any
24 other time;

25 (6) A complete and accurate statement of the buyer's
26 right to dispute directly with the consumer reporting
27 agency the completeness or accuracy of any item
28 contained in a file on the buyer maintained by that
29 consumer reporting agency;

30 (7) A statement that accurate information cannot be
31 permanently removed from the files of a consumer
32 reporting agency;

33 (8) A complete and accurate statement of when
34 consumer information becomes obsolete, and of when
35 consumer reporting agencies are prevented from issuing
36 reports containing obsolete information; and

37 (9) A complete and accurate statement of the availa-
38 bility of nonprofit credit counseling services.

39 (b) The credit services organization shall maintain on
40 file, for a period of two years after the date the
41 statement is provided, an exact copy of the statement,
42 signed by the buyer, acknowledging receipt of the
43 statement.

§46A-6C-7. Form and terms of contract.

1 (a) Each contract between the buyer and a credit
2 services organization for the purchase of the services of

3 the credit services organization must be in writing,
4 dated, signed by the buyer, and must include:

5 (1) A statement in type that is boldfaced, capitalized,
6 underlined, or otherwise set out from surrounding
7 written materials so as to be conspicuous, in immediate
8 proximity to the space reserved for the signature of the
9 buyer, as follows: "You, the buyer, may cancel this
10 contract at any time before midnight of the third day
11 after the date of the transaction. See the attached notice
12 of cancellation form for an explanation of this right";

13 (2) The terms and conditions of payment, including
14 the total of all payments to be made by the buyer,
15 whether to the credit services organization or to another
16 person;

17 (3) A full and detailed description of the services to
18 be performed by the credit services organization for the
19 buyer, including all guarantees and all promises of full
20 or partial refunds, and the estimated length of time, not
21 to exceed one hundred eighty days, for performing the
22 services; and

23 (4) The address of the credit services organization's
24 principal place of business and the name and address
25 of its agent in the state authorized to receive service or
26 process.

27 (b) The contract must have attached two easily
28 detachable copies of a notice of cancellation. The notice
29 must be in boldfaced type and in the following form:

30 **"Notice of Cancellation**

31 You may cancel this contract, without any penalty or
32 obligation, within three days after the date the contract
33 is signed.

34 If you cancel, any payment made by you under this
35 contract will be returned within ten days after the date
36 of receipt by the seller of your cancellation notice.

37 To cancel this contract, mail or deliver a signed dated
38 copy of this cancellation notice, or other written notice
39 to:

40 (name of seller) at (address of seller) (place of business)
41 not later than midnight (date)

42 I hereby cancel this transaction.

43 (date)

44 (purchaser's signature)"

45 (c) The credit services organization shall give to the
46 buyer a copy of the completed contract and all other
47 documents the credit services organization requires the
48 buyer to sign at the time they are signed.

49 (d) The breach by a credit services organization of a
50 contract under this article, or of any obligation arising
51 from this article, is an unfair or deceptive act or
52 practice.

§46A-6C-8. Waiver.

1 (a) A credit services organization may not attempt to
2 cause a buyer to waive a right under this article.

3 (b) A waiver by a buyer of any part of this article is
4 void.

§46A-6C-9. Action for damages.

1 (a) A buyer injured by a violation of this article may
2 bring any action for recovery of damages. The damages
3 awarded may not be less than the amount paid by the
4 buyer to the credit services organization, plus reasona-
5 ble attorney's fees and court costs.

6 (b) The buyer may also be awarded punitive damages.

§46A-6C-10. Criminal penalty.

1 A person who violates the provisions of this article is
2 guilty of a misdemeanor, and, upon conviction thereof,
3 shall be fined not less than one thousand dollars,
4 imprisoned in the county jail not more than one year,
5 or both fined and imprisoned.

§46A-6C-11. Burden of proving exemption.

1 In an action under this article, the burden of proving
2 an exemption under section two of this article is on the
3 person claiming the exemption.

§46A-6C-12. Remedies cumulative.

- 1 The remedies provided by this article are in addition
- 2 to other remedies provided by law.

CHAPTER 29

(S. B. 453—By Senator Humphreys)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred four, two hundred six and two hundred eight, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article eight, all relating to the uniform controlled substances act; changing the lists of controlled substances in Schedule I, Schedule II and Schedule III; relating to licensing of those engaged in wholesale distribution of prescription drugs; and wholesale drug distributor advisory committee.

Be it enacted by the Legislature of West Virginia:

That sections two hundred four, two hundred six and two hundred eight, article two, chapter sixty-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article eight, to read as follows:

Article

2. Standards and Schedules.
8. Wholesale Drug Distribution Licensing Act of 1991.

ARTICLE 2. STANDARDS AND SCHEDULES.

- §60A-2-204. Schedule I.
§60A-2-206. Schedule II.
§60A-2-208. Schedule III.

§60A-2-204. Schedule I.

- 1 (a) The controlled substances listed in this section are
- 2 included in Schedule I.

3 (b) Unless specifically excepted or unless listed in
4 another schedule, any of the following opiates, including
5 its isomers, esters, ethers, salts and salts of isomers,
6 esters and ethers whenever the existence of such
7 isomers, esters, ethers and salts is possible within the
8 specific chemical designation:

9 (1) Acetyl-alpha-methylfentanyl (N-[1-(2-methyl-2-
10 phenethyl)-4-piperidinyl]-N-phenylacetamide);

11 (2) Acetylmethadol;

12 (3) Allylprodine;

13 (4) Alphacetylmethadol;

14 (5) Alphameprodine;

15 (6) Alphamethadol;

16 (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-
17 phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-
18 phenylethyl)-4-(N-propanilido) piperidine);

19 (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thie-
20 nyl) ethyl-4-piperidinyl]-N-phenylpropanamide);

21 (9) Benzethidine;

22 (10) Betacetylmethadol;

23 (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phene-
24 thyl)-4-piperidinyl]-N-phenylpropanamide);

25 (12) Beta-hydroxy-3-methylfentanyl (other name:

26 N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl] -
27 N-phenylpropanamide);

28 (13) Betameprodine;

29 (14) Betamethadol;

30 (15) Betaprodine;

31 (16) Clonitazene;

32 (17) Dextromoramide;

33 (18) Diampromide;

34 (19) Diethylthiambutene;

- 35 (20) Difenoxin;
36 (21) Dimenoxadol;
37 (22) Dimepheptanol;
38 (23) Dimethylthiambutene;
39 (24) Dioxaphetyl butyrate;
40 (25) Dipipanone;
41 (26) Ethylmethylthiambutene;
42 (27) Etonitazene;
43 (28) Etoxeridine;
44 (29) Furethidine;
45 (30) Hydroxypethidine;
46 (31) Ketobemidone;
47 (32) Levomoramide;
48 (33) Levophenacymorphan;
49 (34) 3-Methylfentanyl
50 (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenyl-
51 propanamide);
52 (35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl)
53 ethyl-4-piperinyl]-N-phenylpropanamide);
54 (36) Morpheridine;
55 (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperi-
56 dine);
57 (38) Noracymethadol;
58 (39) Norlevorphanol;
59 (40) Normethadone;
60 (41) Norpipanone;
61 (42) Para-fluorofentanyl (N-(4-fluorophenyl)
62 (N-[1-(2-phenethyl)-4-piperidinyl]-propanamide);
63 (43) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiper-
64 idine);

- 65 (44) Phenadoxone;
66 (45) Phenampromide;
67 (46) Phenomorphan;
68 (47) Phenoperidine;
69 (48) Piritramide;
70 (49) Proheptazine;
71 (50) Properidine;
72 (51) Propiram;
73 (52) Racemoramide;
74 (53) Thiofentanyl
75 (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propana-
76 mide);
77 (54) Tilidine;
78 (55) Trimeperidine.
- 79 (c) *Opium derivatives*. — Unless specifically excepted
80 or unless listed in another schedule, any of the following
81 opium derivatives, its salts, isomers and salts of isomers
82 whenever the existence of such salts, isomers and salts
83 of isomers is possible within the specific chemical
84 designation:
- 85 (1) Acetorphine;
86 (2) Acetyldihydrocodeine;
87 (3) Benzylmorphine;
88 (4) Codeine methylbromide;
89 (5) Codeine-N-Oxide;
90 (6) Cyprenorphine;
91 (7) Desomorphine;
92 (8) Dihydromorphine;
93 (9) Drotebanol;
94 (10) Etorphine (except HCl Salt);
95 (11) Heroin;

- 96 (12) Hydromorphenol;
- 97 (13) Methyldesorphine;
- 98 (14) Methyldihydromorphine;
- 99 (15) Morphine methylbromide;
- 100 (16) Morphine methylsulfonate;
- 101 (17) Morphine-N-Oxide;
- 102 (18) Myrophine;
- 103 (19) Nicocodeine;
- 104 (20) Nicomorphine;
- 105 (21) Normorphine;
- 106 (22) Phoclodine;
- 107 (23) Thebacon.
- 108 (d) *Hallucinogenic substances.* — Unless specifically
109 excepted or unless listed in another schedule, any
110 material, compound, mixture or preparation, which
111 contains any quantity of the following hallucinogenic
112 substances, or which contains any of the salts, isomers
113 and salts of isomers is possible within the specific
114 chemical designation (for the purposes of this subsection
115 only, the term “isomer” includes the optical, position and
116 geometric isomers):
- 117 (1) 4-bromo-2, 5-dimethoxy-amphetamine; some trade
118 or other names: 4-bromo-2, 5-dimethoxy-*a*-methylphe-
119 nethylamine; 4-bromo-2,5-DMA;
- 120 (2) 2,5-dimethoxyamphetamine; some trade or other
121 names: 2,5-dimethoxy-*a*-methylphenethylamine; 2,5-
122 DMA;
- 123 (3) 4-methoxyamphetamine; some trade or other
124 names: 4-methoxy-*a*-methylphenethylamine; paramen-
125 thoxyamphetamine; PMA;
- 126 (4) 5-methyloxy-3, 4-methylenedioxy-amphetamine;
- 127 (5) 4-methyl-2,5-dimethoxy-amphetamine; some trade
128 and other names: 4-methyl-2,5-dimethoxy-*a*-methylphe-
129 nethylamine; “DOM”; and “STP”;

- 130 (6) 3,4-methylenedioxy amphetamine;
- 131 (7) 3,4-methylenedioxymethamphetamine (MDMA);
- 132 (8) 3,4,5-trimethoxy amphetamine;
- 133 (9) Bufotenine; some trade and other names: 3-(B-
134 Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethyla-
135 minoethyl)-5-indolol; N, N-dimethylserotonin; 5-hy-
136 droxy-N,N-dimethyltryptamine; mappine;
- 137 (10) Diethyltryptamine; some trade and other names:
138 N, N-Diethyltryptamine; DET;
- 139 (11) Dimethyltryptamine; some trade or other names:
140 DMT;
- 141 (12) Ibogaine; some trade and other names: 7-Ethyl-
142 6, 6B, 7, 8, 9, 10, 12, 13-octahydro-2-methoxy-6, 9-
143 methano-5H-pyrido [1', 2': 1, 2] azeplino [5,4-b] indole;
144 Tabernanthe iboga;
- 145 (13) Lysergic acid diethylamide;
- 146 (14) Marihuana;
- 147 (15) Mescaline;
- 148 (16) Parahexyl—7374; some trade or other names: 3-
149 Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-triethyl-
150 6H-dibenzo [b,d] pyran; Synhexyl;
- 151 (17) Peyote; meaning all parts of the plant presently
152 classified botanically as *Lophophora williamsii* Lemaire,
153 whether growing or not, the seeds thereof, any extract
154 from any part of such plant, and every compound,
155 manufacture, salt, derivative, mixture or preparation of
156 such plant, its seeds or extracts;
- 157 (18) N-ethyl-3-piperidyl benzilate;
- 158 (19) N-methyl-3-piperidyl benzilate;
- 159 (20) Psilocybin;
- 160 (21) Psilocyn;
- 161 (22) Tetrahydrocannabinols; synthetic equivalents of
162 the substances contained in the plant, or in the resinous
163 extractives of *Cannabis*, sp. and/or synthetic substances,

164 derivatives and their isomers with similar chemical
165 structure and pharmacological activity such as the
166 following:

167 -1 Cis or trans tetrahydrocannabinol, and their optical
168 isomers;

169 -6 Cis or trans tetrahydrocannabinol, and their optical
170 isomers;

171 -3,4 Cis or trans tetrahydrocannabinol, and its optical
172 isomers;

173 (Since nomenclature of these substances is not
174 internationally standardized, compounds of these
175 structures, regardless of numerical designation of
176 atomic positions covered.)

177 (23) Ethylamine analog of phencyclidine; some trade
178 or other names: N-ethyl-1-phenylcyclo-hexylamine, (1-
179 phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl)
180 ethylamine, cyclohexamine, PCE;

181 (24) Pyrrolidine analog of phencyclidine; some trade
182 or other names: 1-(1-phenylcyclohexyl)-pyrrolidine,
183 PCPy, PHP;

184 (25) Thiophene analog of phencyclidine; some trade or
185 other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-
186 thienylanalog of phencyclidine; TPCP, TCP;

187 (26) Pyrrolidine analog of phencyclidine; some trade
188 or other names: 1-(1-phenylcyclohexyl)-pyrrolidine,
189 PCPy, PHP;

190 (27) N-ethylamphetamine;

191 (28) Parahexyl;

192 (29) 4-Methylaminorex;

193 (30) 3,4-Methylenedioxy-N-Ethylamphetamine;

194 (31) N-Hydroxy-3, 4-Methylenedioxyamphetamine.

195 (e) Unless specifically excepted or unless listed in
196 another schedule, any of the following depressants, its
197 salts, isomers and salts of isomers whenever the
198 existence of such salts, isomers and salts of isomers is

- 199 possible within the specific chemical designation:
- 200 (1) Mecloqualone;
- 201 (2) Methaqualone.
- 202 (f) Any material, compound, mixture or preparation
- 203 which contains any quantity of the following substances:
- 204 (1) Acetyl-alphamethylfentanyl;
- 205 (2) Alpha-methylthiofentanyl;
- 206 (3) Benzylfentanyl;
- 207 (4) Beta-hydroxyfentanyl;
- 208 (5) Beta-hydroxy-3-methylfentanyl;
- 209 (6) 3-Methylthiofentanyl;
- 210 (7) Thenylfentanyl;
- 211 (8) Thiofentanyl;
- 212 (9) 1-Methyl-4-phenyl-4-propionoxypiperidine
- 213 (MPPP), its optical isomers, salts and salts of isomers;
- 214 (10) 1-(2-Phenylethyl)-4-phenyl-4-acetyloxypiperidine
- 215 (PEPAP), its optical isomers, salts and salts of isomers;
- 216 (11) 3-Methylfentanyl (N-(3-methyl-1-(2-phenylethyl)-
- 217 4-piperidyl)-N-phenylpropanamide), its optical and
- 218 geometric isomers, salts and salts of isomers.

§60A-2-206. Schedule II.

- 1 (a) The controlled substances listed in this section are
- 2 included in Schedule II.
- 3 (b) Unless specifically excepted or unless listed in
- 4 another schedule, any of the following substances
- 5 whether produced directly or indirectly by extraction
- 6 from substances of vegetable origin, or independently by
- 7 means of chemical synthesis, or by a combination of
- 8 extraction and chemical synthesis:
- 9 (1) Opium and opiate, and any salt, compound,
- 10 derivative or preparation of opium or opiate excluding
- 11 nalorphine, nalmefene, naloxone and naltrexone and
- 12 their respective salts, but including the following:

- 13 (A) Raw opium;
- 14 (B) Opium extracts;
- 15 (C) Opium fluid extracts;
- 16 (D) Powdered opium;
- 17 (E) Granulated opium;
- 18 (F) Tincture of opium;
- 19 (G) Codeine;
- 20 (H) Ethylmorphine;
- 21 (I) Ethrophine HCL;
- 22 (J) Hydromorphone;
- 23 (K) Metopon;
- 24 (L) Morphine;
- 25 (M) Oxycodone;
- 26 (N) Oxymorphone;
- 27 (O) Thebaine;
- 28 (2) Any salt, compound, isomer derivative or prepa-
29 ration thereof which is chemically equivalent or
30 identical with any of the substances referred to in
31 subdivision (1) of this subsection, except that these
32 substances shall not include the isoquinoline alkaloids of
33 opium;
- 34 (3) Opium poppy and poppy straw;
- 35 (4) Coca leaves (9040) and any salt, compound,
36 derivative or preparation of coca leaves (including
37 cocaine 9041) and ecgonine (9180) and their salts,
38 isomers, derivatives (and salts of isomers and deriva-
39 tives), and any salt, compound, derivative or preparation
40 thereof which is chemically equivalent or identical with
41 any of these substances, except that the substances shall
42 not include decocainized coca leaves or extractions of
43 coca leaves, which extractions do not contain cocaine or
44 ecgonine;
- 45 (5) Concentrate of poppy straw (the crude extract of

46 poppy straw in either liquid, solid or powder form which
47 contains the phenanthrine alkaloids of the opium poppy),
48 9670.

49 (c) *Opiates*. — Unless specifically excepted or unless
50 in another schedule, any of the following opiates,
51 including its isomers, esters, ethers, salts and salts of
52 isomers, esters and ethers whenever the existence of
53 such isomers, esters, ethers and salts is possible within
54 the specific chemical designation, dextrorphan and
55 levopropoxyphene excepted:

- 56 (1) Alfentanil;
- 57 (2) Alphaprodine;
- 58 (3) Anileridine;
- 59 (4) Bezitramide;
- 60 (5) Bulk dextropropoxyphene (nondosage forms);
- 61 (6) Carfentanil;
- 62 (7) Dihydrocodeine;
- 63 (8) Diphenoxylate;
- 64 (9) Fentanyl;
- 65 (10) Isomethadone;
- 66 (11) Levomethorphan;
- 67 (12) Levorphanol;
- 68 (13) Metazocine;
- 69 (14) Methadone;
- 70 (15) Methadone-Intermediate,
- 71 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- 72 (16) Moramide-Intermediate, 2-methyl-3-morpholino-
- 73 1, 1-diphenyl-propane-carboxylic acid;
- 74 (17) Pethidine; (meperidine);
- 75 (18) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-
- 76 phenylpiperidine;
- 77 (19) Pethidine-Intermediate-B, ethyl-4-phenylpiperi-

- 78 dine-ethyl-4-phenylpiper-idin-4-carboxylate;
- 79 (20) Pethidine-Intermediate-C, 1-methyl-4-phenylpip-
80 eridine-4-carboxylic acid;
- 81 (21) Phenazocine;
- 82 (22) Piminodine;
- 83 (23) Racemethorphan;
- 84 (24) Racemorphan;
- 85 (25) Sufentanil.
- 86 (d) *Stimulants*. — Unless specifically excepted or
87 unless listed in another schedule, any material, com-
88 pound, mixture or preparation which contains any
89 quantity of the following substances having a stimulant
90 effect on the central nervous system:
- 91 (1) Amphetamine, its salts, optical isomers and salts
92 of its optical isomers;
- 93 (2) Methamphetamine, its salts, isomers and salts of
94 isomers;
- 95 (3) Methylphenidate;
- 96 (4) Phenmetrazine and its salts.
- 97 (e) *Depressants*. — Unless specifically excepted or
98 unless listed in another schedule, any material, com-
99 pound, mixture or preparation which contains any
100 quantity of the following substances having a depressant
101 effect on the central nervous system, including its salts,
102 isomers and salts of isomers whenever the existence of
103 such salts, isomers and salts of isomers is possible within
104 the specific chemical designation:
- 105 (1) Amobarbital;
- 106 (2) Secobarbital;
- 107 (3) Pentobarbital;
- 108 (4) Phencyclidine.
- 109 (f) Hallucinogenic substances:
- 110 (1) Dronabinol (synthetic) in sesame oil and encapsu-

111 lated in a soft gelatin capsule in a United States food
112 and drug administration approved drug product. (Some
113 other names for dronabinol: (6aRtrans)-6a, 7, 8, 10a-
114 tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo 9b,d)
115 pyran-1-od or (-) delta-9-(trans)-tetrahydrocanna-bonil);

116 (2) Nabilone: THC-like antiemetic/cancer chemo-
117 therapy.

118 (g) Immediate precursors. Unless specifically ex-
119 cepted or unless listed in another schedule, any material,
120 compound, mixture, or preparation which contains any
121 quantity of the following substances:

122 (1) Immediate precursor to amphetamine and
123 methamphetamine:

124 (A) Phenylacetone; Some trade or other names:
125 phenyl-2-propanone; P2P; benzylymethyl ketone; methyl
126 benzyl ketone;

127 (2) Immediate precursors to phencyclidine (PCP):

128 (A) 1-phenylcyclohexylamine;

129 (B) 1-piperidinocyclohexanecarbonitrile (PCC).

§60A-2-208. Schedule III.

1 (a) Schedule III shall consist of the drugs and other
2 substances, by whatever official name, common or usual
3 name, chemical name or brand name designated, listed
4 in this section.

5 (b) *Stimulants*. — Unless specifically excepted or
6 unless listed in another schedule, any material, com-
7 pound, mixture or preparation which contains any
8 quantity of the following substances having a stimulant
9 effect on the central nervous system, including its salts,
10 isomers (whether optical, position or geometric), and
11 salts of such isomers whenever the existence of such
12 salts, isomers and salts of isomers is possible within the
13 specific chemical designation:

14 (1) Those compounds, mixtures or preparations in
15 dosage unit form containing any stimulant substances
16 listed in Schedule II which compounds, mixtures or
17 preparations were listed on the twenty-fifth day of

18 August, one thousand nine hundred seventy-one, as
19 excepted compounds under §308.32, and any other drug
20 of the quantitative composition shown in that list for
21 those drugs or which is the same except that it contains
22 a lesser quantity of controlled substances;

23 (2) Benzphetamine;

24 (3) Chlorphentermine;

25 (4) Clortermine;

26 (5) Phendimetrazine.

27 (c) *Depressants*. — Unless specifically excepted or
28 unless listed in another schedule, any material, com-
29 pound, mixture or preparation which contains any
30 quantity of the following substances having a depressant
31 effect on the central nervous system:

32 (1) Any compound, mixture or preparation containing:

33 (A) Amobarbital;

34 (B) Secobarbital;

35 (C) Pentobarbital; or any salt thereof and one or more
36 other active medicinal ingredients which are not listed
37 in any schedule;

38 (2) Any suppository dosage form containing:

39 (A) Amobarbital;

40 (B) Secobarbital;

41 (C) Pentobarbital; or any salt of any of these drugs and
42 approved by the food and drug administration for
43 marketing only as a suppository;

44 (3) Any substance which contains any quantity of a
45 derivative of barbituric acid or any salt thereof;

46 (4) Chlorhexadol;

47 (5) Glutethimide;

48 (6) Lysergic acid;

49 (7) Lysergic acid amide;

50 (8) Methyprylon;

- 51 (9) Sulfondiethylmethane;
 52 (10) Sulfonethylmethane;
 53 (11) Sulfonmethane;
 54 (12) Tiletamine and zolazepam or any salt thereof;
 55 some trade or other names for a tiletamine-zolazepam
 56 combination product: Telazol; some trade or other
 57 names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-
 58 cyclohexanone; some trade or other names for zolaze-
 59 pam: 4-(2-fluorophenyl)-6, 8-dihydro-1, 3, 8-trimethylpy-
 60 razolo-[3,4-e][1,4]-diazepin-7(1H)-one, flupyrazapon;
 61 (13) Human growth hormones or anabolic steroids.

**ARTICLE 8. WHOLESALE DRUG DISTRIBUTION LICENSING
 ACT OF 1991.**

- §60A-8-1. Short title.
 §60A-8-2. Scope.
 §60A-8-3. Purpose.
 §60A-8-4. West Virginia board of pharmacy wholesale drug distributor
 advisory committee; composition; duties.
 §60A-8-5. Definitions.
 §60A-8-6. Prohibited drug purchases or receipt; penalties.
 §60A-8-7. Wholesale drug distributor licensing requirements.
 §60A-8-8. License renewal application procedures.
 §60A-8-9. West Virginia board of pharmacy powers to promulgate rules.
 §60A-8-10. West Virginia board of pharmacy complaint provisions.
 §60A-8-11. The West Virginia board of pharmacy inspection powers and
 access to wholesale drug distributor records.
 §60A-8-12. Judicial enforcement of the article.
 §60A-8-13. Criminal penalties.

§60A-8-1. Short title.

- 1 This article may be cited as the "Wholesale Drug
 2 Distribution Licensing Act of 1991".

§60A-8-2. Scope.

- 1 This article applies to any person, partnership,
 2 corporation or business firm engaging in the wholesale
 3 distribution of human prescription drugs within this
 4 state.

§60A-8-3. Purpose.

- 1 The purpose of this article is to implement the federal
 2 prescription drug marketing act of one thousand nine
 3 hundred eighty-seven ("PDMA"), U.S. Pubic Law 100-

4 293, 102 Stat. 95, codified at 21 U.S. Code §321; and
5 particularly PDMA requirements that no person or
6 entity may engage in the wholesale distribution of
7 human prescription drugs in any state unless such
8 person or entity is licensed by such state in accordance
9 with federally-prescribed minimum standards, terms
10 and conditions as set forth in guidelines issued by
11 United States food and drug administration (FDA)
12 regulations pursuant to 21 U.S. Code §§353(e)(2)(A) and
13 (B); and such regulations as are set forth in 21 C.F.R.
14 Part 205.

**§60A-8-4. West Virginia board of pharmacy wholesale
drug distributor advisory committee; com-
position; duties.**

1 The board of pharmacy shall appoint a wholesale drug
2 distributor advisory committee composed of five
3 members. The committee shall be composed and shall
4 perform its duties and responsibilities as follows:

5 (a) At least one member shall be a pharmacy distrib-
6 utor as defined in subdivision (c), section five of this
7 article, but who shall be neither a member of the West
8 Virginia board of pharmacy nor a board of pharmacy
9 employee, except that if no such pharmacy distributor
10 is available to be a committee member, the member
11 required by this subdivision shall be a representative of
12 wholesale drug distributors in addition to those repre-
13 sentatives provided for in subdivision (b).

14 (b) At least two members shall be representatives of
15 wholesale drug distributors as defined in subdivision (b),
16 section five of this article, except that the wholesale
17 drug distributors in this subdivision shall not include
18 any drug manufacturer.

19 (c) At least one member shall be a representative of
20 drug manufacturers.

21 (d) The advisory committee shall review and make
22 recommendations to the board of pharmacy on the merit
23 of all rules dealing with wholesale drug distributors,
24 pharmacy distributors and drug manufacturers which
25 are proposed by the board of pharmacy. No rule

26 affecting wholesale drug distributors or pharmacy
27 distributors promulgated by the board of pharmacy
28 shall be approved without first being submitted to the
29 committee reasonably ahead of time for review and
30 comment.

31 (e) In making advisory committee appointments, the
32 board of pharmacy shall consider recommendations
33 received from each of the wholesale drug distributor,
34 pharmacy distributor and drug manufacturer classes
35 cited in subdivisions (a) through (c) herein and shall
36 promulgate rules which provide for solicitation of such
37 recommendations.

§60A-8-5. Definitions.

1 As used in this article:

2 (a) "Wholesale distribution" and "wholesale distribu-
3 tions" mean distribution of prescription drugs to persons
4 other than a consumer or patient, but does not include:

5 (1) Intracompany sales, being defined as any transac-
6 tion or transfer between any division, subsidiary, parent
7 and/or affiliated or related company under the common
8 ownership and control of a corporate entity;

9 (2) The purchase or other acquisition by a hospital or
10 other health care entity that is a member of a group
11 purchasing organization of a drug for its own use from
12 the group purchasing organization or from other
13 hospitals or health care entities that are members of
14 such organizations;

15 (3) The sale, purchase or trade of a drug or an offer
16 to sell, purchase or trade a drug by a charitable
17 organization described in section 501(c)(3) of the United
18 States Internal Revenue Code of 1954 to a nonprofit
19 affiliate of the organization to the extent otherwise
20 permitted by law;

21 (4) The sale, purchase or trade of a drug or an offer
22 to sell, purchase or trade a drug among hospitals or
23 other health care entities that are under common
24 control. For purposes of this article, "common control"
25 means the power to direct or cause the direction of the

26 management and policies of a person or an organization,
27 whether by ownership of stock, voting rights, by
28 contract, or otherwise;

29 (5) The sale, purchase or trade of a drug or an offer
30 to sell, purchase or trade a drug for "emergency medical
31 reasons" for purposes of this article includes transfers
32 of prescription drugs by a retail pharmacy to another
33 retail pharmacy to alleviate a temporary shortage,
34 except that the gross dollar value of such transfers shall
35 not exceed five percent of the total prescription drug
36 sales revenue of either the transferor or transferee
37 pharmacy during any twelve consecutive month period;

38 (6) The sale, purchase or trade of a drug, an offer to
39 sell, purchase, or trade a drug or the dispensing of a
40 drug pursuant to a prescription;

41 (7) The distribution of drug samples by manufactur-
42 ers' representatives or distributors' representatives; or

43 (8) The sale, purchase or trade of blood and blood
44 components intended for transfusion.

45 (b) "Wholesale drug distributor" means any person or
46 entity engaged in wholesale distribution of prescription
47 drugs, including, but not limited to, manufacturers,
48 repackers, own-label distributors, jobbers, private-label
49 distributors, brokers, warehouses, including manufactur-
50 ers' and distributors' warehouses, chain drug ware-
51 houses and wholesale drug warehouses, independent
52 wholesale drug traders, prescription drug repackagers,
53 physicians, dentists, veterinarians, birth control and
54 other clinics, individuals, hospitals, nursing homes
55 and/or their providers, health maintenance organiza-
56 tions and other health care providers, and retail and
57 hospital pharmacies that conduct wholesale distribu-
58 tions, including, but not limited to, any pharmacy
59 distributor as defined in this section. A wholesale drug
60 distributor shall not include any for hire carrier or
61 person or entity hired solely to transport prescription
62 drugs.

63 (c) "Pharmacy distributor" means any pharmacy
64 licensed in this state or hospital pharmacy which is

65 engaged in the delivery or distribution of prescription
66 drugs either to any other pharmacy licensed in this state
67 or to any other person or entity, including, but not
68 limited to, a wholesale drug distributor as defined in
69 subdivision (b) of this section engaged in the delivery or
70 distribution of prescription drugs and who is involved
71 in the actual, constructive or attempted transfer of a
72 drug in this state to other than the ultimate consumer
73 except as otherwise provided for by law.

74 (d) "Manufacturer" means anyone who is engaged in
75 manufacturing, preparing, propagating, compounding,
76 processing, packaging, repackaging or labeling of a
77 prescription drug.

78 (e) "West Virginia board of pharmacy" means the
79 agency of this state authorized to license wholesale drug
80 distribution except where otherwise provided.

81 (f) "Prescription drug" means any human drug
82 required by federal law or regulation to be dispensed
83 only by prescription, including finished dosage forms
84 and active ingredients subject to section 503(b) of the
85 federal food, drug and cosmetic act.

86 (g) "Blood" means whole blood collected from a single
87 donor and processed either for transfusion or further
88 manufacturing.

89 (h) "Blood component" means that part of blood
90 separated by physical or mechanical means.

91 (i) "Drug sample" means a unit of a prescription drug
92 that is not intended to be sold and is intended to promote
93 the sale of the drug.

**§60A-8-6. Prohibited drug purchases or receipt;
penalties.**

1 It is unlawful for any person or entity to knowingly
2 purchase or receive any prescription drug from any
3 source other than a person or entity licensed pursuant
4 to the laws of this state except where otherwise
5 provided, such person or entity to include, but not be
6 limited to, a wholesale distributor, manufacturer,
7 pharmacy distributor or pharmacy. Any person violat-

8 ing the provisions of this section is guilty of a misde-
9 meanor, and, upon conviction thereof, shall be fined not
10 more than one thousand dollars. Any person who
11 violates this section shall for a second offense be guilty
12 of a misdemeanor, and, upon conviction thereof, shall be
13 fined not less than one thousand dollars nor more than
14 five thousand dollars.

§60A-8-7. Wholesale drug distributor licensing requirements.

1 All wholesale distributors and pharmacy distributors
2 shall be subject to the following requirements:

3 (a) No person or distribution outlet may act as a
4 wholesale drug distributor without first obtaining a
5 license to do so from the board of pharmacy and paying
6 any reasonable fee required by the board of pharmacy,
7 such fee not to exceed two hundred dollars per year.

8 (b) The board of pharmacy may grant a temporary
9 license when a wholesale drug distributor first applies
10 for a license to operate within this state and such
11 temporary license shall remain valid until the board of
12 pharmacy finds that the applicant meets or fails to meet
13 the requirements for regular licensure, except that no
14 such temporary license shall be valid for more than
15 ninety days from the date of issuance. Any temporary
16 license issued pursuant to this subdivision shall be
17 renewable for a similar period of time not to exceed
18 ninety days pursuant to policies and procedures to be
19 prescribed by the board of pharmacy.

20 (c) No license may be issued or renewed for a
21 wholesale drug distributor to operate unless the distrib-
22 utor operates in a manner prescribed by law and
23 according to the rules promulgated by the board of
24 pharmacy with respect thereto.

25 (d) The board of pharmacy may require a separate
26 license for each facility directly or indirectly owned or
27 operated by the same business entity within this state,
28 or for a parent entity with divisions, subsidiaries, or
29 affiliate companies within this state when operations are
30 conducted at more than one location and there exists

31 joint ownership and control among all the entities.

32 (e) (1) As a condition for receiving and retaining any
33 wholesale drug distributor license issued pursuant to
34 this article, each applicant shall satisfy the board of
35 pharmacy that it has and will continuously maintain:

36 (A) Acceptable storage and handling conditions plus
37 facilities standards;

38 (B) Minimum liability and other insurance as may be
39 required under any applicable federal or state law;

40 (C) A security system which includes after hours
41 central alarm or comparable entry detection capability,
42 restricted premises access, adequate outside perimeter
43 lighting, comprehensive employment applicant screen-
44 ing and safeguards against employee theft;

45 (D) An electronic, manual or any other reasonable
46 system of records describing all wholesale distributor
47 activities governed by this article for the two-year
48 period following disposition of each product and being
49 reasonably accessible as defined by board of pharmacy
50 regulations during any inspection authorized by the
51 board of pharmacy;

52 (E) Officers, directors, managers and other persons in
53 charge of wholesale drug distribution, storage and
54 handling, who must at all times demonstrate and
55 maintain their capability of conducting business accord-
56 ing to sound financial practices as well as state and
57 federal law;

58 (F) Complete, updated information to be provided the
59 board of pharmacy as a condition for obtaining and
60 retaining a license about each wholesale distributor to
61 be licensed under this article including all pertinent
62 licensee ownership and other key personnel and facili-
63 ties information deemed necessary for enforcement of
64 this article, with any changes in such information to be
65 submitted at the time of license renewal or within
66 twelve months from the date of such change, whichever
67 occurs first;

68 (G) Written policies and procedures which assure

69 reasonable wholesale distributor preparation for protec-
70 tion against and handling of any facility security or
71 operation problems, including, but not limited to, those
72 caused by natural disaster or government emergency,
73 inventory inaccuracies or product shipping and receiv-
74 ing, outdated product or other unauthorized product
75 control, appropriate disposition of returned goods and
76 product recalls;

77 (H) Sufficient inspection procedures for all incoming
78 and outgoing product shipments; and

79 (I) Operations in compliance with all federal legal
80 requirements applicable to wholesale drug distribution.

81 (2) The board of pharmacy shall consider, at a
82 minimum, the following factors in reviewing the
83 qualifications of persons who engage in wholesale
84 distribution of prescription drugs with this state:

85 (A) Any conviction of the applicant under any federal,
86 state or local laws relating to drug samples, wholesale
87 or retail drug distribution or distribution of controlled
88 substances;

89 (B) Any felony convictions of the applicant under
90 federal, state or local laws;

91 (C) The applicant's past experience in the manufac-
92 ture or distribution of prescription drugs, including
93 controlled substances;

94 (D) The furnishing by the applicant of false or
95 fraudulent material in any application made in connec-
96 tion with drug manufacturing or distribution;

97 (E) Suspension or revocation by federal, state or local
98 government of any license currently or previously held
99 by the applicant for the manufacture or distribution of
100 any drug, including controlled substances;

101 (F) Compliance with licensing requirements under
102 previously granted licenses, if any;

103 (G) Compliance with requirements to maintain and/or
104 make available to the board of pharmacy or to federal,

105 state or local law-enforcement officials those records
106 required by this article; and

107 (H) Any other factors or qualifications the board of
108 pharmacy considers relevant to and consistent with the
109 public health and safety, including whether the grant-
110 ing of the license would not be in the public interest.

111 (3) All requirements set forth in this subsection shall
112 conform to wholesale drug distributor licensing guide-
113 lines formally adopted by the United States food and
114 drug administration (FDA); and in case of conflict
115 between any wholesale drug distributor licensing
116 requirement imposed by the board of pharmacy pursu-
117 ant to this subsection and any food and drug adminis-
118 tration wholesale drug distributor licensing guideline,
119 the latter shall control.

120 (f) An agent or employee of any licensed wholesale
121 drug distributor need not seek licensure under this
122 section and may lawfully possess pharmaceutical drugs
123 when such agent or employee is acting in the usual
124 course of business or employment.

125 (g) The issuance of a license pursuant to this article
126 does not change or affect tax liability imposed by this
127 state's department of tax and revenue on any wholesale
128 drug distributor.

129 (h) The board of pharmacy may adopt rules pursuant
130 to section nine of this article which permit out-of-state
131 wholesale drug distributors to obtain any license
132 required by this article on the basis of reciprocity to the
133 extent that: (i) An out-of-state wholesale drug distribu-
134 tor possesses a valid license granted by another state
135 pursuant to legal standards comparable to those which
136 must be met by a wholesale drug distributor of this state
137 as prerequisites for obtaining a license under the laws
138 of this state; and (ii) such other state would extend
139 reciprocal treatment under its own laws to a wholesale
140 drug distributor of this state.

§60A-8-8. License renewal application procedures.

1 Application blanks for renewal of any license required
2 by this article shall be mailed to each licensee at least

3 thirty days before the first day of July of each calendar
4 year by the board. All licenses issued under this section
5 are not transferable and expire on the thirtieth day of
6 June of each calendar year. If application for renewal
7 of such license with required fee is not made before the
8 expiration date of the license, the existing license, or
9 renewal thereof, shall lapse and become null and void
10 upon the last day of June of each calendar year.

§60A-8-9. West Virginia board of pharmacy powers to promulgate rules.

1 The board of pharmacy shall promulgate rules not
2 inconsistent with law, as may be necessary to carry out
3 the purposes and enforce the provisions of this article
4 pursuant to chapter twenty-nine-a of this code. Rules
5 which incorporate and set detailed standards for
6 meeting each of the license prerequisites set forth in
7 section seven of this article shall be promulgated in final
8 form by no later than the fourteenth day of September,
9 one thousand nine hundred ninety-two. All rules
10 promulgated pursuant to this section shall conform to
11 wholesale drug distributor licensing guidelines formally
12 adopted by the food and drug administration at 21
13 C.F.R. Part 205; and in case of conflict between any rule
14 adopted by the board of pharmacy and any food and
15 drug administration wholesale drug distributor guide-
16 line, the latter shall control.

§60A-8-10. West Virginia board of pharmacy complaint provisions.

1 Complaints arising under any provision of this article
2 shall be handled as follows:

3 (a) The board of pharmacy is hereby authorized and
4 empowered, when complaints or examinations or
5 inspections of a wholesale drug distributor disclose that
6 a wholesale drug distributor is not operating or
7 conducting business according to the state and federal
8 laws, to file a written complaint with the board
9 charging the holder of a license to operate a wholesale
10 drug distributorship operation with violations of this
11 article which are grounds for restriction, suspension or
12 revocation of the wholesale drug distributor's license.

13 (b) If the board of pharmacy concludes that a
14 wholesale drug distributor has committed an act or is
15 engaging in a course of conduct which constitutes a
16 clear and present danger to the public health and safety
17 in this state, the board of pharmacy may hold an
18 expedited hearing. Within fifteen days after service of
19 the complaint on a wholesale drug distributor, the West
20 Virginia board of pharmacy shall conduct a preliminary
21 hearing to determine whether the alleged activities of
22 the wholesale drug distributor appear to constitute a
23 clear and present danger to the public health and safety
24 which justify that the wholesale drug distributor's
25 license be immediately restricted or suspended. The
26 burden of proving that a wholesale drug distributor is
27 a clear and present danger to the public health and
28 safety shall be upon the board. The board shall issue its
29 decision immediately after the hearing and shall dismiss
30 the action or suspend, restrict or revoke the license. The
31 board shall require any wholesale drug distributor
32 found in violation of this article to take all necessary
33 measures for compliance.

34 (c) If the board restricts, revokes or suspends the
35 wholesale drug distributor's license, such temporary
36 restriction, revocation or suspension shall become a final
37 restriction or suspension if there is no request by the
38 wholesale drug distributor for a final hearing within
39 thirty days of the preliminary hearing. The board shall,
40 if requested by the wholesale drug distributor named in
41 the complaint, set a date to hold a final hearing which
42 shall be held pursuant to the provisions of chapter
43 twenty-nine-a of this code.

§60A-8-11. The West Virginia board of pharmacy inspection powers and access to wholesale drug distributor records.

1 (a) A person authorized by the board may inspect
2 during normal business hours any premises being used
3 by a wholesale drug distributor in this state in the
4 course of its business. Any wholesale drug distributor
5 providing adequate documentation of the most recent
6 satisfactory inspection less than three years old of such
7 distributor's wholesale drug distribution activities and

8 facilities by either the food and drug administration or
9 a state agency, or any person or entity lawfully
10 designated by a state agency to perform such inspection,
11 determined to be comparable by the board shall be
12 exempt from further inspection for a period of time to
13 be determined by the board of pharmacy. Such exemp-
14 tion shall not bar the board from initiating an investi-
15 gation pursuant to a public or governmental complaint
16 received by the board regarding a wholesale drug
17 distributor.

18 (b) Wholesale drug distributors may keep records
19 regarding purchase and sales transactions at a central
20 location apart from the principal office of the wholesale
21 drug distributor or the location at which the drugs were
22 stored and from which they were shipped: *Provided*,
23 That such records shall be made available for inspection
24 within two working days after a request to inspect by
25 the board is made. Such records may be kept in any
26 form permissible under federal law applicable to
27 prescription drugs record keeping.

§60A-8-12. Judicial enforcement of the article.

1 (a) Upon proper application by the board, a court of
2 competent jurisdiction may grant an injunction, res-
3 training order or other order as may be appropriate to
4 enjoin a person from offering to engage or engaging in
5 the performance of any acts or practices for which a
6 certificate of registration or authority, permit or license
7 is required by any applicable federal or state law,
8 including, but not limited to, this act upon a showing
9 that such acts or practices were or are likely to be
10 performed or offered to be performed without a
11 certificate of registration or authority, permit or license.

12 (b) Any such judicial actions shall be commenced
13 either in the county in which such conduct occurred or
14 in the county in which defendant resides.

15 (c) Any action brought under this section shall be in
16 addition to and not in lieu of any other penalty provided
17 by law and may be brought concurrently with other
18 actions to enforce this article.

§60A-8-13. Criminal penalties.

- 1 Every person who violates any provision of section
- 2 seven of this article shall be guilty of a misdemeanor,
- 3 and, upon conviction thereof, shall be fined not less than
- 4 two hundred dollars nor more than one thousand dollars.

CHAPTER 30

(Com. Sub. for H. B. 2792—By Delegates Rutledge and Williams)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article six, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to building and loan associations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. BUILDING AND LOAN ASSOCIATIONS.**§1. Repeal of article relating to building and loan associations.**

- 1 Article six, chapter thirty-one of the code of West
- 2 Virginia, one thousand nine hundred thirty-one, as
- 3 amended, is hereby repealed.

CHAPTER 31

(H. B. 2763—By Delegates Rutledge and Williams)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article six-a, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the federal savings and loan insurance corporation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION.

§1. Repeal of article relating to the federal savings and loan insurance corporation.

- 1 Article six-a, chapter thirty-one of the code of West
- 2 Virginia, one thousand nine hundred thirty-one, as
- 3 amended, is hereby repealed.

CHAPTER 32

(H. B. 2548—By Delegates Murensky and Moore)

[Passed February 27, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fourteen-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a, relating to compensation of correctional officers required to work certain holidays.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.

§7-14B-18a. Correctional officers who are required to work during holidays; how compensated.

- 1 From the effective date of this section, if any correc-
- 2 tional officer is required to work during a legal holiday
- 3 as is specified in section one, article two, chapter two
- 4 of this code, or if a legal holiday falls on the member's
- 5 regular scheduled day off, he or she shall be allowed
- 6 equal time off at such time as may be approved by the
- 7 sheriff under whom he or she serves, or in the alterna-
- 8 tive, shall be paid at a rate not less than one and one-
- 9 half times his or her regular rate of pay.

CHAPTER 33

(H. B. 2688—By Mr. Speaker, Mr. Chambers, and Delegate Roop)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article seven of said chapter, all relating to additional duties of county officials and compensation therefor.

Be it enacted by the Legislature of West Virginia:

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

Article

1. County Commissions Generally.
7. Training Programs for County Employees, Etc.; Compensation of Elected County Officials; County Assistants, Deputies and Employees; Their Number and Compensation.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-5a. Excusal of commissioner from voting where conflict of interest involved.

- 1 Each county commissioner present during any county
- 2 commission meeting when any question is put shall vote
- 3 unless he is immediately and particularly interested
- 4 therein. Before such question is put, any member having
- 5 a direct personal or pecuniary interest therein should
- 6 announce this fact, and request to be excused from
- 7 voting. The disqualifying interest must be such as
- 8 affects the member directly, and not as one of a class.

ARTICLE 7. TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.

§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

1 (a) (1) All county commissioners shall be paid compen-
2 sation out of the county treasury in amounts and
3 according to the schedule hereafter set forth for each
4 class of county as determined by the provisions of section
5 three, article seven, chapter seven: *Provided*, That as to
6 any county having a tribunal in lieu of a county
7 commission, the county commissioners of such county
8 may be paid less than the minimum compensation limits
9 of the county commission for the particular class of such
10 county.

11	Class I	\$20,000
12	Class II	\$15,500
13	Class III	\$14,000
14	Class IV	\$10,000
15	Class V	\$ 7,000
16	Class VI	\$ 4,000

17 The compensation hereinabove provided shall be paid
18 on and after January one, one thousand nine hundred
19 eighty-five, to each county commissioner. Within each
20 county, every county commissioner whose term of office
21 commenced prior to the first day of January, one
22 thousand nine hundred eighty-five, shall receive the
23 same annual compensation as commissioners commenc-
24 ing a term of office on or after that date by virtue of
25 the new duties imposed upon county commissioners
26 pursuant to the provisions of chapter fifteen, acts of the
27 Legislature, first extraordinary session, one thousand
28 nine hundred eighty-three.

29 (2) For the purpose of determining the compensation
30 to be paid to the elected county officials of each county,
31 the following compensations for each county office by
32 class are hereby established and shall be used by each
33 county commission in determining the compensation of
34 each of their county officials other than compensation of
35 members of the county commission:

		Sheriff	County Clerk	Circuit Clerk	Assessor	Prosecuting Attorney
36						
37						
38	Class I	\$24,200	\$31,300	\$31,300	\$24,200	\$41,500
39	Class II	\$24,200	\$28,000	\$28,000	\$24,200	\$39,500
40	Class III	\$24,200	\$28,000	\$28,000	\$24,200	\$30,000
41	Class IV	\$22,300	\$24,000	\$24,000	\$22,300	\$26,500
42	Class V	\$20,400	\$22,000	\$22,000	\$20,400	\$23,500
43	Class VI	\$17,200	\$17,200	\$17,200	\$17,200	\$17,000

44 Any county clerk, circuit clerk, joint clerk of the
 45 county commission and circuit court, if any, county
 46 assessor, sheriff and prosecuting attorney of a Class I
 47 county, any assessor of a Class II and Class III county,
 48 any sheriff of a Class II and Class III county, and any
 49 prosecuting attorney of a Class II county shall devote
 50 full time to his public duties to the exclusion of any other
 51 employment: *Provided*, That any such public official,
 52 whose term of office begins when his county's classifi-
 53 cation imposes no restriction on his outside activities,
 54 shall not be restricted on his outside activities during
 55 the remainder of the term for which he is elected. The
 56 compensation hereinabove provided shall be paid on and
 57 after the first day of January, one thousand nine
 58 hundred eighty-five, to each elected county official.

59 In the case of a county that has a joint clerk of the
 60 county commission and circuit court, the compensation
 61 of the joint clerk shall be fixed in an amount twenty-
 62 five percent higher than the compensation would be
 63 fixed for the county clerk if it had separate offices of
 64 county clerk and circuit clerk.

65 The Legislature finds, as a fact, that the duties
 66 imposed upon county clerks by the provisions of chapter
 67 sixty-four, acts of the Legislature, regular session, one
 68 thousand nine hundred eighty-two, and by chapter
 69 fifteen, acts of the Legislature, first extraordinary
 70 session, one thousand nine hundred eighty-three,
 71 constitute new and additional duties for county clerks
 72 and as such justify the additional compensation provided
 73 in this section without violating the provisions of section
 74 thirty-eight, article six of the constitution of West
 75 Virginia.

76 The Legislature further finds as a fact that the duties
77 imposed upon circuit clerks by the provisions of
78 chapters sixty-one and one hundred eighty-two, acts of
79 the Legislature, regular session, one thousand nine
80 hundred eighty-one, and by chapter sixty, acts of the
81 Legislature, regular session, one thousand nine hundred
82 eighty-three, constitute new and additional duties for
83 circuit clerks and as such justify the additional compen-
84 sation provided by this section without violating the
85 provisions of section thirty-eight, article six of the
86 constitution of West Virginia.

87 (b) Prior to the primary election in the year one
88 thousand nine hundred ninety-two, and for the fiscal
89 year beginning on the first day of July, one thousand
90 nine hundred ninety-two, or for any subsequent fiscal
91 year if the approval set out herein is not granted for any
92 fiscal year, and at least thirty days prior to the meeting
93 to approve the county budget, the commission shall
94 provide notice to the public of the date and time of the
95 meeting and that the purpose of the meeting of the
96 county commission is to decide upon their budget
97 certification to the tax department. Upon submission by
98 the county commission to the chief inspector division of
99 the department of tax and revenue of a proposed annual
100 budget which contains anticipated receipts into the
101 county's general revenue fund, less anticipated moneys
102 from the unencumbered fund balance, equal to antici-
103 pated receipts into the county's general revenue fund,
104 less anticipated moneys from the unencumbered fund
105 balance and any federal or state special grants, for the
106 immediately preceding fiscal year, plus such additional
107 amount as is necessary for payment of the increases in
108 the salaries set out herein and related employment taxes
109 over that paid for the immediately preceding fiscal year,
110 and upon approval thereof by the chief inspector, which
111 approval shall not be granted for any proposed annual
112 budget containing anticipated receipts which are
113 unreasonably greater or lesser than that of the imme-
114 diately preceding fiscal year, for the purpose of
115 determining the compensation to be paid to the elected
116 county officials of each county office by class are hereby

117 established and shall be used by each county commission
 118 in determining the compensation of each of their county
 119 officials: *Provided*, That as to any county having a
 120 tribunal in lieu of a county commission, the county
 121 commissioners of such county may be paid less than the
 122 minimum compensation limits of the county commission
 123 for the particular class of such county.

124 COUNTY COMMISSIONERS

125	Class I	\$24,000
126	Class II	\$18,600
127	Class III	\$16,800
128	Class IV	\$12,000
129	Class V	\$ 8,400

130 If the approval set out hereinabove is granted, the
 131 compensation hereinabove provided shall be paid on and
 132 after January one, one thousand nine hundred ninety-
 133 three, to each county commissioner. Within each county,
 134 every county commissioner shall receive the same
 135 annual compensation by virtue of the new duties
 136 imposed upon county commissioners pursuant to the
 137 provisions of chapter one hundred seventy-two, acts of
 138 the Legislature, second regular session, one thousand
 139 nine hundred ninety, and chapter five, acts of the
 140 Legislature, third extraordinary session, one thousand
 141 nine hundred ninety.

142 OTHER ELECTED OFFICIALS

143		County	Circuit	Assessor	Prosecuting	
144		Sheriff	Clerk	Clerk	Attorney	
145	Class I	\$29,040	\$37,560	\$37,560	\$29,040	\$59,500
146	Class II	\$29,040	\$33,600	\$33,600	\$29,040	\$59,500
147	Class III	\$29,040	\$33,600	\$33,600	\$29,040	\$36,000
148	Class IV	\$26,760	\$28,800	\$28,800	\$26,760	\$31,800
149	Class V	\$24,480	\$26,400	\$26,400	\$24,480	\$28,200
150	Class VI	\$24,480	\$26,400	\$26,400	\$24,480	\$28,200

151 Any county clerk, circuit clerk, joint clerk of the
 152 county commission and circuit court, if any, county
 153 assessor, sheriff and prosecuting attorney of a Class I

154 county, any assessor of a Class II and Class III county,
155 any sheriff of a Class II and Class III county, and any
156 prosecuting attorney of a Class II county shall devote
157 full time to his or her public duties to the exclusion of
158 any other employment: *Provided*, That any such public
159 official, whose term of office begins when his or her
160 county's classification imposes no restriction on his or
161 her outside activities, shall not be restricted on his or
162 her outside activities during the remainder of the term
163 for which he or she is elected. If the approval set out
164 hereinabove is granted, the compensation hereinabove
165 provided shall be paid on and after the first day of
166 January, one thousand nine hundred ninety-three, to
167 each elected county official.

168 In the case of a county that has a joint clerk of the
169 county commission and circuit court, the compensation
170 of the joint clerk shall be fixed in an amount twenty-
171 five percent higher than the compensation would be
172 fixed for the county clerk if it had separate offices of
173 county clerk and circuit clerk.

174 Prior to the primary election in the year one thousand
175 nine hundred ninety-two, in the case of a Class III, Class
176 IV or Class V county which has a part-time prosecuting
177 attorney, the county commission may find that such
178 facts and circumstances exist that require the prosecut-
179 ing attorney to devote full time to his or her public
180 duties for the four-year term, beginning the first day of
181 January, one thousand nine hundred ninety-three. If the
182 county commission makes such a finding, it may by
183 proper order adopted and entered, require the prosecut-
184 ing attorney who takes office on the first day of January,
185 one thousand nine hundred ninety-three, to devote full
186 time to his or her public duties and the county commis-
187 sion shall then compensate said prosecuting attorney at
188 the same rate of compensation as that of a prosecuting
189 attorney in a Class II county.

CHAPTER 34

(H. B. 2908—By Delegates Flanigan and J. Martin)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections one-a through one-ee, inclusive, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one of said article; to amend and reenact section ten, article nine of said chapter; and to amend and reenact section nine, article twelve, chapter sixty-two, relating to circuit court judges; providing twenty-third circuit with three judges; reconstituting eleventh and thirty-first circuits; providing for concurrent jurisdiction as to single judge circuits; providing for term of office for new judges; providing that supreme court shall set terms of court; providing for a panel of senior judges; payment of senior judges; and conditions of probation.

Be it enacted by the Legislature of West Virginia:

That sections one-a through one-ee, inclusive, article two, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one of said article be amended and reenacted; that section ten, article nine of said chapter be amended and reenacted; and that section nine, article twelve, chapter sixty-two be amended and reenacted to read as follows:

Chapter

51. Courts and Their Officers.
62. Criminal Procedure.

CHAPTER 51. COURTS AND THEIR OFFICERS.

Article

2. Circuit Courts; Circuit Judges.
9. Retirement System for Judges of Courts of Record.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.

1 (a) The state shall be divided into the following
2 judicial circuits with the following number of judges:

3 The counties of Brooke, Hancock and Ohio shall
4 constitute the first circuit and shall have four judges;
5 the counties of Marshall, Tyler and Wetzel shall
6 constitute the second circuit and shall have two judges;
7 the counties of Doddridge, Pleasants and Ritchie shall
8 constitute the third circuit and shall have one judge; the
9 counties of Wood and Wirt shall constitute the fourth
10 circuit and shall have three judges; the counties of
11 Calhoun, Jackson and Roane shall constitute the fifth
12 circuit and shall have one judge; the county of Cabell
13 shall constitute the sixth circuit and shall have four
14 judges; the county of Logan shall constitute the seventh
15 circuit and shall have two judges; the county of
16 McDowell shall constitute the eighth circuit and shall
17 have two judges; the county of Mercer shall constitute
18 the ninth circuit and shall have two judges; the county
19 of Raleigh shall constitute the tenth circuit and shall
20 have three judges; the counties of Greenbrier and
21 Pocahontas shall constitute the eleventh circuit and shall
22 have two judges; the county of Fayette shall constitute
23 the twelfth circuit and shall have two judges; the county
24 of Kanawha shall constitute the thirteenth circuit and
25 shall have seven judges; the counties of Braxton, Clay,
26 Gilmer and Webster shall constitute the fourteenth
27 circuit and shall have two judges; the county of Harrison
28 shall constitute the fifteenth circuit and shall have two
29 judges; the county of Marion shall constitute the
30 sixteenth circuit and shall have two judges; the county
31 of Monongalia shall constitute the seventeenth circuit
32 and shall have two judges; the county of Preston shall
33 constitute the eighteenth circuit and shall have one
34 judge; the counties of Barbour and Taylor shall consti-
35 tute the nineteenth circuit and shall have one judge; the
36 county of Randolph shall constitute the twentieth circuit
37 and shall have one judge; the counties of Grant, Mineral
38 and Tucker shall constitute the twenty-first circuit and
39 shall have two judges; the counties of Hampshire, Hardy
40 and Pendleton shall constitute the twenty-second circuit
41 and shall have one judge; the counties of Berkeley,
42 Jefferson and Morgan shall constitute the twenty-third

43 circuit and shall have three judges; the county of Wayne
44 shall constitute the twenty-fourth circuit and shall have
45 one judge; the counties of Lincoln and Boone shall
46 constitute the twenty-fifth circuit and shall have two
47 judges; the counties of Lewis and Upshur shall consti-
48 tute the twenty-sixth circuit and shall have one judge;
49 the county of Wyoming shall constitute the twenty-
50 seventh circuit and shall have one judge; the county of
51 Nicholas shall constitute the twenty-eighth circuit and
52 shall have one judge; the counties of Mason and Putnam
53 shall constitute the twenty-ninth circuit and shall have
54 two judges; the county of Mingo shall constitute the
55 thirtieth circuit and shall have one judge; and the
56 counties of Monroe and Summers shall constitute the
57 thirty-first circuit and shall have one judge: *Provided,*
58 That the Kanawha County circuit court shall be a court
59 of concurrent jurisdiction with each single judge circuit
60 where the sitting judge in such single judge circuit is
61 unavailable by reason of sickness, vacation or other
62 reason.

63 The term of office of the second and third circuit court
64 judges of the twenty-third circuit created by the
65 provisions of this section shall commence on the first day
66 of January, one thousand nine hundred ninety-three.
67 Any judge in office at the time of the effective date of
68 this section shall continue as a judge of the circuit as
69 constituted under prior enactments of this section,
70 unless sooner removed or retired as provided by law,
71 until the thirty-first day of December, one thousand nine
72 hundred ninety-two.

73 (b) The terms of office of all circuit court judges shall
74 be for eight years, the first commencing on the first day
75 of January, one thousand nine hundred eighty-five, and
76 ending on the thirty-first day of December, one thousand
77 nine hundred ninety-two. Subsequent terms of said
78 judges shall be for eight years.

79 (c) Beginning with the primary and general elections
80 to be conducted in the year one thousand nine hundred
81 ninety-two, in all judicial circuits having two or more
82 judges there shall be, for election purposes, numbered
83 divisions corresponding to the number of circuit judges

84 in each circuit. Each judge shall be elected at large from
85 the entire circuit. In each numbered division of a
86 judicial circuit, the candidates for nomination or
87 election shall be voted upon and the votes cast for the
88 candidates in each division shall be tallied separately
89 from the votes cast for candidates in other numbered
90 divisions within the circuit. The candidate receiving the
91 highest number of the votes cast within a numbered
92 division shall be nominated or elected, as the case may
93 be.

94 (d) The supreme court shall, by rule, establish the
95 terms of court of circuit judges. Until such rule is
96 effective, terms of court shall continue to be set in
97 accordance with the last enactment of sections one-a
98 through one-ee of this article prior to the repeal of such
99 sections.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-10. Services of senior judges.

1 The West Virginia supreme court of appeals is
2 authorized and empowered to create a panel of senior
3 judges to utilize the talent and experience of former
4 circuit court judges and supreme court justices of this
5 state. The supreme court of appeals shall promulgate
6 rules providing for said judges and justices to be
7 assigned duties as needed and as feasible toward the
8 objective of reducing caseloads and providing speedier
9 trials to litigants throughout the state: *Provided*, That
10 reasonable payment shall be made to said judges and
11 justices on a per diem basis: *Provided, however*, That the
12 per diem and retirement compensation of a senior judge
13 shall not exceed the salary of a sitting judge, and
14 allowances shall also be made for necessary expenses as
15 provided for special judges under articles two and nine
16 of this chapter.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-9. Conditions of release on probation.

1 Release on probation shall be upon the following
2 conditions:

3 (1) That the probationer shall not, during the term of
4 his probation, violate any criminal law of this or any
5 other state or of the United States.

6 (2) That he shall not, during the term of his probation,
7 leave the state without the consent of the court which
8 placed him on probation.

9 (3) That he shall comply with the rules and regula-
10 tions prescribed by the court or by the board of
11 probation and parole, as the case may be, for his
12 supervision by the probation officer.

13 In addition, the court may impose, subject to modifi-
14 cation at any time, any other conditions which it may
15 deem advisable, including, but not limited to, any of the
16 following:

17 (1) That he shall make restitution or reparation, in
18 whole or in part, immediately or within the period of
19 probation, to any party injured by the crime for which
20 he has been convicted.

21 (2) That he shall pay any fine assessed and the costs
22 of the proceeding in such installments as the court may
23 direct.

24 (3) That he shall make contribution from his earnings,
25 in such sums as the court may direct, for the support
26 of his dependents.

27 (4) That he shall, in the discretion of the court, be
28 required to serve a period of confinement in the county
29 jail of the county in which he was convicted for a period
30 not to exceed one third of the minimum sentence
31 established by law or one third of the least possible
32 period of confinement in an indeterminate sentence, but
33 in no case shall such period of confinement exceed six
34 consecutive months. The court shall have authority to
35 sentence the defendant within such six-month period to
36 intermittent periods of confinement including, but not
37 limited to, weekends or holidays and may grant unto the
38 defendant intermittent periods of release in order that

39 he may work at his employment or for such other
40 reasons or purposes as the court may deem appropriate:
41 *Provided*, That the provisions of article eleven-a of this
42 chapter shall not apply to such intermittent periods of
43 confinement and release except to the extent that the
44 court may direct. If a period of confinement is required
45 as a condition of probation, the court shall make special
46 findings that other conditions of probation are inade-
47 quate and that a period of confinement is necessary.

CHAPTER 35

(H. B. 2544—By Delegates Damron and Beach)

[Passed March 7, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article four, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to full-time investigators of crime.

Be it enacted by the Legislature of West Virginia:

That section two, article four, 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 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-2. Rewards for apprehension of persons charged with crime and expenditure of money for detection of crime; appointment of investigators of crime.

1 The prosecuting attorney of any county, with the
2 approval of the county commission, or of the governor,
3 or of the court of the county vested with authority to try
4 criminal offenses, or of the judge thereof in vacation,
5 may, within his discretion, offer rewards for the
6 apprehension of persons charged with crime, or may
7 expend money for the detection of crime. Any money
8 expended under this section shall, when approved by the
9 prosecuting attorney, be paid out of the county fund, in

10 the same manner as other county expenses are paid:
11 *Provided*, That the prosecuting attorneys of the several
12 counties of the state may, with the approval of the
13 county commissions of their respective counties, entered
14 of record, appoint to assist them in the discharge of their
15 official duties, trained and qualified full-time or part-
16 time investigators of crime. Such full-time investigators
17 shall accept no other public employment or employment
18 in a private police or investigative capacity during the
19 term of their appointment and shall be paid such salary
20 and expenses as may be fixed by the county commission.
21 Such expenses shall be itemized and sworn to by the
22 investigator upon presentation to the county
23 commission.

24 Notwithstanding any other provision of this code to
25 the contrary, the prosecuting attorney of any county,
26 with the consent of the judge of the court of competent
27 jurisdiction and the county commission, may appoint an
28 investigator of crime who need not be a resident of this
29 state.

CHAPTER 36

(Com. Sub. for H. B. 2297—By Delegates Spencer and Gallagher)

[Passed March 8, 1991: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, article ten, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article ten by adding thereto a new section, designated section four-a; and to amend and reenact sections nineteen and nineteen-a, article eight, chapter sixty-one of said code, all relating to cruelty to animals; setting forth duties of humane officers; permitting humane officers to inspect certain records and property; redefining acts of cruelty to animals; providing for notice and hearing to owners of seized animals; establishing evidence of abandonment; setting

forth when ownership may be forfeited; requiring owner to pay for costs of animal care; permitting veterinarian to determine when animal should be humanely destroyed; limiting liability of certain persons; requiring veterinarians and permitting other persons to report acts of cruelty; defining the crime of forcibly interfering with the reporting of acts of cruelty and providing criminal penalties therefor; expanding the circumstances under which it is a crime to administer drugs to animals participating in contests; exempting certain activities and practices under certain circumstances; prohibiting certain participation in animal fighting ventures; and providing for and increasing certain civil and criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Chapter

7. County Commissions and Officers.

61. Crimes and Their Punishment.

CHAPTER 7.

COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 10. HUMANE OFFICERS.

§7-10-2. Duty of humane officers; interference with.

§7-10-4. Custody and care of animals abandoned, neglected or cruelly treated; hearing; liability for costs; exclusions.

§7-10-4a. Reporting of animals abandoned, neglected or cruelly treated; enforcement.

§7-10-2. Duty of humane officers; interference with.

1 It is the duty of such officers to prevent the perpetra-
 2 tion or continuance of any act of cruelty upon any
 3 animal and to investigate, and upon probable cause, to
 4 cause the arrest and assist in the prosecution of any

5 person engaging in such cruel and forbidden practices.
6 Upon reasonable cause, and as provided by law, such
7 officers have the right to access and inspection of
8 records and property as may be reasonably necessary to
9 any investigation. Any person who interferes with,
10 obstructs or resists any such officer in the discharge of
11 his duty is guilty of a misdemeanor, and, upon conviction
12 thereof, shall be fined not less than one hundred nor
13 more than five hundred dollars, or confined in the
14 county jail not more than thirty days, or both so fined
15 and confined. Any such penalties are in addition to any
16 penalties such person may incur for cruel or inhumane
17 treatment of any animal.

§7-10-4. Custody and care of animals abandoned, neglected or cruelly treated; hearing; liability for costs; exclusions.

1 (a) A humane officer shall take possession of any
2 animal, including birds or wildlife in captivity, known
3 or believed to be abandoned, neglected, deprived of
4 necessary sustenance, shelter or medical care or cruelly
5 treated or used, as defined in sections nineteen and
6 nineteen-a, article eight, chapter sixty-one of this code:

7 (b) The owner, or person in possession, if his or her
8 identity and residence is known, of any animal seized
9 pursuant to subsection (a) of this section, shall be
10 provided written notice of such seizure, their liability
11 for the cost and care of the animal seized as herein
12 provided, and the right to request a hearing before a
13 magistrate in the county wherein the animal was seized.
14 The magistrate court shall schedule any hearing so
15 requested within ten working days of the receipt of the
16 request. The failure of an owner or person in possession
17 to request a hearing within five working days of the
18 seizure shall be deemed prima facie evidence of the
19 abandonment of said animal. At the hearing, if requested,
20 the magistrate shall determine if probable
21 cause exists to believe that such animal was abandoned,
22 neglected or deprived of necessary sustenance, shelter or
23 medical care, or otherwise treated or used cruelly as set

24 forth herein.

25 (c) Upon finding of such probable cause, or if no
26 hearing is requested, if the magistrate finds probable
27 cause based upon the affidavit of the humane officer, the
28 magistrate shall enter an order authorizing any humane
29 officer to maintain possession of the animal pending
30 further proceedings, appeal or the disposition of any
31 criminal charges pursuant to chapter sixty-one of this
32 code.

33 (d) Any person whose animal is seized and against
34 whom a finding of probable cause is rendered pursuant
35 to this section is liable for the costs of the care, medical
36 treatment and provisions for such animal during any
37 period it remains in the possession of the humane
38 officer.

39 (e) If, after the humane officer takes possession of the
40 animal pursuant to the finding of probable cause, it is
41 determined by a licensed veterinarian that the animal
42 should be humanely destroyed to end its suffering, the
43 veterinarian may order the animal to be humanely
44 destroyed according to acceptable humane standards
45 and neither the humane officer nor the veterinarian may
46 be subject to any civil or criminal liability as a result
47 of any such determination.

48 (f) The provisions of this section do not apply to farm
49 livestock, poultry, gaming fowl or wildlife kept in
50 private or licensed game farms if kept and maintained
51 according to usual and accepted standards of livestock,
52 poultry, gaming fowl, wildlife or game farm production
53 and management, nor to the humane use of animals or
54 activities regulated under and in conformity with the
55 provisions of 7 U.S.C. §2131 et seq. and the regulations
56 promulgated thereunder, as both such statutes and
57 regulations are in effect on the effective date of this
58 section.

**§7-10-4a. Reporting of animals abandoned, neglected or
cruelly treated; enforcement.**

1 (a) It is the duty of any licensed veterinarian and the

2 right of any other person to report to a humane officer
3 any animal found, reasonably known or believed to be
4 abandoned, neglected or cruelly treated as set forth in
5 this article, and such veterinarian or other person may
6 not be subject to any civil or criminal liability as a result
7 of such reporting.

8 (b) Any person who, with force, assaults, resists, or
9 impedes any other person engaged in the reporting of
10 abandoned, neglected or cruelly treated animals as
11 provided for in this section is guilty of a misdemeanor,
12 and, upon conviction thereof, shall be fined not less than
13 two hundred fifty nor more than one thousand dollars,
14 or confined in the county jail not more than one year,
15 or both so fined and confined.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-19. Cruelty to animals; penalties; exclusions.

§61-8-19a. Animal fighting ventures prohibited.

§61-8-19. Cruelty to animals; penalties; exclusions.

1 (a) If any person cruelly mistreats, abandons or
2 withholds proper sustenance, including food, water,
3 shelter or medical treatment necessary to sustain
4 normal health and fitness or to end suffering or
5 abandons any animal to die, or uses, trains or possesses
6 any domesticated animal for the purpose of seizing,
7 detaining or mistreating any other domesticated
8 animal, he or she is guilty of a misdemeanor, and, upon
9 conviction thereof, shall be fined not less than one
10 hundred nor more than one thousand dollars, or
11 confined in the county jail not more than six months, or
12 both so fined and confined.

13 (b) Any person, other than a licensed veterinarian or
14 a person acting under the direction or with the approval
15 of a licensed veterinarian, who knowingly and willfully
16 administers or causes to be administered to any animal
17 participating in any contest any controlled substance or
18 any other drug for the purpose of altering or otherwise

19 affecting said animal's performance is guilty of a
20 misdemeanor, and, upon conviction thereof, shall be
21 fined not less than one hundred nor more than one
22 thousand dollars.

23 (c) Any person convicted of a violation of this section
24 shall forfeit his or her interest in any such animal and
25 all interest in such animal shall vest in the humane
26 society or county pound of the county in which said
27 conviction was rendered, and such person shall, in
28 addition to any fine imposed, be liable for any costs
29 incurred or to be incurred by the humane society or
30 county pound as a result.

31 (d) For the purpose of this section, the term "con-
32 trolled substance" shall have the same meaning ascribed
33 to it by subsection (d), section one hundred one, article
34 one, chapter sixty-a of this code.

35 (e) The provisions of this section do not apply to farm
36 livestock, poultry, gaming fowl or wildlife kept in
37 private or licensed game farms if kept and maintained
38 according to usual and accepted standards of livestock,
39 poultry, gaming fowl or wildlife or game farm produc-
40 tion and management, nor to humane use of animals or
41 activities regulated under and in conformity with the
42 provisions of 7 U.S.C. §2131 et seq. and the regulations
43 promulgated thereunder, as both such statutes and
44 regulations are in effect on the effective date of this
45 section.

§61-8-19a. Animal fighting ventures prohibited.

1 (a) It is unlawful for any person to engage in, be
2 employed at, or to purchase or sell an admission to any
3 animal fighting venture.

4 (b) Any person who violates the provisions of this
5 section is guilty of a misdemeanor, and, upon conviction
6 thereof, shall be fined not less than one hundred dollars
7 and not more than one thousand dollars, or confined in
8 the county jail not exceeding one year, or both so fined
9 and confined, and may be divested of ownership and
10 control of such animals, and be liable for all costs for
11 their care and maintenance.

CHAPTER 37

(H. B. 2267—By Delegates Roop and Brum)

[Passed March 7, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty-seven, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to negligent shooting and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

That section fifty-seven, 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:

§20-2-57. Negligent shooting, wounding or killing of human being or livestock while hunting; penalty.

1 It is unlawful for any person, while engaged in
2 hunting, pursuing, taking or killing wild animals or
3 wild birds, to carelessly or negligently shoot, wound or
4 kill any human being or livestock, or to destroy or injure
5 any other chattels or property.

6 Any person who, in the act of hunting, pursuing,
7 taking or killing of wild animals or wild birds, in any
8 manner injures any person or property shall file with
9 the director a full description of the accident or other
10 casualty, including such information as the director may
11 require. Such report must be filed during a period not
12 to exceed seventy-two hours following such incident.

13 Any person violating this section is guilty of a
14 misdemeanor, and, upon conviction thereof, shall be
15 fined not less than one thousand dollars nor more than
16 ten thousand dollars, or imprisoned in the county jail not
17 more than one year, or both fined and imprisoned.
18 Restitution of the value of the livestock, chattel or
19 property injured or destroyed shall be required upon
20 conviction.

CHAPTER 38

(S. B. 323—By Senators Humphreys, Felton, Minard, Dittmar,
Dalton, Bailey, Heck, Wiedebusch, Anderson and Claypole)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, defining first and second degree murder; providing that murder in the commission of, or attempt to commit, arson, kidnapping, sexual assault, robbery, burglary, breaking and entering, escape from lawful custody, or a felony offense of manufacturing or delivering a controlled substance is murder of the first degree; and prescribing the contents of an indictment for murder and manslaughter.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-1. First and second degree murder defined; allegations in indictment for homicide.

1 Murder by poison, lying in wait, imprisonment,
2 starving, or by any willful, deliberate and premeditated
3 killing, or in the commission of, or attempt to commit,
4 arson, kidnapping, sexual assault, robbery, burglary,
5 breaking and entering, escape from lawful custody, or
6 a felony offense of manufacturing or delivering a
7 controlled substance as defined in article four, chapter
8 sixty-a of this code, is murder of the first degree. All
9 other murder is murder of the second degree.

10 In an indictment for murder and manslaughter, it
11 shall not be necessary to set forth the manner in which,
12 or the means by which, the death of the deceased was
13 caused, but it shall be sufficient in every such indict-
14 ment to charge that the defendant did feloniously,
15 willfully, maliciously, deliberately and unlawfully slay,
16 kill and murder the deceased.

CHAPTER 39

(Com. Sub. for H. B. 2103—By Delegates Houvouras and Reid)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-nine, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to purchase of nonferrous metal by persons in the businesses of purchasing scrap metal, salvage, and recycling; requiring signed certificates from sellers; removing provisions providing for quarterly report to division of public safety; increasing time to report certain transactions; exempting certain sales from required transaction reporting; removing provisions requiring reports to sheriffs by nonresidents prior to transporting metal from state; increasing the amount of criminal fines for violations; and removing provisions permitting imposition of criminal penalties for violation of section.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-49. Purchase of nonferrous metals by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records and reports of such purchases; criminal penalties.

- 1 (a) Any person in the business of purchasing scrap
- 2 metal, any salvage yard owner or operator, or any public
- 3 or commercial recycling facility owner or operator, or
- 4 any agent or employee thereof, who purchases any form
- 5 of copper, aluminum, brass, lead or other nonferrous
- 6 metal of any kind, shall make a record of such purchase.
- 7 Such record shall accurately list the name, permanent
- 8 and business addresses and telephone number of the

9 seller, the motor vehicle license number of any vehicle
10 used to transport the nonferrous metal to the place of
11 purchase, the time and date of the transaction and a
12 complete description of the kind and character of the
13 nonferrous metal purchased. The person purchasing the
14 nonferrous metal shall also require from the seller, and
15 retain in the record, a signed certificate of ownership
16 of the nonferrous metal being sold or authorization from
17 the owner to sell. It shall be unlawful for any of the
18 aforementioned persons to purchase any nonferrous
19 metal without obtaining the certificate of ownership, or
20 authorization from the owner to sell, on the part of the
21 seller. Such record and certificate shall be available for
22 inspection by any law-enforcement officer and must be
23 maintained by the purchaser for not less than one year
24 after the date of the purchase.

25 (b) Should the transaction involve one hundred or
26 more pounds of copper or aluminum, in any form, the
27 purchaser of the copper or aluminum, or his or her
28 agent, shall report in writing to the chief of police of
29 the municipality or the sheriff of the county wherein he
30 or she is transacting business and to the local detach-
31 ment of the division of public safety all the information
32 obtained. The report must be filed within seventy-two
33 hours after the transaction. The provisions of this
34 subsection do not apply to purchases made at wholesale
35 under contract or as a result of a bidding process.

36 (c) Nothing in this section applies to scrap purchases
37 by manufacturing facilities that melt, or otherwise alter
38 the form of scrap metal and transform it into a new
39 product or to the purchase or transportation of food and
40 beverage containers or other nonindustrial materials
41 having a marginal value per individual unit.

42 (d) Any person violating the provisions of this section,
43 including the knowing falsification of any required
44 information, is guilty of a misdemeanor, and, upon
45 conviction, shall be fined not less than five hundred nor
46 more than two thousand dollars.

CHAPTER 40

(S. B. 322—By Senators Holliday, Felton, Dittmar, Helmick,
Wiedebusch, Anderson, Dalton and Minard)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a; and to amend and reenact section one, article eight and section seven-a, article twelve, chapter sixty-two of said code, all relating to the felony offense of escaping from the custody of the commissioner of corrections; defining the offense of escaping from the custody of the commissioner of corrections and establishing the penalty therefor; and prescribing the venue for violations.

Be it enacted by the Legislature of West Virginia:

That article five, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twelve-a; and that section one, article eight and section seven-a, 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 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-12a. Escape from custody of the commissioner of corrections.

- 1 Any person who escapes from the custody of the
- 2 commissioner of corrections, regardless of where such
- 3 person is confined or where such escape occurs, is guilty
- 4 of a felony, and, upon conviction thereof, shall be
- 5 imprisoned in the penitentiary for not less than one year
- 6 nor more than five years. A term of imprisonment

7 imposed pursuant to the provisions of this section shall
8 be imposed as a consecutive sentence and shall not be
9 served concurrently with any imprisonment, confine-
10 ment or detention imposed under any prior sentence
11 being served or otherwise being discharged at the time
12 such person commits an offense under the provisions of
13 this section. A person charged with an offense under the
14 provisions of this section shall not be released from the
15 custody of the commissioner of corrections while the
16 prosecution of the alleged offense is pending: *Provided,*
17 That time served by such person after any other prior
18 sentence has been served or otherwise discharged shall
19 be applied to any sentence which may ultimately be
20 imposed for an offense under this section. Venue for the
21 prosecution of a violation of this section shall be in the
22 county in which the escape occurs.

CHAPTER 62. CRIMINAL PROCEDURE.

Article

- 8. Crimes By and Proceedings Against Convicts.
- 12. Probation and Parole.

ARTICLE 8. CRIMES BY AND PROCEEDINGS AGAINST CONVICTS.

§62-8-1. Offenses by convicts; conspiracy.

1 A person imprisoned or otherwise in the custody of the
2 commissioner of corrections is guilty of a felony if he
3 shall kill, wound or inflict other bodily injury upon an
4 officer or guard of the penitentiary or medium security
5 prison; or shall break, cut or injure any building, fixture
6 or fastening of the penitentiary or medium security
7 prison, or any part thereof, for the purpose of escaping
8 or aiding any other convict to escape therefrom, or
9 rendering the penitentiary or medium security prison
10 less secure as a place of confinement; or shall make,
11 procure, secrete, or have in his possession, any instru-
12 ment, tool or other thing for such purpose, or with intent
13 to kill, wound or inflict bodily injury as aforesaid; or
14 shall resist the lawful authority of an officer or guard
15 of the penitentiary or medium security prison for such
16 purpose or with such intent. Any three or more convicts

17 so confined, or in such custody, who shall conspire
18 together to commit any offense mentioned in this section
19 shall each be deemed guilty of a felony.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-7a. Presentence diagnosis and classification; power of court; custody of convicted person; provision for presentence reports; penalty for escape.

1 Notwithstanding any other provision of law, when any
2 person has been found guilty of, or pleads guilty to, a
3 felony, the court may, prior to pronouncing of sentence,
4 direct that the person be delivered into the custody of
5 the commissioner of corrections, for the purpose of
6 diagnosis and classification for a period not to exceed
7 sixty days: *Provided*, That the court shall require that
8 a presentence report be completed by the probation
9 officer assigned to that person and be made available
10 to the commissioner of corrections prior to delivery of
11 the person to a statutorily approved diagnosis and
12 classification unit of the division of corrections. While
13 at the diagnosis and classification unit the person shall
14 undergo examination, diagnosis and classification and
15 shall then be remanded and delivered to the custody of
16 the sheriff of the county wherein he or she was found
17 guilty or entered such plea. Within ten days following
18 the termination of the examination, diagnosis and
19 classification, the commissioner of corrections shall
20 make or cause to be made a report to the court wherein
21 the person was found guilty, or entered a plea of guilty,
22 containing the results, findings, conclusions and recom-
23 mendations of the commissioner with respect to such
24 person.

25 Whenever a person is remanded into the custody of the
26 commissioner of corrections pursuant to this section, the
27 person shall be given credit on any sentence subse-
28 quently imposed by the court equal to the time spent in
29 such custody.

CHAPTER 41

(Com. Sub. for S. B. 304—(By Senators Burdette, Mr. President, and Boley)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article eight; sections three and four, article eight-b; and section five, article eight-d, all of chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the offenses of incest, sexual assault in the first degree, sexual assault in the second degree, and sexual exploitation, sexual intercourse, sexual intrusion, or sexual contact by a parent, guardian or custodian, and the penalties therefor; and increasing the criminal penalties for such offenses.

Be it enacted by the Legislature of West Virginia:

That section twelve, article eight; sections three and four, article eight-b; and section five, article eight-d, all of chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

Article

- 8. Crimes Against Chastity, Morality and Decency.
- 8B. Sexual Offenses.
- 8D. Child Abuse.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-12. Incest; penalty.

- 1 (a) For the purposes of this section:
- 2 (1) "Aunt" means the sister of a person's mother or
- 3 father;
- 4 (2) "Brother" means the son of a person's mother or
- 5 father;
- 6 (3) "Daughter" means a person's natural daughter,
- 7 adoptive daughter or the daughter of a person's husband
- 8 or wife;

9 (4) "Father" means a person's natural father, adoptive
10 father or the husband of a person's mother;

11 (5) "Granddaughter" means the daughter of a person's
12 son or daughter;

13 (6) "Grandfather" means the father of a person's
14 father or mother;

15 (7) "Grandmother" means the mother of a person's
16 father or mother;

17 (8) "Grandson" means the son of a person's son or
18 daughter;

19 (9) "Mother" means a person's natural mother,
20 adoptive mother or the wife of a person's father;

21 (10) "Niece" means the daughter of a person's brother
22 or sister;

23 (11) "Nephew" means the son of a person's brother or
24 sister;

25 (12) "Sexual intercourse" means any act between
26 persons involving penetration, however slight, of the
27 female sex organ by the male sex organ or involving
28 contact between the sex organs of one person and the
29 mouth or anus of another person;

30 (13) "Sexual intrusion" means any act between persons
31 involving penetration, however slight, of the female sex
32 organ or of the anus of any person by an object for the
33 purpose of degrading or humiliating the person so
34 penetrated or for gratifying the sexual desire of either
35 party;

36 (14) "Sister" means the daughter of a person's father
37 or mother;

38 (15) "Son" means a person's natural son, adoptive son
39 or the son of a person's husband or wife; and

40 (16) "Uncle" means the brother of a person's father or
41 mother.

42 (b) A person is guilty of incest when such person
43 engages in sexual intercourse or sexual intrusion with
44 his or her father, mother, brother, sister, daughter, son,

45 grandfather, grandmother, grandson, granddaughter,
46 nephew, niece, uncle or aunt.

47 (c) Any person who violates the provisions of this
48 section shall be guilty of a felony, and, upon conviction
49 thereof, shall be imprisoned in the penitentiary not less
50 than five years nor more than fifteen years, or fined not
51 less than five hundred dollars nor more than five
52 thousand dollars and imprisoned in the penitentiary not
53 less than five years nor more than fifteen years.

54 (d) In addition to any penalty provided under this
55 section and any restitution which may be ordered by the
56 court under article eleven-a of this chapter, the court
57 may order any person convicted under the provisions of
58 this section where the victim is a minor to pay all or
59 any portion of the cost of medical, psychological or
60 psychiatric treatment of the victim, the need for which
61 results from the act or acts for which the person is
62 convicted, whether or not the victim is considered to
63 have sustained bodily injury.

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-3. Sexual assault in the first degree.

§61-8B-4. Sexual assault in the second degree.

§61-8B-3. Sexual assault in the first degree.

1 (a) A person is guilty of sexual assault in the first
2 degree when:

3 (1) Such person engages in sexual intercourse or
4 sexual intrusion with another person and, in so doing:

5 (i) Inflicts serious bodily injury upon anyone; or

6 (ii) Employs a deadly weapon in the commission of the
7 act; or

8 (2) Such person, being fourteen years old or more,
9 engages in sexual intercourse or sexual intrusion with
10 another person who is eleven years old or less.

11 (b) Any person who violates the provisions of this
12 section shall be guilty of a felony, and, upon conviction
13 thereof, shall be imprisoned in the penitentiary not less
14 than fifteen nor more than thirty-five years, or fined not

15 less than one thousand dollars nor more than ten
 16 thousand dollars and imprisoned in the penitentiary not
 17 less than fifteen nor more than thirty-five years.

§61-8B-4. Sexual assault in the second degree.

1 (a) A person is guilty of sexual assault in the second
 2 degree when:

3 (1) Such person engages in sexual intercourse or
 4 sexual intrusion with another person without the
 5 person's consent, and the lack of consent results from
 6 forcible compulsion; or

7 (2) Such person engages in sexual intercourse or
 8 sexual intrusion with another person who is physically
 9 helpless.

10 (b) Any person who violates the provisions of this
 11 section shall be guilty of a felony, and, upon conviction
 12 thereof, shall be imprisoned in the penitentiary not less
 13 than ten nor more than twenty-five years, or fined not
 14 less than one thousand dollars nor more than ten
 15 thousand dollars and imprisoned in the penitentiary not
 16 less than ten nor more than twenty-five years.

ARTICLE 8D. CHILD ABUSE.

**§61-8D-5. Sexual abuse by a parent, guardian or custo-
 dian; parent, guardian or custodian allowing
 sexual abuse to be inflicted upon a child;
 displaying of sex organs by a parent,
 guardian or custodian; penalties.**

1 (a) In addition to any other offenses set forth in this
 2 code, the Legislature hereby declares a separate and
 3 distinct offense under this subsection, as follows: If any
 4 parent, guardian or custodian of a child under his or her
 5 care, custody or control, shall engage in or attempt to
 6 engage in sexual exploitation of, or in sexual inter-
 7 course, sexual intrusion or sexual contact with, a child
 8 under his or her care, custody or control, notwithstand-
 9 ing the fact that the child may have willingly partici-
 10 pated in such conduct, or the fact that the child may
 11 have consented to such conduct or the fact that the child
 12 may have suffered no apparent physical injury or
 13 mental or emotional injury as a result of such conduct,

14 then such guardian or custodian shall be guilty of a
15 felony, and, upon conviction thereof, shall be imprisoned
16 in the penitentiary not less than five nor more than
17 fifteen years, or fined not less than five hundred nor
18 more than five thousand dollars and imprisoned in the
19 penitentiary not less than five years nor more than
20 fifteen years.

21 (b) If any parent, guardian or custodian shall know-
22 ingly procure another person to engage in or attempt to
23 engage in sexual exploitation of, or sexual intercourse,
24 sexual intrusion or sexual contact with, a child under
25 the care, custody or control of such parent, guardian or
26 custodian when such child is less than sixteen years of
27 age, notwithstanding the fact that the child may have
28 willingly participated in such conduct or the fact that
29 the child may have suffered no apparent physical injury
30 or mental or emotional injury as a result of such
31 conduct, such parent, guardian or custodian shall be
32 guilty of a felony, and, upon conviction thereof, shall be
33 imprisoned in the penitentiary not less than one year nor
34 more than five years, or fined not less than one thousand
35 nor more than ten thousand dollars and imprisoned in
36 the penitentiary not less than one year nor more than
37 five years.

38 (c) If any parent, guardian or custodian shall know-
39 ingly procure another person to engage in or attempt to
40 engage in sexual exploitation of, or sexual intercourse,
41 sexual intrusion or sexual contact with, a child under
42 the care, custody or control of such parent, guardian or
43 custodian when such child is sixteen years of age or
44 older, notwithstanding the fact that the child may have
45 consented to such conduct or the fact that the child may
46 have suffered no apparent physical injury or mental or
47 emotional injury as a result of such conduct, then such
48 parent, guardian or custodian shall be guilty of a
49 misdemeanor, and, upon conviction thereof, shall be
50 confined in the county jail not less than six months nor
51 more than one year.

52 (d) The provisions of this section shall not apply to a
53 custodian whose age exceeds the age of the child by less
54 than four years.

CHAPTER 42

(H. B. 2951—By Delegates J. Martin and Cerra)

[Passed March 9, 1991: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the division of culture and history; qualifications of commissioner; changing administrative structure within the division; permitting three additional sections within the division; reordering sections and changing references; authorizing fees prescribed by the commissioner by rule for use of facilities; increasing membership on the archives and history commission from nine to thirteen and adding an archivist, a librarian, and a museum specialist to the commission; and authorizing division to enter into agreements with responsible individuals in carrying out its purposes.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

- §29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.
- §29-1-1a. Transfer of powers and duties; existing contracts and obligations.
- §29-1-1b. Termination date.
- §29-1-2. General powers of commissioner.
- §29-1-3. Commission on the arts.
- §29-1-4. Arts and humanities section; director.
- §29-1-5. Archives and history commission.
- §29-1-6. Archives and history section; director.
- §29-1-7. Museums section; director.
- §29-1-8. Historic preservation section; director.
- §29-1-8a. Protection of human skeletal remains; grave artifacts and grave markers; permits for excavation and removal; penalties.
- §29-1-8b. Protection of historic and prehistoric sites; penalties.
- §29-1-9. Administrative section; director.
- §29-1-10. Division employees classified by civil service; exceptions.

- §29-1-11. Power to accept and receive funds; power to apply for grants; disbursement of funds; restrictions on expenditure; disposition of funds heretofore received or appropriated.
- §29-1-12. Publication of materials; agreements.
- §29-1-13. Land; control and disposal; rules and regulations.
- §29-1-14. Washington-Carver Camp; prohibition of disposition or removal of minerals without authorization by the Legislature.

§29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.

1 The division of culture and history and the office of
2 commissioner of culture and history heretofore created
3 are hereby continued. The governor shall nominate, and
4 by and with the advice and consent of the Senate,
5 appoint the commissioner, who shall be the chief
6 executive officer of the division and shall be paid an
7 annual salary and be governed by the provisions of
8 section two-a, article seven, chapter six of this code. The
9 commissioner so appointed shall have: (1) A bachelor's
10 degree in one of the fine arts, social sciences, library
11 science or a related field; or (2) four years' experience
12 in the administration of museum management, public
13 administration, arts, history or a related field.

14 The division shall consist of five sections and two
15 citizen's commissions as follows:

16 (1) The arts and humanities section and a commission
17 on the arts;

18 (2) The archives and history section and a commission
19 on archives and history;

20 (3) The museums section;

21 (4) The historic preservation section; and

22 (5) The administrative section.

23 The commissioner shall exercise control and supervi-
24 sion of the division and shall be responsible for the
25 projects, programs and actions of each of its sections.
26 The purpose and duty of the division is to advance, foster
27 and promote the creative and performing arts and
28 crafts, including both indoor and outdoor exhibits and
29 performances; to advance, foster, promote, identify,

30 register, acquire, mark and care for historical, prehis-
31 torical, archaeological and significant architectural
32 sites, structures and objects in the state; to encourage
33 the promotion, preservation and development of signif-
34 icant sites, structures and objects through the use of
35 economic development activities such as loans, subsidies,
36 grants and other incentives; to coordinate all cultural,
37 historical and artistic activities in state government and
38 at state-owned facilities; to acquire, preserve and
39 classify books, documents, records and memorabilia of
40 historical interest or importance; and, in general, to do
41 all things necessary or convenient to preserve and
42 advance the culture of the state.

43 The division shall have jurisdiction and control and
44 may set and collect fees for the use of all space in the
45 building presently known as the West Virginia science
46 and culture center, including the deck and courtyards
47 forming an integral part thereof; the building presently
48 known as West Virginia Independence Hall in Wheel-
49 ing, including all the grounds and appurtenances
50 thereof; "Camp Washington-Carver" in Fayette County,
51 as provided for in section fourteen of this article; and
52 any other sites as may be transferred to or acquired by
53 the division.

54 For the purposes of this article "commissioner" means
55 the commissioner of culture and history, and "division"
56 means the division of culture and history.

**§29-1-1a. Transfer of powers and duties; existing con-
tracts and obligations.**

1 Except as otherwise provided in this article, the
2 powers and duties of the West Virginia antiquities
3 commission, the West Virginia arts and humanities
4 council and the department of archives and history are
5 hereby transferred to the division of culture and history.
6 All existing contracts and obligations of the West
7 Virginia antiquities commission, the West Virginia arts
8 and humanities council and the department of archives
9 and history, or relating to the present science and
10 culture center, shall remain in full force and effect and
11 shall be performed by the division of culture and
12 history.

§29-1-1b. Termination date.

1 The division of culture and history, together with its
2 citizen's commissions, shall continue to exist until the
3 first day of July, one thousand nine hundred ninety-six,
4 upon which date it shall terminate unless sooner
5 continued and reestablished pursuant to the provisions
6 of article ten, chapter four of this code.

§29-1-2. General powers of commissioner.

1 The commissioner shall assign and allocate space in
2 all facilities assigned to the division and all space in the
3 building presently known as the West Virginia science
4 and culture center, and any other buildings or sites
5 under the control of the commissioner, and may, in
6 accordance with the provisions of chapter twenty-nine-
7 a of this code, prescribe rules, regulations and fees for
8 the use and occupancy of said facilities, including tours.

9 The commissioner shall coordinate the operations and
10 affairs of the sections and commissions of the division
11 and assign each section or commission responsibilities
12 according to criteria the commissioner deems most
13 efficient, productive and best calculated to carry out the
14 purposes of this article. The commissioner shall provide
15 to the fullest extent possible for centralization and
16 coordination of the bookkeeping, personnel, purchasing,
17 printing, duplicating, binding and other services which
18 can be efficiently combined. The commissioner may
19 establish such other sections for such purposes as he or
20 she deems necessary, and may appoint directors thereof.
21 The commissioner may appoint a director of the West
22 Virginia science and culture center. The commissioner
23 shall serve as the state historic preservation officer and
24 shall chair the capitol building commission.

25 After consultation with the section directors and the
26 commissions, the commissioner shall prepare a proposed
27 division budget for submission to the governor for each
28 fiscal year.

29 No contract, agreement or undertaking may be
30 entered into by any section of the division which involves

31 the expenditure of funds without the express written
32 approval of the commissioner as to fiscal responsibility.

33 The commissioner shall prepare and submit to the
34 governor an annual report in accordance with the
35 provisions of section twenty, article one, chapter five of
36 this code, which report shall include a detailed account
37 of the activities of each section and commission of the
38 division.

39 The commissioner shall employ all personnel for the
40 sections, except for persons in the professional positions
41 established within the sections as provided in this
42 article; and shall supply support services to the commis-
43 sions and to the governor's mansion advisory committee.

§29-1-3. Commission on the arts.

1 The commission on the arts heretofore created is
2 hereby continued and shall be composed of fifteen
3 appointed members.

4 The governor shall nominate, and by and with the
5 advice and consent of the Senate, appoint the members
6 of the commission for staggered terms of three years.
7 A person appointed to fill a vacancy shall be appointed
8 only for the remainder of that term.

9 No more than eight members may be of the same
10 political party. Members of the commission shall be
11 appointed so as to fairly represent both sexes, the ethnic
12 and cultural diversity of the state and the geographic
13 regions of the state.

14 The commission shall elect one of its members chair.
15 It shall meet at such time as shall be specified by the
16 chair. Notice of each meeting shall be given to each
17 member by the chair in compliance with the open
18 meetings laws of the state. A majority of the members
19 shall constitute a quorum for the transaction of business.
20 The director of the arts and humanities section shall be
21 an ex officio nonvoting member of the commission and
22 shall serve as secretary. The director or a majority of
23 the members may also call a meeting upon such notice
24 as provided in this section.

25 Each member or ex officio member of the commission
26 shall serve without compensation, but shall be reim-
27 bursed for all reasonable and necessary expenses
28 actually incurred in the performance of the duties of the
29 office; except that in the event the expenses are paid,
30 or are to be paid, by a third party, the member or ex
31 officio member, as the case may be, shall not be
32 reimbursed by the state.

33 Upon recommendation of the commissioner, the
34 governor may also appoint such officers of the state as
35 may be appropriate to serve on the commission as ex
36 officio nonvoting members.

37 The commission shall have the following powers:

38 (1) To advise the commissioner and the director of the
39 arts and humanities section concerning the accomplish-
40 ment of the purposes of that section and to establish a
41 state plan with respect thereto;

42 (2) To approve and distribute grants-in-aid and
43 awards from federal and state funds relating to the
44 purposes of the arts and humanities section;

45 (3) To request, accept or expend federal funds to
46 accomplish the purposes of the arts and humanities
47 section when federal law or regulations would prohibit
48 the same by the commissioner or section director, but
49 would permit the same to be done by the commission
50 on the arts;

51 (4) To otherwise encourage and promote the purposes
52 of the arts and humanities section;

53 (5) To approve rules and regulations concerning the
54 professional policies and functions of the section as
55 promulgated by the director of the arts and humanities
56 section; and

57 (6) To advise and consent to the appointment of the
58 director by the commissioner.

§29-1-4. Arts and humanities section; director.

1 The purposes and duties of the arts and humanities
2 section are to stimulate, encourage, assist, promote,

3 foster and develop the performing and creative arts and
4 crafts in the state; and in furtherance thereof to make
5 awards, prizes and grants to individual performers,
6 artists or craftsmen and to public or private corpora-
7 tions or associations in the field of either the performing
8 or creative arts and crafts that would tend to encourage
9 and foster the advancement of such arts and crafts; to
10 support cultural, artistic or craft exhibits or perform-
11 ances at the division's facilities or on tour; and to
12 perform such other duties as may be assigned to said
13 section by the commissioner.

14 With the advice and consent of the commission on the
15 arts, the commissioner shall appoint a director of the
16 arts and humanities section, who shall have: (1) A
17 bachelor's degree in the fine arts or related field or
18 equivalent training and experience; or (2) three years'
19 experience in administration of the fine arts or a related
20 field. Notwithstanding these qualifications, the person
21 serving as the executive director of the arts and
22 humanities council on the date of the enactment of this
23 article shall be eligible for appointment as the director
24 of the arts and humanities section.

25 With the approval of the commissioner, the director
26 shall establish professional positions within the section.
27 The director shall employ the personnel within these
28 professional positions for the section.

29 The director may promulgate rules and regulations in
30 accordance with the provisions of chapter twenty-nine-
31 a of this code concerning the professional policies and
32 functions of the arts and humanities section, subject to
33 the approval of the commission on the arts.

§29-1-5. Archives and history commission.

1 The archives and history commission which is hereby
2 created shall be composed of thirteen appointed
3 members, two ex officio voting members and five ex
4 officio nonvoting members as provided in this section.

5 The governor shall nominate, and by and with the
6 advice and consent of the Senate, appoint the members
7 of the commission for staggered terms of three years.

8 A person appointed to fill a vacancy shall be appointed
9 only for the remainder of that term.

10 No more than seven of the appointed members may
11 be of the same political party. Members of the commis-
12 sion shall be appointed so as to fairly represent both
13 sexes, the ethnic and cultural diversity of the state and
14 the geographic regions of the state. The archives and
15 history commission shall contain the required profes-
16 sional representation necessary to carry out the provi-
17 sions of the National Historic Preservation Act of 1966,
18 as amended, and shall serve as the "state review board"
19 and shall follow all rules and regulations as specified
20 therein. This representation shall include the following
21 professions: Historian, architectural historian, historical
22 architect, archaeologist specializing in historic and
23 prehistoric archaeology, archivist, librarian and mu-
24 seum specialist.

25 The commission shall elect one of its members chair.
26 It shall meet at such time as shall be specified by the
27 chair. Notice of each meeting shall be given to each
28 member by the chair in compliance with the open
29 meetings law. A majority of the voting members shall
30 constitute a quorum for the transaction of business.

31 In addition to the thirteen appointed members, the
32 president of the state historical society and the president
33 of the state historical association shall serve as ex officio
34 voting members of the archives and history commission.
35 The director of the state geological and economic survey,
36 the president of the West Virginia Preservation Al-
37 liance, Inc., and the state historic preservation officer
38 shall serve as ex officio nonvoting members of the
39 archives and history commission.

40 The directors of the archives and history section, the
41 historic preservation section and the museums section
42 shall be ex officio nonvoting members of the commis-
43 sion. The director of the archives and history section
44 shall serve as secretary of the commission. The secre-
45 tary, or a majority of the members, may also call a
46 meeting upon such notice as provided in this section.

47 Each member or ex officio member of the commission

48 shall serve without compensation, but shall be reim-
49 bursed for all reasonable and necessary expenses
50 actually incurred in the performance of the duties of the
51 commission; except that in the event the expenses are
52 paid, or are to be paid, by a third party, the member
53 or ex officio member, as the case may be, shall not be
54 reimbursed by the state.

55 The commission shall have the following powers:

56 (a) To advise the commissioner and the directors of
57 the archives and history section, the historic preserva-
58 tion section and the museums section concerning the
59 accomplishment of the purposes of those sections and to
60 establish a state plan with respect thereto;

61 (b) To approve and distribute grants-in-aid and
62 awards from federal and state funds relating to the
63 purposes of the archives and history section, the historic
64 preservation section and the museums section;

65 (c) To request, accept or expend federal funds to
66 accomplish the purposes of the archives and history
67 section, the historic preservation section and the
68 museums section when federal law or regulations would
69 prohibit the same by the commissioner or section
70 director, but would permit the same to be done by the
71 archives and history commission;

72 (d) To otherwise encourage and promote the purposes
73 of the archives and history section, the historic preser-
74 vation section and the museums section;

75 (e) To approve rules and regulations concerning the
76 professional policies and functions of the archives and
77 history section, the historic preservation section and the
78 museums section as promulgated by the directors of
79 those sections;

80 (f) To advise and consent to the appointment of the
81 section directors by the commissioner; and

82 (g) To review and approve nominations to the state
83 and national registers of historic places.

§29-1-6. Archives and history section; director.

1 (a) The purposes and duties of the archives and
2 history section are to locate, survey, investigate,
3 register, identify, preserve, protect, restore and recom-
4 mend to the commissioner for acquisition documents
5 and records having historical, evidential, administrative
6 and/or legal value relating to the state of West Virginia
7 and the territory included therein from the earliest
8 times to the present, upon its own initiative or in
9 cooperation with any private or public society, organi-
10 zation or agency; to conduct a continuing survey and
11 study throughout the state to develop a state plan to
12 determine the needs and priorities for the preservation
13 of such documents and records; to direct, protect,
14 preserve, study and disseminate information on such
15 documents and records; to operate and maintain a state
16 library for the preservation of all public records, state
17 papers, documents and reports of all three branches of
18 state government including all boards, commissions,
19 departments and agencies as well as any other private
20 or public papers, books or documents of peculiar or
21 historic interest or significance; to designate appro-
22 priate monuments, tablets or markers for historic,
23 architectural and scenic sites within the state and to
24 arrange for the purchase, replacement, care of and
25 maintenance of such monuments, tablets and markers
26 and to formulate and prepare suitable copy for them; to
27 edit and publish a historical journal devoted to the
28 history, biography, bibliography and genealogy of West
29 Virginia; and to perform such other duties as may be
30 assigned to the section by the commissioner.

31 (b) With the advice and consent of the archives and
32 history commission, the commissioner shall appoint a
33 director of the archives and history section, who shall
34 have: (1) A graduate degree in one of the social sciences,
35 or equivalent training and experience in the field of
36 West Virginia history, history, or in records, library or
37 archives management; and (2) three years' experience in
38 administration in the field of West Virginia history,
39 history, or in records, library or archives management.
40 Notwithstanding these qualifications, the person serving
41 as the state historian and archivist on the date of
42 enactment of this article shall be eligible for appoint-

43 ment as the director of the archives and history section.
44 The director of the archives and history section shall
45 serve as the state historian and archivist.

46 (c) With the approval of the commissioner, the
47 director shall establish professional positions within the
48 section and develop appropriate organizational struc-
49 tures to carry out the duties of the section. The director
50 shall employ the personnel with applicable professional
51 qualifications to fill positions within the organizational
52 structure with the minimum professional qualifications.
53 At the minimum, the following professions shall be
54 represented within the section staff: Historian, archivist,
55 librarian and technical and clerical positions as are
56 required.

57 (d) The director shall promulgate rules and regula-
58 tions with the approval of the archives and history
59 commission and in accordance with chapter twenty-
60 nine-a of this code concerning: (1) The professional
61 policies and functions of the archives and history section;
62 and (2) such other rules and regulations as may be
63 deemed necessary to effectuate the purposes of this
64 article.

§29-1-7. Museums section; director.

1 (a) The purposes and duties of the museums section
2 are to locate, survey, investigate, register, identify,
3 excavate, preserve, protect, restore and recommend to
4 the commissioner for acquisition historic objects worthy
5 of preservation, relating to the state of West Virginia
6 and the territory included therein from the earliest
7 times to the present, upon its own initiative or in
8 cooperation with any private or public society, organi-
9 zation or agency; to conduct a continuing survey and
10 study throughout the state to develop a state plan to
11 determine the needs and priorities for the preservation,
12 restoration or development of such objects; to direct,
13 protect, excavate, preserve, study or develop such
14 objects; to preserve and protect all battle or regimental
15 flags borne by West Virginians and other memorabilia
16 of historic interest; to operate and maintain a state
17 museum, and to coordinate activities with other muse-

18 ums in the state; and to perform such other duties as
19 may be assigned to the section by the commissioner.

20 (b) With the advice and consent of the archives and
21 history commission, in addition to the duties above set
22 forth, the section shall determine the whereabouts of
23 and require the return of furnishings and objects
24 missing from the capitol building and other state-owned
25 or controlled buildings, including, but not limited to,
26 furnishings chosen or purchased for the capitol by its
27 architect, Cass Gilbert. No furnishings from the capitol
28 may be sold or disposed of except pursuant to the
29 provisions of article three, chapter five-a of this code. If
30 furnishings originally designated as capitol building
31 furnishings have been sold or otherwise disposed of
32 without the requisite sale procedures, such furnishings
33 shall be returned to the capitol and, upon presentation
34 of proof of the amount paid, the current owner shall be
35 reimbursed for the cost of the furnishing less any
36 appropriate depreciation or wear and tear.

37 (c) With the advice and consent of the archives and
38 history commission, the commissioner shall appoint a
39 director of the museums section, who shall have: (1) A
40 graduate degree in one of the social sciences, or
41 equivalent training and experience in the field of West
42 Virginia history, history, archaeology, or in museum
43 administration; and (2) three years' experience in
44 administration in the field of West Virginia history,
45 history, archaeology, or in museum management.

46 (d) With the approval of the commissioner, the
47 director shall establish professional positions within the
48 section and develop appropriate organizational struc-
49 tures to carry out the duties of the section. The director
50 shall employ the personnel with applicable professional
51 qualifications to fill positions within the organizational
52 structure. At the minimum, the following professions
53 shall be represented within the section staff: Curator
54 and such technical and clerical positions as are required.
55 With the approval of the commissioner, the director
56 shall establish professional positions within the section.
57 The director shall employ the personnel within these
58 professional positions for the section.

59 (e) The director shall promulgate rules and regula-
60 tions with the approval of the archives and history
61 commission and in accordance with chapter twenty-
62 nine-a of this code concerning: (1) The professional
63 policies and functions of the museums section; and (2)
64 such other rules and regulations as may be deemed
65 necessary to effectuate the purposes of this section.

§29-1-8. Historic preservation section; director.

1 (a) The purposes and duties of the historic preserva-
2 tion section are to locate, survey, investigate, register,
3 identify, preserve, protect, restore and recommend to
4 the commissioner for acquisition historic, architectural,
5 archaeological and cultural sites, structures and objects
6 worthy of preservation, including human skeletal
7 remains, graves, grave artifacts and grave markers,
8 relating to the state of West Virginia and the territory
9 included therein from the earliest times to the present,
10 upon its own initiative or in cooperation with any
11 private or public society, organization or agency; to
12 conduct a continuing survey and study throughout the
13 state to develop a state plan to determine the needs and
14 priorities for the preservation, restoration or develop-
15 ment of such sites, structures and objects; to direct,
16 protect, excavate, preserve, study or develop such sites
17 and structures; to review all undertakings permitted,
18 funded, licensed or otherwise assisted, in whole or in
19 part, by the state for the purposes of furthering the
20 duties of the section; to carry out the duties and
21 responsibilities enumerated in the National Historic
22 Preservation Act of 1966, as amended, as they pertain
23 to the duties of the section; to develop and maintain a
24 West Virginia state register of historic places for use as
25 a planning tool for state and local government; to
26 cooperate with state and federal agencies in archaeolog-
27 ical work; to issue permits for the excavation or removal
28 of human skeletal remains, grave artifacts and grave
29 markers, archaeological, and prehistoric and historic
30 features under the provisions of section eight-a of this
31 article; and to perform such other duties as may be
32 assigned to the section by the commissioner.

33 (b) With the advice and consent of the archives and

34 history commission, the commissioner shall appoint a
35 director of the historic preservation section, who shall
36 have: (1) A graduate degree in one of the social sciences,
37 or equivalent training and experience in the field of
38 historic preservation, archaeology, West Virginia
39 history, or history; and (2) three years' experience in
40 administration in the field of West Virginia history,
41 history, historic preservation or archaeology. Notwith-
42 standing these qualifications, the person serving as the
43 deputy state historic preservation officer on the date of
44 enactment of this article shall be eligible for appoint-
45 ment as the director of the historic preservation section.
46 The director of the historic preservation section shall
47 serve as the deputy state historic preservation officer.

48 (c) With the approval of the commissioner, the
49 director shall establish professional positions within the
50 section and develop appropriate organizational struc-
51 tures to carry out the duties of the section. The director
52 shall employ the personnel with applicable professional
53 qualifications to fill positions within the organizational
54 structure with the minimum professional qualifications
55 necessary to carry out the provisions of the National
56 Historic Preservation Act of 1966, as amended. At the
57 minimum, the following professions shall be represented
58 within the section staff: Historian, architectural histo-
59 rian, a structural historian who specializes in historical
60 preservation, an archaeologist specializing in historic
61 and prehistoric archaeology, and such technical and
62 clerical positions as are required.

63 (d) The director shall promulgate rules and regula-
64 tions with the approval of the archives and history
65 commission and in accordance with chapter twenty-
66 nine-a of this code concerning: (1) The professional
67 policies and functions of the historic preservation
68 section; (2) the review of, and, when required, issuance
69 of permits for, all undertakings permitted, funded,
70 licensed or otherwise assisted, in whole or in part, by
71 the state as indicated in subsection (a) of this section,
72 in order to carry out the duties and responsibilities of
73 the section; (3) the establishment and maintenance of a
74 West Virginia state register of historic places, including

75 the criteria for eligibility of buildings, structures, sites,
76 districts and objects for the state register and proce-
77 dures for nominations to the state register and protec-
78 tion of nominated and listed properties; (4) the review
79 of historic structures in accordance with compliance
80 alternatives and other provisions in any state fire
81 regulation, and shall coordinate standards with the
82 appropriate regulatory officials regarding their applica-
83 tion; (5) review of historic structures in conjunction with
84 existing state or local building codes, and shall coordi-
85 nate standards with the appropriate regulatory officials
86 for their application; and (6) such other rules and
87 regulations as may be deemed necessary to effectuate
88 the purposes of this article.

**§29-1-8a. Protection of human skeletal remains, grave
artifacts and grave markers; permits for
excavation and removal; penalties.**

1 (a) *Legislative findings and purpose.*

2 The Legislature finds that there is a real and growing
3 threat to the safety and sanctity of unmarked human
4 graves in West Virginia and the existing laws of the
5 state do not provide equal or adequate protection for all
6 such graves. As evident by the numerous incidents in
7 West Virginia which have resulted in the desecration of
8 human remains and vandalism to grave markers, there
9 is an immediate need to protect the graves of earlier
10 West Virginians from such desecration. Therefore, the
11 purpose of this article is to assure that all human burials
12 be accorded equal treatment and respect for human
13 dignity without reference to ethnic origins, cultural
14 backgrounds, or religious affiliations.

15 The Legislature also finds that those persons engaged
16 in the scientific study or recovery of artifacts which
17 have been acquired in accordance with the law are
18 engaged in legitimate and worthy scientific and educa-
19 tional activities. Therefore, this legislation is intended to
20 permit the appropriate pursuit of those lawful activities.

21 Finally, this legislation is not intended to interfere
22 with the normal activities of private property owners,
23 farmers, or those engaged in the development, mining

24 or improvement of real property.

25 (b) *Definitions.*

26 For the purposes of this section:

27 (1) "Human skeletal remains" means the bones, teeth,
28 hair or tissue of a deceased human body;

29 (2) "Unmarked grave" means any grave or location
30 where a human body or bodies have been buried or
31 deposited for at least fifty years and the grave or
32 location is not in a publicly or privately maintained
33 cemetery or in the care of a cemetery association, or is
34 located within such cemetery or in such care and is not
35 commonly marked;

36 (3) "Grave artifact" means any items of human
37 manufacture or use that are associated with the human
38 skeletal remains in a grave;

39 (4) "Grave marker" means any tomb, monument,
40 stone, ornament, mound, or other item of human
41 manufacture that is associated with a grave;

42 (5) "Person" includes the federal and state govern-
43 ments and any political subdivision of this state; and

44 (6) "Disturb" means the excavating, removing, expos-
45 ing, defacing, mutilating, destroying, molesting, or
46 desecrating in any way of human skeletal remains,
47 unmarked graves, grave artifacts or grave markers.

48 (c) *Acts prohibited; penalties.*

49 (1) No person may excavate, remove, destroy, or
50 otherwise disturb any historic or prehistoric ruins,
51 burial grounds, archaeological site, or human skeletal
52 remains, unmarked grave, grave artifact or grave
53 marker of historical significance unless such person has
54 a valid permit issued to him or her by the director of
55 the historic preservation section: *Provided*, That the
56 supervising archaeologist of an archaeological investiga-
57 tion being undertaken in compliance with the federal
58 Archaeological Resources Protection Act (Public Law
59 96-95 at 16 USC 470(aa)) and regulations promulgated
60 thereunder shall not be required to obtain such permit,

61 but shall notify the director of the historic preservation
62 section that such investigation is being undertaken and
63 file reports as are required of persons issued a permit
64 under this section: *Provided, however,* That projects
65 being undertaken in compliance with section 106 of the
66 National Historic Preservation Act of 1966, as amended,
67 or subsection (a), section five of this article shall not be
68 required to obtain such permit for excavation, removal,
69 destruction or disturbance of historic or prehistoric
70 ruins or archaeological sites.

71 A person who, either by himself or through an agent,
72 intentionally excavates, removes, destroys or otherwise
73 disturbs any historic or prehistoric ruins, burial
74 grounds or archaeological site, or unmarked grave,
75 grave artifact or grave marker of historical significance
76 without first having been issued a valid permit by the
77 director of the historic preservation section, or who fails
78 to comply with the terms and conditions of such permit,
79 is guilty of a misdemeanor, and, upon conviction, shall
80 be fined not less than one hundred dollars nor more than
81 five hundred dollars, and may be imprisoned in the
82 county jail for not less than ten days nor more than six
83 months or both fined and imprisoned.

84 A person who, either by himself or through an agent,
85 intentionally excavates, removes, destroys or otherwise
86 disturbs human skeletal remains of historical signifi-
87 cance without first having been issued a valid permit
88 by the director of the historic preservation section, or
89 who fails to comply with the terms and conditions
90 relating to disinterment or displacement of human
91 skeletal remains of such permit, is guilty of the felony
92 of disinterment or displacement of a dead human body
93 or parts thereof under section fourteen, article eight,
94 chapter sixty-one of this code and, upon conviction, shall
95 be confined in the state penitentiary not less than two
96 nor more than five years.

97 A person who intentionally withholds information
98 about the excavation, removal, destruction, or other
99 disturbance of any historic or prehistoric ruins, burial
100 grounds, archaeological site, or human skeletal remains,
101 unmarked grave, grave artifact or grave marker of

102 historical significance is guilty of a misdemeanor and,
103 upon conviction, shall be fined not more than one
104 hundred dollars, and may be imprisoned in the county
105 jail not more than ten days.

106 (2) No person may offer for sale or exchange any
107 human skeletal remains, grave artifact or grave marker
108 obtained in violation of this section.

109 A person who, either by himself or through an agent,
110 offers for sale or exchange any human skeletal remains,
111 grave artifact or grave marker obtained in violation of
112 this section is guilty of a misdemeanor and, upon
113 conviction, shall be fined not less than one thousand
114 dollars nor more than five thousand dollars, and may be
115 imprisoned in the county jail not less than six months
116 nor more than one year.

117 (3) Each instance of excavation, removal, destruction,
118 disturbance or offering for sale or exchange under (1)
119 and (2) of this subsection shall constitute a separate
120 offense.

121 (d) *Notification of discovery of human skeletal remains*
122 *in unmarked locations.*

123 Within forty-eight hours of the discovery of human
124 skeletal remains, grave artifact or grave marker in an
125 unmarked grave on any publicly or privately owned
126 property the person making such discovery shall notify
127 the county sheriff of the discovery and its location. If the
128 human remains, grave artifact or grave marker appear
129 to be from an unmarked grave, the sheriff shall
130 promptly, and prior to any further disturbance or
131 removal of the remains, notify the director of the
132 historic preservation section. The director shall cause an
133 on-site inspection of the disturbance to be made to
134 determine the potential for archaeological significance
135 of the site: *Provided*, That when the discovery is made
136 by an archaeological investigation permitted under state
137 or federal law, the supervising archaeologist shall notify
138 the director of the historic preservation section directly.

139 If the director of the historic preservation section
140 determines that the site has no archaeological signifi-

141 cance, the removal, transfer and disposition of the
142 remains shall be subject to the provisions of article
143 thirteen, chapter thirty-seven of this code, and the
144 director shall notify the circuit court of the county
145 wherein the site is located.

146 If the director of historic preservation determines that
147 the site has a potential for archaeological significance,
148 the director shall take such action as is reasonable,
149 necessary and prudent, including consultation with
150 appropriate private or public organizations, to preserve
151 and advance the culture of the state in accordance with
152 the powers and duties granted to the director, including
153 the issuance of a permit for the archaeological excava-
154 tion or removal of the remains. If the director deter-
155 mines that the issuance of a permit for the archaeolog-
156 ical excavation or removal of the remains is not
157 reasonable, necessary or prudent, the director shall
158 provide written reasons to the applicant for not issuing
159 the permit.

160 (e) *Issuance of permits.*

161 All permits issued by the director of the historic
162 preservation section for the disturbance of human
163 skeletal remains, grave artifacts, or grave markers shall
164 at a minimum address the following conditions: (1) The
165 methods by which descendents of proven kinship to the
166 deceased are notified prior to the disturbance; (2) the
167 respectful manner in which the remains, artifacts or
168 markers are to be removed and handled; (3) the need
169 for any scientific analysis of the remains, artifacts or
170 markers and the duration of those studies; (4) the way
171 in which the remains may be reburied in consultation
172 with any descendents of proven kinship, when available;
173 and (5) such other conditions as the director may deem
174 necessary. Expenses accrued in meeting the permit
175 conditions shall be borne by the permit applicant, except
176 in cases where the deceased descendents or sponsors are
177 willing to share or assume the costs. A permit to disturb
178 human skeletal remains, grave artifacts or grave
179 markers will be issued only after alternatives to
180 disturbance and other mitigative measures have been
181 considered.

182 In addition, a person applying for a permit to excavate
183 or remove human skeletal remains, grave artifacts,
184 grave markers, or any historic or prehistoric features of
185 archaeological significance must:

186 (1) Provide a detailed statement to the director of the
187 historic preservation section giving the reasons and
188 objectives for excavation or removal and the benefits
189 expected to be obtained from the contemplated work;

190 (2) Provide data and results of any excavation, study
191 or collection in annual reports to the director of the
192 historic preservation section and submit a final report
193 to the director upon completion of the excavation; and

194 (3) Obtain the prior written permission of the owner
195 if the site of such proposed excavation is on privately
196 owned land.

197 Such permits shall be issued for a period of two years
198 and may be renewed at expiration. The permits are not
199 transferable but other persons who have not been issued
200 a permit may work under the direct supervision of the
201 person holding the permit. The person or persons to
202 whom a permit was issued must carry the permit while
203 exercising the privileges granted and must be present
204 at the site whenever work is being done.

205 Notwithstanding any other penalties to which a
206 person may be subject under this section for failing to
207 comply with the terms and conditions of a permit, the
208 permit of a person who violates any of the provisions of
209 this subsection shall be revoked.

210 As permits are issued, the director of the historic
211 preservation section shall maintain a catalogue of
212 unmarked grave locations throughout the state.

213 (f) *Property tax exemption for unmarked grave sites.*

214 To serve as an incentive for the protection of un-
215 marked graves, the owner, having evidence of the
216 presence of unmarked graves on his or her property,
217 may apply to the director of the historic preservation
218 section for a determination as to whether such is the
219 case. Upon making such a determination in the affirma-

220 tive, the director of the historic preservation section
221 shall provide written certification to the land owner that
222 the site containing the graves is a cemetery and as such
223 is exempt from property taxation upon presentation of
224 the certification to the county assessor. The area of the
225 site to receive property tax exempt status shall be
226 determined by the director of the historic preservation
227 section. Additionally, a property owner may establish
228 protective easements for the location of unmarked
229 graves.

230 (g) *Additional provisions for enforcement; civil penal-*
231 *ties; rewards for information.*

232 (1) The prosecuting attorney of the county in which
233 a violation of any provision of this section is alleged to
234 have occurred may be requested by the director of the
235 historic preservation section to initiate criminal prose-
236 cutions or to seek civil damages, injunctive relief and
237 any other appropriate relief. The director of the historic
238 preservation section shall cooperate with the prosecut-
239 ing attorney in resolving such allegations.

240 (2) Persons convicted of any prohibited act involving
241 the excavation, removal, destruction, disturbance or
242 offering for sale or exchange of historic or prehistoric
243 ruins, burial grounds, archaeological site, human
244 skeletal remains, unmarked grave, grave artifact or
245 grave marker under the provisions of subdivisions (1)
246 and (2), subsection (c) of this section shall also be liable
247 for civil damages to be assessed by the prosecuting
248 attorney in consultation with the director of the historic
249 preservation section.

250 Civil damages may include:

251 (i) Forfeiture of any and all equipment used in
252 disturbing the protected unmarked graves or grave
253 markers;

254 (ii) any and all costs incurred in cleaning, restoring,
255 analyzing, accessioning and curating the recovered
256 material;

257 (iii) any and all costs associated with recovery of data,
258 and analyzing, publishing, accessioning and curating

259 materials when the prohibited activity is so extensive as
260 to preclude the restoration of the unmarked burials or
261 grave markers;

262 (iv) any and all costs associated with restoring the
263 land to its original contour or the grave marker to its
264 original condition;

265 (v) any and all costs associated with reinterment of
266 the human skeletal remains; and

267 (vi) any and all costs associated with the determina-
268 tion and collection of the civil damages.

269 When civil damages are recovered, the proceeds, less
270 the costs of the prosecuting attorney associated with the
271 determination and collection of such damages, shall be
272 deposited into the endangered historic properties fund
273 and may be expended by the commissioner of culture
274 and history for archaeological programs at the state
275 level, including the payment of rewards for information
276 leading to the arrest and conviction of persons violating
277 the provisions of subdivisions (1) and (2), subsection (c)
278 of this section.

279 (3) The commissioner of culture and history is
280 authorized to offer and pay rewards of up to one
281 thousand dollars from funds on deposit in the endan-
282 gered historic properties fund for information leading
283 to the arrest and conviction of persons who violate the
284 provisions of subdivisions (1) and (2), subsection (c) of
285 this section.

286 (h) *Disposition of remains and artifacts not subject to*
287 *reburial.*

288 All human skeletal remains and grave artifacts found
289 in unmarked graves on public or private land, and not
290 subject to reburial, under the provisions of subsection (e)
291 of this section, are held in trust for the people of West
292 Virginia by the state and are under the jurisdiction of
293 the director of historic preservation. All materials
294 collected and not reburied through this section shall be
295 maintained with dignity and respect for the people of
296 the state under the care of the West Virginia state
297 museum.

§29-1-8b. Protection of historic and prehistoric sites; penalties.

1 Historic and prehistoric landmarks, sites and dis-
2 tricts, identified by the historic preservation section, on
3 lands owned or leased by the state, or on private lands
4 where investigation and development rights have been
5 acquired by the state by lease or contract, shall not be
6 disturbed, or destroyed except as permitted under
7 sections eight and eight-a of this article.

8 Any person violating the provisions of this section
9 shall be guilty of a misdemeanor, and, upon conviction
10 thereof, shall be fined not more than five hundred
11 dollars, or imprisoned in the county jail not more than
12 six months, or both fined and imprisoned.

§29-1-9. Administrative section; director.

1 The purposes and duties of the administrative section
2 are to provide centralized support to the division in all
3 areas of operations.

4 The commissioner shall appoint a director of the
5 administrative section who shall have a bachelor's
6 degree and two years' experience in responsible posi-
7 tions involving office management, public administra-
8 tion, budget and fiscal administration, or related fields;
9 or six years' experience as outlined above.
10 Notwithstanding these qualifications, the person serving
11 as director of the administrative section on the date of
12 enactment of this section shall be eligible for appoint-
13 ment as director of the administrative section.

14 With approval of the commissioner, the director of the
15 administrative section shall establish professional
16 positions within the section.

§29-1-10. Division employees classified by civil service; exceptions.

1 Effective the first day of July, one thousand nine
2 hundred seventy-seven, any person employed in any of
3 the agencies consolidated by this article who is a
4 classified civil service employee shall, within the limits
5 provided in article six of this chapter, remain in the civil

6 service system as a covered employee; and all persons
7 employed by the division of culture and history shall be
8 employed under the classified service of the civil service
9 system within the limits provided in article six of this
10 chapter.

**§29-1-11. Power to accept and receive funds; power to
apply for grants; disbursal of funds; restric-
tions on expenditure; disposition of funds
heretofore received or appropriated.**

1 The division may, in the name of the state of West
2 Virginia, through the commissioner or its commissions,
3 accept and receive grants, appropriations, gifts, be-
4 quests and funds from any public or private source for
5 the purpose of carrying out the duties and purposes of
6 this article. The division may, through the commissioner
7 or its commissions, apply for grants from the federal
8 government, private foundations and any other source
9 for the purposes of this article. All funds received from
10 any source shall be paid into the treasury of the state
11 and disbursed upon warrant by the state auditor
12 following requisition by the division. Such requisitions
13 shall be signed by the commissioner or by such other
14 person as the commissioner may authorize by written
15 document deposited with the auditor or, in the event of
16 emergency, by the governor or the governor's designee.
17 No funds or gifts received from any source shall be
18 expended or used for any purpose other than that
19 intended as evidenced by a positive and affirmative
20 declaration or by a negative restriction or limitation.

21 All federal or state funds received to provide grants-
22 in-aid or awards to further the purposes of this article
23 shall be approved and distributed by the appropriate
24 commission established by this article.

§29-1-12. Publication of materials; agreements.

1 The division of culture and history shall have the
2 power, responsibility and duty to publish or republish
3 material of prehistorical, historical, archaeological,
4 architectural or cultural interest. The division of culture
5 and history may sell such publications as well as
6 postcards and other items of such interest at the state

7 museum or any other site or property administered by
8 the state or at any special event sponsored by the state.
9 The division shall have the right to enter into agree-
10 ments with responsible individuals, private historical,
11 archaeological, architectural or cultural associations,
12 foundations or similar organizations or any agency of
13 the federal, state or local government for the purpose
14 of carrying out its purposes or for raising money to fund
15 the functions of the division.

§29-1-13. Land; control and disposal; rules and regulations.

1 All land owned or leased by the division of culture and
2 history shall be titled in the name of the public land
3 corporation of West Virginia but shall be controlled,
4 administered and supervised by the division. The
5 division, in the discretion of its commissioner, may sell
6 or dispose of any real or personal property which, in his
7 or her opinion, does not have sufficient prehistorical,
8 historical, archaeological, architectural or cultural value
9 to justify its retention.

10 The commissioner shall have the power to make and
11 promulgate rules and regulations relating to the general
12 management and administration of the division.

§29-1-14. Washington-Carver Camp; prohibition of disposition or removal of minerals without authorization by the Legislature.

1 Washington-Carver Camp in Fayette County, hereto-
2 fore transferred to the public land corporation under the
3 control, administration and supervision of the division
4 of culture and history shall continue under the control,
5 administration and supervision of the division.

6 The division of culture and history shall undertake to
7 develop such cultural and multicultural, artistic,
8 humanistic and educational programs at the camp as
9 will serve and benefit the citizens of the state and the
10 many cultures represented therein. In order to ensure
11 the maximum reasonable utilization of that portion of
12 the camp under its jurisdiction, the division shall,
13 during times the camp is not being used for the
14 division's purposes, make the camp available, under
15 such terms as the division deems proper, to any other

16 agency of government or nonprofit group desiring to use
17 the camp. The camp shall retain the name "Camp
18 Washington-Carver" as indicative of its heritage of
19 serving the black citizens of the state. The division is
20 authorized to provide necessary and suitable equipment
21 and other resources for implementing the provisions of
22 this section.

23 No minerals may be assigned, leased or otherwise
24 encumbered, sold, mined, or removed with respect to the
25 property heretofore transferred or the mineral rights
26 retained without specific authorization by the Legisla-
27 ture.

CHAPTER 43

(S. B. 351—By Senators Bailey, Minard, Dittmar,
Wiedebusch, Anderson and Felton)

[Passed March 7, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and thirteen, article fourteen, and sections one and thirteen, article fourteen-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to civil service for deputy sheriffs and correctional officers; and providing that deputy sheriffs or correctional officers who are appointed jailer shall be entitled to rights and benefits under civil service, except that they may be removed without cause, retaining their former rank.

Be it enacted by the Legislature of West Virginia:

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

Article

14. Civil Service for Deputy Sheriffs.
- 14B. Civil Service for Correctional Officers.

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-1. Appointments and promotions of deputy sheriffs.

§7-14-13. Vacancies filled by promotions; eligibility for promotion; rights of chief deputy.

***§7-14-1. Appointments and promotions of deputy sheriffs.**

1 Notwithstanding the provisions of article three,
2 chapter six, and article seven, chapter seven of this code,
3 all appointments and promotions of full-time deputy
4 sheriffs, as defined in section two of this article, in the
5 offices of sheriffs of counties of twenty-five thousand
6 population or more, shall be made only according to
7 qualifications and fitness to be ascertained by examina-
8 tions, which, so far as practicable, shall be competitive,
9 as hereinafter provided. On and after the effective date
10 of this article, no person except the chief deputy or a
11 deputy sheriff appointed as jailer pursuant to the
12 provisions of section two, article eight of this chapter
13 shall be appointed, promoted, reinstated, removed,
14 discharged, suspended or reduced in rank or pay as a
15 full-time deputy sheriff, as defined in said section two,
16 of any county in the state of West Virginia subject to
17 the provisions hereof, in any manner or by any means
18 other than those prescribed in this article.

§7-14-13. Vacancies filled by promotions; eligibility for promotion; rights of chief deputy.

1 Vacancies in positions of deputy sheriff shall be filled,
2 so far as practicable, by promotion from among persons
3 holding positions in the next lower grade. Promotions
4 shall be based upon merit and fitness, to be ascertained
5 by competitive examinations to be provided by the civil
6 service commission, and upon the superior qualifications
7 of the persons promoted, as shown by their previous
8 service and experience: *Provided*, That, except for the
9 chief deputy or jailer, no person shall be eligible for
10 promotion from the lower grade to the next higher
11 grade until such person shall have completed at least
12 two years' service in the next lower grade: *Provided*,
13 *however*, That notwithstanding the provisions of section
14 one of this article, any person occupying the office of
15 chief deputy or any deputy sheriff occupying the office
16 of jailer pursuant to the provisions of section two, article
17 eight of this chapter in any such county on the effective

*Clerk's Note: This section was also amended by S. B. 478 (Chapter 44), which passed subsequent to this act.

18 date of this article, or thereafter appointed to such
19 office, shall, except as hereinafter provided in this
20 section, be and shall continue to be entitled to all of the
21 rights and benefits of the provisions of this article,
22 except that he or she may be removed from such office
23 of chief deputy or jailer without cause and the time
24 spent by such person in the office of such chief deputy
25 or jailer shall be added to the time, if any, served by
26 such person during the entire time he or she was a
27 deputy sheriff of such county prior to his or her
28 appointment as chief deputy or jailer, and shall in all
29 cases of removal, except for removal for just cause,
30 retain the regular rank within said sheriff's office which
31 he or she held, if any, at the time of his or her
32 appointment to the office of chief deputy or jailer or
33 which he or she has attained, if any, during his or her
34 term of service as chief deputy or jailer. The provisions
35 of this section shall be construed to apply and to inure
36 to the benefit of all persons who have ever been subject
37 to the provisions of this article. The commission shall
38 have the power to determine in each instance whether
39 an increase in salary constitutes a promotion.

ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.

§7-14B-1. Appointments and promotions of correctional officers.

§7-14B-13. Vacancies filled by promotions; eligibility for promotion.

§7-14B-1. Appointments and promotions of correctional officers.

1 Notwithstanding the provisions of article three,
2 chapter six, and article seven, chapter seven of this code,
3 all appointments and promotions of full-time correc-
4 tional officers, as defined in section two of this article,
5 in the offices of sheriffs of counties of twenty-five
6 thousand population or more, shall be made only
7 according to qualifications and fitness to be ascertained
8 by examinations, which, so far as practicable, shall be
9 competitive, as hereinafter provided. On and after the
10 effective date of this article, no person except a
11 correctional officer appointed as jailer pursuant to the
12 provisions of section two, article eight of this chapter
13 shall be appointed, promoted, reinstated, removed,
14 discharged, suspended or reduced in rank or pay as a
15 full-time correctional officer, as defined in said section

16 two, of any county in the state of West Virginia subject
17 to the provisions hereof, in any manner or by any means
18 other than those prescribed in this article.

§7-14B-13. Vacancies filled by promotions; eligibility for promotion.

1 Vacancies in positions of correctional officer shall be
2 filled, so far as practicable, by promotion from among
3 persons holding positions in the next lower grade.
4 Promotions shall be based upon merit and fitness, to be
5 ascertained by competitive examinations to be provided
6 by the civil service commission, and upon the superior
7 qualifications of the persons promoted, as shown by
8 their previous service and experience: *Provided, That,*
9 except for a correctional officer appointed jailer
10 pursuant to the provisions of section two, article eight
11 of this chapter, no person shall be eligible for promotion
12 from the lower grade to the next higher grade until such
13 person shall have completed at least two years' service
14 in the next lower grade: *Provided, however, That*
15 notwithstanding the provisions of section one of this
16 article, any correctional officer occupying the office of
17 jailer pursuant to the provisions of section two, article
18 eight of this chapter in any such county on the effective
19 date of this article, or thereafter appointed to such
20 office, shall, except as hereinafter provided in this
21 section, be and shall continue to be entitled to all of the
22 rights and benefits of the provisions of this article,
23 except that he or she may be removed from such office
24 of jailer without cause and the time spent by such person
25 in the office of such jailer shall be added to the time,
26 if any, served by such person during the entire time he
27 or she was a correctional officer of such county prior to
28 his or her appointment as jailer, and shall in all cases
29 of removal, except for removal for just cause, retain the
30 regular rank within said sheriff's office which he or she
31 held, if any, at the time of his or her appointment to the
32 office of jailer or which he or she has attained, if any,
33 during his or her term of service as jailer. The
34 provisions of this section shall be construed to apply and
35 to inure to the benefit of all persons who have ever been
36 subject to the provisions of this article. The commission
37 shall have the power to determine in each instance
38 whether an increase in salary constitutes a promotion.

CHAPTER 44

(Com. Sub. for S. B. 478—By Senator Felton)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section nineteen, article fourteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one, three and twenty of said article, relating to civil service for deputy sheriffs; and providing that persons who are currently or who hereinafter serve as deputy sheriffs shall be covered by civil service.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. CIVIL SERVICE FOR DEPUTY SHERIFFS.

§7-14-1. Appointments and promotions of deputy sheriffs.

§7-14-3. Civil service commission.

§7-14-20. Inconsistent acts repealed; once established civil service remains mandatory.

*§7-14-1. Appointments and promotions of deputy sheriffs.

1 Notwithstanding the provisions of article three,
2 chapter six and article seven, chapter seven of this code,
3 all appointments and promotions of full-time deputy
4 sheriffs shall be made only according to qualifications
5 and fitness to be ascertained by examinations, which, so
6 far as practicable, shall be competitive, as hereinafter
7 provided. On and after the effective date of this article,
8 no person except the chief deputy shall be appointed,
9 promoted, reinstated, removed, discharged, suspended
10 or reduced in rank or pay as a full-time deputy sheriff,
11 as defined in said section two, of any county in the state
12 of West Virginia subject to the provisions hereof, in any
13 manner or by any means other than those prescribed in
14 this article.

*Clerk's Note: This section was also amended by S.B. 351 (Chapter 43), which passed prior to this act.

§7-14-3. Civil service commission.

1 There shall be a civil service commission in each
2 county and the state. Each such civil service commission
3 shall consist of three commissioners, one of whom shall
4 be appointed by the bar association of such county, one
5 of whom shall be appointed by the deputy sheriff's
6 association of such county, and one of whom shall be
7 appointed by the county commission of such county. In
8 the event the bar association or deputy sheriff's
9 association fails to make an appointment within the time
10 prescribed in this section therefor, then such appoint-
11 ment shall be made by the county commission. The
12 persons appointed commissioners shall be qualified
13 voters of the county for which they are appointed, and
14 at least two of the commissioners shall be persons in full
15 sympathy with the purposes of this article. Not more
16 than two of the commissioners, at any one time, shall
17 be members of the same political party. The commis-
18 sioners in each county shall be appointed as follows:
19 Within sixty days from the effective date of this article,
20 the authorities having the power to appoint members to
21 the civil service commission shall appoint the three
22 commissioners, the first to be appointed by the bar
23 association of the county shall serve for six years from
24 the date of appointment, the second to be appointed by
25 the deputy sheriff's association of the county shall serve
26 for four years from the date of appointment, and the
27 third to be appointed by the county commission of the
28 county shall serve for a term of two years from the date
29 of appointment. All subsequent appointments shall be
30 made for terms of four years. In the event that any
31 commissioner of the civil service commission ceases to
32 be a member thereof by virtue of death, final removal
33 or other cause, a new commissioner shall be appointed
34 to fill the unexpired term of that commissioner within
35 ten days after said ex-commissioner ceased to be a
36 member of the commission. Such appointment shall be
37 made by the authority who appointed the commissioner
38 who is no longer a member of the commission. Each
39 year the three members of the commission shall,
40 together, elect one of their number to act as president
41 of the commission for a term of one year. The county

42 commission may at any time remove a commissioner for
43 good cause, which shall be stated in writing and made
44 a part of the records of the commission. Once the county
45 commission has removed any commissioner, such county
46 commission shall within ten days thereafter file in the
47 office of the clerk of the circuit court of the county a
48 petition setting forth in full the reason for the removal
49 and praying for the confirmation of the circuit court of
50 the action of the county commission in removing the said
51 commissioner. A copy of the petition shall be served
52 upon the commissioner so removed simultaneously with
53 its filing in the office of the clerk of the circuit court
54 and has precedence on the docket of the circuit court
55 and shall be heard by the court as soon as practicable
56 upon the request of the removed commissioner. All
57 rights hereby vested in the circuit court may be
58 exercised by the judge thereof in vacation. In the event
59 that no term of the circuit court is being held at the time
60 of the filing of the petition, and the judge thereof cannot
61 be reached in the county wherein the petition was filed,
62 the petition shall be heard at the next succeeding term
63 of the circuit court, whether regular or special, and the
64 commissioner so removed shall remain removed until a
65 hearing is had upon the petition of the county commis-
66 sion. The circuit court, or the judge thereof in vacation,
67 shall hear and decide the issues presented by the
68 petition. The county commission or commissioner, as the
69 case may be, against whom the decisions of the circuit
70 court or judge thereof in vacation is rendered has the
71 right to petition the supreme court of appeals for a
72 review of the decision of the circuit court or the judge
73 thereof in vacation as in other civil cases. In the event
74 that the county commission fails to file its petition in the
75 office of the clerk of the circuit court, as hereinbefore
76 provided, within ten days after the removal of the
77 commissioner, such commissioner immediately resumes
78 his position as a member of the civil service commission.

79 Any resident of the county has the right at any time
80 to file charges against and seek the removal of any
81 member of the civil service commission. The charges
82 shall be filed in the form of a petition in the office of
83 the clerk of the circuit court of the county. A copy of

84 the petition shall be served upon the commissioner
85 sought to be removed. The petition shall be matured for
86 hearing and heard as a civil action by the circuit court
87 of the county for which the commissioner serves as a
88 member of the civil service commission or by the judge
89 thereof in vacation. The party against whom the decision
90 of the circuit court or judge thereof in vacation is
91 rendered has the right to petition the supreme court of
92 appeals for a review of the decision of the circuit court
93 or judge thereof in vacation as in other civil cases.

94 No commissioner may hold any other office (other
95 than the office of notary public) under the United States,
96 this state or any municipality, county or other political
97 subdivision thereof; nor may any commissioner serve on
98 any political party committee or take any active part in
99 the management of any political campaign.

**§7-14-20. Inconsistent acts repealed; once established civil
service remains mandatory.**

1 All acts and parts of acts of the Legislature, whether
2 general, special or local, in relation to deputy sheriffs
3 inconsistent with the provisions of this article are hereby
4 repealed to the extent of such inconsistency.

CHAPTER 45

(S. B. 631—By Senators Holliday and Macnaughtan)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen; to amend article sixteen of said chapter by adding thereto a new section, designated section eleven; to amend and reenact sections fifteen-a, fifteen-b and thirty-three, article two, chapter forty-eight of said code; to further amend said article by adding thereto a new section, designated section fifteen-c; to amend and reenact section three, article one, chapter forty-eight-a of said code; to amend and reenact

sections twelve and fifteen, article two of said chapter; to further amend said article by adding thereto a new section, designated section twenty-three; to amend and reenact section three-a, article three of said chapter; to amend and reenact section one, article four of said chapter; to amend and reenact sections two and three, article five of said chapter; to amend and reenact section five, article six of said chapter; and to amend and reenact sections twelve and thirty-six, article seven of said chapter, all relating to the enforcement of family obligations generally; requiring insurers to provide coverage for children of insureds; requiring courts when establishing or modifying support orders to ascertain the ability of parties to provide medical care for children; providing for the establishment and enforcement of medical support orders; providing for withholding from income of amounts payable as support; directing the supreme court of appeals to provide forms for petitions for modification of an order for support; requiring the disclosure of assets in an action for divorce or annulment; clarifying the meaning of the term "source of income"; changing the definition of "support" to include interest on unpaid support; providing for the distribution of amounts collected as support by the child advocate office; removing the specific requirements as to the contents of legislative rules relating to obtaining support from federal tax refunds; prescribing procedures for obtaining access to records in the possession of the children's advocate; providing that the children's advocate represents the state of West Virginia; increasing the statutory salary for secretary-clerks of the family law master; restating that for hearings before a master, advance payment of additional fees beyond the initial fee charged shall be required; providing for interest on judgments for mature, unpaid installments of child support; directing an obligor who contests an affidavit for child support arrearages to obtain a date for hearing before the family law master; establishing the priority of writs of execution, suggestions or suggestee executions as to other legal process; providing for the amount to be withheld from the disposable income of an obligor

pursuant to a suggestee execution; establishing when a notice of wage withholding is sent to an obligor; prescribing the contents of such notice; providing for certain limitations on the amount which may be withheld from income; defining the misdemeanor offense of concealing the payment of income to an obligor with the intent to avoid income withholding and establishing penalties therefor; requiring a source of income to provide income information to the children's advocate; and providing that the children's advocate represents the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 33. Insurance.**
- 48. Domestic Relations.**
- 48A. Enforcement of Family Obligations.**

CHAPTER 33. INSURANCE.

Article

- 15. Accident and Sickness Insurance.**
- 16. Group Accident and Sickness Insurance.**

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-16. Policies not to exclude insured's children from coverage.

1 An insurer issuing accident and sickness policies in
2 this state shall provide coverage for the child or children
3 of the insured without regard to the amount of child
4 support ordered to be paid or actually paid by the
5 insured, if any, and without regard to the fact that the
6 insured may not have legal custody of the child or
7 children or that the child or children may not be
8 residing in the home of the insured.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-11. Group policies not to exclude insured's children from coverage.

1 An insurer issuing group accident and sickness
2 policies in this state shall provide coverage for the child
3 or children of each employee or member of the insured
4 group without regard to the amount of child support
5 ordered to be paid or actually paid by such employee
6 or member, if any, and without regard to the fact that
7 the employee or member may not have legal custody of
8 the child or children or that the child or children may
9 not be residing in the home of the employee or member.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15a. Medical support enforcement.

§48-2-15b. Withholding from income on and after November 1, 1990.

§48-2-15c. Modification forms.

§48-2-33. Disclosure of assets required.

§48-2-15a. Medical support enforcement.

- 1 (a) For the purposes of this section:
 - 2 (1) "Custodian for the children" means a parent, legal
3 guardian, committee or other third party appointed by
4 court order as custodian of child or children for whom
5 child support is ordered.
 - 6 (2) "Obligated parent" means a natural or adoptive
7 parent who is required by agreement or order to pay
8 for insurance coverage and medical care, or some
9 portion thereof, for his or her child.

10 (3) "Insurance coverage" means coverage for medical,
11 dental, including orthodontic, optical, psychological,
12 psychiatric or other health care service.

13 (4) "Child" means a child to whom a duty of child
14 support is owed.

15 (5) "Medical care" means medical, dental, optical,
16 psychological, psychiatric or other health care service
17 for children in need of child support.

18 (6) "Insurer" means any company, trust or other entity
19 which provides insurance coverage.

20 (b) In every action to establish or modify an order
21 which requires the payment of child support, the court
22 shall ascertain the ability of each parent to provide
23 medical care for the children of the parties. The court
24 shall order one or more of the following:

25 (1) The court may order either parent or both parents
26 to provide insurance coverage for a child, if such
27 insurance coverage is available to that parent on a group
28 basis through an employer or through an employee's
29 union. If similar insurance coverage is available to both
30 parents, the court shall order the child to be insured
31 under the insurance coverage which provides more
32 comprehensive benefits. If such insurance coverage is
33 not available at the time of the entry of the order, the
34 order shall require that if such coverage thereafter
35 becomes available to either party, that party shall
36 promptly notify the other party of the availability of
37 insurance coverage for the child.

38 (2) If the court finds that insurance coverage is not
39 available to either parent on a group basis through an
40 employer, multi-employer trust or employees' union, or
41 that the group insurer is not accessible to the parties,
42 the court may order either parent or both parents to
43 obtain insurance coverage which is otherwise available
44 at a reasonable cost.

45 (3) Based upon the respective ability of the parents to
46 pay, the court may order either parent or both parents
47 to be liable for reasonable and necessary medical care

48 for a child. The court shall specify the proportion of the
49 medical care for which each party shall be responsible.

50 (4) If insurance coverage is available, the court shall
51 also determine the amount of the annual deductible on
52 insurance coverage which is attributable to the children
53 and designate the proportion of the deductible which
54 each party shall pay.

55 (c) The cost of insurance coverage shall be considered
56 by the court in applying the child support guidelines
57 provided for in section eight, article two, chapter forty-
58 eight-a of this code.

59 (d) Within thirty days after the entry of an order
60 requiring the obligated parent to provide insurance
61 coverage for the children, that parent shall submit to the
62 custodian for the child written proof that the insurance
63 has been obtained or that an application for insurance
64 has been made. Such proof of insurance coverage shall
65 consist of, at a minimum:

66 (1) The name of the insurer;

67 (2) The policy number;

68 (3) An insurance card;

69 (4) The address to which all claims should be mailed;

70 (5) A description of any restrictions on usage, such as
71 prior approval for hospital admission, and the manner
72 in which to obtain such approval;

73 (6) A description of all deductibles; and

74 (7) Five copies of claim forms.

75 (e) The custodian for the child shall send the insurer
76 or the obligated parent's employer the children's address
77 and notice that the custodian will be submitting claims
78 on behalf of the children. Upon receipt of such notice,
79 or an order for insurance coverage under this section,
80 the obligated parent's employer, multi-employer trust or
81 union shall, upon the request of the custodian for the
82 child, release information on the coverage for the
83 children, including the name of the insurer.

84 (f) A copy of the court order for insurance coverage
85 shall not be provided to the obligated parent's employer
86 or union or the insurer unless ordered by the court, or
87 unless:

88 (1) The obligated parent, within thirty days of
89 receiving effective notice of the court order, fails to
90 provide to the custodian for the child written proof that
91 the insurance has been obtained or that an application
92 for insurance has been made;

93 (2) The custodian for the child serves written notice
94 by mail at the obligated parent's last known address of
95 intention to enforce the order requiring insurance
96 coverage for the child; and

97 (3) The obligated parent fails within fifteen days after
98 the mailing of the notice to provide written proof to the
99 custodian for the child that the child has insurance
coverage.

100 (g) (1) Upon service of the order requiring insurance
101 coverage for the children, the employer, multi-employer
102 trust or union shall enroll the child as a beneficiary in
103 the group insurance plan and withhold any required
104 premium from the obligated parent's income or wages.

105 (2) If more than one plan is offered by the employer,
106 multi-employer trust or union, the child shall be
107 enrolled in the most comprehensive plan otherwise
108 available to the obligated parent at a reasonable cost.

109 (3) Insurance coverage for the child which is ordered
110 pursuant to the provisions of this section shall not be
111 terminated except as provided in subsection (i) of this
112 section.

113 (h) (1) The signature of the custodian for the child
114 shall constitute a valid authorization to the insurer for
115 the purposes of processing an insurance payment to the
116 provider of medical care for the child.

117 (2) No insurer, employer or multi-employer trust in
118 this state may refuse to honor a claim for a covered
119 service when the custodian for the child or the obligated
120 parent submits proof of payment for medical bills for
121 the child.

122 (3) The insurer shall reimburse the custodian for the
123 child or the obligated parent who submits copies of
124 medical bills for the child with proof of payment.

125 (4) All insurers in this state shall provide insurance
126 coverage for the child of a covered employee notwith-
127 standing the amount of support otherwise ordered by
128 the court and regardless of the fact that the child may
129 not be living in the home of the covered employee.

130 (i) When an order for insurance coverage for a child
131 pursuant to this section is in effect and the obligated
132 parent's employment is terminated, or the insurance
133 coverage for the child is denied, modified or terminated,
134 the insurer shall, within ten days after the notice of
135 change in coverage is sent to the covered employee,
136 notify the custodian for the child and provide an
137 explanation of any conversion privileges available from
138 the insurer.

139 (j) A child of an obligated parent shall remain eligible
140 for insurance coverage until the child is emancipated or
141 until the insurer under the terms of the applicable
142 insurance policy terminates said child from coverage,
143 whichever is later in time, or until further order of the
144 court.

145 (k) If the obligated parent fails to comply with the
146 order to provide insurance coverage for the child, the
147 court shall:

148 (1) Hold the obligated parent in contempt for failing
149 or refusing to provide the insurance coverage, or for
150 failing or refusing to provide the information required
151 in subsection (d) of this section;

152 (2) Enter an order for a sum certain against the
153 obligated parent for the cost of medical care for the
154 child, and any insurance premiums paid or provided for
155 the child during any period in which the obligated
156 parent failed to provide the required coverage; and

157 (3) In the alternative, other enforcement remedies
158 available under sections two and three, article five,
159 chapter forty-eight-a of this code, or otherwise available

160 under law, may be used to recover from the obligated
161 parent the cost of medical care or insurance coverage
162 for the child.

163 (l) Proof of failure to maintain court ordered insur-
164 ance coverage for the child constitutes a showing of
165 substantial change in circumstances or increased need
166 pursuant to section fifteen of this article, and provides
167 a basis for modification of the child support order.

**§48-2-15b. Withholding from income on and after No-
vember 1, 1990.**

1 (a) On and after the first day of November, one
2 thousand nine hundred ninety, every order entered or
3 modified under the provisions of this article which
4 requires the payment of child support or spousal support
5 shall include a provision for automatic withholding from
6 income of the obligor, in order to facilitate income
7 withholding as a means of collecting support.

8 (b) Every such order as described in subsection (a) of
9 this section shall contain language authorizing income
10 withholding to commence without further court action,
11 as follows:

12 (1) The order shall provide that income withholding
13 will begin immediately, without regard to whether there
14 is an arrearage: (A) When a child for whom support is
15 ordered is included or becomes included in a grant of
16 assistance from the division of human services or a
17 similar agency of a sister state for aid to families with
18 dependent children benefits, medical assistance only
19 benefits, or foster care benefits; or (B) when the support
20 obligee has applied for services from the child advocate
21 office or the support enforcement agency of another
22 state or is otherwise receiving services from the child
23 advocate office as provided for in chapter forty-eight-a
24 of this code. In any case where one of the parties
25 demonstrates, and the court finds, that there is good
26 cause not to require immediate income withholding, or
27 in any case where there is filed with the court a written
28 agreement between the parties which provides for an
29 alternative arrangement, such order shall not provide

30 for income withholding to begin immediately.

31 (2) The order shall also provide that income withhold-
32 ing will begin immediately upon the occurrence of any
33 of the following:

34 (A) When the payments which the obligor has failed
35 to make under the order are at least equal to the support
36 payable for one month, if the order requires support to
37 be paid in monthly installments;

38 (B) When the payments which the obligor has failed
39 to make under the order are at least equal to the support
40 payable for four weeks, if the order requires support to
41 be paid in weekly or biweekly installments;

42 (C) When the obligor requests the child advocate office
43 to commence income withholding; or

44 (D) When the obligee requests that such withholding
45 begin, if the request is approved by the court in
46 accordance with procedures and standards established
47 by rules and regulations promulgated by the director of
48 the child advocate office.

49 (c) For the purposes of this section, the number of days
50 support payments are in arrears shall be considered to
51 be the total cumulative number of days during which
52 payments required by a court order have been delin-
53 quent, whether or not such days are consecutive.

54 (d) The supreme court of appeals shall make available
55 to the circuit courts standard language to be included
56 in all such orders, so as to conform such orders to the
57 applicable requirements of state and federal law
58 regarding the withholding from income of amounts
59 payable as support.

60 (e) Every support order entered by a circuit court of
61 this state prior to the first day of November, one
62 thousand nine hundred ninety, shall be considered to
63 provide for an order of income withholding, by operation
64 of law, which complies with the provisions of this
65 section, notwithstanding the fact that such support
66 order does not in fact provide for such order of
67 withholding.

§48-2-15c. Modification forms.

1 The supreme court of appeals shall make available to
2 the circuit courts a standard form for a petition for
3 modification of an order for support, which form will
4 allege that the existing order should be altered or
5 revised because of a loss or change of employment or
6 other substantial change affecting income, or that the
7 amount of support required to be paid is not within
8 fifteen percent of the child support guidelines. The clerk
9 of the circuit court shall make such forms available to
10 persons desiring to petition the court pro se for a
11 modification of the support award.

§48-2-33. Disclosure of assets required.

1 (a) In addition to any discovery ordered by the court
2 pursuant to rule eighty-one of the rules of civil proce-
3 dure, the court may, or upon pleadings or motion of
4 either party, the court shall, require each party to
5 furnish, on such standard forms as the court may
6 require, full disclosure of all assets owned in full or in
7 part by either party separately or by the parties jointly.
8 Such disclosure may be made by each party individually
9 or by the parties jointly. Assets required to be disclosed
10 shall include, but shall not be limited to, real property,
11 savings accounts, stocks and bonds, mortgages and
12 notes, life insurance, health insurance coverage, interest
13 in a partnership or corporation, tangible personal
14 property, income from employment, future interests
15 whether vested or nonvested, and any other financial
16 interest or source. The court may also require each
17 party to furnish, on the same standard form, informa-
18 tion pertaining to all debts and liabilities of the parties.
19 The form used shall contain a statement in conspicuous
20 print that complete disclosure of assets and debts is
21 required by law and deliberate failure to provide
22 complete disclosure as ordered by the court constitutes
23 false swearing. The court may on its own initiative and
24 shall at the request of either party require the parties
25 to furnish copies of all state and federal income tax
26 returns filed by them for the past two years, and may
27 require copies of such returns for prior years.

28 (b) Disclosure forms required under this section shall
29 be filed within forty days after the service of summons

30 or at such other time as ordered by the court.
31 Information contained on such forms shall be updated
32 on the record to the date of hearing.

33 (c) Information disclosed under this section shall be
34 confidential and may not be made available to any
35 person for any purpose other than the adjudication,
36 appeal, modification or enforcement of judgment of an
37 action affecting the family of the disclosing parties. The
38 court shall include in any order compelling disclosure
39 of assets such provisions as the court considers necessary
40 to preserve the confidentiality of the information
41 ordered disclosed.

42 (d) Upon the failure by either party timely to file a
43 complete disclosure statement as may be required by
44 this section, the court may accept the statement of the
45 other party as accurate.

46 (e) If any party deliberately or negligently fails to
47 disclose information which may be required by this
48 section and in consequence thereof any asset or assets
49 with a fair market value of five hundred dollars or more
50 is omitted from the final distribution of property, the
51 party aggrieved by such nondisclosure may at any time
52 petition a court of competent jurisdiction to declare the
53 creation of a constructive trust as to all undisclosed
54 assets, for the benefit of the parties and their minor or
55 dependent children, if any, with the party in whose
56 name the assets are held declared the constructive
57 trustee, such trust to include such terms and conditions
58 as the court may determine. The court shall impose the
59 trust upon a finding of a failure to disclose such assets
60 as required under this section.

61 (f) Any assets with a fair market value of five hundred
62 dollars or more which would be considered part of the
63 estate of either or both of the parties if owned by either
64 or both of them at the time of the action, but which was
65 transferred for inadequate consideration, wasted, given
66 away or otherwise unaccounted for by one of the parties,
67 within five years prior to the filing of the petition or
68 length of the marriage, whichever is shorter, shall be
69 presumed to be part of the estate and shall be subject

70 to the disclosure requirement contained in this section.
71 With respect to such transfers the spouse shall have the
72 same right and remedies as a creditor whose debt was
73 contracted at the time the transfer was made under
74 article one-a, chapter forty of this code. Transfers which
75 resulted in an exchange of assets of substantially
76 equivalent value need not be specifically disclosed where
77 such assets are otherwise identified in the statement of
78 net worth.

79 (g) A person who knowingly provides incorrect
80 information pursuant to the provisions of this section is
81 guilty of false swearing.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article

1. General Provisions.
2. West Virginia Child Advocate Office.
3. Children's Advocate.
4. Proceedings Before a Master.
5. Remedies for the Enforcement of Support Obligations and Visitation.
6. Establishment of Paternity.
7. Revised Uniform Reciprocal Enforcement of Support Act.

ARTICLE 1. GENERAL PROVISIONS.

§48A-1-3. Definitions.

1 As used in this chapter:

2 (1) "Automatic data processing and retrieval system"
3 means a computerized data processing system designed
4 to do the following:

5 (A) To control, account for and monitor all of the
6 factors in the support enforcement collection and
7 paternity determination process, including, but not
8 limited to:

9 (i) Identifiable correlation factors (such as social
10 security numbers, names, dates of birth, home addresses
11 and mailing addresses of any individual with respect to
12 whom support obligations are sought to be established
13 or enforced and with respect to any person to whom such
14 support obligations are owing) to assure sufficient

15 compatibility among the systems of different jurisdic-
16 tions to permit periodic screenings to determine
17 whether such individual is paying or is obligated to pay
18 support in more than one jurisdiction;

19 (ii) Checking of records of such individuals on a
20 periodic basis with federal, interstate, intrastate and
21 local agencies;

22 (iii) Maintaining the data necessary to meet applicable
23 federal reporting requirements on a timely basis; and

24 (iv) Delinquency and enforcement activities;

25 (B) To control, account for and monitor the collection
26 and distribution of support payments (both interstate
27 and intrastate), the determination, collection and
28 distribution of incentive payments (both interstate and
29 intrastate), and the maintenance of accounts receivable
30 on all amounts owed, collected and distributed;

31 (C) To control, account for and monitor the costs of all
32 services rendered, either directly or by exchanging
33 information with state agencies responsible for main-
34 taining financial management and expenditure
35 information;

36 (D) To provide access to the records of the department
37 of health and human resources or aid to families with
38 dependent children in order to determine if a collection
39 of a support payment causes a change affecting eligibil-
40 ity for or the amount of aid under such program;

41 (E) To provide for security against unauthorized
42 access to, or use of, the data in such system;

43 (F) To facilitate the development and improvement of
44 the income withholding and other procedures designed
45 to improve the effectiveness of support enforcement
46 through the monitoring of support payments, the
47 maintenance of accurate records regarding the payment
48 of support, and the prompt provision of notice to
49 appropriate officials with respect to any arrearages in
50 support payments which may occur; and

51 (G) To provide management information on all cases
52 from initial referral or application through collection

53 and enforcement.

54 (2) "Chief judge" means the following:

55 (A) The circuit judge in a judicial circuit having only
56 one circuit judge, except for the twenty-third and thirty-
57 first judicial circuits;

58 (B) In the twenty-third and thirty-first judicial
59 circuits, a chief judge designated by the judges thereof
60 from among themselves by general order, to act as chief
61 judge for both circuits for the purposes of this chapter:
62 *Provided*, That if the judges cannot agree as to who shall
63 act as chief judge, then a chief judge shall be designated
64 for the purposes of this chapter by the supreme court
65 of appeals; or

66 (C) The chief judge of the circuit court in a judicial
67 circuit having two or more circuit judges.

68 (3) "Child advocate office" means the office within the
69 department of health and human resources created
70 under the provisions of article two of this chapter,
71 intended by the Legislature to be the single and separate
72 organizational unit of state government administering
73 programs of child and spousal support enforcement and
74 meeting the staffing and organizational requirements of
75 the secretary of the federal department of health and
76 human services.

77 (4) "Children's advocate" or "advocate" means a person
78 appointed to such position under the provisions of
79 section two, article three of this chapter.

80 (5) "Court" means a circuit court of this state, unless
81 the context in which such term is used clearly indicates
82 that reference to some other court is intended. For the
83 purposes of this chapter, the circuit courts of the twenty-
84 third and thirty-first judicial circuits shall be con-
85 sidered as being in a single judicial circuit.

86 (6) "Court of competent jurisdiction" means a circuit
87 court within this state, or a court or administrative
88 agency of another state having jurisdiction and due legal
89 authority to deal with the subject matter of the
90 establishment and enforcement of support obligations.

91 Whenever in this chapter reference is made to an order
92 of a court of competent jurisdiction, or similar wording,
93 such language shall be interpreted so as to include
94 orders of an administrative agency entered in a state
95 where enforceable orders may by law be properly made
96 and entered by such administrative agency.

97 (7) "Custodial parent" or "custodial parent of a child"
98 means a parent who has been granted custody of a child
99 by a court of competent jurisdiction. "Noncustodial
100 parent" means a parent of a child with respect to whom
101 custody has been adjudicated with the result that such
102 parent has not been granted custody of the child.

103 (8) "Domestic relations matter" means any circuit
104 court proceeding involving child custody, child visita-
105 tion, child support or alimony.

106 (9) "Earnings" means compensation paid or payable
107 for personal services, whether denominated as wages,
108 salary, commission, bonus, or otherwise, and includes
109 periodic payments pursuant to a pension or retirement
110 program. "Disposable earnings" means that part of the
111 earnings of any individual remaining after the deduc-
112 tion from those earnings of any amounts required by law
113 to be withheld.

114 (10) "Employer" means any individual, sole proprie-
115 torship, partnership, association, public or private
116 corporation, the United States or any federal agency,
117 this state or any political subdivision of this state, any
118 other state or a political subdivision of another state, and
119 any other legal entity which hires and pays an individ-
120 ual for his services.

121 (11) "Guardian of the property of a child" means a
122 person lawfully invested with the power, and charged
123 with the duty, of managing and controlling the estate
124 of a child.

125 (12) "Income" means any of the following:

126 (A) Commissions, earnings, salaries, wages and other
127 income due or to be due in the future to an obligor from
128 his employer and successor employers;

129 (B) Any payment due or to be due in the future to an
130 obligor from a profit-sharing plan, a pension plan, an

131 insurance contract, an annuity, social security, unem-
132 ployment compensation, supplemental employment
133 benefits and workers' compensation;

134 (C) Any amount of money which is owing to the
135 obligor as a debt from an individual, partnership,
136 association, public or private corporation, the United
137 States or any federal agency, this state or any political
138 subdivision of this state, any other state or a political
139 subdivision of another state, or any other legal entity
140 which is indebted to the obligor.

141 (13) "Individual entitled to support enforcement
142 services under the provisions of this chapter" means:

143 (A) An individual who has applied for or is receiving
144 services from the child advocate office and who is the
145 custodial parent of a child, or the primary caretaker of
146 a child, or the guardian of the property of a child when:

147 (i) Such child has a parent and child relationship with
148 an obligor who is not such custodial parent, primary
149 caretaker or guardian; and

150 (ii) The obligor with whom the child has a parent and
151 child relationship is not meeting an obligation to support
152 the child, or has not met such obligation in the past; or

153 (B) An individual who has applied for or is receiving
154 services from the child advocate office and who is an
155 adult or an emancipated minor whose spouse or former
156 spouse has been ordered by a court of competent
157 jurisdiction to pay spousal support to the individual,
158 whether such support is denominated alimony or
159 separate maintenance, or is identified by some other
160 terminology, thus establishing a support obligation with
161 respect to such spouse, when the obligor required to pay
162 such spousal support is not meeting the obligation, or
163 has not met such obligation in the past.

164 (14) "Master" or "family law master" means a person
165 appointed to such position under the provisions of
166 section one, article four of this chapter.

167 (15) "Obligee" means an individual to whom a duty of
168 support is owed, or the state of West Virginia or the

169 department of health and human resources, if support
170 has been assigned to the state or department.

171 (16) "Obligor" means a person who owes a legal duty
172 to support another person.

173 (17) "Office of the children's advocate" means the
174 office created in section two, article three of this
175 chapter.

176 (18) "Primary caretaker of a child" means a parent or
177 other person having actual physical custody of a child
178 without a court order granting such custody, and who
179 has been primarily responsible for exercising parental
180 rights and responsibilities with regard to such child.

181 (19) "Source of income" means an employer or
182 successor employer or any other person who owes or will
183 owe income to an obligor.

184 (20) "Support" means the payment of money:

185 (A) For a child or spouse, ordered by a court of
186 competent jurisdiction, whether the payment is ordered
187 in an emergency, temporary, permanent or modified
188 order, decree or judgment of such court, and the amount
189 of unpaid support shall bear interest from the date it
190 accrued, at a rate of ten dollars upon one hundred
191 dollars per annum, and proportionately for a greater or
192 lesser sum, or for a longer or shorter time;

193 (B) To third parties on behalf of a child or spouse,
194 including, but not limited to, payments to medical,
195 dental or educational providers, payments to insurers
196 for health and hospitalization insurance, payments of
197 residential rent or mortgage payments, payments on an
198 automobile, or payments for day care; and/or

199 (C) For a mother, ordered by a court of competent
200 jurisdiction, for the necessary expenses incurred by or
201 for the mother in connection with her confinement or of
202 other expenses in connection with the pregnancy of the
203 mother.

204 (21) "Support order" means any order of a court of
205 competent jurisdiction for the payment of support,
206 whether or not for a sum certain.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-12. Disbursements of amounts collected as support.

§48A-2-15. Obtaining support from federal tax refunds.

§48A-2-23. Access to records, confidentiality.

§48A-2-12. Disbursements of amounts collected as support.

1 (a) Amounts collected as child or spousal support by
2 the office shall be distributed within ten days of receipt,
3 except as otherwise specifically provided in this chapter.
4 Such amounts shall, except as otherwise provided under
5 the provisions of subsection (c) of this section, be
6 distributed as follows:

7 (1) The first fifty dollars of such amounts as are
8 collected periodically which represent monthly support
9 payments shall be paid to the obligee without affecting
10 the eligibility of such person's family for assistance from
11 the department of health and human resources or
12 decreasing any amount otherwise payable as assistance
13 to such family during such month;

14 (2) Such amounts as are collected periodically which
15 are in excess of any amount paid to the family under
16 subdivision (1) of this subsection and which represent
17 monthly support payments shall be paid by the office to
18 the appropriate administrative unit of the department
19 of health and human resources to reimburse it for
20 assistance payments to the family during such period
21 (with appropriate reimbursement of the federal govern-
22 ment to the extent of its participation in the financing);

23 (3) Such amounts as are in excess of amounts required
24 to reimburse the department of health and human
25 resources under subdivision (2) of this subsection and
26 are not in excess of the amount required to be paid
27 during such period to the family by a court order shall
28 be paid to the obligee; and

29 (4) Such amounts as are in excess of amounts required
30 to be distributed under subdivisions (1), (2) and (3) of
31 this subsection shall be: (A) Paid by the office to the
32 appropriate administrative unit of the department of
33 health and human resources (with appropriate reim-

34 bursement of the federal government to the extent of its
35 participation in the financing) as reimbursement for any
36 past assistance payments made to the family for which
37 the department has not been reimbursed; or (B) if no
38 assistance payments have been made by the department
39 which have not been repaid, such amounts shall be paid
40 to the obligee.

41 (b) (1) Whenever a family for whom support payments
42 have been collected and distributed under the provisions
43 of this chapter ceases to receive assistance from the
44 department of health and human resources, the office
45 shall provide notice to the family of their rights with
46 regard to a continuation of services. Unless notified by
47 the family that services are no longer desired, the office
48 shall continue to collect amounts of support payments
49 which represent monthly support payments from the
50 obligor and pay any amount so collected, which repre-
51 sents monthly support payments, to the family (without
52 requiring any formal reapplication and without the
53 imposition of any application fee) on the same basis as
54 in the case of other obligees who are not receiving
55 assistance from the department of health and human
56 resources.

57 (2) So much of any amounts of support so collected as
58 are in excess of the payments required to be made in
59 subdivision (1) of this subsection shall be paid, first, to
60 the obligee until all past due support owed to the family
61 by the obligor has been paid. After all arrearages owing
62 to the family have been paid, any amounts of support
63 collected which are in excess of the required support
64 payments shall be distributed in the manner provided
65 by paragraphs (A) and (B), subdivision (4), subsection
66 (a) of this section with respect to excess amounts
67 described in subsection (a) of this section.

68 (c) (1) Notwithstanding the preceding provisions of
69 this section, amounts collected by the office as child sup-
70 port for months in any period on behalf of a child for
71 whom the department of health and human resources is
72 making foster care maintenance payments shall:

73 (A) Be paid by the office to the appropriate adminis-

74 trative unit of the department of health and human
75 resources to the extent necessary to reimburse the
76 department for foster care maintenance payments made
77 with respect to the child during such period (with
78 appropriate reimbursement of the federal government
79 to the extent of its participation in financing);

80 (B) Be paid to the appropriate administrative unit of
81 the department of health and human resources to the
82 extent that the amounts collected exceed the foster care
83 maintenance payments made with respect to the child
84 during such period but do not exceed the amounts
85 required by a court order to be paid as support on behalf
86 of the child during such period; and the department of
87 health and human resources may use the payments in
88 the manner it determines will serve the best interests
89 of the child, including setting such payments aside for
90 the child's future needs or making all or a part thereof
91 available to the person responsible for meeting the
92 child's day-to-day needs; and

93 (C) Be paid to the appropriate administrative unit of
94 the department of health and human resources if any
95 portion of the amounts collected remains after making
96 the payments required under paragraphs (A) and (B) of
97 this subdivision, to the extent that such portion is
98 necessary to reimburse the department of health and
99 human resources (with appropriate reimbursement to
100 the federal government to the extent of its participation
101 in the financing), for any past foster care maintenance
102 payments, or payments of aid to families with dependent
103 children which were made with respect to the child (and
104 with respect to which past collections have not pre-
105 viously been retained);

106 (2) Any balance of the amounts required to be paid
107 under the provisions of subdivision (1) shall be paid to
108 the appropriate administrative unit of the department
109 of health and human resources, for use by the depart-
110 ment in accordance with paragraph (B) of this subdivi-
111 sion.

112 (d) Any payment required to be made under the

113 provisions of this section to a family shall be made to
114 the resident parent, legal guardian or caretaker relative
115 having custody of or responsibility for the child or
116 children.

117 (e) The director shall establish bonding requirements
118 for employees of the office who receive, disburse, handle,
119 or have access to cash.

120 (f) The director shall maintain methods of administra-
121 tion which are designed to assure that employees of the
122 office responsible for handling cash receipts shall not
123 participate in accounting or operating functions which
124 would permit them to conceal in the accounting records
125 the misuse of cash receipts: *Provided*, That the director
126 may provide for exceptions to this requirement in the
127 case of sparsely populated areas in this state where the
128 hiring of unreasonable additional staff in the local office
129 would otherwise be necessary.

§48A-2-15. Obtaining support from federal tax refunds.

1 The director shall, by legislative rule, place in effect
2 procedures necessary for the office to obtain payment of
3 past due support from federal tax refunds from
4 overpayments made to the secretary of the treasury of
5 the United States, and shall take all steps necessary to
6 implement and utilize such procedures.

§48A-2-23. Access to records, confidentiality.

1 (a) All records in the possession of the child advocate
2 office, including records in the possession of the
3 children's advocate concerning an individual case of
4 child or spousal support, shall be kept confidential and
5 shall not be released except as provided below:

6 (1) Records shall be disclosed or withheld as required
7 by federal law or regulations promulgated thereunder
8 notwithstanding other provisions of this section.

9 (2) The phone number, address, employer and other
10 information regarding the location of the obligor, the
11 obligee and the child shall only be disclosed: (A) Upon
12 his or her written consent, to the person whom the
13 consent designates; or (B) notwithstanding subdivision

14 (3), to the obligee, the obligor, the child or the caretaker
15 or representative of the child, upon order of a court if
16 the court finds that the disclosure is for a bona fide
17 purpose, is not contrary to the best interest of a child
18 and does not compromise the safety of any party:
19 *Provided*, That the identity and location of the employer
20 may be disclosed on the letters, notices and pleadings
21 of the child advocate office as necessary and convenient
22 for the determination of support amounts and the
23 establishment, investigation, modification, enforcement,
24 collection and distribution of support.

25 (3) Information and records other than the phone
26 number, address, employer and information regarding
27 the location of the obligor, the obligee and the child shall
28 be disclosed to the obligor, the obligee, the child or the
29 caretaker of the child or his or her duly authorized
30 representative, upon his or her written request:
31 *Provided*, That when the obligor requests records other
32 than collection and distribution records, financial
33 records relevant to the determination of the amount of
34 support pursuant to the guidelines, or records the
35 obligor has supplied, the child advocate office shall mail
36 a notice by first class mail to the last known address of
37 the obligee notifying him or her of the request. The
38 notice shall advise the obligee of his or her right to
39 object to the release of records on the grounds that the
40 records are not relevant to the determination of the
41 amount of support, or the establishment, modification,
42 enforcement, collection or distribution of support. The
43 notice shall also advise the obligee of his or her right
44 to disclosure of records provided in this section in order
45 to determine what records the child advocate office may
46 have. In the event of any objection, the children's
47 advocate shall determine whether or not the information
48 shall be released.

49 (4) Information in specific cases may be released as
50 is necessary or to determine the identity, location,
51 employment, income and assets of an obligor.

52 (5) Information and records may be disclosed to the
53 department of vital statistics, department of employ-
54 ment security, the department of workers' compensa-

55 tion, state tax department and the internal revenue
56 service, or other state or federal agencies or depart-
57 ments as may be necessary or desirable in obtaining any
58 address, employment, wage or benefit information for
59 the purpose of determining the amount of support or
60 establishing, enforcing, collecting and distributing
61 support.

62 (b) Any person who willfully violates this section shall
63 be guilty of a misdemeanor, and, upon conviction
64 thereof, shall be fined not less than one hundred nor
65 more than one thousand dollars, or confined in jail not
66 more than six months, or both fined and imprisoned.

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-3a. Representation by the children's advocate.

1 The Legislature recognizes a paramount interest of
2 the state in the establishment and enforcement of family
3 obligations as a function of the state in protecting the
4 health and welfare of the citizens of the state.
5 Accordingly, the state of West Virginia is, by operation
6 of law, a party in actions and proceedings arising from
7 the rights and obligations of persons involved in family
8 law issues. The Legislature recognizes that the child-
9 ren's advocates, with the duties assigned to them under
10 the provisions of this chapter, represent the interests of
11 the state in carrying out such duties. The Legislature
12 further recognizes that, at times, the interests of the
13 state, while being advanced by a children's advocate,
14 may coincide with the interests of the child, the obligee,
15 the obligor, or other persons, as the case may be, and
16 the children's advocate may therefore actively advance
17 the interests of one or more such persons while fur-
18 thering the interests of the state. It is the intent of the
19 Legislature that under such circumstances, the fact that
20 the children's advocate has actively advanced the
21 interests of a party other than the state shall not
22 preclude the children's advocate from advancing
23 interests adverse to such party.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

§48A-4-1. Appointment of family law masters; term of office; vacancy; qualifications; removal; compensation and expenses; budget; location of offices; matters to be heard by master; fees for hearings; notice of master's hearing; content of notice; determination of issues by consent; hearing.

1 (a) On or before the fifteenth day of September, one
2 thousand nine hundred eighty-six, the governor shall
3 appoint family law masters in such numbers and to
4 serve such areas of the state as provided for under the
5 provisions of this article, and such initial appointments
6 of individuals as family law masters shall be for a term
7 ending on the thirtieth day of June, one thousand nine
8 hundred ninety. Thereafter, the length of the term of the
9 office of family law master shall be four years, with
10 terms commencing on the first day of July, one thousand
11 nine hundred ninety, and on a like date in every fourth
12 year thereafter, and ending on the thirtieth day of June,
13 one thousand nine hundred ninety-four, and on a like
14 date in every fourth year thereafter. Upon the expira-
15 tion of his or her term, a family law master may
16 continue to perform the duties of the office until his or
17 her successor is appointed, or for sixty days after the
18 date of the expiration of the master's term, whichever
19 is earlier. If from any cause a vacancy shall occur in the
20 office of family law master, the governor shall, within
21 thirty days after such vacancy occurs, fill such vacancy
22 by appointment for the unexpired term: *Provided*, That
23 if the remaining portion of the unexpired term to be
24 filled is less than one year, the governor may, in his
25 discretion, simultaneously appoint an individual to the
26 unexpired term and to the next succeeding full four-
27 year term. An individual may be reappointed to
28 succeeding terms as a family law master to serve in the
29 same or a different region of the state.

30 (b) No individual may be appointed to serve as a
31 family law master unless he or she is a member in good
32 standing of the West Virginia state bar.

33 (c) Removal of a master during the term for which he
34 or she is appointed shall be only for incompetency,

35 misconduct, neglect of duty, or physical or mental
36 disability.

37 (d) A family law master may not engage in any other
38 business, occupation or employment inconsistent with
39 the expeditious, proper and impartial performance of
40 his or her duties as a judicial officer. Family law
41 masters who do not engage in the practice of criminal
42 law shall be exempted from the appointments in
43 indigent cases which would otherwise be required
44 pursuant to article twenty-one, chapter twenty-nine of
45 this code.

46 (e) All family law masters, and all necessary clerical
47 and secretarial assistants employed in the offices of
48 family law masters, shall be deemed to be officers and
49 employees in the judicial branch of state government.
50 The director of the child advocate office and the
51 commissioner of the division of human services shall
52 enter into an agreement with the administrative office
53 of the supreme court of appeals whereby the office and
54 the division shall contract to pay the administrative
55 office of the supreme court of appeals for the services
56 of the family law masters required to be furnished
57 under the provisions of this chapter which are not
58 otherwise payable from the family law masters fund
59 created under the provisions of section twenty-two,
60 article two of this chapter.

61 Each county commission of this state shall enter into
62 an agreement with the administrative office of the
63 supreme court of appeals whereby the administrative
64 office of the supreme court of appeals shall contract to
65 pay to the county commission a reasonable amount as
66 rent for premises furnished by the county commission
67 to the family law master and its staff, which premises
68 shall be adequate for the conduct of the duties required
69 of such master under the provisions of this chapter.

70 (f) A family law master appointed under the provi-
71 sions of this article shall receive as full compensation for
72 his or her services an annual salary of thirty-five
73 thousand dollars. The secretary-clerk of the family law
74 master shall receive an annual salary of sixteen

75 thousand five hundred dollars and shall be appointed by
76 the family law master and serve at his or her will and
77 pleasure. Disbursement of salaries shall be made by or
78 pursuant to the order of the director of the administra-
79 tive office of the supreme court of appeals.

80 (g) Family law masters serving under the provisions
81 of this article shall be allowed their actual and necessary
82 expenses incurred in the performance of their duties.
83 Such expenses and compensation shall be determined
84 and paid by the director of the administrative office of
85 the supreme court of appeals under such regulations as
86 he or she may prescribe with the approval of the
87 supreme court of appeals.

88 (h) The offices of the family law masters shall be
89 distributed geographically so as to provide an office of
90 the family law master for each of the following regions:

- 91 (1) The counties of Brooke, Hancock and Ohio;
- 92 (2) The counties of Marshall, Tyler and Wetzel;
- 93 (3) The counties of Pleasants, Ritchie, Wirt and Wood;
- 94 (4) The counties of Calhoun, Jackson and Roane;
- 95 (5) The counties of Mason and Putnam;
- 96 (6) The county of Cabell;
- 97 (7) The counties of McDowell and Wyoming;
- 98 (8) The counties of Logan and Mingo;
- 99 (9) The county of Kanawha;
- 100 (10) The county of Raleigh;
- 101 (11) The counties of Mercer and Summers;
- 102 (12) The counties of Fayette and Nicholas;
- 103 (13) The counties of Greenbrier, Pocahontas and
104 Monroe;
- 105 (14) The counties of Braxton, Clay, Gilmer and
106 Webster;
- 107 (15) The counties of Doddridge, Harrison, Lewis and
108 Upshur;

- 109 (16) The counties of Marion and Taylor;
- 110 (17) The counties of Monongalia and Preston;
- 111 (18) The counties of Barbour, Randolph and Tucker;
- 112 (19) The counties of Grant, Hampshire, Hardy,
113 Mineral and Pendleton;
- 114 (20) The counties of Berkeley, Jefferson and Morgan;
115 and
- 116 (21) The counties of Boone, Lincoln and Wayne.
- 117 The governor shall appoint two masters to the office
118 of the family law master for the region of Kanawha
119 County. In each of the other regions defined by this
120 subsection, the governor shall appoint one person as
121 family law master from such region. Nothing contained
122 herein shall prohibit the chief justice of the supreme
123 court of appeals from temporarily assigning, from time
124 to time as caseload may dictate, a family law master
125 from one geographical region to another geographical
126 region.
- 127 (i) A circuit court or the chief judge thereof shall refer
128 to the master the following matters for hearing to be
129 conducted pursuant to section two of this article:
130 *Provided*, That on its own motion or upon motion of a
131 party, the circuit judge may revoke the referral of a
132 particular matter to a master if the master is recused,
133 if the matter is uncontested, or for other good cause, or
134 if the matter will be more expeditiously and inexpen-
135 sively heard by the circuit judge without substantially
136 affecting the rights of parties in actions which must be
137 heard by the circuit court:
- 138 (1) Actions to obtain orders of support brought under
139 the provisions of section one, article five of this chapter;
- 140 (2) All actions to establish paternity under the
141 provisions of article six of this chapter: *Provided*, That
142 all actions wherein either or both of the parties have
143 demanded a trial by jury of the law and the facts shall
144 be heard by the circuit court;
- 145 (3) All motions for pendente lite relief affecting child

146 custody, visitation, child support or spousal support,
147 wherein either party has requested such referral or the
148 court on its own motion in individual cases or by general
149 order has referred such motions to the master: *Provided*,
150 That if the circuit court determines, in its discretion,
151 that the pleadings raise substantial issues concerning
152 the identification of separate property or the division of
153 marital property which may have a bearing on an
154 award of support, the court may decline to refer a
155 motion for support pendente lite to the family law
156 master;

157 (4) All petitions for modification of an order involving
158 child custody, child visitation, child support or spousal
159 support;

160 (5) All actions for divorce, annulment or separate
161 maintenance brought pursuant to article two, chapter
162 forty-eight of this code: *Provided*, That an action for
163 divorce, annulment or separate maintenance which does
164 not involve child custody or child support shall be heard
165 by the circuit judge if, at the time of the filing of the
166 action, the parties file a written property settlement
167 agreement which has been signed by both parties;

168 (6) All actions wherein an obligor is contesting the
169 enforcement of an order of support through the with-
170 holding from income of amounts payable as support or
171 is contesting an affidavit of accrued support, filed with
172 a circuit clerk, which seeks to collect arrearages;

173 (7) All actions commenced under the provisions of
174 article seven of this chapter or under the provisions of
175 the revised uniform reciprocal enforcement of support
176 act of any other state; and

177 (8) Proceedings for the enforcement of support,
178 custody or visitation orders: *Provided*, That contempt
179 actions shall be heard by a circuit judge.

180 (j) The payment of initial fees for a hearing before a
181 master shall be paid before the commencement of the
182 hearing. Any additional hourly fees beyond the initial
183 fee shall be paid at the conclusion of the hearing, unless
184 a party is excused from payment thereof under the

185 provisions of section one, article two, chapter fifty-nine
186 of this code. Such initial fees may be paid at any time
187 prior to such hearing, but shall not be required at the
188 time the action is filed, and no advance payment shall
189 be required for additional fees beyond the initial fees
190 required by this section. Any payment of fees for a
191 hearing shall be refunded by the clerk of the circuit
192 court if the master verifies that such hearing was not
193 held, upon the request of the person paying such fees.

194 (k) Fees for hearings before a master shall be taxed
195 as court costs, which costs may be assessed against
196 either party or apportioned between the parties, in the
197 discretion of the master. The assessment of court costs
198 shall be made at the conclusion of the hearing and
199 included as findings in each case of a master's recom-
200 mended order. The fees for hearings before a master
201 shall be as follows:

202 (1) For an action to establish an order of support, fifty
203 dollars;

204 (2) For an action to establish paternity, one hundred
205 dollars;

206 (3) For a motion for pendente lite relief affecting
207 custody, visitation, child support or spousal support,
208 fifty dollars;

209 (4) For a petition for modification of an order
210 involving child custody, child visitation, child support or
211 spousal support, fifty dollars: *Provided*, That if the
212 matter is contested, the fee shall be fifty dollars for the
213 first hour or any portion thereof, and thirty dollars per
214 hour for each subsequent hour or any portion thereof;

215 (5) For an uncontested divorce action, fifty dollars;

216 (6) For a proceeding for the enforcement of an order,
217 fifty dollars: *Provided*, That if the matter is contested,
218 the fee shall be fifty dollars for the first hour or any
219 portion thereof, and thirty dollars per hour for each
220 subsequent hour or any portion thereof; and

221 (7) For a contested divorce action matured for final
222 hearing, fifty dollars for the first hour or any portion

223 thereof, and thirty dollars per hour for each subsequent
224 hour or any portion thereof.

225 (l) Persons entitled to notice of a master's hearing
226 shall be timely informed of:

227 (1) The time, place and nature of the hearing;

228 (2) The legal authority and jurisdiction under which
229 the hearing is to be held; and

230 (3) The matters of fact and law asserted.

231 (m) The master shall give all interested parties
232 opportunity for the submission and consideration of
233 facts, arguments, offers of settlement or proposals of
234 adjustment when time, the nature of the proceedings
235 and the public interest permit. To the extent that the
236 parties are unable to settle or compromise a controversy
237 by consent, the master shall provide the parties a
238 hearing and make a recommended order in accordance
239 with the provisions of sections two and four of this
240 article.

241 (n) The master who presides at the reception of
242 evidence pursuant to section two of this article shall
243 prepare the default order or make and enter the
244 pendente lite order provided for in section three of this
245 article, or make the recommended order required by
246 section four of this article, as the case may be. Except
247 to the extent required for disposition of ex parte matters
248 as authorized by this chapter, a master may not consult
249 a person or party on a fact in issue, unless on notice and
250 opportunity for all parties to participate; nor shall the
251 master attempt to supervise or direct an employee or
252 agent engaged in the performance of investigative or
253 prosecuting functions for a prosecuting attorney, the
254 division of human services or any other agency or
255 political subdivision of this state.

**ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT
OBLIGATIONS AND VISITATION.**

§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

§48A-5-3. Withholding from income of amounts payable as support.

§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

1 (a) The total of any matured, unpaid installments of
2 child support required to be paid by an order entered
3 or modified by a court of competent jurisdiction, or by
4 the order of a magistrate court of this state under the
5 prior enactments of this code, shall stand, by operation
6 of law, as a decretal judgment against the obligor owing
7 such support. The amount of unpaid support shall bear
8 interest from the date it accrued, at a rate of ten dollars
9 upon one hundred dollars per annum, and proportion-
10 ately for a greater or lesser sum, or for a longer or
11 shorter time. A child support order shall not be
12 retroactively modified so as to cancel or alter accrued
13 installments of support. When an obligor is in arrears
14 in the payment of support which is required to be paid
15 by the terms of such order, an obligee may file an
16 "Affidavit of Accrued Support" with the clerk of the
17 circuit court, setting forth the particulars of such
18 arrearage, and requesting a writ of execution, sugges-
19 tion or suggestee execution. If the duty of support is
20 based upon a foreign support order, the obligee shall
21 first register the foreign support order with the clerk
22 in the same manner and with the same effect as such
23 orders are registered in actions under the revised
24 uniform reciprocal enforcement of support act, sections
25 thirty-four, thirty-five, thirty-seven and thirty-eight,
26 article seven of this chapter: *Provided*, That a copy of
27 the reciprocal enforcement of support law of the state
28 in which the order was made need not be filed with the
29 clerk.

30 (b) The affidavit may be filed in the county wherein
31 the obligee or the obligor resides, or where the obligor's
32 source of income is located.

33 (c) The affidavit may be filed when a payment
34 required by such order has been delinquent, in whole
35 or in part, for a period of fourteen days.

36 (d) The affidavit shall:

37 (1) Identify the obligee and obligor by name and

38 address, and shall list the obligor's social security
39 number or numbers, if known;

40 (2) Name the court which entered the support order
41 and set forth the date of such entry;

42 (3) State the total amount of accrued support which
43 has not been paid by the obligor;

44 (4) List the date or dates when support payments
45 should have been paid but were not; and the amount of
46 each such delinquent payment; and

47 (5) If known, the name and address of the obligor's
48 source of income.

49 (e) Upon receipt of the affidavit, the clerk shall issue
50 a writ of execution, suggestion or suggestee execution,
51 and shall mail a copy of the affidavit and a notice of the
52 filing of the affidavit to the obligor, at his last known
53 address. If the children's advocate is not acting on behalf
54 of the obligee in filing the affidavit, the clerk shall
55 forward a copy of the affidavit and the notice of the
56 filing to the children's advocate.

57 (f) The notice provided for in subsection (e) of this
58 section shall inform the obligor that if he or she desires
59 to contest the affidavit on the grounds that the amount
60 claimed to be in arrears is incorrect or that a writ of
61 execution, suggestion or suggestee execution is not
62 proper because of mistakes of fact, he or she must,
63 within fourteen days of the date of the notice: (1) Inform
64 the children's advocate in writing of the reasons why the
65 affidavit is contested and request a meeting with the
66 children's advocate; or (2) obtain a date for a hearing
67 before the family law master and mail written notice of
68 such hearing to the obligee and to the children's
69 advocate on a form prescribed by the administrative
70 office of the supreme court of appeals and made
71 available through the office of the clerk of the circuit
72 court.

73 (g) Upon being informed by an obligor that he or she
74 desires to contest the affidavit, the children's advocate
75 shall inform the court of such fact, and the court shall
76 require the obligor to give security, post a bond, or give

77 some other guarantee to secure payment of overdue
78 support.

79 (h) The clerk of the circuit court shall make available
80 form affidavits for use under the provisions of this
81 section. Such form affidavits shall be provided to the
82 clerk by the child advocate office. The notice of the filing
83 of an affidavit shall be in a form prescribed by the child
84 advocate office.

85 (i) Writs of execution, suggestions or suggestee
86 executions issued pursuant to the provisions of this
87 section shall have priority over any other legal process
88 under the laws of this state against the same income,
89 except for withholding from income of amounts payable
90 as support in accordance with the provisions of section
91 three of this article, and shall be effective despite any
92 exemption that might otherwise be applicable to the
93 same income.

94 (j) Notwithstanding any other provision of this code to
95 the contrary, the amount to be withheld from the
96 disposable earnings of an obligor pursuant to a sugges-
97 tee execution in accordance with the provisions of this
98 section shall be the same amount which could properly
99 be withheld in the case of a withholding order under the
100 provisions of subsection (e), section three of this article.

**§48A-5-3. Withholding from income of amounts payable
as support.**

1 (a) The withholding from an obligor's income of
2 amounts payable as spousal or child support shall be
3 enforced by the children's advocate in accordance with
4 the provisions of this section. Every support order
5 heretofore or hereafter entered by a circuit court or a
6 magistrate of this state and every support order entered
7 by a court of competent jurisdiction of another state
8 shall be considered to provide for an order of income
9 withholding in accordance with the provisions of section
10 fifteen-a or fifteen-b, article two, chapter forty-eight of
11 this code, notwithstanding the fact that such support
12 order does not in fact provide for such an order of
13 withholding.

14 (b) In any case in which immediate income withhold-
15 ing is not required, the children's advocate shall cause
16 the mailing of a notice to the obligor pursuant to this
17 section when the support payments required by the
18 order are in arrears in an amount equal to:

19 (1) One month's support, if the order requires support
20 to be paid in monthly installments;

21 (2) Four weeks' support, if the order requires support
22 to be paid in weekly or biweekly installments; or

23 (3) Two biweekly installments, if biweekly payments
24 are provided.

25 (c) If notice required by subsection (b) of this section
26 is appropriate, the children's advocate shall determine
27 the time for a meeting between the obligor and the
28 children's advocate and the time for a hearing before the
29 family law master, and shall then set forth in such
30 notice the times and places at which the meeting and
31 hearing will be held if withholding is contested. The
32 meeting and hearing may be scheduled on the same
33 date, but in no case shall the meeting with the advocate
34 be scheduled less than fifteen days after the date the
35 notice is mailed nor shall the hearing before the master
36 be scheduled more than twenty-one days after the date
37 the notice is mailed. The children's advocate shall send
38 such notice by first class mail to the delinquent obligor.
39 The notice shall inform the delinquent obligor of the
40 following:

41 (1) The amount owed;

42 (2) That it is proposed that there be withholding from
43 the obligor's income of amounts payable as support, and
44 that if withholding is uncontested, or is contested but
45 determined appropriate, the amount withheld will be
46 equal to the amount required under the terms of the
47 current support order, plus amounts for any outstanding
48 arrearages;

49 (3) The definition of "income" as defined in section
50 three, article one of this chapter;

51 (4) That the withholding will apply to the obligor's

52 present source of income and to any future source of
53 income;

54 (5) That any action by the obligor to purposefully
55 minimize his or her income will result in the enforce-
56 ment of support being based upon potential and not just
57 actual earnings;

58 (6) That payment of the arrearage after the date of
59 the notice is not a bar to such withholding;

60 (7) That if the obligor fails to appear at the meeting,
61 withholding will automatically occur as described in the
62 notice;

63 (8) That a mistake of fact exists only when there is
64 an error in the amount of current or overdue support
65 claimed in the notice, or there is a mistake as to the
66 identity of the obligor;

67 (9) That matters such as lack of visitation, inappro-
68 priateness of the support award, or changed financial
69 circumstances of the obligee or the obligor will not be
70 considered at any hearing held pursuant to the notice,
71 but may be raised by the filing of a separate petition;

72 (10) That if the obligor contests the withholding, in
73 writing, a meeting with the children's advocate will be
74 held at a time and place set forth in the notice, for the
75 purpose of attempting to settle any issues which are
76 contested, and that a hearing before the family law
77 master cannot be held until after the meeting with the
78 children's advocate occurs;

79 (11) That if the meeting with the children's advocate
80 fails to resolve the issues being contested, a hearing
81 before the family law master will be held at a time and
82 place set forth in the notice, and that following such
83 hearing, the master will make a recommended order to
84 the circuit court;

85 (12) That a master's recommended order as to
86 withholding will become effective when it is confirmed
87 and entered by the circuit court, and that if the obligor
88 disagrees with the master's recommended order, he or
89 she will be given the opportunity to make objections
90 known to the circuit court; and

91 (13) That if, while the withholding is being contested,
92 it is determined that the obligor is in arrears in an
93 amount equal to or greater than one month's support
94 obligation, but the amount of the arrearage is disputed,
95 then income withholding for the current payment of
96 support will be instituted, and may not be stayed
97 pending a final determination as to the amount of
98 arrearages due.

99 (d) Withholding should occur when the support order
100 provides for immediate income withholding, or if
101 immediate income withholding is not so provided, and
102 the withholding is contested, then after entry of the
103 master's recommended order by the circuit court. In any
104 case where withholding should occur, the source of
105 income shall proceed to withhold so much of the
106 obligor's income as is necessary to comply with the order
107 authorizing such withholding, up to the maximum
108 amount permitted under applicable law. Such withhold-
109 ing, unless otherwise terminated under the provisions of
110 this section, shall apply to any subsequent source of
111 income or any subsequent period of time during which
112 income is received by the obligor.

113 (e) Notwithstanding any other provision of this code
114 to the contrary which provides for a limitation upon the
115 amount which may be withheld from earnings through
116 legal process, the amount of an obligor's aggregate
117 disposable earnings for any given workweek which can
118 be withheld as support payments is to be determined in
119 accordance with the provisions of this subsection, as
120 follows:

121 (1) After ascertaining the status of the payment record
122 of the obligor under the terms of the support order, the
123 payment record shall be examined to determine whether
124 any arrearages are due for amounts which should have
125 been paid prior to a twelve-week period which ends with
126 the workweek for which withholding is sought to be
127 enforced.

128 (2) If none of the withholding is for amounts which
129 came due prior to such twelve-week period, then:

130 (A) When the obligor is supporting another spouse or

131 dependent child other than the spouse or child for whom
132 the proposed withholding is being sought, the amount
133 withheld may not exceed fifty percent of the obligor's
134 disposable earnings for that week; and

135 (B) When the obligor is not supporting another spouse
136 or dependent child as described in paragraph (A) of this
137 subdivision, the amount withheld may not exceed sixty
138 percent of the obligor's disposable earnings for that
139 week.

140 (3) If a part of the withholding is for amounts which
141 came due prior to such twelve-week period, then:

142 (A) Where the obligor is supporting another spouse or
143 dependent child other than the spouse or child for whom
144 the proposed withholding is being sought, the amount
145 withheld may not exceed fifty-five percent of the
146 obligor's disposable earnings for that week; and

147 (B) Where the obligor is not supporting another spouse
148 or dependent child as described in paragraph (A) of this
149 subdivision, the amount withheld may not exceed sixty-
150 five percent of the obligor's disposable earnings for that
151 week.

152 (4) In addition to the percentage limitations set forth
153 in subdivisions (2) and (3) of this subsection, it shall be
154 a further limitation that when current payments plus
155 arrearages are being withheld from salaries or wages
156 in no case shall the total amounts withheld for current
157 payments plus arrearages exceed the amounts withheld
158 for current payments by an amount greater than ten
159 percent of the obligor's disposable income.

160 (5) The provisions of this subsection shall apply
161 directly to the withholding of disposable earnings of an
162 obligor regardless of whether the obligor is paid on a
163 weekly, biweekly, monthly or other basis.

164 (6) If an obligor acts so as to purposefully minimize
165 his or her income and to thereby circumvent the
166 provisions of this section which provide for withholding
167 from income of amounts payable as support, the amount
168 to be withheld as support payments may be based upon
169 the obligor's potential earnings rather than his or her

170 actual earnings, and such obligor may not rely upon the
171 percentage limitations set forth in this subsection which
172 limit the amount to be withheld from disposable
173 earnings.

174 (f) The source of income of any obligor who is subject
175 to withholding, upon being given notice of withholding,
176 shall withhold from such obligor's income the amount
177 specified by the notice and pay such amount to the child
178 advocate office for distribution in accordance with the
179 provisions of section four, article three of this chapter.
180 The notice given to the source of income shall contain
181 only such information as may be necessary for the
182 source of income to comply with the withholding order.
183 Such notice to the source of income shall include, at a
184 minimum, the following:

185 (1) The amount to be withheld from the obligor's
186 disposable earnings, and a statement that the amount to
187 be withheld for support and other purposes, including
188 the fee specified under subdivision (3) of this subsection,
189 may not be in excess of the maximum amounts permit-
190 ted under section 303(b) of the federal consumer credit
191 protection act or limitations imposed under the provi-
192 sions of this code;

193 (2) That the source of income must send the amount
194 to be withheld from the obligor's income along with such
195 identifying information as may be required by the child
196 advocate office to the child advocate office within ten
197 days of the date the obligor is paid;

198 (3) That, in addition to the amount withheld under the
199 provisions of subdivision (1) of this subsection, the source
200 of income may deduct a fee, not to exceed one dollar,
201 for administrative costs incurred by the source of
202 income, for each withholding;

203 (4) That withholding is binding on the source of
204 income until further notice by the child advocate office;

205 (5) That the source of income is subject to a fine for
206 discharging an obligor from employment, refusing to
207 employ, or taking disciplinary action against any obligor
208 because of the withholding;

209 (6) That if the source of income fails to withhold
210 income in accordance with the provisions of the notice,
211 the source of income is liable for the accumulated
212 amount the source of income should have withheld from
213 the obligor's income;

214 (7) That the withholding under the provisions of this
215 section shall have priority over any other legal process
216 under the laws of this state against the same income,
217 and shall be effective despite any exemption that might
218 otherwise be applicable to the same income;

219 (8) That the source of income may combine withheld
220 amounts from obligors' income in a single payment to
221 the child advocate office and separately identify the
222 portion of the single payment which is attributable to
223 each obligor;

224 (9) That the source of income must implement
225 withholding no later than the first pay period or first
226 date for payment of income that occurs after fourteen
227 days following the date the notice to the source of income
228 was mailed; and

229 (10) That the source of income must notify the child
230 advocate office promptly when the obligor terminates
231 his or her employment or otherwise ceases receiving
232 income from the source of income, and must provide the
233 obligor's last known address and the name and address
234 of the obligor's new source of income, if known.

235 (g) The director shall, by administrative rule, estab-
236 lish procedures for promptly refunding to obligors
237 amounts which have been improperly withheld under
238 the provisions of this section.

239 (h) A source of income must send the amount to be
240 withheld from the obligor's income to the child advocate
241 office and must notify the child advocate office of the
242 date of withholding, within ten days of the date the
243 obligor is paid.

244 (i) In addition to any amounts payable as support
245 withheld from the obligor's income, the source of income
246 may deduct a fee, not to exceed one dollar, for adminis-
247 trative costs incurred by the source of income, for each
248 withholding.

249 (j) Withholding of amounts payable as support under
250 the provisions of this section is binding on the source of
251 income until further notice by the child advocate office.

252 (k) Every source of income who receives a notice of
253 withholding under the provisions of this section shall
254 implement withholding no later than the first pay
255 period or first date for the payment of income which
256 occurs after fourteen days following the date the notice
257 to the source of income was mailed.

258 (l) A source of income who employs or otherwise pays
259 income to an obligor who is subject to withholding under
260 the provisions of this section must notify the child
261 advocate office promptly when the obligor terminates
262 employment or otherwise ceases receiving income from
263 the source of income, and must provide the office with
264 the obligor's last known address and the name and
265 address of the obligor's new source of income, if known.

266 (m) A source of income who has more than a single
267 obligor who is subject to withholding from income under
268 the provisions of this article may combine all withheld
269 amounts into a single payment to the child advocate
270 office, with the portion thereof which is attributable to
271 each obligor being separately designated.

272 (n) A source of income is liable to an obligee, including
273 the state of West Virginia or the department of health
274 and human resources where appropriate, for any
275 amount which the source of income fails to withhold
276 from income due an obligor following receipt by such
277 source of income of proper notice under subsection (f)
278 of this section: *Provided*, That a source of income shall
279 not be required to vary the normal pay and disburse-
280 ment cycles in order to comply with the provisions of
281 this section.

282 (o) A source of income who knowingly and willfully
283 conceals the fact that the source of income is paying
284 income to an obligor, with the intent to avoid withhold-
285 ing from the obligor's income of amounts payable as
286 support, is guilty of a misdemeanor, and, upon convic-

287 tion thereof, shall be fined not more than one hundred
288 dollars.

289 (p) If the children's advocate makes a written request
290 to a source of income to provide information as to
291 whether the source of income has paid income to a
292 specific obligor, within the preceding sixty-day period,
293 the source of income shall, within fourteen days
294 thereafter, respond to such request, itemizing all such
295 income, if any, paid to the obligor during such sixty-day
296 period. A source of income shall not be liable, civilly or
297 criminally, for providing such information in good faith.

298 (q) Support collection under the provisions of this
299 section shall have priority over any other legal process
300 under the laws of this state against the same income,
301 and shall be effective despite any exemption that might
302 otherwise be applicable to the same income.

303 (r) Any source of income who discharges from
304 employment, refuses to employ, or takes disciplinary
305 action against any obligor subject to income withholding
306 required by this section because of the existence of such
307 withholding and the obligations or additional obligations
308 which it imposes on the source of income, shall be guilty
309 of a misdemeanor, and, upon conviction thereof, shall be
310 fined not less than five hundred dollars nor more than
311 one thousand dollars.

312 (s) In any case where immediate income withholding
313 is not required then, at any time following a period of
314 eighteen months during which the obligor has owed no
315 arrearages to the obligee or to the state of West Virginia
316 or any other state, if the obligee and obligor agree to
317 the termination of withholding and demonstrate to the
318 children's advocate that there is a reliable alternative
319 method by which to make the support payments, they
320 may request the children's advocate to terminate
321 withholding and such withholding from income may
322 cease until such time as further withholding is required
323 by law. The director of the child advocate office shall,
324 by legislative rule, establish state termination standards
325 which will ensure, at a minimum, that withholding will
326 not be terminated where there are indications that it is

327 unlikely that support will continue without such
 328 withholding. The mere fact that all arrearages have
 329 been paid shall not be a sufficient ground for the
 330 termination of withholding.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-5. Representation of parties.

1 (a) The children's advocate of the county where the
 2 action under this section is brought shall represent the
 3 state of West Virginia and shall litigate the action in the
 4 best interests of the child although the action is
 5 commenced in the name of a plaintiff listed in section
 6 one of this article.

7 (b) The defendant shall be advised of his right to
 8 counsel. In the event he files an affidavit that he is a
 9 poor person within the meaning of section one, article
 10 two, chapter fifty-nine of this code, counsel shall be
 11 appointed to represent him. The service and expenses of
 12 counsel shall be paid in accordance with the provisions
 13 of article twenty-one, chapter twenty-nine of this code:
 14 *Provided*, That the court shall make a finding of
 15 eligibility for appointed counsel in accordance with the
 16 requirements of said article and, if the person qualifies,
 17 any blood or tissue tests ordered to be taken shall be
 18 paid as part of the costs of the proceeding.

19 (c) The children's advocate shall litigate the action
 20 only to the extent of establishing paternity and estab-
 21 lishing and enforcing a child support order.

**ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT
 OF SUPPORT ACT.**

§48A-7-12. Children's advocate to represent the state and advance the
 interests of the child.

§48A-7-36. Children's advocate to represent state.

**§48A-7-12. Children's advocate to represent the state and
 advance the interests of the child.**

1 If this state is acting as an initiating state, the
 2 children's advocate shall represent the state of West
 3 Virginia and shall advance the best interests of the child
 4 in any proceedings under this article.

§48A-7-36. Children's advocate to represent state.

1 If this state is acting either as a rendering or a
2 registering state, the children's advocate shall represent
3 the state of West Virginia and shall advance the best
4 interests of the child in proceedings under sections
5 thirty-three through thirty-eight of this article.

CHAPTER 46

(Com. Sub. for S. B. 354—By Senator Pritt)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to granting circuit courts the authority to revise or alter an order of annulment or divorce or a decree of separate maintenance, to enjoin either party from molesting or interfering with the other, or imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other; and requiring orders revising or altering prior orders to be issued forthwith.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article two, 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 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

1 (a) Upon ordering a divorce or granting a decree of
2 separate maintenance, the court may require either
3 party to pay alimony in the form of periodic install-
4 ments, or a lump sum, or both, for the maintenance of
5 the other party. Payments of alimony and child support
6 are to be ordinarily made from a party's employment

7 income and other recurring earnings, but in cases where
8 the employment income and other recurring earnings
9 are not sufficient to adequately provide for payments of
10 alimony and child support, the court may, upon specific
11 findings set forth in the order, order the party required
12 to make such payments to make the same from the
13 corpus of his or her separate estate. An award of such
14 relief shall not be disproportionate to a party's ability
15 to pay as disclosed by the evidence before the court.

16 (b) Upon ordering the annulment of a marriage or a
17 divorce or granting of decree of separate maintenance,
18 the court may further order all or any part of the
19 following relief:

20 (1) The court may provide for the custody of minor
21 children of the parties, subject to such rights of
22 visitation, both in and out of the residence of the
23 custodial parent or other person or persons having
24 custody, as may be appropriate under the circumstan-
25 ces. In addition, the court may, in its discretion, make
26 such further order as it shall deem expedient, concern-
27 ing the grant of reasonable visitation rights to any
28 grandparent or grandparents of the minor children
29 upon application, if the grandparent or grandparents
30 are related to such minor child through a party:

31 (A) Whose whereabouts are unknown, or

32 (B) Who did not answer or otherwise appear and
33 defend the cause of action.

34 (2) The court may require either party to pay child
35 support in the form of periodic installments for the
36 maintenance of the minor children of the parties.

37 (3) As an incident to requiring the payment of alimony
38 or child support, the court may order either party to
39 continue in effect existing policies of insurance covering
40 the costs of health care and hospitalization of the other
41 party and the minor children of the parties: *Provided*,
42 That if the other party is no longer eligible to be covered
43 by such insurance because of the granting of an
44 annulment or divorce, the court may require a party to
45 substitute such insurance with a new policy to cover the

46 other party, or may consider the prospective cost of such
47 insurance in awarding alimony to be paid in periodic
48 installments. If there is no such existing policy or
49 policies, the court shall order such health care insurance
50 coverage to be paid for by the noncustodial parent, if
51 the court determines that such health care insurance
52 coverage is available to the noncustodial parent at a
53 reasonable cost. Payments made to an insurer pursuant
54 to this subdivision, either directly or by a deduction
55 from wages, shall be deemed to be alimony, child
56 support or installment payments for the distribution of
57 marital property, in such proportion as the court shall
58 direct: *Provided, however,* That if the court does not set
59 forth in the order that a portion of such payments is to
60 be deemed child support or installment payments for the
61 distribution of marital property, then all such payments
62 made pursuant to this subdivision shall be deemed to be
63 alimony: *Provided further,* That the designation of
64 insurance coverage as alimony under the provisions of
65 this subdivision shall not, in and of itself, give rise to
66 a subsequent modification of the order to provide for
67 alimony other than insurance for covering the costs of
68 health care and hospitalization.

69 (4) As an incident to requiring the payment of alimony
70 or child support, the court may grant the exclusive use
71 and occupancy of the marital home to one of the parties,
72 together with all or a portion of the household goods,
73 furniture and furnishings reasonably necessary for such
74 use and occupancy. Such use and occupancy shall be for
75 a definite period, ending at a specific time set forth in
76 the order, subject to modification upon the petition of
77 either party. Except in extraordinary cases supported
78 by specific findings set forth in the order granting
79 relief, a grant of the exclusive use and occupancy of the
80 marital home shall be limited to those situations where
81 such use and occupancy is reasonably necessary to
82 accommodate the rearing of minor children of the
83 parties. The court may require payments to third
84 parties in the form of home loan installments, land
85 contract payments, rent, payments for utility services,
86 property taxes, insurance coverage, or other expenses or
87 charges reasonably necessary for the use and occupancy

88 of the marital domicile. Payments made to a third party
89 pursuant to this subdivision for the benefit of the other
90 party shall be deemed to be alimony, child support or
91 installment payments for the distribution of marital
92 property, in such proportion as the court shall direct:
93 *Provided*, That if the court does not set forth in the order
94 that a portion of such payments is to be deemed child
95 support or installment payments for the distribution of
96 marital property, then all such payments made pursu-
97 ant to this subdivision shall be deemed to be alimony.
98 Nothing contained in this subdivision shall abrogate an
99 existing contract between either of the parties and a
100 third party, or affect the rights and liabilities of either
101 party or a third party under the terms of such contract.

102 (5) As an incident to requiring the payment of
103 alimony, the court may grant the exclusive use and
104 possession of one or more motor vehicles to either of the
105 parties. The court may require payments to third
106 parties in the form of automobile loan installments or
107 insurance coverage if available at reasonable rates, and
108 any such payments made pursuant to this subdivision
109 for the benefit of the other party shall be deemed to be
110 alimony or installment payments for the distribution of
111 marital property, as the court may direct. Nothing
112 contained in this subdivision shall abrogate an existing
113 contract between either of the parties and a third party,
114 or affect the rights and liabilities of either party or a
115 third party under the terms of such contract.

116 (6) Where the pleadings include a specific request for
117 specific property or raise issues concerning the equita-
118 ble division of marital property as defined in section one
119 of this article, the court shall order such relief as may
120 be required to effect a just and equitable distribution
121 of the property and to protect the equitable interests of
122 the parties therein.

123 (7) Unless a contrary disposition be found appropriate
124 and ordered pursuant to other provisions of this section,
125 then upon the motion of either party, the court may
126 compel the other party to deliver to the movant party
127 any of his or her separate estate which may be in the
128 possession or control of the respondent party, and may

129 make such further order as is necessary to prevent
130 either party from interfering with the separate estate
131 of the other.

132 (8) The court may enjoin either party from the
133 molesting or interfering with the other, or otherwise
134 imposing any restraint on the personal liberty of the
135 other, or interfering with the custodial or visitation
136 rights of the other.

137 (9) The court may order either party to take necessary
138 steps to transfer utility accounts and other accounts for
139 recurring expenses from the name of one party into the
140 name of the other party or from the joint names of the
141 parties into the name of one party. Nothing contained
142 in this subdivision shall affect the liability of the parties
143 for indebtedness on any such account incurred before
144 the transfer of such account.

145 (c) In any case where an annulment or divorce is
146 denied, the court shall retain jurisdiction of the case and
147 may order all or any portion of the relief provided for
148 in subsections (a) and (b) of this section which has been
149 demanded or prayed for in the pleadings.

150 (d) In any case where a divorce or annulment is
151 granted in this state upon constructive service of
152 process, and personal jurisdiction is thereafter obtained
153 of the defendant in such case, the court may order all
154 or any portion of the relief provided for in subsections
155 (a) and (b) of this section which has been demanded or
156 prayed for in the pleadings.

157 (e) At any time after the entry of an order pursuant
158 to the provisions of this section, the court may, upon the
159 verified petition of either of the parties, revise or alter
160 such order concerning the maintenance of the parties,
161 or either of them, and make a new order concerning the
162 same, issuing it forthwith, as the altered circumstances
163 or needs of the parties may render necessary to meet the
164 ends of justice. The court may also from time to time
165 afterward, on the verified petition of either of the
166 parties, revise or alter such order to grant relief
167 pursuant to subdivision (8), subsection (b) of this section,
168 and make a new order concerning the same, issuing it

169 forthwith, as the circumstances of the parties and the
170 benefit of children may require. The court may also
171 from time to time afterward, on the verified petition of
172 either of the parties or other proper person having
173 actual or legal custody of the minor child or children
174 of the parties, revise or alter such order concerning the
175 custody and support of the children, and make a new
176 order concerning the same, issuing it forthwith, as the
177 circumstances of the parents or other proper person or
178 persons and the benefit of the children may require:
179 *Provided*, That an order providing for child support
180 payments may be revised or altered for the reason, inter
181 alia, that the existing order provides for child support
182 payments in an amount that is less than eighty-five
183 percent or more than one hundred fifteen percent of the
184 amount that would be required to be paid under the
185 child support guidelines promulgated pursuant to the
186 provisions of section eight, article two, chapter forty-
187 eight-a of this code. In granting relief under this
188 subsection, the court may, where other means are not
189 conveniently available, alter any prior order of the court
190 with respect to the distribution of marital property, if
191 such property is still held by the parties, and if
192 necessary to give effect to a modification of alimony,
193 child support or child custody or necessary to avoid an
194 inequitable or unjust result which would be caused by
195 the manner in which the modification will affect the
196 prior distribution of marital property.

197 (f) In every case where a separation agreement is the
198 basis for an award of alimony, the court, in approving
199 the agreement, shall examine the agreement to ascer-
200 tain whether it clearly provides for alimony to continue
201 beyond the death of the payor party or to cease in such
202 event. Where alimony is to be paid pursuant to the terms
203 of a separation agreement which does not state whether
204 the payment of alimony is to continue beyond the death
205 of the payor party or is to cease, or where the parties
206 have not entered into a separation agreement and
207 alimony is to be awarded, the court shall specifically
208 state as a part of its order whether such payments of
209 alimony are to be continued beyond the death of the
210 payor party or cease.

211 (g) In every case where a separation agreement is the
212 basis for an award of alimony, the court, in approving
213 the agreement, shall examine the agreement to ascer-
214 tain whether it clearly provides for alimony to continue
215 beyond the remarriage of the payee party or to cease in
216 such event. Where alimony is to be paid pursuant to the
217 terms of a separation agreement which does not state
218 whether the payment of alimony is to continue beyond
219 the remarriage of the payee party or is to cease, or
220 where the parties have not entered into a separation
221 agreement and alimony is to be awarded, the court shall
222 specifically state as a part of its order whether such
223 payments of alimony are to be continued beyond the
224 remarriage of the payee party or cease.

225 (h) In addition to the statement provided for in
226 subsection (d), section thirteen of this article and in
227 addition or in lieu of the disclosure requirements set
228 forth in section thirty-three of this article, the court may
229 order accounts to be taken as to all or any part of
230 marital property or the separate estates of the parties,
231 and may direct that the accounts be taken as of the date
232 of the marriage, the date upon which the parties
233 separated, or any other time deemed to be appropriate
234 in assisting the court in the determination and equitable
235 division of property.

236 (i) In determining whether alimony is to be awarded,
237 or in determining the amount of alimony, if any, to be
238 awarded under the provisions of this section, the court
239 shall consider and compare the fault or misconduct of
240 either or both of the parties and the effect of such fault
241 or misconduct as a contributing factor to the deteriora-
242 tion of the marital relationship. However, alimony shall
243 not be awarded in any case where both parties prove
244 grounds for divorce and are denied a divorce, nor shall
245 an award of alimony under the provisions of this section
246 be ordered which directs the payment of alimony to a
247 party determined to be at fault, when, as a grounds
248 granting the divorce, such party is determined by the
249 court:

250 (1) To have committed adultery; or

251 (2) To have been convicted for the commission of a
252 crime which is a felony, subsequent to the marriage if
253 such conviction has become final; or

254 (3) To have actually abandoned or deserted his or her
255 spouse for six months.

256 (j) Whenever under the terms of this section or section
257 thirteen of this article a court enters an order requiring
258 the payment of alimony or child support, if the court
259 anticipates the payment of such alimony or child
260 support or any portion thereof to be paid out of
261 "disposable retired or retainer pay" as that term is
262 defined in 10 U.S.C. §1408, relating to members or
263 former members of the uniformed services of the United
264 States, the court shall specifically provide for the
265 payment of an amount, expressed in dollars or as a
266 percentage of disposable retired or retainer pay, from
267 the disposable retired or retainer pay of the payor party
268 to the payee party.

CHAPTER 47

(Com. Sub. for S. B. 569—By Senators Pritt, Wehrle, Wiedebusch, Spears,
Macnaughtan, Holliday, Boley, Dalton, Jones and Blatnik)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, nine and ten, article two-a, chapter forty-eight 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 three-a and eleven; and to amend article one-c, chapter sixty-two of said code by adding thereto a new section, designated section seventeen-c, all relating to the prevention of domestic violence; purposes and intent; definitions; concurrent jurisdiction; circumstances under which right to relief not affected; priority of petitions; effect of action for divorce, separate maintenance or annulment upon entitlement to relief;

responding officer's duty to inform parties and to transport or facilitate transportation of victims; filing of petition for relief; forms for petition; counterclaim; exclusion of other persons; venue; magistrate court assistance to persons desiring to file petition in other county; ex parte proceedings; burden of proof; notice of ex parte hearing; service of temporary orders, notice of full hearing and statement of rights upon respondent; permitting service of process on Sundays and legal holidays; statewide effect of temporary order; time for full hearing; burden of proof; evidence; exclusion of other persons; continuances; protective orders; burden of proof before issuance; relief which is mandatory; other relief permitted; effective dates of orders; amendments of orders; statewide effect of protective order; title to real property; issuance of certified orders to law-enforcement agencies; records to be kept by law-enforcement agencies; monthly reports; confidential information; statistical compilation and publication thereof; further definitions; the legislative rules for law-enforcement agencies and officers relating to duties of such officers with respect to domestic violence promulgated by governor's committee on crime, delinquency and correction; advisory committee; extent of disclosure of information; delivery of orders to law-enforcement officers; confidential files; expungement and destruction of orders; affidavits of consent to enter household delivered with order; actual notice of contents of order not preventing stay of order; duties of law-enforcement agency upon receiving call from person observing violation of order; arrests of persons violating orders; obtaining arrest warrants; contempt proceedings; jury trial; violation of order constituting misdemeanor; criminal penalties; and conditions of bail.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, nine and ten, article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto two new sections, designated sections three-a and eleven; and that article one-c, chapter sixty-two of said

code be amended by adding thereto a new section, designated section seventeen-c, all to read as follows:

Chapter

48. Domestic Relations.

62. Criminal Procedure.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-1. Purpose.

§48-2A-2. Definitions.

§48-2A-3. Jurisdiction; effect of complaining party leaving residence; priority of petitions filed under this article.

§48-2A-3a. Responding officer's duty to advise parties; duty to transport or facilitate transportation.

§48-2A-4. Commencement of proceeding; counterclaim.

§48-2A-5. Temporary orders of court; hearings.

§48-2A-6. Protective orders.

§48-2A-9. Record keeping and reporting.

§48-2A-10. Enforcement procedure for temporary and protective order.

§48-2A-11. Violation of temporary or protective orders; criminal penalties.

§48-2A-1. Purpose.

1 The purpose of this article is to prevent continuing
 2 abuse of one family or household member at the hands
 3 of another family or household member. Nothing
 4 contained in this article shall be construed as affecting
 5 the abused party's rights of action or claims which are
 6 otherwise provided for in this code or by common law.
 7 An abusing party will remain subject to a damage claim
 8 or charges of criminal conduct. It is the intent of the
 9 Legislature to provide temporary and immediate relief
 10 for an abused party so that he or she may make rational
 11 decisions regarding their future, thus enabling them to
 12 initiate procedures for appropriate permanent remedies.
 13 It is further intended that magistrates fully explain to
 14 persons alleging abuse, as defined in this article, the
 15 procedures involved pursuant to a domestic violence
 16 petition. Magistrates shall also inform such persons
 17 alleging abuse to the existence of the nearest residential
 18 or other protective facility and of the availability of
 19 counseling services for victims and their children. Any
 20 order entered by virtue of this article, unless it has
 21 expired by virtue of the provisions herein regarding

22 periods of time the order remains in effect, shall remain
23 in full force and effect upon the filing by either party
24 of a complaint for divorce, annulment or separate
25 maintenance.

§48-2A-2. Definitions.

1 As used in this article, unless the context clearly
2 requires otherwise:

3 (a) "Abuse" means the occurrence of one or more of
4 the following acts between family or household members
5 who reside together or who formerly resided together:

6 (1) Attempting to cause or intentionally, knowingly or
7 recklessly causing bodily injury with or without
8 dangerous or deadly weapons;

9 (2) Placing by physical menace another in fear of
10 imminent serious bodily injury;

11 (3) Creating fear of bodily injury by harassment,
12 psychological abuse or threatening acts;

13 (4) Sexual abuse.

14 (b) "Family or household member" means spouses,
15 persons living as spouses, persons who formerly resided
16 as spouses, parents, children and stepchildren, current
17 or former sexual or intimate partners, or other persons
18 related by consanguinity or affinity.

19 (c) "Sexual abuse" has the same meaning as the
20 definitions of "sexual assault" and "sexual abuse" in this
21 code.

§48-2A-3. Jurisdiction; effect of complaining party leaving residence; priority of petitions filed under this article.

1 Circuit courts and magistrate courts, as constituted
2 under chapter fifty of this code, shall have concurrent
3 jurisdiction over proceedings under this article. The
4 complaining party's right to relief under this article
5 shall not be affected by his or her leaving the residence
6 or household to avoid further abuse. Any petition filed
7 under the provisions of this article shall be given
8 priority over any other civil action before the court

9 except actions in which trial is in progress, and shall
10 be docketed immediately upon filing. Where a person is
11 a party to an action for divorce, separate maintenance
12 or annulment in which no order has been entered
13 pursuant to section thirteen, article two of this chapter,
14 such person shall, pending such action, remain entitled
15 to file for and obtain any relief provided by this article
16 until such an order is entered in such action. Where a
17 person has filed for relief provided by this article and
18 subsequently becomes a party to an action for divorce,
19 separate maintenance or annulment, such person shall,
20 pending such action, remain entitled to obtain any relief
21 provided by this article, and to again file for and obtain
22 any such relief, until an order is entered in such action
23 pursuant to section thirteen, article two of this chapter.
24 No person who is a party to a pending action for divorce,
25 separate maintenance or annulment in which an order
26 has been entered pursuant to section thirteen, article
27 two of this chapter, shall be entitled to file for or obtain
28 any relief provided by this article subsequent to the
29 entry of such an order until after the entry of an order
30 in such action which dismisses such action or which
31 grants or denies a divorce, separate maintenance or
32 annulment to such person.

**§48-2A-3a. Responding officer's duty to advise parties;
duty to transport or facilitate transportation.**

1 (a) Any law-enforcement officer responding to an
2 alleged incident of abuse shall inform the parties thereto
3 of the availability of the possible remedies provided by
4 this article and the possible applicability of the criminal
5 laws of this state.

6 (b) Any law-enforcement officer responding to an
7 alleged incident of abuse shall, in addition to providing
8 the information required in subsection (a) of this section,
9 provide transportation for, or facilitate transportation
10 of, the victim or victims, upon the request of such victim
11 or victims, to a shelter or the appropriate court where
12 there is reasonable cause to believe that such victim or
13 victims have suffered or are likely to suffer physical
14 injury.

§48-2A-4. Commencement of proceeding; counterclaim.

1 (a) A person may seek relief under this article for
2 himself or herself, or any parent or adult household
3 member may seek relief under this article on behalf of
4 a minor child, by filing a verified petition alleging abuse
5 by the respondent. No person shall be refused the right
6 to file a petition under the provisions of this article if
7 he or she presents facts sufficient under the provisions
8 of this article for the relief sought.

9 (b) The West Virginia supreme court of appeals shall
10 prescribe a form which shall be used for preparing a
11 petition under this article, and the court shall distribute
12 such forms to the clerk of the circuit court and
13 magistrate court of each county within the state.

14 (c) The respondent named in any petition alleging
15 abuse may file a counterclaim or raise any affirmative
16 defenses.

17 (d) No person accompanying a person who is seeking
18 to file a petition under the provisions of this article shall
19 be precluded from being present if his or her presence
20 is desired by the person seeking a petition unless the
21 person's behavior is disruptive to the proceeding or is
22 otherwise in violation of court rules.

23 (e) The action may be heard in the county in which
24 the abuse occurred or in the county in which the
25 defendant is living. If the parties are married, the action
26 may also be brought in the county in which an action
27 for divorce, annulment or separate maintenance be-
28 tween the parties may be brought as provided by section
29 eight, article two of this chapter.

30 (f) In the event a person who resides, temporarily or
31 permanently, in a county not described in subsection (e)
32 of this section desires to file a petition described in
33 subsection (a) of this section, such person may obtain
34 assistance in filing such a petition at a magistrate court
35 within the county of such place of temporary or
36 permanent residence. In such event, and upon request
37 of such person, a magistrate or the clerk of such
38 magistrate court shall:

39 (1) Provide to such person such forms and such
40 assistance as may be necessary for the filing of a petition
41 described in subsection (a) of this section;

42 (2) To the extent possible, contact and obtain from any
43 magistrate court described in subsection (e) of this
44 section chosen by the person seeking to file the petition
45 a hearing date for such petition; and

46 (3) Forward such petition to the magistrate court
47 described in subdivision (2) of this subsection for filing
48 together with any such other papers and documents
49 necessary to file the same.

§48-2A-5. Temporary orders of court; hearings.

1 (a) Upon filing of a verified petition under this article,
2 the court may enter such temporary orders as it may
3 deem necessary to protect the petitioner or minor
4 children from abuse, and, upon good cause shown, may
5 do so ex parte without the necessity of bond being given
6 by the petitioner. Clear and convincing evidence of
7 immediate and present danger of abuse to the petitioner
8 or minor children shall constitute good cause for
9 purposes of this section. If the respondent is not present
10 at the proceeding, the petitioner or the petitioner's legal
11 representative shall certify to the court, in writing, the
12 efforts which have been made to give notice to the
13 respondent or just cause why notice should not be
14 required. Following such proceeding, the court shall
15 order a copy of the petition to be served immediately
16 upon the respondent, together with a copy of any
17 protective order issued pursuant to the proceeding,
18 notice setting forth the time and place of the full hearing
19 and a statement of the right of the respondent to be
20 present and to be represented by counsel.
21 Notwithstanding any other provision of this code to the
22 contrary, all law-enforcement officers are hereby
23 authorized to serve all pleadings and orders filed or
24 entered pursuant to this article on Sundays and legal
25 holidays. Such initial protective order shall remain
26 effective until such time as a hearing is held. The order
27 shall be in full force and effect in every county in this

28 state. The order shall state that it is in full force and
29 effect in every county in this state.

30 (b) Within five days following the issuance of the
31 court's temporary order, a full hearing shall be held at
32 which the petitioner must prove the allegation of abuse
33 by a preponderance of the evidence, or such petition
34 shall be dismissed. Copies of medical reports may be
35 admitted into evidence to the same extent as though the
36 original thereof, upon proper authentication, by the
37 custodian of such records. At the hearing, the court may
38 make any protective order or approve any consent
39 agreement authorized by this article.

40 (c) No person requested by a party to be present
41 during a hearing held under the provisions of this
42 article shall be precluded from being present unless
43 such person is to be a witness in the proceeding and a
44 motion for sequestration has been made and such has
45 been granted or is found by the court to be disruptive
46 or otherwise in violation of court rules.

47 (d) If a hearing is continued, the court may make or
48 extend such temporary orders as it deems necessary.

§48-2A-6. Protective orders.

1 (a) At the conclusion of the hearing and if the
2 petitioner has proven the allegations of abuse by a
3 preponderance of the evidence, then the court shall issue
4 a protective order which shall direct the respondent to
5 refrain from abusing the petitioner and/or the minor
6 children, and may also include:

7 (1) Granting possession to the petitioner of the
8 residence or household to the exclusion of the defendant
9 when the residence or household is jointly owned or
10 leased by the parties;

11 (2) When the respondent has a duty to support the
12 petitioner or minor children living in the residence or
13 household and the respondent is the sole owner or lessee,
14 granting possession to the petitioner of the residence or
15 household to the exclusion of the respondent or by
16 consent agreement allowing the respondent to provide
17 suitable alternate housing;

18 (3) Awarding temporary custody of or establishing
19 temporary visitation rights with regard to minor
20 children;

21 (4) Ordering the respondent to pay to the petitioner
22 a sum for temporary support and maintenance of the
23 abused party. This order is of a temporary nature and,
24 on the sixtieth day following issuance of the order, that
25 portion of the order requiring the respondent to pay
26 support becomes void unless the beneficiary of that
27 order has filed a petition for divorce with a prayer for
28 temporary support and maintenance under section
29 thirteen, article two of this chapter, or has initiated an
30 action for separate maintenance under section twenty-
31 eight, article two of this chapter. When there is a
32 subsequent ruling on a petition for support under
33 section thirteen, article two of this chapter, that portion
34 of the order requiring the respondent to pay support
35 becomes void;

36 (5) Ordering the respondent to refrain from entering
37 the school, business or place of employment of the
38 petitioner or household members or family members for
39 the purpose of violating the protective order;

40 (6) Directing the parties or a party to participate in
41 counseling;

42 (7) Ordering the respondent to refrain from contact-
43 ing, telephoning, communicating, harassing or verbally
44 abusing the petitioner in any public place.

45 (b) Any protective order shall be for a fixed period of
46 time not to exceed sixty days. The court may amend its
47 order at any time upon subsequent petition filed by
48 either party. If the court enters an initial order for a
49 period of less than sixty days, it shall, after notice and
50 hearing, extend its initial order for the full sixty day
51 period if it finds the petitioner continues to need
52 protection from abuse. The order shall be in full force
53 and effect in every county in this state. The order shall
54 state that it is in full force and effect in every county
55 in this state.

56 (c) No order under this article shall in any manner
57 affect title to any real property.

58 (d) Certified copies of any order made under the
59 provisions of this article shall be issued to the petitioner,
60 the respondent and any law-enforcement agency having
61 jurisdiction to enforce the order or agreement, including
62 the city police, the county sheriff's office or local office
63 of the state police.

§48-2A-9. Record keeping and reporting.

1 (a) Each law-enforcement agency shall maintain
2 records on all incidents of family or household abuse
3 reported to it, and shall monthly make and deliver to
4 the department of public safety a report on a form
5 prescribed by the department, listing all such incidents
6 of family or household abuse. Such reports shall include:

7 (1) The age and sex of the abused and abusing parties;

8 (2) The relationship between the parties;

9 (3) The type and extent of abuse;

10 (4) The number and type of weapons involved;

11 (5) Whether the law-enforcement agency responded to
12 the complaint and if so, the time involved, the action
13 taken and the time lapse between the agency's action
14 and the abused's request for assistance;

15 (6) Whether the complaining party reported having
16 filed complaints with regard to family or household
17 abuse on any prior occasion and if so, the number of
18 such prior complaints; and

19 (7) The effective dates and terms of any order of
20 protection issued prior to or following the incident to
21 protect the abused party: *Provided*, That no information
22 which will permit the identification of the parties
23 involved in any incident of abuse shall be included in
24 such report.

25 (b) The department of public safety shall tabulate and
26 analyze any statistical data derived from the reports
27 made by law-enforcement agencies pursuant to this
28 section, and publish a statistical compilation in the

29 department's annual uniform crime report, as provided
30 for in section twenty-four, article two, chapter fifteen of
31 this code.

32 (c) The statistical compilation shall include, but is not
33 limited to, the following:

34 (1) The number of family violence complaints
35 received;

36 (2) The number of complaints investigated;

37 (3) The number of complaints received from alleged
38 victims of each sex;

39 (4) The average time lapse in responding to such
40 complaints;

41 (5) The number of complaints received from alleged
42 victims who have filed such complaints on prior
43 occasions;

44 (6) The number of aggravated assaults and homicides
45 resulting from such repeat incidents;

46 (7) The type of police action taken in disposition of the
47 cases; and

48 (8) The number of alleged violations of orders of
49 protection.

50 (d) As used in this section, the terms "abuse" and
51 "family or household members" shall have the meanings
52 given them in section two of this article; and the term
53 "law-enforcement agency" shall include the West
54 Virginia department of health and human resources in
55 those instances of child abuse reported to the depart-
56 ment which are not otherwise reported to any other law-
57 enforcement agency.

58 (e) The governor's committee on crime, delinquency
59 and correction shall develop and promulgate rules for
60 state, county and municipal law-enforcement officers
61 and law-enforcement agencies regarding the duties of
62 law-enforcement officers and law-enforcement agencies
63 with respect to domestic violence. The notice of the
64 public hearing on the rules shall be published before the
65 first day of July, one thousand nine hundred ninety-one.

66 Prior to the publication of the proposed rules, the
67 governor's committee on crime, delinquency and correc-
68 tion shall convene a meeting or meetings of an advisory
69 committee to assist in the development of the rules. The
70 advisory committee shall be composed of persons invited
71 by the committee to represent state, county and local
72 law-enforcement agencies and officers, to represent
73 magistrates and court officials, to represent victims of
74 domestic violence, to represent shelters receiving
75 funding pursuant to article two-c of this chapter, and
76 to represent other persons or organizations who, in the
77 discretion of the committee, have an interest in the
78 rules. The rules and the revisions thereof as provided in
79 this section shall be promulgated as legislative rules in
80 accordance with chapter twenty-nine-a of this code.

81 (f) Nothing in this section shall be construed to
82 authorize the inclusion of information contained in a
83 report of an incident of abuse in any local, state,
84 interstate, national or international systems of criminal
85 identification pursuant to section twenty-four, article
86 two, chapter fifteen of this code: *Provided*, That nothing
87 in this section shall prohibit the department of public
88 safety from processing information through its criminal
89 identification bureau with respect to any actual charge
90 or conviction of a crime.

§48-2A-10. Enforcement procedure for temporary and protective order.

1 (a) Upon issuance of a temporary order as provided
2 in section five of this article, and service thereof upon
3 the respondent, or under relief granted in a protective
4 order as provided in subsections (a) and (b), section six
5 of this article of which the respondent has notice, a copy
6 of such order shall, no later than the close of the next
7 business day, be delivered by the court or the clerk to
8 a local office of the city police, the county sheriff and
9 the West Virginia department of public safety, where
10 it shall be placed in a confidential file, with access
11 provided only to the law-enforcement agency and the
12 respondent named on said order: *Provided*, That upon
13 the expiration of any order issued pursuant to section

14 five or six of this article, any such law-enforcement
15 agency which has any such order on file, shall imme-
16 diately expunge its confidential file of any reference
17 thereto and destroy all copies of such order in its
18 possession, custody or control. A sworn affidavit may be
19 executed by the party awarded exclusive possession of
20 the residence or household, pursuant to an order entered
21 under subsection (b), section six of this article, and
22 delivered to such law-enforcement agency simultane-
23 ously with any such order, giving his or her consent for
24 a law-enforcement officer to enter such residence or
25 household, without a warrant, to enforce such protective
26 order or temporary order. Orders shall be promptly
27 served upon the respondent. Failure to serve shall not
28 stay the effect of a valid order if the respondent has
29 actual notice of the existence and contents of the order.

30 (b) Any person who observes a violation of such order
31 or the violated party may call a local law-enforcement
32 agency, which shall verify the existence of a current
33 order, and shall direct a law-enforcement officer to
34 immediately investigate the alleged violation.

35 (c) Where a law-enforcement officer observes a
36 violation of a valid order, he or she may immediately
37 arrest the subject of the order. In cases of violation of
38 such orders occurring outside the presence of the
39 investigating officer, the petitioner may apply to a court
40 in session in the county in which the violation occurred
41 or the county in which the order was issued for a
42 warrant of arrest. If the court finds probable cause to
43 believe that a valid order has been violated, the court
44 shall issue such warrant for the arrest of the subject of
45 the order wherever he or she may be found.

46 (d) Where there is an arrest, the officer shall take the
47 arrested person before a court or a magistrate and upon
48 a finding of probable cause to believe a violation of an
49 order has taken place, the court or magistrate shall set
50 a time and place for a hearing, to take place within five
51 days, and serve forthwith upon the alleged violator an
52 order to show cause why he or she should not be held

53 in contempt for violation of the prior order, which unless
54 waived by the defendant shall be by trial by a jury of
55 six persons. The remedies provided by this section shall
56 be limited to violations of a temporary order or
57 protective order entered pursuant to subsection (a) or
58 (b), section six of this article.

**§48-2A-11. Violation of temporary or protective orders;
criminal penalties.**

1 Any person who shall knowingly and willfully violate
2 the terms of a protective order which provides the relief
3 authorized by subdivisions (1), (5) or (7), subsection (a),
4 section six of this article shall be guilty of a misdemea-
5 nor, and, upon conviction thereof, shall be confined in
6 the county jail for not more than thirty days, or fined
7 not more than five hundred dollars, or both fined and
8 imprisoned: *Provided*, That any person who shall abuse
9 another person in knowing and willful violation of the
10 terms of a temporary order or protective order issued
11 under the provisions of this article shall be guilty of a
12 misdemeanor, and, upon conviction thereof, shall be
13 confined in the county jail for a period of not less than
14 one day nor more than thirty days, which jail term shall
15 include actual confinement of not less than twenty-four
16 hours, and shall be fined not less than one hundred
17 dollars nor more than five hundred dollars.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1C. BAIL.

**§62-1C-17c. Bail in cases of crimes between family or
household members.**

1 When the offense charged is a crime against a family
2 or household member, it may be a condition of bond that
3 the defendant shall not have any contact whatsoever,
4 direct or indirect, verbal or physical, with the victim or
5 complainant.

CHAPTER 48

(S. B. 522—By Senators Chernenko, Humphreys, Burdette, Mr. President, Wiedebusch, Heck, Chafin, Bailey, Holliday, Wehrle, Pritt, Tomblin, M. Manchin, Craigo, Claypole, Anderson, Felton, Brackenrich, Whitlow, Helmick, Withers, Dittmar, Wagner, Blatnik, Boley and Minard)

[Passed March 9, 1991: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article four-a, all relating to providing for the transmission of nonidentifying information on the health and history and the genetic and social history of adoptees; and establishing a mutual consent voluntary adoption registry.

Be it enacted by the Legislature of West Virginia:

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

Article

4. Adoption.

4A. Voluntary Adoption Registry.

ARTICLE 4. ADOPTION.

§48-4-10. Recordation of order; fees; disposition of records; names of adopting parents and persons previously entitled to parental rights not to be disclosed; disclosure of identifying and nonidentifying information; certificate for state registrar of vital statistics; birth certificate.

- 1 (a) The order of adoption shall be recorded in a book
- 2 kept for that purpose, and the clerk shall receive the
- 3 same fees as in other cases. All records of proceedings
- 4 in adoption cases and all papers and records relating to
- 5 such proceedings shall be kept in the office of the clerk

6 of the circuit court in a sealed file, which file shall be
7 kept in a locked or sealed cabinet, vault or other
8 container and shall not be open to inspection or copy by
9 anyone, except as otherwise provided in this article, or
10 upon court order for good cause shown. No person in
11 charge of adoption records shall disclose the names of
12 the adopting parent or parents, the names of persons
13 previously entitled to parental rights, or the name of the
14 adopted child, except as otherwise provided in this
15 article, or upon court order for good cause shown. The
16 clerk of the court keeping and maintaining the records
17 in adoption cases shall keep and maintain an index of
18 such cases separate and distinct from all other indices
19 kept or maintained by him, and the index of adoption
20 cases shall be kept in a locked or sealed cabinet, vault
21 or other container and shall not be open to inspection
22 or copy by anyone, except as otherwise provided in this
23 article, or upon court order for good cause shown.
24 Nonidentifying information, the collection of which is
25 provided for in article four-a of this chapter, shall be
26 provided to the adoptive parents as guardians of the
27 adopted child, or to the adult adoptee, by their submit-
28 ting a duly acknowledged request to the clerk of the
29 court. The clerk may charge the requesting party for
30 copies of any documents, as provided in section eleven,
31 article one, chapter fifty-nine of this code. Either birth
32 parent may from time to time submit additional social,
33 medical or genetic history for the adoptee, which
34 information shall be placed in the court file by the clerk,
35 who shall bring the existence of this medical informa-
36 tion to the attention of the court. The court shall
37 immediately transmit all such nonidentifying medical,
38 social or genetic information to the adoptive parents or
39 the adult adoptee.

40 (b) If an adoptee, or parent of a minor adoptee, is
41 unsuccessful in obtaining identifying information by use
42 of the mutual consent voluntary adoption registry
43 provided for in article four-a of this chapter, identifying
44 information may be sought through the following
45 process:

46 (1) Upon verified petition of an adoptee at least

47 eighteen years of age, or, if less than eighteen, his
48 adoptive parent or legal guardian, the court may also
49 attempt, either itself, or through its designated agent,
50 to contact the birth parents, if known, to obtain their
51 consent to release identifying information to the adoptee.
52 The petition shall state the reasons why the adoptee
53 desires to contact his birth parents, which reasons shall
54 be disclosed to the birth parents if contacted. The court
55 and its agent shall take any and all care possible to
56 assure that none but the birth parents themselves are
57 informed of the adoptee's existence in relationship to
58 them. The court may appoint the department of human
59 services, or a private agency which provides adoption
60 services in accordance with standards established by
61 law, to contact birth parents as its designated agent, the
62 said agent shall report to the court the results of said
63 contact.

64 (2) Upon the filing of a verified petition as provided
65 in subdivision (1) of this subsection, should the court be
66 unable to obtain consent from either of the birth parents
67 to release identifying information, the court may release
68 such identifying information to the adoptee, or if a
69 minor, the adoptee's parents or guardian, after notice to
70 the birth parents and a hearing thereon, at which
71 hearing the court must specifically find that there exists
72 evidence of compelling medical or other good cause for
73 release of such identifying information.

74 (c) Identifying information may only be obtained with
75 the duly acknowledged consent of the mother or the
76 legal or determined father who consented to the
77 adoption or whose rights were otherwise relinquished or
78 terminated, together with the duly acknowledged
79 consent of the adopted child upon reaching majority, or
80 upon court order for good cause shown. Any person
81 previously entitled to parental rights may from time to
82 time submit additional social or medical information
83 which, notwithstanding other provisions of this article,
84 shall be inserted into the record by the clerk of the
85 court.

86 (d) Immediately upon the entry of such order of
87 adoption, the court shall direct the clerk thereof

88 forthwith to make and deliver to the state registrar of
89 vital statistics a certificate under the seal of said court,
90 showing:

91 (1) The date and place of birth of the child, if known;

92 (2) The name of the mother of the child, if known, and
93 the name of the legal or determined father of the child,
94 if known;

95 (3) The name by which said child has previously been
96 known;

97 (4) The names and addresses of the adopting parents;

98 (5) The name by which the child is to be thereafter
99 known; and

100 (6) Such other information from the record of the
101 adoption proceedings as may be required by the law
102 governing vital statistics and as may enable the state
103 registrar of vital statistics to carry out the duties
104 imposed upon him by this section.

105 (e) Upon receipt of the certificate, the registrar of
106 vital statistics shall forthwith issue and deliver by mail
107 to the adopting parents at their last-known address and
108 to the clerk of the county commission of the county
109 wherein such order of adoption was entered a birth
110 certificate in the form prescribed by law, except that the
111 name of the child shown in said certificate shall be the
112 name given him by the order of adoption. The clerk shall
113 record such birth certificate in the manner set forth in
114 section twelve, article five, chapter sixteen of this code.

ARTICLE 4A. VOLUNTARY ADOPTION REGISTRY.

§48-4A-1. Policy and purposes.

§48-4A-2. Definitions.

§48-4A-3. Prohibited conduct.

§48-4A-4. Nondisclosure.

§48-4A-5. Rule making.

§48-4A-6. The compilation of nonidentifying information on health history
and social and genetic history.

§48-4A-7. Use of the mutual consent voluntary adoption registry.

§48-4A-8. Operation of the mutual consent voluntary adoption registry.

§48-4A-1. Policy and purposes.

1 Adoption is based upon the legal termination of
2 parental rights and responsibilities of birth parents and
3 the creation of the legal relationship of parent and child
4 between an adoptee and his adoptive parents. These
5 legal and social premises underlying adoption must be
6 maintained. The Legislature recognizes that some adults
7 who were adopted as children have a strong desire to
8 obtain identifying information about their birth parents
9 while other such adult adoptees have no such desire. The
10 Legislature further recognizes that some birth parents
11 have a strong desire to obtain identifying information
12 about their biological children who were surrendered
13 for adoption, while other birth parents have no such
14 desire. The Legislature fully recognizes the right to
15 privacy and confidentiality of: (1) Birth parents whose
16 children were adopted; (2) the adoptees; and (3) the
17 adoptive parents. The purpose of this article is to: (1) Set
18 up a mutual consent voluntary adoption registry where
19 birth parents and adult adoptees may register their
20 willingness to the release of identifying information to
21 each other; (2) to provide for the disclosure of such
22 identifying information to birth parents or adoptees, or
23 both, through a social worker employed by a licensed
24 adoption agency, provided each birth parent and the
25 adult adoptee voluntarily registers on his own; (3) to
26 provide for the transmission of nonidentifying health
27 and social and genetic history to the adult adoptees,
28 birth parents and other specified persons; and (4) to
29 provide for disclosure of identifying information for
30 cause shown.

§48-4A-2. Definitions.

1 (a) As used in this article:

2 (1) "Adoptee" means a person who has been legally
3 adopted in the state of West Virginia.

4 (2) "Adoption" means the judicial act of creating the
5 relationship of parent and child where it did not exist
6 previously.

7 (3) "Adult" means a person eighteen or more years of
8 age.

9 (4) "Agency" means any public or voluntary organi-
10 zation licensed or approved pursuant to the laws of any
11 jurisdiction within the United States to place children
12 for adoption.

13 (5) "Genetic and social history" means a comprehen-
14 sive report, when obtainable, on the birth parents,
15 siblings to the birth parents, if any, other children of
16 either birth parent, if any, and parents of the birth
17 parents, which shall contain the following information:

18 (i) Medical history;

19 (ii) Health status;

20 (iii) Cause of and age at death;

21 (iv) Height, weight, eye and hair color;

22 (v) Ethnic origins;

23 (vi) Where appropriate, levels of educational and
24 professional achievement; and

25 (vii) Religion, if any.

26 (6) "Health history" means a comprehensive report of
27 the child's health status at the time of placement for
28 adoption and medical history, including neonatal,
29 psychological, physiological and medical care history.

30 (7) "Mutual consent voluntary adoption registry" or
31 "registry" means a place provided for herein where
32 eligible persons as described in section three of this
33 article may indicate their willingness to have their
34 identity and whereabouts disclosed to each other under
35 conditions specified in this article.

36 (8) "Putative father" means any man not deemed or
37 adjudicated under the laws of a jurisdiction of the
38 United States to be the father of genetic origin of a child
39 and who claims or is alleged to be the father of genetic
40 origin of such child.

41 (b) As used in this article, pronouns of the masculine
42 gender include the feminine.

§48-4A-3. Prohibited conduct.

1 (a) No person, agency, entity or organization of any
2 kind, including, but not limited to, any officer or
3 employee of this state and any employee, officer or judge
4 of any court of this state, may disclose any confidential
5 information relating to an adoption except as provided
6 in this article or pursuant to a court order. Any
7 employer who knowingly or negligently allows any
8 employee to disclose information in violation of this
9 article is subject to the penalties provided in subsection
10 (b) of this section, together with the employee who made
11 any disclosure prohibited by this law.

12 (b) Any person, agency, entity or organization of any
13 kind who discloses information in violation of this law
14 is liable to the parties so injured in an action to recover
15 damages in respect thereto.

§48-4A-4. Nondisclosure.

1 (a) Notwithstanding any other provision of law, the
2 information acquired by any registry may not be
3 disclosed under any sunshine or freedom of information
4 legislation, rules or practice.

5 (b) Notwithstanding any other provision of law, no
6 person, group of persons, or entity, including an agency,
7 may file a class action to force the registry to disclose
8 identifying information.

§48-4A-5. Rule making.

1 The division of human services shall establish and
2 maintain the mutual consent voluntary adoption regis-
3 try, except that the division of human services may
4 contract out the function of establishing and maintain-
5 ing the registry to a licensed voluntary agency with
6 expertise in providing post-legal adoption services in
7 which case the agency shall establish and maintain the
8 registry that would otherwise be operated by the
9 division.

10 The commissioner of the department of health and
11 human resources shall promulgate and adopt such rules
12 as are necessary for implementing this article.

§48-4A-6. The compilation of nonidentifying information on health history and social and genetic history.

1 (a) Prior to placement for adoption, the court shall
2 require that the licensed adoption agency or, where an
3 agency is not involved, the person, entity or organization
4 handling the adoption, shall compile and provide to the
5 prospective adoptive parents a detailed written health
6 history and genetic and social history of the child which
7 excludes information which would identify birth parents
8 or members of a birth parent's family and is set forth
9 in a document that is separate from any document
10 containing such identifying information. The court, or
11 an agency designated by the court, or judge thereof,
12 shall provide agency, person, or any other organization
13 handling the adoption with forms which shall be utilized
14 in the acquisition of the above-described detailed
15 nonidentifying written health history and genetic and
16 social history of the child. If the records cannot be
17 obtained, the court shall make specific findings as to
18 why the records are unobtainable.

19 (b) Records containing such nonidentifying informa-
20 tion and which are set forth on a document described
21 in subsection (a) above, separate from any document
22 containing identifying data:

23 (1) Shall be retained by the clerk of the court for
24 ninety-nine years; and

25 (2) Shall be available upon request, throughout the
26 time specified in subsection (b) (1) of this section
27 together with any additional nonidentifying information
28 which may have been added on health or on genetic and
29 social history, but which excludes information identify-
30 ing any birth parent or member of a birth parent's
31 family, or the adoptee or any adoptive parent of the
32 adoptee, to the following persons only:

33 (i) The adoptive parents of the child or, in the event
34 or death of the adoptive parents, the child's guardian;

35 (ii) The adoptee upon reaching the age of eighteen;

36 (iii) In the event of the death of the adoptee, the

37 adoptee's spouse if he is the legal parent of the adoptee's
38 child or the guardian of any child of the adoptee;

39 (iv) In the event of the death of the adoptee, any
40 progeny of the adoptee who is age eighteen or older; and

41 (v) The birth parent of the adoptee.

42 The actual and reasonable cost of providing noniden-
43 tifying health history and genetic and social history
44 shall be paid by the person requesting such information.
45 This provision is subject to sections of this article which
46 provide for the adoptee obtaining information by
47 petition to the court. If any provision of this article is
48 held invalid, the remaining provisions of the article shall
49 continue in effect.

**§48-4A-7. Use of the mutual consent voluntary adoption
registry.**

1 (a) Use of a mutual consent voluntary adoption
2 registry for obtaining identifying information about
3 birth parents and adult adoptees shall be available only
4 to birth parents and adult adoptees, except that no adult
5 adoptee who has a sibling in this adoptive family who
6 is under the age of eighteen years may use the registry.

7 (b) No birth parent may be eligible to use the registry
8 until after his genetic offspring who was adopted has
9 reached his eighteenth birthday.

10 (c) A birth father whose name has appeared in the
11 original sealed birth certificate or who has legitimated
12 or formally acknowledged the child as provided by law
13 or who has signed a voluntary abandonment and release
14 for the child's adoption as provided by state law may
15 register.

16 (d) Any birth parent who in terminating his parental
17 rights used an alias name, and this alias is listed in the
18 original sealed birth record, may register if the agency
19 or, in cases where no agency was involved, the organ-
20 ization, entity or person who was involved, certifies to
21 the court that the individual seeking to register used,
22 as an alias, the name set forth in the original sealed
23 birth certificate.

§48-4A-8. Operation of the mutual consent voluntary adoption registry.

1 (a) *Prerequisites to disclosure of identifying information.* — The adult adoptee and each birth parent may
2 voluntarily, without having been contacted by any
3 employee or agent of the entity operating the registry,
4 place his name in the appropriate registry before any
5 disclosure or identifying information can be made. A
6 qualified person may register by submitting a notarized
7 affidavit to the appropriate registry stating his name,
8 address and telephone number and his willingness to be
9 identified solely to the other relevant persons who
10 register. No registration may be accepted until the
11 prospective registrant submits satisfactory proof of his
12 identity in accord with the provisions specified in section
13 six of this article. The failure of any of the three above
14 described persons to file a notarized affidavit with the
15 registry for any reason, including death or disability,
16 precludes the disclosure of identifying information to
17 those relevant persons who do register.

18
19 (b) *Counseling.* — Upon registering, the registrant
20 shall participate in not less than one hour of counseling
21 with a social worker employed by the entity that
22 operates the registry, except if a birth parent or adult
23 adoptee is domiciled outside the state, he shall obtain
24 counseling from a social worker employed by a licensed
25 agency in that other state selected by the entity that
26 operates the registry. When an eligible person registers
27 concerning an adoption that was arranged through an
28 agency which has not merged or otherwise ceased
29 operations, and that same agency is not operating the
30 registry, the entity operating the registry shall notify by
31 certified mail the agency which handled the adoption
32 within ten business days after the date of registration.

33 (c) *Cases where disclosure of identifying information*
34 *cannot occur.* — In any case where the identity of the
35 birth father was unknown to the birth mother, or where
36 the administrator learns that one or both of the birth
37 parents are deceased, this information shall be shared
38 with the adult adoptee. In these kinds of cases, the
39 adoptee will not be able to obtain identifying informa-

40 tion through the registry, and he would be told of his
41 right to pursue whatever right otherwise exists by law
42 to petition a court to release the identifying information.

43 (d) *Matching and disclosure procedures.* —

44 (1) Each mutual consent voluntary adoption registry
45 shall be operated under the direction of an
46 administrator.

47 (2) A person eligible to register may request the
48 administrator to disclose identifying information by
49 filing an affidavit which sets forth the following:

50 (i) The current name and address of the affiant;

51 (ii) Any previous name by which the affiant was
52 known;

53 (iii) The original and adopted names, if known, of the
54 adopted child;

55 (iv) The place and date of birth of the adopted child;
56 or

57 (v) The name and address of the adoption agency or
58 other entity, organization or person placing the adopted
59 child, if known.

60 The affiant shall notify the registry of any change in
61 name or location which occurs subsequent to his filing
62 the affidavit. The registry shall have no duty to search
63 for the affiant who fails to register his most recent
64 address.

65 (e) The administrator of the mutual consent voluntary
66 adoption registry shall process each affidavit in an
67 attempt to match the adult adoptee and the birth
68 parents. Such processing shall include research from
69 agency records, when available, and when agency
70 records are not available, research from court records
71 to determine conclusively whether the affiants match.

72 (f) The administrator shall determine that there is a
73 match when the adult adoptee and the birth mother or
74 the adult adoptee and the birth father have each filed
75 affidavits with the mutual consent voluntary adoption
76 registry and have each received the counseling required
77 in subsection (a) of this section.

78 (g) When a match has taken place, the department
79 shall directly notify all parties through a direct and
80 confidential contact. The contact shall be made by an
81 employee or agent of the agency receiving the assign-
82 ment and shall be made face to face, rather than by
83 mail, telephone or other indirect means. The employee
84 or agent shall be a trained social worker who has
85 expertise in post-legal adoption services.

86 (h) *Retention of data by the registry.* — Any affidavits
87 filed and other information collected shall be retained
88 for ten years following the date of registration by any
89 qualified person to which the information pertains. Any
90 qualified person who registers may renew his registra-
91 tion for ten additional years within one hundred eighty
92 days prior to the last day of ten years from the date of
93 initial registration.

94 (i) *Scope of information obtained by the mutual consent*
95 *voluntary adoption registry.* — A mutual consent
96 voluntary adoption registry shall obtain only informa-
97 tion necessary for identifying a birth parent or adult
98 adoptee and in no event shall obtain information of any
99 kind pertaining to the adoptive parents, any siblings to
100 the adult adoptee who are children of the adoptive
101 parents, the income of anyone and reasons for adoptive
102 placement.

103 (j) *Fees for operations of the mutual consent voluntary*
104 *adoption registry.* — All costs for establishing and
105 maintaining a mutual consent voluntary adoption
106 registry shall be obtained through user's fees charged
107 to all persons who register.

CHAPTER 49

(S. B. 413—By Senator Lucht)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

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

section seven-a, relating to requiring the state board to prescribe a program incorporating the elements propounded by the president's council on physical fitness and sports.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7a. Program in physical fitness.

1 The state board of education shall prescribe a
 2 program within the existing health and physical
 3 education program which incorporates the testing,
 4 awards recognition, fitness events and incentive pro-
 5 grams designed under the auspices of the president's
 6 council on physical fitness and sports and which
 7 requires the participation through grade nine of each
 8 student and of each school in the state in both the
 9 challenge program and the state champion program of
 10 the council. The program shall include the modified test
 11 for exceptional students. Each school in the state shall
 12 participate in national physical fitness and sports month
 13 in May of each year and shall make every effort to
 14 involve the community it serves in the related events.

CHAPTER 50

(Com. Sub. for H. B. 2467—By Delegate Ashcraft, By Request)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two-e, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to establishing instances when a school may be declared seriously impaired; adding another accreditation level; defining conditional approval; redefining probationary approval; and requiring the state board to establish

methods to identify school districts which may be nonapproved.

Be it enacted by the Legislature of West Virginia:

That section five, article two-e, 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 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-5. School accreditation; standards compliance board; approval status; intervention to correct impairments.

1 (a) The purpose of this section is to provide assurances
2 that a thorough and efficient system of education is
3 being provided for all West Virginia public school
4 students on an equal educational opportunity basis and
5 that the high quality standards are being met. A system
6 for the review of school district educational plans,
7 performance-based accreditation and periodic, random,
8 unannounced on-site effectiveness reviews of district
9 educational systems, including individual schools within
10 the districts, shall provide assurances that the high
11 quality standards, established pursuant to subsection (b)
12 of this section, are being met. A performance-based
13 accreditation system shall provide assurances that the
14 high quality standards, established pursuant to subsec-
15 tion (c) of this section, are being met.

16 (b) On or before the first day of January, one thousand
17 nine hundred ninety-one, the state board of education
18 shall, in accordance with the provisions of article three-
19 b, chapter twenty-nine-a of this code, establish and
20 adopt high quality educational standards in the areas of
21 curriculum, finance, transportation, special education,
22 facilities, administrative practices, training of school
23 district board members and administrators, personnel
24 qualifications, professional development and evaluation,
25 student and school performance, a code of conduct for
26 students and employees and other such areas as
27 determined by the state board of education. The
28 standards established in the area of curriculum shall
29 assure that all graduates are prepared for the world of

30 work or for continuing postsecondary education and
31 training. Each school district shall submit an annual
32 improvement plan designed around locally identified
33 needs showing how the educational program of each
34 school in the district will meet or exceed the high
35 quality standards.

36 A performance-based accreditation system shall be
37 the only statewide system used for accrediting or
38 classifying the public schools in West Virginia. The state
39 board shall establish a schedule and shall review each
40 school within a district and each school district board
41 of education for accreditation based on information
42 submitted to the board under the performance-based
43 accreditation system as set forth in subsection (c) of this
44 section.

45 (c) On or before the first day of July, one thousand
46 nine hundred ninety-one, the state board of education
47 shall, in accordance with the provisions of article three-
48 b, chapter twenty-nine-a of this code, establish by rule
49 a system which measures the performance of each school
50 based on the following measures of student and school
51 performance: The acquisition of student proficiencies as
52 indicated by student performance by grade level in the
53 various subjects tested under the statewide testing of
54 educational progress program and other appropriate
55 measures; school attendance rates; the student dropout
56 rate; the percent of students promoted to next grade and
57 the number of waivers of the promotion standard
58 granted; the graduation rate; the average class size; the
59 pupil-teacher ratio; the number of exceptions to pupil-
60 teacher ratio requested by the county board and the
61 number of exceptions granted; the number of split-
62 grade classrooms; the percentage of graduating students
63 entering postsecondary education or training; the pupil-
64 administrator ratio; parent involvement; parent, teacher
65 and student satisfaction; and operating expenditures per
66 pupil.

67 The state board annually shall review the information
68 submitted for each school and shall issue to every school:
69 (1) Full accreditation status; or (2) probationary
70 accreditation status.

71 Full accreditation status shall be given to a school
72 when the school's performance on the above indicators
73 is at a level which would be expected when all of the
74 high quality educational standards are being met.
75 Probationary accreditation status shall be given to a
76 school when the measure of the school's performance is
77 below such level.

78 Whenever a school is given probationary accreditation
79 status, the district board shall implement an improve-
80 ment plan which is designed to increase the perform-
81 ance of the school to a full accreditation status level
82 within one year.

83 (d) The state board of education shall establish and
84 adopt standards of performance to identify seriously
85 impaired schools and the state board may declare a
86 school seriously impaired whenever extraordinary
87 circumstances exist as defined by the state board.
88 Whenever the state board of education determines that
89 the quality of education in a school is seriously impaired,
90 the state superintendent, with approval of the state
91 board, shall appoint a team of three improvement
92 consultants to make recommendations within sixty days
93 of appointment for correction of the impairment. Upon
94 approval of the recommendations by the state board, the
95 recommendations shall be made to the district board of
96 education. If progress in correcting the impairment is
97 not made within six months of receipt of the recommen-
98 dations, the state superintendent shall provide consulta-
99 tion and assistance to the district board to (1) improve
100 personnel management, (2) establish more efficient
101 financial management practices, (3) improve instruc-
102 tional programs and policies or (4) make such other
103 improvements as may be necessary to correct the
104 impairment. If the impairment is not corrected within
105 one year of receipt of the recommendations, the district
106 shall be given probationary approval status or nonap-
107 proval status.

108 (e) Whenever a school is given probationary status or
109 is determined to be seriously impaired and fails to
110 improve its status within one year, any student attend-
111 ing such school may transfer once to the nearest fully

112 accredited school, subject to approval of the fully
113 accredited school and at the expense of the school from
114 which the student transferred.

115 (f) The state board of education shall issue one of the
116 following accreditation levels to each school district
117 board of education: (1) Full approval, (2) conditional
118 approval, (3) probationary approval or (4) nonapproval.

119 Full approval shall be given to a district board whose
120 educational system meets or exceeds all of the high
121 quality standards adopted by the state board and whose
122 schools have all been given full accreditation status. Full
123 approval shall be for a period not to exceed four years.

124 Conditional approval shall be given to a district board
125 whose educational system meets at least ninety-five
126 percent of the high quality standards adopted by the
127 state board and in which at least ninety percent of the
128 schools have been given full accreditation status
129 provided no school is seriously impaired. Conditional
130 approval shall be for a period not to exceed one year:
131 *Provided*, That for counties that have fewer than ten
132 schools, the state board of education may grant condi-
133 tional approval without regard to the ninety percent
134 based on the total quality of the county educational
135 program.

136 Probationary approval shall be given to a district
137 board of education whose educational system has met
138 less than ninety-five percent of the high quality
139 standards, or which has eleven percent or more schools
140 in the district given probationary status or serious
141 impairment. Probationary approval is a warning that
142 the district board must make specified improvements.
143 If the number of schools in the district given probation-
144 ary status is not reduced to a number that would allow
145 full accreditation to be granted in the following year, the
146 district board shall be automatically given nonapproval.
147 In addition, nonapproval shall be given to a district
148 board of education which fails to submit an annual
149 program plan or fails to demonstrate a reasonable effort
150 to meet the high quality standards. The state board of
151 education shall establish and adopt standards to identify

152 school districts in which the program may be nonap-
153 proved or the state board may issue nonapproval status
154 whenever extraordinary circumstances exist as defined
155 by the state board of education.

156 (g) Whenever nonapproval status is given to a district,
157 the state board of education shall declare a state of
158 emergency in the district and may intervene in the
159 operation of the district to (1) limit the authority of the
160 district superintendent and district board of education
161 as to the expenditure of funds, the employment and
162 dismissal of personnel, the establishment and operation
163 of the school calendar, the establishment of instructional
164 programs and policies, and such other areas as may be
165 designated by the state board by rule, (2) take such
166 direct action as may be necessary to correct the
167 impairment and (3) declare that the office of the district
168 superintendent is vacant.

169 (h) To assist the state board in determinations of the
170 accreditation status of schools and the approval status
171 of school districts under this section, the state board
172 shall from time to time appoint an educational stand-
173 ards compliance review team to make unannounced on-
174 site reviews of the educational programs in any school
175 or school district in the state to assess compliance of the
176 school or district with the high quality standards
177 adopted by the state board, including, but not limited
178 to, facilities, administrative procedures, transportation,
179 food services and the audit of all matters relating to
180 school finance, budgeting and administration.

181 The teams shall be composed of not more than ten
182 persons, not more than half of whom may be members
183 of or currently employed by the state board, who possess
184 the necessary knowledge, skills and experience to make
185 an accurate assessment of such educational programs.
186 The educational standards compliance team shall report
187 the findings of its on-site reviews to the state board of
188 education for inclusion in the determination of a school's
189 or district's accreditation or approval status as applica-
190 ble. The state board of education shall encourage the
191 sharing of information to improve school effectiveness
192 among the districts. --

193 The state board shall make accreditation information
194 available to the Legislature, the governor, the general
195 public and to any individuals who request such
196 information.

197 (i) The state board shall fully implement the accred-
198 itation system established under this article for all
199 schools on the first day of July, one thousand nine
200 hundred ninety-one, and may pilot test the system prior
201 to that date. The state board shall adopt rules in
202 accordance with the provisions of article three-b,
203 chapter twenty-nine-a of this code necessary to imple-
204 ment the provisions of this article.

CHAPTER 51

(Com. Sub. for H. B. 2512—By Delegates Ashcraft and Mezzatesta)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-f, relating to creating the West Virginia share in your future act; setting forth legislative findings; creating a share in your future commission and providing for the membership thereof; meetings and report of the commission; establishment of a non-profit fund; commission to contract to provide scholarship grants; powers of the commission; registration requirements; promulgation of rules; eligibility for shares; conversion of shares; creation of share certificate; duties of county boards; and termination of commission.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen 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-f, to read as follows:

ARTICLE 2F. INCENTIVES AND RESULTS BASED SCHOLARSHIP PROGRAM.

§18-2F-1. Title.

§18-2F-2. Legislative findings.

§18-2F-3. Share in your future commission established; composition of commission; duties and responsibilities.

§18-2F-4. Nonprofit fund.

§18-2F-5. Registration requirements.

§18-2F-6. Incentives-based shares program.

§18-2F-7. Conversion of shares.

§18-2F-8. Duties of county boards.

§18-2F-9. Termination of commission.

§18-2F-1. Title.

1 This article shall be known and may be cited as the
2 "West Virginia Share in Your Future Act".

§18-2F-2. Legislative findings.

1 The Legislature hereby finds and declares that an
2 educated and informed citizenry is essential to a
3 democratic society. Opportunities for higher education
4 and post-secondary vocational education should be
5 expanded, made affordable and made available to all
6 residents.

7 In order to ensure that continued access to higher
8 education and post-secondary vocational education is
9 available to the state's citizens, an incentive to secondary
10 education students must be developed and funded
11 through private and public entities as well as any other
12 available sources.

§18-2F-3. Share in your future commission established; composition of commission; duties and responsibilities.

1 There is hereby created in state government, under
2 the supervision of the state board, a commission on
3 educational incentives to secondary education students
4 to be known as the share in your future commission.

5 The share in your future commission shall be com-
6 posed of nine members who shall serve without salary
7 or expenses, as follows:

8 (a) The state superintendent, the chancellor of the

9 state college system and the chancellor of the university
10 of West Virginia system, ex officio, or their designees;

11 (b) A member of the joint commission on vocational
12 education, ex officio, or his or her designee; and

13 (c) Five members to be appointed by the governor as
14 follows:

15 (1) A representative of the business community with
16 a demonstrated interest in education;

17 (2) A representative of labor with a demonstrated
18 interest in education; and

19 (3) Three representatives of the general public.

20 Of the five members appointed by the governor, no
21 more than three may be members of the same political
22 party and all shall serve at the will and pleasure of the
23 governor.

24 The share in your future commission shall meet no
25 later than the first day of July, one thousand nine
26 hundred ninety-one. The commission shall conduct a
27 study and report to the Legislature on the first day of
28 the regular session in the year one thousand nine
29 hundred ninety-two. The commission's report shall
30 include any further legislative recommendations neces-
31 sary to carry out the provisions of this article, whereby
32 students in grade seven through grade eleven may earn
33 shares, through appropriate conduct and accomplish-
34 ment, in a scholarship fund to be used to pay student
35 costs at accredited state institutions of higher education,
36 post-secondary vocational education programs and
37 higher educational institutions, all as defined in section
38 two, article one, chapter eighteen-b of this code, and
39 other approved and accredited participating post-
40 secondary educational programs located in West
41 Virginia.

42 The share in your future commission shall encourage
43 contributions to the program and encourage private,
44 proprietary educational institutions, accredited by a
45 national or regional accrediting agency or association
46 recognized by the United States department of educa-

47 tion and which provide training at a campus located in
48 this state to participate.

§18-2F-4. Nonprofit fund.

1 The share in your future commission shall identify a
2 nonprofit corporation or other charitable organization
3 which is suitable to collect, invest, hold, manage, and
4 disburse scholarship funds under the provisions of this
5 article. At an appropriate time, the commission may
6 contract with said corporation or organization to provide
7 scholarship grants under this article. The commission is
8 empowered to publicize the program and to solicit
9 donations, grants, bequests and gifts from any source.
10 The state board may seek appropriations from the
11 Legislature for the cost of operating this program and
12 to match private scholarship funds.

13 The nonprofit corporation shall, under the terms of
14 any contract entered into hereunder, make available to
15 the commission on a yearly basis, the amount of money
16 available to meet the requirements of the incentives-
17 based share program and, upon request, shall transfer
18 funds necessary for implementing the provisions of this
19 article.

§18-2F-5. Registration requirements.

1 Any student choosing to enter the program must
2 complete and sign a registration form. The student's
3 parent or guardian shall also sign the registration form
4 in order for the student to be eligible for the program.
5 The registration form shall be made available through
6 the commission to the local boards of education. A copy
7 of the completed form shall be kept on file at the board
8 office in the county in which the student is enrolled. The
9 original registration form shall be kept on file with the
10 share in your future commission.

11 The registration form shall clearly state the eligibility
12 requirements for the program as well as all applicable
13 rules and regulations regarding continued eligibility in
14 the program.

§18-2F-6. Incentives-based shares program.

1 On or before the first day of July, one thousand nine
2 hundred ninety-two, the share in your future commis-
3 sion shall promulgate legislative rules pursuant to
4 section nine, article three-b, chapter twenty-nine-a of
5 this code regarding the criteria to be used in awarding
6 shares. When the commission determines that adequate
7 funding is available, these rules shall be forwarded to
8 each county board to be used in awarding shares to
9 participants. Shares in the fund may be awarded for
10 performance by students in grades seven through eleven
11 in the following areas:

12 (a) Attendance or improved attendance over the
13 previous school year;

14 (b) Successful completion of an advance placement
15 course and passage of the national advanced placement
16 exam;

17 (c) An improvement in quality point average over the
18 previous school year;

19 (d) Completion of all courses with a specified quality
20 point average;

21 (e) Signing a drug free, alcohol free pledge;

22 (f) Completion of an advanced course in specified
23 subject areas;

24 (g) Demonstrated participation in extracurricular
25 activities; and

26 (h) Such other areas and criteria as the share in your
27 future commission may establish.

§18-2F-7. Conversion of shares.

1 Shares are cumulative from one school year to the
2 next school year and may be converted to a pro rata
3 share of the total fund available upon graduation from
4 an accredited West Virginia high school. The share in
5 your future commission shall promulgate rules in
6 accordance with article three-b, chapter twenty-nine-a
7 of this code, to determine the pro rata share of the total
8 fund that each share represents.

9 Upon graduation from an accredited West Virginia

10 high school, each student has the right to cash in his or
11 her respective shares for a voucher that may be spent
12 at any accredited state institutions of higher education,
13 post-secondary vocational education programs or higher
14 educational institutions, all as defined in section two,
15 article one, chapter eighteen-b of this code, and other
16 approved and accredited post-secondary educational
17 programs located in West Virginia participating in the
18 program: *Provided*, That the share in your future
19 commission may implement the conversion of shares to
20 vouchers at the close of the school year ending in the
21 year one thousand nine hundred ninety-five.

22 The share in your future commission may have a
23 share certificate designed, which is similar in design to
24 stock certificates, which shall include the student's
25 name, the number of shares and certification by the
26 governor of West Virginia and the superintendent of
27 schools that the shares were earned. Upon receipt by the
28 share in your future commission of the report provided
29 for in section eight of this article, the commission may
30 complete share certificates based upon the report and
31 forward the certificates to the appropriate county board.
32 The county board shall notify the student and at an
33 appropriate time shall deliver the certificate to the
34 student.

§18-2F-8. Duties of county boards.

1 Each county board which has a student participating
2 in the incentive program shall, at the end of each school
3 year, report in writing to the share in your future
4 commission the number of shares earned by each
5 participant. A copy of such report shall be retained by
6 the county board. Accumulated shares earned shall be
7 reported to each student at the end of each school year:
8 *Provided*, That the appropriate information shall be
9 collected by the school counselor who will then forward
10 the same to the local county board.

§18-2F-9. Termination of commission.

1 The share in your future commission shall be termi-
2 nated on the first day of July, one thousand nine
3 hundred ninety-four, unless review of its functions shall

4 be undertaken pursuant to the provisions of sections
5 nine, ten and eleven, article ten, chapter four of this
6 code. If such commission is terminated pursuant to this
7 section, all contractual obligations of the commission,
8 including any shares earned, shall be assumed by the
9 state board.

CHAPTER 52

(Com. Sub. for H. B. 2131—By Delegates S. Cook and Brum)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article two-g; and to amend and reenact sections ten and thirteen, article nine-a of said chapter, all relating to maintaining step seven funds for one thousand nine hundred ninety-one; permitting up to fifteen percent of this allocation be used for personnel costs in certain instances; increasing the amount of funds to be paid into the school building capital improvements fund; increasing the appropriations for certain state board staff and operating costs in certain instances; authorizing a one-time appropriation to certain rural district boards; and creating the school library media improvement grant program.

Be it enacted by the Legislature of West Virginia:

That chapter eighteen 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-g; and that sections ten and thirteen, article nine-a of said chapter be amended and reenacted, all to read as follows:

Article

2G. School Library Media Improvement Grant Program.

9A. Public School Support.

**ARTICLE 2G. SCHOOL LIBRARY MEDIA IMPROVEMENT
GRANT PROGRAM.**

§18-2G-1. Legislative intent and purpose.

§18-2G-2. Criteria for grants.

§18-2G-3. Grant applications.

§18-2G-1. Legislative intent and purpose.

1 The Legislature acknowledges that society is presently
2 generating more and more information at ever faster
3 rates. Further, the Legislature acknowledges that it is
4 more difficult for educational facilities and students to
5 digest this growing pool of educational information.
6 Finally, the Legislature acknowledges the need for an
7 incentive grant program which will encourage growth
8 and development of school library media programs
9 which will assist in implementing innovative educa-
10 tional technology.

§18-2G-2. Criteria for grants.

1 The state board shall administer the school library
2 media improvement grant program pursuant to the
3 following criteria:

4 (a) Library media improvement grants shall be
5 utilized to initiate a centralized library media program
6 or to improve an existing program. Funds awarded in
7 such grant may be used for the purchase of books,
8 audiovisual materials, audiovisual equipment, computer
9 software or other innovative uses of technology in the
10 library media center. Funds may not be used for
11 construction, remodeling, furniture, salaries or supplies
12 or to replace funds previously allocated or expended by
13 the county board of education receiving the grant.

14 (b) Funds in the amount of not less than fifty thousand
15 dollars shall be appropriated to be awarded as grants
16 and shall be equitably allocated between elementary and
17 secondary schools with at least fifty percent of the funds
18 being allocated to small schools with a disproportionate
19 number of students from low income families.

20 (c) Grants shall be for one year.

§18-2G-3. Grant applications.

1 Each school district applying for a grant shall submit
2 a proposal detailing plans for the creation of a school

3 library media program or for the improvement of a
 4 program already in use. Each district receiving a grant
 5 shall furnish information to the state board document-
 6 ing the application of funds allocated and the benefits
 7 to the children served as a result of the grant.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs.

§18-9A-13. Transitional allocation for certain rural district boards.

§18-9A-10. Foundation allowance to improve instructional programs.

1 (a) For the school year beginning on the first day of
 2 July, one thousand nine hundred ninety-one only,
 3 twenty-eight million eight hundred thousand dollars, in
 4 addition to funds which accrue from allocations due to
 5 increase in total local share above that computed for the
 6 school year beginning on the first day of July, one
 7 thousand nine hundred ninety-one, from balances in the
 8 general school fund, or from appropriations for such
 9 purpose shall be allocated to increase state support of
 10 counties as follows:

11 (1) Twenty percent of these funds shall be allocated
 12 to the counties proportional to adjusted enrollment; and

13 (2) Each county whose allocation in subsection (1) is
 14 less than one hundred fifty thousand dollars in any fiscal
 15 year shall then receive an amount which equals the
 16 difference between such amount received and one
 17 hundred fifty thousand dollars.

18 (b) The remainder of these funds shall be allocated
 19 according to the following plan for progress toward
 20 basic resources per pupil equity:

21 Beginning with the county which has the lowest basic
 22 resources per pupil and progressing through the
 23 counties successively to and beyond the county with the
 24 highest basic resources per pupil, the funds available
 25 shall be allocated in amounts necessary to increase
 26 moneys available to the county or counties to the basic
 27 resources per pupil level, as nearly as is possible, of the
 28 county having the next higher basic resources per pupil:
 29 *Provided*, That to be eligible for its allocation under this

30 section, a county board shall lay the maximum regular
31 tax rates set out in section six-c, article eight, chapter
32 eleven of this code: *Provided, however,* That moneys
33 allocated by provision of this section shall be used to
34 improve instructional programs according to a plan for
35 instructional improvement which the affected county
36 board shall file with the state board by the first day of
37 August of each year, to be approved by the state board
38 by the first day of September of that year if such plan
39 substantially complies with standards to be adopted by
40 the state board: *Provided further,* That for the school
41 year beginning on the first day of July, one thousand
42 nine hundred ninety-one, up to fifteen percent of this
43 allocation may be used to employ professional educators
44 and/or service personnel in counties after all applicable
45 provisions of sections four and five of this article have
46 been fully utilized.

47 Prior to the use of any funds from this section for
48 personnel costs, the county board must receive author-
49 ization from the state superintendent of schools. The
50 state superintendent shall require the district board to
51 demonstrate: (1) The need for the allocation, (2)
52 efficiency and fiscal responsibility in staffing, and (3)
53 sharing of services with adjoining counties and the
54 regional educational service agency for that county in
55 the use of the total local district board budget. District
56 boards shall make application for available funds by the
57 first day of May, one thousand nine hundred ninety-one.
58 On or before the first day of June, the state superintend-
59 ent shall review all applications and notify applying
60 district boards of the distribution of the allocation. Such
61 funds shall be distributed during the fiscal year as
62 appropriate. The state superintendent shall require the
63 county board to demonstrate the need for an allocation
64 for personnel based upon the county's inability to meet
65 the requirements of state law or state board policy:
66 *Provided,* That the funds available for personnel under
67 this section may not be used to increase the total number
68 of professional noninstructional personnel in the central
69 office beyond four. Such instructional improvement plan
70 shall be made available for distribution to the public at
71 the office of each affected county board.

72 (c) Commencing with the school year beginning on the
73 first day of July, one thousand nine hundred ninety-one,
74 twenty-one million, four hundred forty thousand, four
75 hundred ninety-three dollars shall be paid into the
76 school building capital improvements fund created by
77 section six, article nine-d of this chapter, and shall be
78 used solely for the purposes of said article nine-d. In
79 each fiscal year thereafter, fifty percent of the funds
80 which accrue due to an increase in local share above that
81 computed for the school year beginning on the first day
82 of July, one thousand nine hundred eighty-seven, shall
83 be paid into the school building capital improvements
84 fund created by section six, article nine-d of this
85 chapter, and shall be used solely for the purposes of said
86 article nine-d: *Provided*, That if funds are available and
87 appropriated in each such subsequent fiscal year, not
88 less than seven million seven hundred thousand dollars
89 shall be added to the amount of the prior year's
90 appropriation for such fund.

91 (d) There shall be appropriated seven million, four
92 hundred ten thousand, six hundred sixty-eight dollars
93 for aid to counties which may be expended by the county
94 boards for the initiation and/or improvements of special
95 education programs including employment of new
96 special education professional personnel solely serving
97 exceptional children; instructional programs which
98 utilize state of the art technology; training of educa-
99 tional personnel to work with exceptional children; and
100 supportive costs such as materials, transportation,
101 contracted services, minor renovations and other costs
102 directly related to the special education delivery process
103 prescribed by the state board. The appropriation may
104 also be used for nonpersonnel costs associated with the
105 maintenance of special education programs in accord-
106 ance with such rules as established by the state board.
107 The appropriation includes out-of-state instruction and
108 may be expended to provide instruction, care and
109 maintenance for educable persons who are severely
110 handicapped and for whom the state provides no
111 facilities.

112 (e) There shall be appropriated two million, eighty-

113 five thousand two hundred two dollars to be used by the
114 state department of education which may be expended
115 for the purposes of paying staff and operating costs of
116 both administrative/program personnel and instruc-
117 tional personnel delivering education to handicapped
118 children in facilities operated by the state division of
119 health; paying state department of education staff,
120 current expenses and equipment; supporting a gifted
121 summer camp; and supporting special state projects,
122 including, but not limited to, (1) an instructional
123 materials center for visually handicapped children at
124 the West Virginia Schools for the Deaf and the Blind,
125 (2) the state special olympics program, (3) the West
126 Virginia advisory council for the education of excep-
127 tional children at the West Virginia College of Graduate
128 Studies, (4) statewide training activities or other
129 programs benefiting exceptional children and (5) the
130 state very special arts program.

§18-9A-13. Transitional allocation for certain rural district boards.

1 For the school year one thousand nine hundred ninety-
2 one—ninety-two only, there shall be a one-time addi-
3 tional appropriation of one million dollars to be
4 distributed to those very few district boards on a needs
5 basis: *Provided*, That if funds available under this
6 section are used for personnel, such funds may not be
7 used to increase the total number of professional
8 noninstructional personnel in the central office beyond
9 four. The factors used to determine eligibility for funds
10 shall be staffing ratio to students, administrative ratio
11 to staff supervised, funding stability, and sparsity of
12 student population.

13 The state superintendent shall require the district
14 board to demonstrate: (1) The need for the allocation, (2)
15 efficiency and fiscal responsibility in staffing, and (3)
16 sharing of services with adjoining counties and the
17 regional educational service agency for that county in
18 the use of the total local district board budget. District
19 boards shall make application for available funds by the
20 first day of May, one thousand nine hundred ninety-one.
21 On or before the first day of June, the state superintend-

22 ent shall review all applications and notify applying
 23 district boards of the distribution of the allocation. Such
 24 funds shall be distributed during the fiscal year as
 25 appropriate.

CHAPTER 53

(Com. Sub. for H. B. 2677—By Delegate Ashcraft, By Request)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and four, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirty-nine, article five of said chapter; to amend and reenact section four, article two, chapter eighteen-a; and to amend and reenact sections eight and ten, article four of said chapter, relating to clarifying qualifications of superintendents; the employment of school personnel during the summer; providing for seniority in summer service positions; licensing of school electricians; providing priority status to certain disabled service personnel in certain instances; and enlarging conditions of personal leave for service employees.

Be it enacted by the Legislature of West Virginia:

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

Chapter

18. Education.

18A. School Personnel

CHAPTER 18. EDUCATION.

Article

4. County Superintendent of Schools.
5. County Board of Education.

ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

§18-4-4. Compensation.

§18-4-2. Qualifications; health certificate; disability; acting superintendent.

1 Superintendents employed prior to the twenty-eighth
2 day of June, one thousand nine hundred eighty-eight
3 shall hold a certificate valid in West Virginia and an
4 approved master's degree including at least twelve
5 semester hours in school administration and supervision,
6 and at least five years experience in public school
7 teaching and/or supervision.

8 Any superintendent appointed as superintendent after
9 the twenty-seventh day of June, one thousand nine
10 hundred eighty-eight, shall meet requirements for the
11 professional administrative certificate endorsed for
12 superintendent by the first day of July, one thousand
13 nine hundred ninety-three. Any new superintendent
14 appointed as of the thirtieth day of August, one thousand
15 nine hundred ninety, shall hold a professional adminis-
16 trative certificate endorsed for superintendent. Any
17 person employed as assistant superintendent or educa-
18 tional administrator prior to the twenty-seventh day of
19 June, one thousand nine hundred eighty-eight, and who
20 was previously employed as superintendent shall not be
21 required to hold the professional administrative certifi-
22 cate endorsed for superintendent.

23 Before entering upon the discharge of his duties the
24 superintendent shall file with the president of the board
25 a health certificate from a reputable physician, on a
26 form prescribed by the state department of schools,
27 certifying that he is physically fit for the duties of his
28 office and that he has no infectious or contagious disease;
29 and if the superintendent, due to accident or illness,
30 should become incapacitated to an extent that could lead
31 to a prolonged absence, the board, upon unanimous vote,
32 shall have authority to enter an order declaring such

33 incapacity and it shall appoint an acting superintendent
34 until such time as a majority of the members of the
35 board shall determine that the incapacity no longer
36 exists. However, an acting superintendent shall not
37 serve as such for more than one year, or later than the
38 expiration date of the superintendent's term, whichever
39 is less, without being reappointed by the board of
40 education.

§18-4-4. Compensation.

1 On or before the first day of May of the year in which
2 the superintendent is appointed, the board shall fix the
3 annual salary of the superintendent for the period of
4 appointment for the term beginning on the first day of
5 July following. The board shall pay the salary from the
6 general current expense fund of the district.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-39. Establishment of summer school programs; tuition.

1 Inasmuch as the present county school facilities for
2 the most part lie dormant and unused during the
3 summer months, and inasmuch as there are many
4 students who are in need of remedial instruction and
5 others who desire accelerated instruction, it is the
6 purpose of this section to provide for the establishment
7 of a summer school program, which program is to be
8 separate and apart from the full school term as
9 established by each county.

10 The board of education of any county shall have
11 authority to establish a summer school program utiliz-
12 ing the public school facilities and to charge tuition for
13 students who attend such summer school, such tuition
14 not to exceed in any case the actual cost of operation of
15 such summer school program: *Provided*, That any
16 deserving pupil whose parents, in the judgment of the
17 board, are unable to pay such tuition, may attend at a
18 reduced charge or without charge. The county board of
19 education shall have the authority to determine the term
20 and curriculum of such summer schools based upon the
21 particular needs of the individual county. The curricu-

22 lum may include, but is not limited to, remedial
23 instruction, accelerated instruction, and the teaching of
24 manual arts. The term of such summer school program
25 may not be established in such a manner as to interfere
26 with the regular school term.

27 The county boards may employ as teachers for this
28 summer school program any certified teacher. Certified
29 teachers employed by the county board to teach in the
30 summer school program shall be paid an amount to be
31 determined by the county board and shall enter into a
32 contract of employment in such form as is prescribed
33 by the county board: *Provided*, That teachers who teach
34 summer courses of instruction which are offered for
35 credit and which are taught during the regular school
36 year shall be paid at the same daily rate such teacher
37 would receive if paid in accordance with the then
38 current minimum monthly salary in effect for teachers
39 in that county.

40 Any funds accruing from such tuitions shall be
41 credited to and expended within the existing framework
42 of the general current expense fund of the county board.

43 Notwithstanding any other provision of this code to
44 the contrary, the board shall fill professional positions
45 established pursuant to the provisions of this section on
46 the basis of certification and length of time the
47 professional has been employed in the county's summer
48 school program. In the event that no employee who has
49 been previously employed in the summer school pro-
50 gram holds a valid certification or licensure, a board
51 shall fill the position as a classroom teaching position in
52 accordance with section eight-b, article four, chapter
53 eighteen-a of this code.

54 Notwithstanding any other provision of the code to the
55 contrary, the county board of education is authorized to
56 employ school service personnel to perform any related
57 duties outside the regular school term as defined in
58 section eight, article four, chapter eighteen-a of this
59 code. An employee who was employed in any service
60 personnel job or position during the immediate previous
61 summer shall have the option of retaining such job or

62 position if such exists during any succeeding summer.
63 If such employee is unavailable or if the position is
64 newly created, the position shall be filled pursuant to
65 section eight-b, article four, chapter eighteen-a of this
66 code. When any summer employee who is employed in
67 a summer position is granted a leave of absence for the
68 summer months, the board shall give regular employ-
69 ment status to such employee for that summer position
70 which shall be filled under the procedure set forth in
71 section eight-b, article four, chapter eighteen-a of this
72 code. The summer employee on leave of absence shall
73 have the option of returning to that summer position if
74 such exists the succeeding summer or whenever such
75 position is reestablished if it were abolished. The salary
76 of a summer employee shall be in accordance with the
77 salary schedule of persons regularly employed in the
78 same position in the county where employed.

79 If a county board reduces in force the number of
80 employees to be employed in a particular summer
81 program or classification from the number employed in
82 such position in previous summers, such reductions in
83 force and priority in reemployment to such summer
84 positions shall be based upon the length of service time
85 in the particular summer program or classification.

86 For the purpose of this section, summer employment
87 for service personnel shall be defined, but not limited
88 to, filling jobs and positions as defined in section eight,
89 article four, chapter eighteen-a of this code and
90 especially established for and which are to be predom-
91 inantly performed during the summer months to meet
92 the needs of a county board of education.

CHAPTER 18A. SCHOOL PERSONNEL.

Article

2. School Personnel.
4. Salaries, Wages and Other Benefits.

ARTICLE 2. SCHOOL PERSONNEL.

**§18A-2-4. Commercial driver's license for school person-
nel; reimbursement of electrician's and
commercial driver's license when required.**

1 If a commercial driver's license is required as a
2 condition of employment for any school employee or
3 qualified applicant who becomes an employee by a
4 county board of education, the cost shall be paid in full
5 by the employer.

6 It is unlawful for any county board of education to
7 require any employee or applicant who becomes an
8 employee of the board to pay the cost of acquiring a
9 commercial driver's license as a condition of
10 employment.

11 The division of motor vehicles shall accept the West
12 Virginia department of education physical and psy-
13 chomotor test result forms in lieu of the division of
14 motor vehicles vision report form.

15 If a county board of education requires of any
16 employee who is employed as an electrician any license
17 renewal when the employee is exempt from renewing
18 the license pursuant to section three, article three-b,
19 chapter twenty-nine of this code, the cost of such license
20 renewal shall be paid in full by the county board of
21 education.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel;
definitions.

§18A-4-10. Personal leave for illness and other causes; leave banks;
substitutes.

§18A-4-8. Employment term and class titles of service personnel; definitions.

1 The purpose of this section is to establish an employ-
2 ment term and class titles for service personnel. The
3 employment term for service personnel shall be no less
4 than ten months, a month being defined as twenty
5 employment days: *Provided*, That the county board of
6 education may contract with all or part of these
7 personnel for a longer term. The beginning and closing
8 dates of the ten-month employment term shall not
9 exceed forty-three weeks. Service personnel employed
10 on a yearly or twelve-month basis may be employed by
11 calendar months. Whenever there is a change in job

12 assignment during the school year, the minimum pay
13 scale and any county supplement shall be applicable.

14 Service personnel employed in the same classification
15 for more than the two hundred day minimum employ-
16 ment term shall be paid for additional employment at
17 a daily rate of not less than the daily rate paid for the
18 two hundred day minimum employment term.

19 No service employee, without his agreement, shall be
20 required to report for work more than five days per
21 week and no part of any working day may be accum-
22 ulated by the employer for future work assignments,
23 unless the employee agrees thereto.

24 Should an employee whose regular work week is
25 scheduled from Monday through Friday agree to
26 perform any work assignments on a Saturday or
27 Sunday, the employee shall be paid for at least one-half
28 day of work for each such day he reports for work, and
29 if the employee works more than three and one-half
30 hours on any Saturday or Sunday, he shall be paid for
31 a least a full day of work for each such day.

32 Custodians required to work a daily work schedule
33 that is interrupted, that is, who do not work a continuous
34 period in one day, shall be paid additional compensation
35 which shall be equal to at least one eighth of their total
36 salary as provided by their state minimum salary and
37 any county pay supplement, and payable entirely from
38 county funds.

39 Upon the change in classification or upon meeting the
40 requirements of an advanced classification of or by any
41 employee, his salary shall be made to comply with the
42 requirements of this article, and to any county salary
43 schedule in excess of the minimum requirements of this
44 article, based upon his advanced classification and
45 allowable years of employment.

46 An employee's contract as provided in section five,
47 article two of this chapter shall state the appropriate
48 monthly salary the employee is to be paid, based on the
49 class title as provided in this article and any county
50 salary schedule in excess of the minimum requirements

51 of this article.

52 The column heads of the state minimum pay scale and
53 class titles, set forth in section eight-a of this article, are
54 defined as follows:

55 "Pay grade" means the monthly salary applicable to
56 class titles of service personnel.

57 "Years of employment" means the number of years
58 which an employee classified as service personnel has
59 been employed by a board of education in any position
60 prior to or subsequent to the effective date of this section
61 and including service in the armed forces of the United
62 States if the employee were employed at the time of his
63 induction. For the purpose of section eight-a of this
64 article, years of employment shall be limited to the
65 number of years shown and allowed under the state
66 minimum pay scale as set forth in section eight-a of this
67 article.

68 "Class title" means the name of the position or job held
69 by service personnel.

70 "Accountant I" means personnel employed to maintain
71 payroll records and reports and perform one or more
72 operations relating to a phase of the total payroll.

73 "Accountant II" means personnel employed to main-
74 tain accounting records and to be responsible for the
75 accounting process associated with billing, budgets,
76 purchasing and related operations.

77 "Accountant III" means personnel who are employed
78 in the county board of education office to manage and
79 supervise accounts payable and/or payroll procedures.

80 "Aide I" means those personnel selected and trained
81 for teacher-aide classifications such as monitor aide,
82 clerical aide, classroom aide or general aide.

83 "Aide II" means those personnel referred to in the
84 "Aide I" classification who have completed a training
85 program approved by the state board of education, or
86 who hold a high school diploma or have received a
87 general educational development certificate. Only
88 personnel classified in an Aide II class title shall be

89 employed as an aide in any special education program.

90 "Aide III" means those personnel referred to in the
91 "Aide I" classification who hold a high school diploma
92 or a general educational development certificate, and
93 have completed six semester hours of college credit at
94 an institution of higher education or are employed as an
95 aide in a special education program and have one year's
96 experience as an aide in special education.

97 "Aide IV" means personnel referred to in the "Aide
98 I" classification who hold a high school diploma or a
99 general educational development certificate and who
100 have completed eighteen hours of state board-approved
101 college credit at a regionally accredited institution of
102 higher education, or who have completed fifteen hours
103 of state board-approved college credit at a regionally
104 accredited institution of higher education and success-
105 fully completed an in-service training program deter-
106 mined by the state board to be the equivalent of three
107 hours of college credit.

108 "Audiovisual technician" means personnel employed
109 to perform minor maintenance on audiovisual equip-
110 ment, films, supplies and the filling of requests for
111 equipment.

112 "Auditor" means personnel employed to examine and
113 verify accounts of individual schools and to assist schools
114 and school personnel in maintaining complete and
115 accurate records of their accounts.

116 "Braille or sign language specialist" means personnel
117 employed to provide braille and/or sign language
118 assistance to students.

119 "Bus operator" means personnel employed to operate
120 school buses and other school transportation vehicles as
121 provided by the state board of education.

122 "Buyer" means personnel employed to review and
123 write specifications, negotiate purchase bids and
124 recommend purchase agreements for materials and
125 services that meet predetermined specifications at the
126 lowest available costs.

127 "Cabinetmaker" means personnel employed to con-

- 128 struct cabinets, tables, bookcases and other furniture.
- 129 "Cafeteria manager" means personnel employed to
130 direct the operation of a food services program in a
131 school, including assigning duties to employees, approv-
132 ing requisitions for supplies and repairs, keeping
133 inventories, inspecting areas to maintain high standards
134 of sanitation, preparing financial reports and keeping
135 records pertinent to food services of a school.
- 136 "Carpenter I" means personnel classified as a carpen-
137 ter's helper.
- 138 "Carpenter II" means personnel classified as a
139 journeyman carpenter.
- 140 "Chief mechanic" means personnel employed to be
141 responsible for directing activities which ensure that
142 student transportation or other board-owned vehicles
143 are properly and safely maintained.
- 144 "Clerk I" means personnel employed to perform
145 clerical tasks.
- 146 "Clerk II" means personnel employed to perform
147 general clerical tasks, prepare reports and tabulations
148 and operate office machines.
- 149 "Computer operator" means qualified personnel
150 employed to operate computers.
- 151 "Cook I" means personnel employed as a cook's helper.
- 152 "Cook II" means personnel employed to interpret
153 menus, to prepare and serve meals in a food service
154 program of a school and shall include personnel who
155 have been employed as a "Cook I" for a period of four
156 years, if such personnel have not been elevated to this
157 classification within that period of time.
- 158 "Cook III" means personnel employed to prepare and
159 serve meals, make reports, prepare requisitions for
160 supplies, order equipment and repairs for a food service
161 program of a school system.
- 162 "Crew leader" means personnel employed to organize
163 the work for a crew of maintenance employees to carry
164 out assigned projects.

165 "Custodian I" means personnel employed to keep
166 buildings clean and free of refuse.

167 "Custodian II" means personnel employed as a
168 watchman or groundsman.

169 "Custodian III" means personnel employed to keep
170 buildings clean and free of refuse, to operate the heating
171 or cooling systems and to make minor repairs.

172 "Custodian IV" means personnel employed as head
173 custodians. In addition to providing services as defined
174 in "Custodian III," their duties may include supervising
175 other custodian personnel.

176 "Director or coordinator of services" means personnel
177 not defined as professional personnel or professional
178 educators in section one, article one of this chapter, who
179 are assigned to direct a department or division.

180 "Draftsman" means personnel employed to plan,
181 design and produce detailed architectural/engineering
182 drawings.

183 "Electrician I" means personnel employed as an
184 apprentice electrician helper or who holds an electrician
185 helper license issued by the state fire marshal.

186 "Electrician II" means personnel employed as an
187 electrician journeyman or who holds a journeyman
188 electrician license issued by the state fire marshal.

189 "Electronic technician I" means personnel employed
190 at the apprentice level to repair and maintain electronic
191 equipment.

192 "Electronic technician II" means personnel employed
193 at the journeyman level to repair and maintain elec-
194 tronic equipment.

195 "Executive secretary" means personnel employed as
196 the county school superintendent's secretary or as a
197 secretary who is assigned to a position characterized by
198 significant administrative duties.

199 "Food services supervisor" means qualified personnel
200 not defined as professional personnel or professional
201 educators in section one, article one of this chapter,

202 employed to manage and supervise a county school
203 system's food service program. The duties would include
204 preparing in-service training programs for cooks and
205 food service employees, instructing personnel in the
206 areas of quantity cooking with economy and efficiency,
207 and keeping aggregate records and reports.

208 "Foremen" means skilled persons employed for
209 supervision of personnel who work in the areas of repair
210 and maintenance of school property and equipment.

211 "General maintenance" means personnel employed as
212 helpers to skilled maintenance employees and to
213 perform minor repairs to equipment and buildings of a
214 county school system.

215 "Glazier" means personnel employed to replace glass
216 or other materials in windows and doors and to do minor
217 carpentry tasks.

218 "Graphic artist" means personnel employed to prepare
219 graphic illustrations.

220 "Groundsmen" means personnel employed to perform
221 duties that relate to the appearance, repair and general
222 care of school grounds in a county school system.
223 Additional assignments may include the operation of a
224 small heating plant and routine cleaning duties in
225 buildings.

226 "Handyman" means personnel employed to perform
227 routine manual tasks in any operation of the county
228 school system.

229 "Heating and air conditioning mechanic I" means
230 personnel employed at the apprentice level to install,
231 repair and maintain heating and air conditioning plants
232 and related electrical equipment.

233 "Heating and air conditioning mechanic II" means
234 personnel employed at the journeyman level to install,
235 repair and maintain heating and air conditioning plants
236 and related electrical equipment.

237 "Heavy equipment operator" means personnel em-
238 ployed to operate heavy equipment.

239 "Inventory supervisor" means personnel who are
240 employed to supervise or maintain operations in the
241 receipt, storage, inventory and issuance of materials and
242 supplies.

243 "Key punch operator" means qualified personnel
244 employed to operate key punch machines or verifying
245 machines.

246 "Locksmith" means personnel employed to repair and
247 maintain locks and safes.

248 "Lubrication man" means personnel employed to
249 lubricate and service gasoline or diesel-powered equip-
250 ment of a county school system.

251 "Machinist" means personnel employed to perform
252 machinist tasks which include the ability to operate a
253 lathe, planer, shaper, threading machine and wheel
254 press. Such personnel should also have ability to work
255 from blueprints and drawings.

256 "Mail clerk" means personnel employed to receive,
257 sort, dispatch, deliver or otherwise handle letters,
258 parcels and other mail.

259 "Maintenance clerk" means personnel employed to
260 maintain and control a stocking facility to keep ade-
261 quate tools and supplies on hand for daily withdrawal
262 for all school maintenance crafts.

263 "Mason" means personnel employed to perform tasks
264 connected with brick and block laying and carpentry
265 tasks related to such laying.

266 "Mechanic" means personnel employed who can
267 independently perform skilled duties in the maintenance
268 and repair of automobiles, school buses and other
269 mechanical and mobile equipment to use in a county
270 school system.

271 "Mechanic assistant" means personnel employed as a
272 mechanic apprentice and helper.

273 "Multi-classification" means personnel employed to
274 perform tasks that involve the combination of two or
275 more class titles in this section or as created by the West

276 Virginia board of education. In such instances the
277 minimum salary scale shall be the higher pay grade of
278 the class titles involved.

279 "Office equipment repairman I" means personnel
280 employed as an office equipment repairman apprentice
281 or helper.

282 "Office equipment repairman II" means personnel
283 responsible for servicing and repairing all office
284 machines and equipment. Personnel shall be responsible
285 for parts being purchased necessary for the proper
286 operation of a program of continuous maintenance and
287 repair.

288 "Painter" means personnel employed to perform
289 duties of painting, finishing and decorating of wood,
290 metal and concrete surfaces of buildings, other struc-
291 tures, equipment, machinery and furnishings of a
292 county school system.

293 "Paraprofessional" means a person certified pursuant
294 to section two-a, article three of this chapter to perform
295 duties in a support capacity including, but not limited
296 to, facilitating in the instruction and direct or indirect
297 supervision of pupils under the direction of a principal,
298 a teacher, or another designated professional educator:
299 *Provided*, That no person employed on the effective date
300 of this section in the position of an aide may be reduced
301 in force or transferred to create a vacancy for the
302 employment of a paraprofessional.

303 "Plumber I" means personnel employed as an appren-
304 tice plumber and helper.

305 "Plumber II" means personnel employed as a journey-
306 man plumber.

307 "Printing operator" means personnel employed to
308 operate duplication equipment, and as required, to cut,
309 collate, staple, bind and shelve materials.

310 "Printing supervisor" means personnel employed to
311 supervise the operation of a print shop.

312 "Programmer" means personnel employed to design
313 and prepare programs for computer operation.

314 "Roofing/sheet metal mechanic" means personnel
315 employed to install, repair, fabricate and maintain roofs,
316 gutters, flashing and duct work for heating and
317 ventilation.

318 "Sanitation plant operator" means personnel employed
319 to operate and maintain a water or sewage treatment
320 plant to ensure the safety of the plant's effluent for
321 human consumption or environmental protection.

322 "School bus supervisor" means qualified personnel
323 employed to assist in selecting school bus operators and
324 routing and scheduling of school buses, operate a bus
325 when needed, relay instructions to bus operators, plan
326 emergency routing of buses and promoting good
327 relationships with parents, pupils, bus operators and
328 other employees.

329 "Secretary I" means personnel employed to transcribe
330 from notes or mechanical equipment, receive callers,
331 perform clerical tasks, prepare reports and operate
332 office machines.

333 "Secretary II" means personnel employed in any
334 elementary, secondary, kindergarten, nursery, special
335 education, vocational or any other school as a secretary.
336 The duties may include performing general clerical
337 tasks, transcribing from notes or stenotype or mechan-
338 ical equipment or a sound-producing machine, prepar-
339 ing reports, receiving callers and referring them to
340 proper persons, operating office machines, keeping
341 records and handling routine correspondence. There is
342 nothing implied herein that would prevent such em-
343 ployees from holding or being elevated to a higher
344 classification.

345 "Secretary III" means personnel assigned to the
346 county board of education office administrators in
347 charge of various instructional, maintenance, transpor-
348 tation, food services, operations and health departments,
349 federal programs or departments with particular
350 responsibilities of purchasing and financial control or
351 any personnel who have served in a position which meets
352 the definition of "Secretary II" or "Secretary III" herein
353 for twelve years.

354 "Supervisor of maintenance" means skilled personnel
355 not defined as professional personnel or professional
356 educators as in section one, article one of this chapter.
357 The responsibilities would include directing the upkeep
358 of buildings and shops, issuing instructions to subordi-
359 nates relating to cleaning, repairs and maintenance of
360 all structures and mechanical and electrical equipment
361 of a board of education.

362 "Supervisor of transportation" means qualified
363 personnel employed to direct school transportation
364 activities, properly and safely, and to supervise the
365 maintenance and repair of vehicles, buses, and other
366 mechanical and mobile equipment used by the county
367 school system.

368 "Switchboard operator-receptionist" means personnel
369 employed to refer incoming calls, to assume contact with
370 the public, to direct and to give instructions as neces-
371 sary, to operate switchboard equipment and to provide
372 clerical assistance.

373 "Truck driver" means personnel employed to operate
374 light or heavy duty gasoline and diesel-powered vehicles.

375 "Warehouse clerk" means personnel employed to be
376 responsible for receiving, storing, packing and shipping
377 goods.

378 "Watchman" means personnel employed to protect
379 school property against damage or theft. Additional
380 assignments may include operation of a small heating
381 plant and routine cleaning duties.

382 "Welder" means personnel employed to provide
383 acetylene or electric welding services for a school
384 system.

385 In addition to the compensation provided for in section
386 eight-a of this article, for service personnel, each service
387 employee shall, notwithstanding any provisions in this
388 code to the contrary, be entitled to all service personnel
389 employee rights, privileges and benefits provided under
390 this or any other chapter of this code without regard to
391 such employee's hours of employment or the methods or
392 sources of compensation.

393 Service personnel whose years of employment exceed
394 the number of years shown and provided for under the
395 state minimum pay scale set forth in section eight-a of
396 this article may not be paid less than the amount shown
397 for the maximum years of employment shown and
398 provided for in the classification in which he is
399 employed.

400 The county boards shall review each service personnel
401 employee job classification annually and shall reclassify
402 all service employees as required by such job classifi-
403 cations. The state superintendent of schools is hereby
404 authorized to withhold state funds appropriated pursu-
405 ant to this article for salaries for service personnel who
406 are improperly classified by such county boards.
407 Further, he shall order county boards to correct
408 immediately any improper classification matter and
409 with the assistance of the attorney general shall take any
410 legal action necessary against any county board to
411 enforce such order.

412 The state board of education is authorized to establish
413 other class titles of service personnel positions and jobs
414 not listed in this section. The state board of education
415 is further authorized to provide appropriate pay grades
416 for such positions and jobs but pay shall be established
417 within the minimum salary scale in section eight-a of
418 this article.

419 No service employee, without his written consent, may
420 be reclassified by class title, nor may a service employee,
421 without his written consent, be relegated to any
422 condition of employment which would result in a
423 reduction of his salary, rate of pay, compensation or
424 benefits earned during the current fiscal year or which
425 would result in a reduction of his salary, rate of pay,
426 compensation or benefits for which he would qualify by
427 continuing in the same job position and classification
428 held during said fiscal year and subsequent years.

429 Any board failing to comply with the provisions of this
430 article may be compelled to do so by mandamus, and
431 shall be liable to any party prevailing against the board
432 for court costs and his reasonable attorney fee, as

433 determined and established by the court.

434 Notwithstanding any provisions in this code to the
435 contrary, service personnel who hold a continuing
436 contract in a specific job classification and are physi-
437 cally unable to perform the job's duties as confirmed by
438 a physician chosen by the employee shall be given
439 priority status over any employee not holding a contin-
440 uing contract in filling other service personnel job
441 vacancies if qualified as provided in section eight-e of
442 this article.

**§18A-4-10. Personal leave for illness and other causes;
leave banks; substitutes.**

1 At the beginning of the employment term, any full-
2 time employee of a county board of education shall be
3 entitled annually to at least one and one-half days
4 personal leave for each employment month or major
5 fraction thereof in the employee's employment term.
6 Unused leave shall be accumulative without limitation
7 and shall be transferable within the state. A change in
8 job assignment during the school year shall in no way
9 affect the employee's rights or benefits.

10 A regular full-time employee who is absent from
11 assigned duties due to accident, sickness, death in the
12 immediate family, or life threatening illness of the
13 employee's spouse, parents or child, or other cause
14 authorized or approved by the board, shall be paid the
15 full salary from his regular budgeted salary appropri-
16 ation during the period which such employee is absent,
17 but not to exceed the total amount of leave to which such
18 employee is entitled: *Provided*, That each such employee
19 shall be permitted three days of such leave annually,
20 which may be taken without regard to the cause for the
21 absence, except that personal leave without cause may
22 not be taken on consecutive work days unless authorized
23 or approved by the employee's principal or immediate
24 supervisor, as the case may be: *Provided, however*, That
25 notice of such leave day shall be given to the employee's
26 principal or immediate supervisor, as the case may be,
27 at least twenty-four hours in advance, except that in the
28 case of sudden and unexpected circumstances, such

29 notice shall be given as soon as reasonably practicable;
30 however, the use of such day may be denied if, at the
31 time notice is given, either fifteen percent of the
32 employees or three employees, whichever is greater,
33 under the supervision of the principal or immediate
34 supervisor, as the case may be, have previously notified
35 the principal or immediate supervisor of their intention
36 to use that day for such leave: *Provided further*, That
37 such leave shall not be used in connection with a
38 concerted work stoppage or strike. Where the cause for
39 leave had its origin prior to the beginning of the
40 employment term, the employee shall be paid for time
41 lost after the start of the employment term. If an
42 employee should use personal leave which the employee
43 has not yet accumulated on a monthly basis and
44 subsequently leave the employment, the employee shall
45 be required to reimburse the board for the salary or
46 wages paid to him for such unaccumulated leave.

47 Prior to the first day of January, one thousand nine
48 hundred eighty-nine, the state board shall establish
49 rules, effective on said date, to restrict the payment of
50 personal leave benefits and the charging of personal
51 leave time used to an employee receiving a workers'
52 compensation benefit from a claim filed against and
53 billed to the employee's board. If an employee is
54 awarded such benefit, such employee shall receive
55 personal leave compensation only to the extent such
56 compensation is required, when added to the workers'
57 compensation benefit, to equal the amount of compen-
58 sation regularly paid such employee. If personal leave
59 compensation equal to the employee's regular pay is
60 paid prior to the award of the workers' compensation
61 benefit, such amount which, when added to the benefit,
62 is in excess of the employee's regular pay shall be
63 deducted from the employee's subsequent pay. The
64 employee's accrued personal leave days shall be charged
65 only for such days as equal the amount of personal leave
66 compensation required to compensate the employee at
67 the employee's regular rate of pay.

68 The board may establish reasonable rules for report-
69 ing and verification of absences for cause; and if any

70 error in reporting absences should occur, it shall have
71 authority to make necessary salary adjustments in the
72 next pay after the employee has returned to duty or in
73 the final pay if the absence should occur during the last
74 month of the employment term.

75 A county board of education may establish a personal
76 leave bank or banks to which employees may contribute
77 no more than two days of personal leave per school year:
78 *Provided*, That such bank or banks be established either
79 jointly or separately for both professional personnel and
80 school service personnel and that a bank be available to
81 all school personnel. Such personal leave bank shall be
82 established and operated pursuant to rules adopted by
83 the county board: *Provided, however*, That such rules
84 may limit the maximum number of days used by an
85 employee, shall require that leave bank days be used
86 only by an active employee with less than five days
87 accumulated personal leave who is absent from work
88 due to accident or illness of such employee, and shall
89 prohibit the use of such days with the extension of
90 insurance coverage pursuant to section twelve, article
91 sixteen, chapter five of this code. Such rules shall
92 require that contributions shall reduce, to the extent of
93 such contribution, the number of personal leave days to
94 which an employee is entitled by this section: *Provided*
95 *further*, That such contribution shall not reduce personal
96 leave days without cause to which an employee is
97 entitled. No employee may be compelled to contribute
98 to such personal leave bank.

99 When an allowable absence does not directly affect the
100 instruction of the pupils or when a substitute employee
101 may not be required because of the nature of the work
102 and the duration of the cause for the allowable absence
103 of the regular employee, the administration, subject to
104 board approval, may use its discretion as to the need for
105 a substitute where limited absence may prevail.

106 If funds in any fiscal year, including transfers, are
107 insufficient to pay the full cost of substitutes for meeting
108 the provisions of this section, the remainder shall be
109 paid on or before the thirty-first day of August from the
110 budget of the next fiscal year.

111 Any board of education shall have authority to
112 supplement such leave provisions in any manner it may
113 deem advisable in accordance with applicable rules of
114 the state board and the provisions of this chapter and
115 chapter eighteen of this code.

CHAPTER 54

(S. B. 468—By Senators Wagner and Withers)

[Passed March 7, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying and limiting the emergency powers of the county superintendent of schools.

Be it enacted by the Legislature of West Virginia:

That section ten, article four, 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 4. COUNTY SUPERINTENDENT OF SCHOOLS.

§18-4-10. Duties.

1 The county superintendent shall:

2 (1) Act as the chief executive officer of the board, and
3 execute under the direction of the state board all its
4 educational policies;

5 (2) Nominate all personnel to be employed; in case the
6 board of education refuses to employ any or all of the
7 persons nominated, the superintendent shall nominate
8 others and submit the same to the board of education
9 at such time as the board may direct, but no such person
10 or persons shall be employed except on the nomination
11 of the county superintendent;

12 (3) Assign, transfer, suspend or promote teachers and
13 all other school employees of the district, subject only
14 to the approval of the board, and to recommend to the

- 15 board their dismissal pursuant to the provisions of this
16 chapter;
- 17 (4) Organize and attend district institutes; organize
18 and direct reading circles and boys' and girls' clubs;
- 19 (5) Close temporarily a school when conditions are
20 detrimental to the health, safety or welfare of the pupils;
- 21 (6) Certify all expenditures and monthly payrolls of
22 teachers and employees;
- 23 (7) Be the secretary of the board and attend all
24 meetings of the board or its committees, except when
25 his tenure, salary or administration is under
26 consideration;
- 27 (8) Administer oaths and examine under oath wit-
28 nesses in any proceedings pertaining to the schools of the
29 district, and have the testimony reduced to writing;
- 30 (9) Exercise all other authority granted by this
31 chapter or required by the board or state board; and
- 32 (10) Act in case of emergency as the best interests of
33 the school demand: *Provided*, That an emergency as
34 contemplated in this section shall be limited to an
35 unforeseeable, catastrophic event including natural
36 disaster or act of war: *Provided, however*, That nothing
37 in this section shall be construed as granting the county
38 superintendent authority to override any statutory or
39 constitutional provision in the exercise of said emer-
40 gency power except where such authority is specifically
41 granted in the particular code section.

CHAPTER 55

(H. B. 2472—By Delegates Pethtel and D. Miller)

[Passed February 13, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, to allow school employees to serve on a county board of education in the county where they reside but are not employed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members.

1 No person shall be eligible for membership on any
2 county board of education who is not a citizen, resident
3 in such county, or who accepts a position as teacher or
4 service personnel in the school district in which he or
5 she is a resident or who is an elected or an appointed
6 member of any political party executive committee, or
7 who becomes a candidate for any other office than to
8 succeed oneself.

9 No member or member-elect of any board of educa-
10 tion shall be eligible for nomination, election or
11 appointment to any public office, other than to succeed
12 oneself, or for election or appointment as a member of
13 any political party executive committee, unless and until
14 after that membership on the board, or his status as
15 member-elect to the board, has been terminated at or
16 before the time of his filing for such nomination for, or
17 appointment to, such public office or committee.

18 Any person who is elected or appointed to a county
19 board of education on or after the fifth day of May, one
20 thousand nine hundred ninety-two, shall possess at least
21 a high school diploma or a general educational develop-
22 ment (GED) diploma: *Provided*, That this provision shall
23 not apply to members or members-elect who have taken
24 office prior to the fifth day of May, one thousand nine
25 hundred ninety-two, and who serve continuously
26 therefrom.

27 No person elected to a county board of education after
28 the first day of July, one thousand nine hundred ninety,
29 shall assume the duties of board member unless he or
30 she has first attended and completed a course of
31 orientation relating to boardsmanship and governance
32 effectiveness which shall be given between the date of
33 election and the beginning of the member's term of

34 office. Members appointed to the board shall attend and
35 complete the next such course offered following their
36 appointment. Commencing on the effective date of this
37 section, members shall annually receive seven clock
38 hours of training in areas relating to boardmanship
39 and governance effectiveness. Such orientation and
40 training shall be approved by the state board of
41 education and conducted by the West Virginia school
42 board association or other organization or organizations
43 approved by the state board. Failure to attend and
44 complete such an approved course of orientation and
45 training relating to boardmanship and governance
46 effectiveness without good cause shall constitute neglect
47 of duty.

CHAPTER 56

(Com. Sub. for S. B. 578—By Senators Bailey and Anderson)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five, chapter eighteen 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-b, relating to authorizing county boards of education to donate unneeded real estate to certain nonprofit organizations; and limiting the liability of county boards for hazardous conditions associated with certain conveyed property.

Be it enacted by the Legislature of West Virginia:

That section seven, article five, chapter eighteen 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-b, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-7. Sale of school property at public auction; rights of grantor of lands in rural communities; oil and gas leases; disposition of proceeds.

§18-5-7b. Charitable or community use of unneeded buildings.

§18-5-7. Sale of school property at public auction; rights of grantor of lands in rural communities; oil and gas leases; disposition of proceeds.

1 If at any time the board shall ascertain that any
2 building or any land no longer shall be needed for school
3 purposes, the board may sell, dismantle, remove or
4 relocate any such buildings and sell the land on which
5 they are located, at public auction, after proper notice,
6 and on such terms as it orders, to the highest responsible
7 bidder. But in rural communities, the grantor of the
8 lands, his heirs or assigns, shall have the right to
9 purchase at the sale, the land, exclusive of the buildings
10 thereon, and the mineral rights, at the same price for
11 which it was originally sold: *Provided*, That the sale to
12 the board was not a voluntary arms length transaction
13 for valuable consideration approximating the fair
14 market value of the property at the time of such sale
15 to the board: *Provided, however*, That this section shall
16 not operate to invalidate any provision of the deed to the
17 contrary. The board by the same method prescribed for
18 the sale of school buildings and lands, may also lease for
19 oil or gas or other minerals any lands or school sites
20 owned in fee by it. The proceeds of such sales and
21 rentals shall be placed to the credit of such fund or
22 funds of the district as the board may direct: *Provided*
23 *further*, That the provisions of this section concerning
24 sale at public auction shall not apply to boards of
25 education selling or disposing of its property for a public
26 use to the state of West Virginia, or its political
27 subdivisions, including county commissions or divisions
28 thereof, for an adequate consideration without consider-
29 ing alone the present commercial or market value of the
30 property: *And provided further*, That the board may
31 make any sale of property subject to the provisions that
32 all liability for hazards associated with the premises are
33 to be assumed by the purchaser, and any sale of
34 improved property in which the actual consideration is
35 less than ten thousand dollars or in any sale of unim-
36 proved property in which the actual consideration is less
37 than one thousand dollars the board shall make any sale

38 of property subject to the provisions that all liability for
39 hazards associated with the premises are to be assumed
40 by the purchaser. The board shall inform any prospec-
41 tive purchaser of known or suspected hazards associated
42 with the property.

§18-5-7b. Charitable or community use of unneeded buildings.

1 If, in the sound judgment of the board, the needs of
2 the community require the use of property not needed
3 for school purposes, for charitable, economic develop-
4 ment or other community use, notwithstanding the
5 provisions of section seven of this article, the board may
6 convey by deed or by lease, for nominal consideration,
7 to a private, nonprofit, tax-exempt organization, such
8 tax-exempt status having been granted by the Internal
9 Revenue Service under the provisions of 26 United
10 States code section 501 (c) (3) through (8) inclusive, (19)
11 or (23), upon such terms and conditions as will permit
12 title to revert to the board if the organization is
13 dissolved or ceases to use the property for the intended
14 purpose within the first five years of such conveyance:
15 *Provided*, That such reversion provision shall be
16 subordinated to such extent as may be required solely
17 in order to obtain a loan for the purpose of improving
18 the property. In any absolute conveyance under this
19 section, the transfer shall be subject to the provisions
20 that all liability for hazards associated with the
21 premises are to be assumed by the recipient. The board
22 shall inform any prospective donee of known or sus-
23 pected hazards associated with the property.

CHAPTER 57

(Com. Sub. for S. B. 408—By Senator Burdette, Mr. President, By Request)

{Passed March 8, 1991; in effect from passage. Approved by the Governor.}

AN ACT to amend and reenact section thirteen-a, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating

to exempting county boards of education from public hearings on school closings or consolidations in certain instances; and specifying additional data to be included in the county board's written statement of reasons for school closing or consolidation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13a. School closing or consolidation.

1 In addition to the provisions of section thirteen of this
2 article, prior to any final decision of a county board of
3 education on any proposal to close or consolidate any
4 school, except in cases in which a construction bond
5 issue was passed by the voters and which bond issue
6 included the schools to be closed or consolidated, the
7 county board of education shall:

8 (1) Prepare and reduce to writing its reasons and
9 supporting data regarding such school closing or
10 consolidation. The written reasons required under this
11 section shall be available for public inspection in the
12 office of the county school superintendent during the
13 four successive weeks before the date of the public
14 hearing required by this section; and

15 (2) Provide for a public hearing, notice of which shall
16 be advertised by publication in a newspaper of general
17 circulation in the locality of the affected school at least
18 once a week for four successive weeks prior to the date
19 of the hearing. The notice shall contain the time and
20 place of the hearing and the proposed action of the
21 school board. A copy of such notice shall be posted at
22 the affected school in conspicuous working places for all
23 professional and service personnel to observe, and such
24 notice shall remain posted for four successive weeks
25 prior to the date of the required public hearing. At least
26 a quorum of the school board members and the county
27 superintendent from the county wherein the affected
28 school is located shall attend and be present at the

29 public hearing. Members of the public shall have the
30 right to be present, to submit statements and testimony,
31 and to question county school officials at the public
32 hearing.

33 Any such proposal to close or consolidate any school
34 by any county board of education shall be further
35 subject to any current rules and regulations of the state
36 board of education relating to school closing or consol-
37 idation: *Provided*, That after the effective date of this
38 section the state board shall promulgate rules and
39 regulations which shall prescribe in detail the type of
40 supporting data a county board of education shall
41 include as part of its written statement of reasons
42 required by this section for school closing or consolida-
43 tion, including the transportation time of the affected
44 students and which shall include any data required by
45 the state board of education to amend a county's
46 comprehensive educational facilities plan.

47 This section shall take effect on the date of passage
48 and shall affect any school not physically closed or
49 consolidated as of that date: *Provided*, That the written
50 reasons shall include all supporting data required by the
51 state board of education to amend a county's comprehen-
52 sive education facilities plan.

CHAPTER 58

(Com. Sub. for H. B. 2362—By Delegates Ashcraft and Prezioso)

[Passed March 7, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting vocational-technical schools to include additional representatives of business and industry on their school improvement councils.

Be it enacted by the Legislature of West Virginia:

That section two, article five-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 5A. LOCAL SCHOOL INVOLVEMENT.**§18-5A-2. Local school improvement councils; election.**

1 A local school improvement council shall be estab-
2 lished at every school consisting of the principal, who
3 shall serve as the ex officio chairman of the council and
4 be entitled to vote, three teachers elected by the faculty
5 senate of the school, two school service personnel elected
6 by the school service personnel employed at the school,
7 three parents or legal guardians of students enrolled at
8 the school elected by the school's parent teacher
9 organization, and two at-large members appointed by
10 the principal, one of whom resides in the school's
11 attendance area and one of whom represents business or
12 industry, both of whom are not eligible for membership
13 under any of the other elected classes of members and
14 in the case of vocational-technical schools, the vocational
15 director, or if there is no vocational director then the
16 principal, may appoint no more than two additional
17 representatives, one of whom represents business and
18 one of whom represents industry: *Provided*, That if the
19 school houses students in grade seven or higher, then the
20 student body president or other student, elected by the
21 student body in grade seven or higher, shall also be a
22 member of the council.

23 The principal shall arrange for such elections to be
24 held prior to the tenth day of May of each school year
25 to elect a council to serve for the next ensuing school
26 year and shall give notice of the elections at least one
27 week prior to the elections being held. To the extent
28 practical, all elections shall be held within the same
29 week. Persons elected to the council shall serve until the
30 next election and may only be replaced upon death,
31 resignation, failure to appear at three consecutive
32 meetings of the council for which notice was given, or
33 a change in personal circumstances so that the person
34 is no longer representative of the class of members from
35 which appointed. In the case of replacement, an election
36 shall be held to elect another qualified person to serve
37 the unexpired term of the person being replaced.

38 Each member of the school improvement council must

39 be given written notice two employment days in advance
40 of any council meeting.

41 School improvement councils shall meet at least once
42 every nine weeks or equivalent grading period at the
43 call of the chair or by three fourths of its members. At
44 the first meeting of the council, the chair shall provide
45 each member with a copy of the current applicable
46 section of this code and any state board rule or
47 regulation promulgated pursuant to the operation of
48 these councils, and the council shall elect from its
49 membership two members to assist the chair in setting
50 the agenda for each council meeting.

51 School improvement councils shall be considered for
52 the receipt of school of excellence awards under section
53 three of this article and competitive grant awards under
54 section twenty-nine, article two of this chapter, and may
55 receive and expend such grants for the purposes
56 provided in such section.

57 In any and all matters which may fall within the scope
58 of both the school improvement councils and the school
59 curriculum teams authorized in section five of this
60 article, the school curriculum teams shall be deemed to
61 have jurisdiction.

62 A school improvement council shall receive coopera-
63 tion from the school in implementing policies and
64 programs it may adopt to:

65 (1) Encourage the involvement of parents in their
66 child's educational process and in the school;

67 (2) Encourage businesses to provide time for their
68 employees who are parents to meet with teachers
69 concerning their child's education;

70 (3) Encourage advice and suggestions from the
71 business community;

72 (4) Encourage school volunteer programs and mentor-
73 ship programs; and

74 (5) Foster utilization of the school facilities and
75 grounds for public community activities.

CHAPTER 59

(S. B. 180—By Senators Heck, Withers, Felton, Wagner, Lucht and Humphreys)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven and eight, article nine-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to school employees employment term; and prohibiting county boards of education from reducing employee salaries by reducing days in the employment term.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9B. STATE BOARD OF SCHOOL FINANCE.

§18-9B-7. Determination by the board of finance before final approval of budget; length of term.

§18-9B-8. Projected expenditures order of revision in budget.

§18-9B-7. Determination by the board of finance before final approval of budget; length of term.

1 The board of finance, before giving its final approval
2 to a proposed budget, shall require that:

3 (1) Estimates of revenue and receipts are reasonable
4 and accurate;

5 (2) Amounts are budgeted so as to cover actual
6 requirements of school operation; and

7 (3) Amounts are budgeted so as to maintain the
8 schools of the county for the employment term and the
9 instructional term as defined in section fifteen, article
10 five of this chapter.

§18-9B-8. Projected expenditures order of revision in budget.

1 If the board of finance finds that the proposed budget
2 for a county will not maintain the proposed educational

3 program as well as other financial obligations of their
4 county board of education, it may require that the
5 budget be revised, but in no case shall permit the
6 reduction of the instructional term pursuant to the
7 provisions contained in section fifteen, article five of this
8 chapter nor the employment term below two hundred
9 days. Any required revision in the budget for this
10 purpose may be made in the following order:

11 (1) Postpone expenditures for permanent improve-
12 ments and capital outlays except from the permanent
13 improvement fund;

14 (2) Reduce the amount budgeted for maintenance
15 exclusive of service personnel so as to guarantee the
16 payment of salaries for the employment term; or

17 (3) Adjust amounts budgeted in any other way so as
18 to assure the required employment term of two hundred
19 days and the required instructional term of one hundred
20 eighty days under the applicable provisions of law.

CHAPTER 60

(H. B. 2124—By Delegates Williams and Susman)

[Passed January 31, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to West Virginia State College; and designating said college a land grant institution.

Be it enacted by the Legislature of West Virginia:

That section three, article ten, 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 10. FEDERAL AID AND GIFTS FOR EDUCATIONAL PURPOSES.

§18-10-3. Federal aid for West Virginia University and West Virginia State College.

1 The state of West Virginia hereby renews its assent
2 to the provisions and purposes of the act of Congress of
3 August thirtieth, eighteen hundred and ninety, entitled
4 "An act to apply a portion of the proceeds of the public
5 land to the more complete endowment and support of
6 the colleges for the benefit of agriculture and the
7 mechanic arts established under the provisions of the act
8 of Congress approved July second, eighteen hundred and
9 sixty-two," and of all subsequent acts of Congress
10 amending or supplementing said act, and accepts the
11 appropriations of money authorized thereby.

12 The state of West Virginia hereby designates West
13 Virginia University as the beneficiary of appropriations
14 under the eighteen hundred and sixty-two act of
15 Congress referred to in section one of this article and
16 West Virginia State College as the beneficiary of
17 appropriations under the eighteen hundred and ninety
18 act of Congress referred to in this section.

CHAPTER 61

(Com. Sub. for S. B. 178—Originating in the Committee on Finance)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section one, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to specifying the date after which certain graduate work will qualify for advanced salary classification; eliminating the petition requirement for receiving advanced salary classification; providing for an additional exception to continue receiving in-field pay; defining in-field classification; requiring certain individuals who complete a master's degree prior to a certain date to take additional hours in certain instances; specifying when certain individuals who complete a master's degree subsequent to a certain date must take additional course work; requiring no additional course work in certain instances; specifying exceptions to the total course work requirements; defining certain master's programs for

qualifying for in-field classification; redefining in-field master's; and defining M.A. + 45, in-field M.A. + 45 and in-field doctorate.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-1. Definitions.

1 For the purpose of this article, salaries shall be
2 defined as: (a) "Basic salaries" which shall mean the
3 salaries paid to teachers with zero years of experience
4 and in accordance with the classification of certification
5 and of training of said teachers; and (b) "advanced
6 salaries" which shall mean the basic salary plus an
7 experience increment based on the allowable years of
8 experience of the respective teachers in accordance with
9 the schedule established herein for the applicable
10 classification of certification and of training of said
11 teachers.

12 "Classification of certification" means the class or type
13 of certificate issued by the state superintendent of
14 schools under the statutory provisions of this chapter.
15 "Classification of training" means the number of
16 collegiate or graduate hours necessary to meet the
17 requirements stipulated in the definitions set forth in
18 the next paragraph in items (2) to (16), inclusive.

19 The column heads of the state minimum salary
20 schedule set forth in section two of this article are
21 defined as follows:

22 (1) "Years of experience" means the number of years
23 the teacher has been employed in the teaching profes-
24 sion, including active work in educational positions
25 other than the public schools, and service in the armed
26 forces of the United States if the teacher was under
27 contract to teach at the time of induction. For a
28 registered professional nurse employed by a county
29 board of education, "years of experience" means the

30 number of years the nurse has been employed as a
31 public school health nurse, including active work in a
32 nursing position related to education, and service in the
33 armed forces if the nurse was under contract with the
34 county board at the time of induction. For the purpose
35 of section two of this article, the experience of a teacher
36 or a nurse shall be limited to that allowed under their
37 training classification as found in the minimum salary
38 schedule.

39 (2) "Fourth class" means all certificates previously
40 identified as: (a) "Certificates secured by examination";
41 and (b) "other first grade certificates".

42 (3) "Third class" means all certificates previously
43 identified as: (a) "Standard normal certificates"; and (b)
44 "third class temporary (sixty-four semester hours)
45 certificates".

46 (4) "Second class" means all certificates previously
47 identified as "second class temporary certificates based
48 upon the required ninety-six hours of college work".

49 (5) "A.B." means a bachelor's degree, from an
50 accredited institution of higher education, which has
51 been issued to, or for which the requirements for such
52 have been met by, a person who qualifies for or holds
53 a professional certificate or its equivalent. A registered
54 professional nurse with a bachelor's degree, who is
55 licensed by the West Virginia board of examiners for
56 registered professional nurses and employed by a county
57 board of education, shall be within this classification for
58 payment in accordance with sections two and two-a of
59 this article.

60 (6) "A.B. plus 15" means a bachelor's degree as
61 defined above plus fifteen hours of graduate work, from
62 an accredited institution of higher education certified to
63 do graduate work, in an approved planned program at
64 the graduate level which requirements have been met
65 by a person who qualifies for or holds a professional
66 certificate or its equivalent.

67 (7) "M.A." means a master's degree, earned in an
68 institution of higher education approved to do graduate

69 work, which has been issued to, or the requirements for
70 such have been met by, a person who qualifies for or
71 holds a professional certificate or its equivalent.

72 (8) "M.A. plus 15" means the above-defined master's
73 degree plus fifteen hours of graduate work, earned in
74 an institution of higher education approved to do
75 graduate work, if the person is qualified for or holds a
76 professional certificate or its equivalent.

77 (9) "M.A. plus 30" means the above-defined master's
78 degree plus thirty graduate hours, earned in an
79 institution approved to do graduate work, if the person
80 is qualified for or holds a professional certificate or its
81 equivalent.

82 (10) "Doctorate" means a doctor's degree, earned from
83 a university qualified and approved to confer such a
84 degree, which has been issued to or the requirements for
85 such have been met by a person who qualifies for or
86 holds a professional certificate or its equivalent.

87 For purposes of advanced salary classification,
88 graduate work completed after the first day of July, one
89 thousand nine hundred ninety-four, shall be related to
90 the public school program, as prescribed by the state
91 board of education.

92 Notwithstanding the requirements set forth in subdi-
93 visions (6), (8) and (9) of this section relating to hours
94 of graduate work at an institution certified to do such
95 work, fifteen undergraduate credit hours from a
96 regionally accredited institution of higher education,
97 earned after the effective date of this section, may be
98 utilized for advanced salary classification if such hours
99 are in accordance with: (a) The teacher's current
100 classification of certification and of training; (b) a
101 designated instructional shortage area documented by
102 the employing county superintendent; or (c) an identi-
103 fied teaching deficiency documented through the state
104 approved county personnel evaluation system.

105 In-field classification compensation is contingent upon
106 recognition of the in-field classification and the educa-
107 tor's assignment. The West Virginia board of education

108 shall establish regulations for the administration and
109 implementation of the in-field classification salary
110 schedule.

111 Only those professional educators whose assignments,
112 for a minimum of fifty (50) percent of the instructional
113 day, are consistent with the endorsement(s) recognized
114 as meeting the in-field classification shall be eligible for
115 compensation based on the in-field classification sched-
116 ule. If scheduling constraints prevent the educator from
117 being assigned to endorsements recognized for the in-
118 field classification for a minimum of fifty (50) percent
119 of the instructional day, the educator shall receive such
120 compensation.

121 If a professional educator, who was previously
122 employed in an area recognized for in-field classifica-
123 tion, is reassigned to work full time in an area not
124 recognized on said educator's certificate for in-field
125 classification as a result of (1) voluntary reassignment
126 to assist the county in meeting a critical staffing need,
127 or (2) a reduction in force, or (3) placement on the
128 transfer list in accordance with and pursuant to section
129 seven, article two, chapter eighteen-a, any of which
130 continues to prevent the educator from being assigned
131 to an in-field area designated on the educator's certifi-
132 cate, then the educator shall continue to receive
133 payment under the in-field classification salary
134 schedule.

135 Upon request for a specific master's degree program,
136 the appropriate governing board of higher education
137 shall provide all of the course work for a master's degree
138 program that is designated as in-field for the certifica-
139 tion area of the professional educator who makes the
140 request. The course work for such program shall be
141 initiated no later than two years from the date requested
142 and shall be provided to the greatest extent feasible
143 within each regional educational service agency area in
144 which the request has been made as follows: (1) Via
145 satellite instruction; (2) via public television home
146 instruction; or (3) in a manner prescribed by such
147 governing board. If the governing board fails to initiate
148 the course work within the above time period, an

149 individual shall be compensated at the appropriate level
150 of years of experience on the in-field classification salary
151 schedule whenever the individual has obtained any
152 master's degree related to the public school program.

153 The appropriate governing board of higher education
154 shall develop a plan to provide "M.A." classification
155 programs to professional educators throughout this state
156 by the first day of January, one thousand nine hundred
157 ninety-one, with the objective being to provide course
158 work enabling professional educators to achieve an
159 "M.A." degree classification in their field of assignment.

160 Effective the first day of July, one thousand nine
161 hundred ninety-two, the following definitions shall be
162 applicable and the preceding definitions numbered (8)
163 and (9) shall be renumbered (9) and (11), respectively,
164 and the preceding definition (10) shall be reconstituted
165 in definition (15).

166 "In-field classification" means the above-defined
167 master's degree and one of the following:

168 (a) For individuals who complete a master's degree
169 after the first day of July, one thousand nine hundred
170 ninety-two, twenty-four (24) semester hours of post
171 baccalaureate graduate credit, within or external to the
172 advanced degree, confined to one specialization com-
173 pleted at the undergraduate level on the educator's
174 professional certificate or its equivalent; or

175 (b) For individuals who complete a master's degree
176 before the first day of July, one thousand nine hundred
177 ninety-two, eighteen (18) semester hours of post bacca-
178 laureate graduate credit, within or external to the
179 advanced degree, confined to one specialization com-
180 pleted at the undergraduate level on the educator's
181 professional certificate or its equivalent; or

182 (c) A master's degree earned prior to the first day of
183 July, one thousand nine hundred ninety-two, in (i) a
184 program specialization completed at the undergraduate
185 level, or (ii) a state approved sub-area of the speciali-
186 zation which is consistent with a specialization, com-
187 pleted at the undergraduate level, on the educator's
188 professional certificate or its equivalent; or

189 (d) For the individuals who complete a master's
190 degree after the first day of July, one thousand nine
191 hundred ninety-two, twelve (12) semester hours of
192 graduate credit above and beyond the course work
193 completed for the endorsement recognized for in-field
194 classification only if the course work for the endorse-
195 ment was also completed at the graduate level; or

196 (e) For individuals who complete a master's degree
197 before the first day of July, one thousand nine hundred
198 ninety-two, nine (9) semester hours of graduate credit
199 above and beyond the course work completed for the
200 endorsement recognized for in-field classification only if
201 the course work for the endorsement was also completed
202 at the graduate level: *Provided*, That in certification
203 areas identified in (d) and (e) of this section where the
204 total course work requirements for initial certification
205 exceed the minimum required for in-field classification,
206 the state department of education may by rule establish
207 exceptions; or

208 (f) For classroom teachers who complete a master's
209 degree program leading to initial certification and who
210 are assigned to that certification area for a minimum
211 of fifty percent of the instructional day, no additional
212 course work shall be required; or

213 (g) A master's degree earned in education administra-
214 tion, guidance counseling, special education or speech
215 communications even if the classroom teacher's assign-
216 ment is not consistent with the endorsement: *Provided*,
217 That special education classroom teachers must have at
218 least five years teaching experience in special education
219 to qualify under this subsection.

220 (8) In-field master's means the above-defined master's
221 degree including recognition of an above-defined in-field
222 classification, earned in an institution of higher educa-
223 tion approved to do graduate work, if the person is
224 qualified for or holds a professional certificate or its
225 equivalent.

226 (10) "In-field M.A. plus 15" means the above-defined
227 M.A. plus 15 including recognition of an above-defined
228 in-field classification, earned in an institution of higher

228 education approved to do graduate work, if the person
229 is qualified for or holds a professional certificate or its
230 equivalent.

231 (12) "In-field M.A. plus 30" means the above-defined
232 M.A. plus 30 including recognition of an above-defined
233 in-field classification, earned in an institution of higher
234 education approved to do graduate work, if the person
235 is qualified for or holds a professional certificate or its
236 equivalent.

237 Effective the first day of July, one thousand nine
238 hundred ninety-four, the following definition shall be
239 applicable and the preceding definition of "doctorate"
240 shall be reconstituted in definition (15).

241 (13) "M.A. plus 45" means the above-defined master's
242 degree plus forty-five graduate hours, earned in an
243 institution approved to do graduate work, if the person
244 is qualified for or holds a professional certificate or its
245 equivalent.

246 (14) "In-field M.A. plus 45" means the above-defined
247 M.A. plus 45 including recognition of an above-defined
248 in-field classification, earned in an institution of higher
249 education approved to do graduate work, if the person
250 is qualified for or holds a professional certificate or its
251 equivalent.

252 (16) "In-field doctorate" means the above-defined
253 doctor's degree, including recognition of an above-
254 defined in-field classification, earned in an institution of
255 higher education approved to do graduate work, if the
256 person is qualified for or holds a professional certificate
257 or its equivalent.

CHAPTER 62

(S. B. 412—By Senators Lucht, Wagner, Blatnik, Felton, Jones and Withers)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

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

section eight-a; to amend article two of said chapter by adding thereto a new section, designated section six; and to amend and reenact section eleven, article three-a, chapter twenty-nine-a of said code, relating to state institutions of higher education; requiring institutional and statewide report cards to ensure accountability in accordance with rules approved by legislative oversight commission on education accountability; requiring reporting of comparative data as enumerated for undergraduate, professional, graduate and health sciences schools; providing generally for said report cards; declaring legislative findings regarding health sciences education and funding for medical education; stating legislative intent regarding vice chancellor for health sciences; and increasing legislative members of legislative oversight commission on education accountability.

Be it enacted by the Legislature of West Virginia:

That article one, chapter eighteen-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 eight-a; that article two of said chapter be amended by adding thereto a new section, designated section six; and that section eleven, article three-a, chapter twenty-nine-a of said code be amended and reenacted to read as follows:

Chapter

18B. Higher Education.

29A. State Administrative Procedures.

CHAPTER 18B. HIGHER EDUCATION.

Article

1. Governance.

2. University of West Virginia Board of Trustees.

ARTICLE 1. GOVERNANCE.

§18B-1-8a. Higher education accountability; institutional and statewide report cards.

- 1 (a) The governing boards are directed to make
- 2 information available to parents, students, faculty, staff,
- 3 state policymakers and the general public on the quality
- 4 and performance of public higher education. This

5 information shall be consistent and comparable between
6 and among the state institutions of higher education
7 and, if applicable, comparable with information from
8 peer institutions in the region and nation. The governing
9 boards shall prepare forms for institutional and state-
10 wide report cards and shall by the thirtieth day of
11 September, one thousand nine hundred ninety-one,
12 promulgate reasonable and proper legislative rules
13 subject to approval of the Legislature pursuant to the
14 provisions of article three-a, chapter twenty-nine-a of
15 this code. Such legislative rules shall provide the
16 legislative oversight commission on education accounta-
17 bility with full and accurate information while minimiz-
18 ing the institutional burden of recordkeeping and
19 reporting. Such legislative rules shall include uniform
20 definitions for the various indicators of student and
21 institutional performance and guidelines for the collec-
22 tion and reporting of data and the preparation, printing
23 and distribution of report cards under this section. The
24 report card forms shall provide for brief, concise
25 reporting in nontechnical language of required informa-
26 tion. Any technical or explanatory material which an
27 institution or governing board wishes to include shall be
28 contained in a separate appendix available to the
29 general public upon request.

30 (b) The president or chief executive officer of each
31 public college, university or community college shall
32 prepare and submit annually all requested data to the
33 appropriate governing board at such time as the
34 governing board may establish. The governing boards
35 shall prepare institutional report cards for institutions
36 under their jurisdiction and systemwide report cards
37 which shall include the information required in the
38 following subdivisions:

39 (1) For all undergraduate students and for all
40 institutions having undergraduate programs, the
41 institution shall report the following as available and
42 applicable: Average scores of incoming freshmen and
43 transfer students on the American college test (ACT) or
44 scholastic aptitude test (SAT); percentage of incoming
45 freshmen enrolled in developmental classes; student

46 performance as measured by grade point average
47 and/or appropriate testing measures; the graduation or
48 completion rate as may be defined by federal law or
49 regulation for the student body as a whole and sepa-
50 rately for students at the institution who received
51 athletically-related student aid categorized by sex and
52 athletic program; the rate at which individuals who
53 complete or graduate from the program of an institution
54 pass applicable licensure or certification examinations
55 required for employment in a particular vocation, trade
56 or professional field; student mobility (transfers in,
57 transfers out and withdrawals); number and percentage
58 of student body receiving tuition fee waivers; and
59 number, percentage and dollar value of tuition fee
60 waivers categorized by whether such waiver is for
61 athletic participation or is an academic waiver and by
62 whether the recipient is a resident or nonresident of this
63 state.

64 (2) For professional schools, defined for the purposes
65 of this section as academic programs leading to profes-
66 sions in which licensing is normally required and for
67 which an undergraduate degree is a general prerequi-
68 site, the institution shall report the following as
69 available and applicable: Average scores of beginning
70 students and transfer students on standardized entrance
71 examinations; number and percentage of student body
72 receiving tuition fee waivers; number, percentage and
73 dollar value of tuition fee waivers categorized by
74 whether the recipient is a resident or nonresident of this
75 state; the number of degrees granted; the graduation or
76 completion rate as may be defined by federal law or
77 regulation for the student body as a whole; the rate at
78 which individuals who complete or graduate from the
79 program of an institution pass applicable licensure or
80 certification examinations required for employment in
81 the particular professional field; the total number of
82 students in each program, including the percentage of
83 those students who are state residents, the percentage
84 of students who are nonresidents of the state, the
85 percentage of students who are women, and the percen-
86 tage of students who are minorities as the term is
87 defined by federal law; and the ratio of expenditures per

88 pupil directly attributable to students enrolled in the
89 professional school as compared to expenditures per
90 pupil calculated as to students enrolled in the institution
91 as a whole.

92 (3) For graduate schools, defined for the purposes of
93 this section as academic programs leading to advanced
94 degrees (masters or doctorates of philosophy in fields for
95 which bachelor's degree programs are available) and for
96 which an undergraduate degree is a general prerequi-
97 site, the institution shall report the following as
98 available and applicable: Average scores of beginning
99 students and transfer students on standardized entrance
100 examinations; number and percentage of student body
101 receiving tuition fee waivers; number, percentage and
102 dollar value of tuition fee waivers categorized by
103 whether the recipient is a resident or nonresident of this
104 state; the number of degrees granted; the graduation or
105 completion rate as may be defined by the federal law or
106 regulation for the student body as a whole; the rate at
107 which individuals who complete or graduate from the
108 program of an institution pass applicable licensure or
109 certification examinations required for employment;
110 and the total number of students in each program,
111 including the percentage of those students who are state
112 residents, the percentage of students who are non-
113 residents of the state, the percentage of students who are
114 women, and the percentage of students who are minor-
115 ities as the term is defined by federal law.

116 (4) In addition to any and all information required by
117 subdivision (2) of this subsection, each health sciences
118 school shall assist the vice chancellor for health sciences
119 in providing information for the institutional and
120 statewide report cards, which shall include reports on
121 the following:

122 (A) Information on graduates, including, but not
123 limited to, placement of interns and residents, retention
124 rates in the state, retention rates in underserved areas
125 as determined by the division of health, the percentage
126 practicing in primary care in this state to be defined as
127 family medicine, internal medicine, pediatrics and
128 obstetrics/gynecology, and other information pertinent

129 to health sciences education as it relates to health care
130 delivery in this state such as recruitment programs to
131 attract health care providers to West Virginia; reasons
132 obtained from graduate surveys as to why health care
133 graduates are leaving West Virginia; programs devel-
134 oped to direct graduates into primary care practices and
135 specialty shortage areas in this state; and ways in which
136 the health sciences schools intend to assist in meeting
137 the projected health care needs of this state, including
138 specialty and sub-specialty health care professional
139 needs and where such needs are expected to arise, as
140 those needs are defined by the division of health or such
141 other state agency as the division of health may deem
142 appropriate;

143 (B) Contractual and financial arrangements between
144 the health sciences schools and such nonprofit and for-
145 profit entities receiving moneys from the health sciences
146 schools that the board of trustees determines have a
147 significant impact on the provision of health sciences
148 education in this state, such report to state the entity,
149 the amount of funds paid to such entity and what the
150 payment is for;

151 (C) The roles and missions of the health sciences
152 schools and evaluation of each school's performance in
153 accordance with outcome measures developed to evalu-
154 ate the attainment of the roles, missions and programs
155 developed for each school;

156 (D) The annual audit of the expenditures of each
157 health sciences school and any audit received by the
158 board from such nonprofit and for-profit entities
159 determined by the board of trustees to have a significant
160 affiliation to any health sciences school;

161 (E) Findings regarding management and operation of
162 the health sciences schools, such findings to be based on
163 the annual audits and to include proposals for and
164 barriers to improving efficiency and generating cost
165 savings in health sciences education;

166 (F) The quality of health sciences education, includ-
167 ing, but not limited to, a review of any accrediting
168 agency's report on health sciences education at any

169 state-funded health sciences school;

170 (G) The clinical health care services and programs
171 offered or delivered by the health sciences schools,
172 including, but not limited to, programs which use
173 existing state facilities for the purposes of clinical
174 rotations;

175 (H) Matters relating to the funding and budgeting of
176 health sciences education in this state, including, but not
177 limited to, ways in which such budget effectuates the
178 roles and missions of the health sciences schools;

179 (I) The financing of health sciences education subse-
180 quent to an annual, comprehensive review thereof,
181 which report shall include anticipated capital costs,
182 projected operating expenses, and future growth and
183 recommendations on the allocation of any state or other
184 tax dedicated to the funding of health sciences educa-
185 tion; and

186 (J) Such other administrative, budgetary, financial,
187 educational and other concerns as the board of trustees
188 may deem necessary or helpful in providing information
189 about the health sciences schools pursuant to this
190 subsection.

191 (5) For all public institutions of higher education in
192 the state, the following indicators of institutional
193 performance in comparison with the aggregate of all
194 other institutions in the state, region and nation as
195 applicable and to the extent comparison data are
196 available: Student-faculty ratio by school; student-
197 administrator ratio; faculty turnover by school; educa-
198 tional and general expenditure per full-time equivalent
199 (FTE) student; expenditure by fund in graphic display;
200 the academic rank and years of experience of the faculty
201 and administrators at the institution; percentage
202 minorities comprise of faculty and major administrative
203 staff; percentage women comprise of faculty and major
204 administrative staff; percentage of classes taught by
205 adjunct or part-time faculty; statistics concerning the
206 occurrence on campus during the most recent school
207 year and during the preceding school years for which
208 data are available of criminal offenses reported to

209 campus security authorities or local police; and statistics
210 concerning the number of arrests for crimes occurring
211 on campus during the most recent school year and
212 during the preceding school years for which data are
213 available.

214 (c) The statewide report card shall include the data
215 for each institution for each separately listed applicable
216 indicator and the aggregate of the data for all institu-
217 tions under the jurisdiction of the board of trustees of
218 the university of West Virginia and for all institutions
219 under the jurisdiction of the board of directors of the
220 state college system for each indicator.

221 (d) The statewide report cards shall be prepared using
222 actual institutional, state, regional and national data as
223 applicable and available indicating the present perform-
224 ance of the individual institutions and the state systems
225 of higher education and shall also include goals and
226 trends for the institutions and the higher education
227 systems. Each governing board as part of its assessment
228 of the individual institutions under its jurisdiction shall
229 include the number and gross dollar amount of grants
230 received for academic research for each institution and
231 a succinct review of research projects including a brief
232 description of each project and the numbers of faculty,
233 graduate and undergraduate students involved in each
234 project. In assessing progress toward meeting goals and
235 in developing trend information, the governing boards
236 shall review report card data in relation to previously
237 adopted board goals, five-year plans, regional and
238 national higher education trends and the resource
239 allocation model.

240 The higher education central office staff under the
241 direction of the senior administrator shall provide
242 technical assistance to each institution and governing
243 board in data collection and reporting and shall be
244 responsible for assembling the statewide report card
245 from information submitted by each governing board.

246 Each governing board shall prepare report card
247 information in accordance with the guidelines set forth
248 in this section. The statewide report card shall be

249 presented at a regular board meeting of the appropriate
250 governing board subject to applicable notice
251 requirements.

252 The statewide report cards shall be completed and
253 disseminated with copies to the legislative oversight
254 commission on education accountability prior to the first
255 day of December, one thousand nine hundred ninety-
256 two, and each year thereafter. Statewide report cards
257 shall be based upon information for the current school
258 year or for the most recent school year for which such
259 information is available, in which case such year shall
260 be clearly footnoted.

261 The governing boards shall make copies of both the
262 institutional and statewide report cards available to any
263 individual requesting them.

ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

§18B-2-6. Health sciences education; legislative findings and intent.

1 (a) The Legislature hereby finds and declares that the
2 higher education accountability report card for health
3 sciences education as provided for in section eight-a,
4 article one of this chapter shall serve as a basis for the
5 accountability and coordination of health sciences
6 education in this state. The Legislature further finds
7 that the preparation of such report card would best be
8 supervised by a vice chancellor for health sciences who
9 is not the director of health and who has the assistance
10 of the staff of each state institution of higher education
11 with health sciences programs.

12 (b) The Legislature further finds and declares that
13 adequate funding will be pursued to maintain the
14 accreditation, integrity and quality of medical education
15 and other health sciences programs in West Virginia.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES.

ARTICLE 3A. HIGHER EDUCATION RULEMAKING.

§29A-3A-11. Creation of a legislative oversight commission on education accountability; termination.

1 (a) There is hereby created a joint commission of the
2 Legislature known as the legislative oversight commis-
3 sion on education accountability to review all legislative
4 rules of the board and such other rules as the commis-
5 sion deems appropriate. The commission shall be
6 composed of six members of the Senate appointed by the
7 president of the Senate and six members of the House
8 of Delegates appointed by the speaker of the House of
9 Delegates. No more than five of the six members
10 appointed by the president of the Senate and the speaker
11 of the House of Delegates, respectively, may be members
12 of the same political party. In addition, the president of
13 the Senate and the speaker of the House of Delegates
14 shall be ex officio nonvoting members of the commission
15 and shall designate the cochairmen. At least one of the
16 Senate members and one of the House members shall
17 be members of the committee on education of the Senate
18 and House, respectively, and at least one of the Senate
19 members and at least one of the House members shall
20 be a member of the committee on finance of the Senate
21 and House, respectively. The members shall serve until
22 their successors shall have been appointed as heretofore
23 provided. Members of the commission shall receive such
24 compensation and expenses as provided in article two-
25 a, chapter four of this code. Such expenses and all other
26 expenses including those incurred in the employment of
27 legal, technical, investigative, clerical, stenographic,
28 advisory and other personnel shall be paid from an
29 appropriation to be made expressly for the legislative
30 oversight commission on education accountability, but if
31 no such appropriation be made, such expenses shall be
32 paid from the appropriation under "Account No. 103 for
33 Joint Expenses", but no expense of any kind whatever
34 payable under said account no. 103 for joint expenses
35 shall be incurred unless first approved by the joint
36 committee on government and finance. The commission
37 shall meet at any time both during sessions of the
38 Legislature and in the interim.

39 (b) The commission may adopt such rules of procedure
40 as it considers necessary for the submission, presenta-
41 tion and consideration of rules.

42 (c) The legislative oversight commission on education
43 accountability shall be terminated on the first day of
44 July, one thousand nine hundred ninety-two, unless
45 review of its functions shall be undertaken pursuant to
46 the provisions of sections nine, ten and eleven, article
47 ten, chapter four of this code. If such commission is
48 terminated pursuant to this subsection, any report
49 required to be submitted to them shall instead be
50 submitted to the joint committee on education of the
51 Legislature.

CHAPTER 63

(Com. Sub. for S. B. 312—By Senator Blatnik)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article nine, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salaries of higher education classified employees; and authorizing change in how experience increment is paid to such employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-5. Classified employee salary.

1 (a) Each classified employee who is employed by a
2 governing board on the first day of July, one thousand
3 nine hundred ninety-one, shall receive for the same
4 employment at the same pay grade during the fiscal
5 year commencing on such date and thereafter a

6 monthly salary which is at least equal to the final base
7 monthly salary paid such classified employee for the
8 fiscal year commencing on the first day of July, one
9 thousand nine hundred ninety, to be paid in equal
10 installments within the regular pay periods.

11 (b) Commencing with the fiscal year beginning on the
12 first day of July, one thousand nine hundred ninety-one,
13 and each fiscal year thereafter, each classified employee
14 with three or more years of experience shall receive an
15 annual salary increase equal to thirty-six dollars times
16 the employee's years of experience: *Provided*, That such
17 annual salary increase shall not exceed the amount
18 granted for the maximum of twenty years of experience.
19 These incremental increases shall be in lieu of any
20 salary increase received pursuant to section two, article
21 five, chapter five of this code; shall be in addition to any
22 across-the-board, cost-of-living or percentage salary
23 increases which may be granted in any fiscal year by
24 the Legislature; and shall be paid in like manner as the
25 annual payment to eligible state employees of the
26 incremental salary increases based on years of service
27 under the provisions of section two, article five, chapter
28 five of this code.

29 (c) Each classified employee whose monthly salary
30 under subsections (a) and (b) of this section is less than
31 the minimum monthly salary for zero years of expe-
32 rience for the appropriate pay grade as set forth in
33 section three of this article shall receive additional
34 compensation such that the monthly salary is at least the
35 minimum amount prescribed for the appropriate pay
36 grade at zero years of experience: *Provided*, That such
37 amounts may be reduced proportionately based upon the
38 amount of funds available for such purpose.

39 (d) Any funds remaining after increasing the monthly
40 salary of each classified employee to at least the
41 minimum amount prescribed for the appropriate pay
42 grade at zero years of experience shall be used to place
43 classified employees on the salary schedule at their
44 appropriate years of experience: *Provided*, That such
45 amount may be reduced proportionately based upon the
46 amount of funds available for such purpose.

47 (e) Any classified employee may receive merit in-
48 creases and/or salary adjustments in accordance with
49 policies established by the board: *Provided*, That funds
50 for such increases and/or adjustments shall be distrib-
51 uted in accordance with rules of the appropriate
52 governing board and shall be available to all state
53 institutions of higher education on an equitable basis.

54 (f) The current monthly salary of any classified
55 employee may not be reduced by the provisions of this
56 article nor by any other action inconsistent with the
57 provisions of this article, and nothing in this article shall
58 be construed to prohibit promotion of any classified
59 employee to a job title carrying a higher pay grade if
60 such promotion is in accordance with the provisions of
61 this article and the personnel classification system
62 established by the appropriate governing board.

CHAPTER 64

(Com. Sub. for S. B. 446—By Senator Blatnik)

[Passed March 7, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend article nine, chapter eighteen-b 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 higher education classified employees; authorizing transfer of leave to employee with no sick leave who is unable to work due to catastrophic illness or injury; defining terms; and providing generally for such transfer and limitations thereto.

Be it enacted by the Legislature of West Virginia:

That article nine, chapter eighteen-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 ten, to read as follows:

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-10. Classified employees' catastrophic leave transfer.

1 (a) For the purpose of this section, a catastrophic
2 illness or injury means an illness or injury which is
3 expected to incapacitate the employee and which creates
4 a financial hardship because the employee has ex-
5 hausted all sick leave and other paid time off.
6 Catastrophic illness or injury shall also include an
7 incapacitated immediate family member if this results
8 in the employee being required to take time off from
9 work for an extended period of time to care for the
10 family member and the employee has exhausted all sick
11 leave and other paid time off.

12 For the purpose of this section, employee means a
13 classified employee employed by a higher education
14 governing board or by the central office.

15 (b) Sick leave may be donated to any employee
16 experiencing a catastrophic illness or injury as those
17 terms are defined in subsection (a) of this section. Such
18 leave shall be donated at the request of the employee
19 upon appropriate verification that the employee is
20 unable to work due to the catastrophic illness or injury
21 as determined by the president of the institution or
22 senior administrator.

23 Upon approval of the transfer of sick leave by the
24 president of the institution or senior administrator, any
25 employee may, upon written notice to the personnel
26 office, donate sick leave in one-day increments.
27 Donations will be reflected as a day-for-day deduction
28 from the sick leave balance of the donating employee.
29 No employee shall be compelled to transfer sick leave.

30 (c) An employee receiving the transfer of sick leave
31 shall have any time which is donated credited to such
32 employee's account in one-day increments and reflected
33 as a day-for-day addition to the leave balance of the
34 receiving employee.

35 Use of donated credits may not exceed a maximum
36 of twelve continuous calendar months for any one
37 catastrophic illness or injury. The total amount of sick

38 leave donated may not exceed an amount sufficient to
39 insure the continuance of regular compensation and
40 shall not be used to extend insurance coverage pursuant
41 to section twelve, article sixteen, chapter five of this
42 code. An employee receiving donations of sick leave
43 pursuant to this section shall use any leave personally
44 accrued on a monthly basis prior to receiving additional
45 donated sick leave.

46 (d) Transfer of sick leave may be inter-institutional in
47 accordance with the policies of the appropriate govern-
48 ing board. Each institution and the central office shall
49 be responsible for the administration of the sick leave
50 transfers of its classified employees.

CHAPTER 65

(S. B. 420—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to repeal article twenty-one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article one, chapter eighteen-c of said code; and to further amend said chapter by adding thereto a new article, designated article four, all relating to the Underwood-Smith teacher scholarship program; providing general eligibility in the program for outstanding resident college students; increasing the minimum grade point eligibility standard for public school aides; and updating provisions in accordance with the higher education reorganization act of 1989.

Be it enacted by the Legislature of West Virginia:

That article twenty-one, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article one, chapter eighteen-c of said code be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article four, all to read as follows:

Article

1. **Financial Assistance Generally.**
4. **Underwood-Smith Teacher Scholarship Program.**

ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.**§18C-1-1. Administration generally.**

1 The senior administrator jointly employed by the
2 chancellors of the board of trustees and the board of
3 directors shall, as provided in section two, article four,
4 chapter eighteen-b of this code, have a ministerial duty
5 to administer, oversee or monitor all state and federal
6 student loan, scholarship and state aid programs which
7 are administered at the state level in accordance with
8 established guidelines, in consultation with and under
9 the direction of the governing boards.

10 Such programs include, but are not limited to: The
11 guaranteed student loan program under this article,
12 which may be administered by a private nonprofit
13 agency; the medical student loan program under article
14 three of this chapter; the Underwood-Smith teacher
15 scholarship program under article four of this chapter;
16 the state scholarship program, commonly known as the
17 West Virginia higher education grant program, under
18 article twenty-two-b, chapter eighteen of this code; the
19 higher education student assistance loan program under
20 article twenty-two-d, chapter eighteen of this code; the
21 West Virginia higher education tuition trust act under
22 article thirty, chapter eighteen of this code, which shall
23 be administered by the state treasurer as provided in
24 said article; the state aid programs for students of
25 optometry, under article three of this chapter; the state
26 aid programs for students of veterinary medicine under
27 section six-a, article eleven, chapter eighteen of this
28 code; any reciprocal program and contract program for
29 student aid under sections three and four, article four,
30 chapter eighteen-b of this code; any other state level
31 student aid program under this code; and any federal
32 grant or contract student assistance or support pro-
33 grams administered at the state level.

ARTICLE 4. UNDERWOOD-SMITH TEACHER SCHOLARSHIP PROGRAM.

§18C-4-1. Scholarship fund created; purposes; funding.

§18C-4-2. Selection criteria and procedures.

§18C-4-3. Scholarship agreement.

§18C-4-4. Renewal conditions; noncompliance; deferral; excusal.

§18C-4-5. Amount and duration of scholarship; relation to other assistance.

§18C-4-1. Scholarship fund created; purposes; funding.

1 (a) It is the purpose of this article to encourage and
2 enable individuals who have demonstrated outstanding
3 academic abilities to pursue teaching careers at the
4 preschool, elementary or secondary levels in the public
5 schools of this state. The higher education governing
6 boards may promulgate reasonable rules under this
7 article for the administration of the Underwood-Smith
8 teacher scholarship program by the senior administra-
9 tor in furtherance of this purpose, including, but not
10 limited to, scholarship selection, renewal, compliance,
11 noncompliance and repayment, deferral and excusal. In
12 accordance with such rules, the senior administrator
13 may establish appropriate guidelines for program
14 operation. All rules so promulgated shall be filed with
15 the secretary of state.

16 (b) There is hereby created in the state treasury a
17 special revolving fund to be known as the "Underwood-
18 Smith Teacher Scholarship Fund" to be administered by
19 the senior administrator solely for granting scholarships
20 to prospective teachers in accordance with this article.
21 Any moneys which may be appropriated by the Legis-
22 lature, or received by the senior administrator from
23 other sources, for the purposes of this article shall be
24 deposited in the fund. Any moneys remaining in the
25 fund at the close of a fiscal year shall be carried forward
26 for use in the next fiscal year. Any moneys repaid to the
27 senior administrator by reason of default of a scholar-
28 ship agreement under this article shall also be deposited
29 in the fund. Fund balances shall be invested with the
30 state's consolidated investment fund, and any and all
31 interest earnings on these investments shall be used
32 solely for the purposes for which moneys invested were
33 appropriated or otherwise received.

34 (c) The senior administrator may accept and expend
35 any gift, grant, contribution, bequest, endowment or

36 other money for the purposes of this article and shall
37 make a reasonable effort to encourage external support
38 for the scholarship program.

39 (d) For the purpose of encouraging support for the
40 scholarship program from private sources, the senior
41 administrator may set aside no more than half of the
42 funds appropriated by the Legislature for Underwood-
43 Smith teacher scholarships to be used to match two state
44 dollars to each private dollar from a nonstate source
45 contributed on behalf of a specific institution of higher
46 education in this state.

§18C-4-2. Selection criteria and procedures.

1 (a) The senior administrator shall designate an
2 existing scholarship selection agency or panel to select
3 the recipients of Underwood-Smith teacher scholarships
4 who meet the eligibility criteria set forth in subsection
5 (b) of this section. If no such agency or panel exists, the
6 governor shall appoint a scholarship selection panel for
7 this purpose which shall consist of seven persons
8 representative of public school administrators, teachers,
9 including preschool teachers, and parents.

10 (b) Eligibility for an Underwood-Smith teacher
11 scholarship award shall be limited to West Virginia
12 resident students who:

13 (1) Have graduated or are graduating from high
14 school, and rank in the top ten percent of their
15 graduating class or the top ten percent statewide of
16 those West Virginia students taking the American
17 college test;

18 (2) Have a cumulative grade point average of at least
19 three and twenty-five one hundredths on a possible scale
20 of four after successfully completing two years of course
21 work at an approved institution of higher education;

22 (3) Are public school aides as defined in section eight,
23 article four of chapter eighteen-a of this code, and who
24 have a cumulative grade point average of at least three
25 and twenty-five one hundredths on a possible scale of
26 four after successfully completing two years of course
27 work at an approved institution of higher education; or

28 (4) Are graduate students at the master's degree level
29 who have graduated or are graduating in the top ten
30 percent of their college graduating class.

31 The senior administrator shall develop criteria and
32 procedures for the selection of recipients which may
33 include, but not be limited to, the applicant's grade point
34 average, involvement in extracurricular activities,
35 financial need, current academic standing, and an
36 expression of interest in teaching as expressed in an
37 essay written by the applicant. Such criteria and
38 procedures may require the applicant to furnish letters
39 of recommendation from teachers and others. The
40 selection criteria and procedures shall also reflect the
41 present and projected teacher needs of the state,
42 including the demand for and supply of early childhood,
43 elementary and secondary teachers and teachers with
44 training in specific academic disciplines.

45 (c) In developing the selection criteria and procedures
46 to be used by the panel, the senior administrator shall
47 solicit the views of public and private education agencies
48 and institutions and other interested parties. These
49 views: (1) Shall be solicited by means of written and
50 published selection criteria and procedures in final form
51 for implementation; and (2) may be solicited by means
52 of public hearings on the present and projected teacher
53 needs of the state or such other methods as the senior
54 administrator may determine to be appropriate to
55 gather such information.

56 (d) The senior administrator shall make application
57 forms for Underwood-Smith teacher scholarships
58 available to public and private high schools in the state
59 and in other locations convenient to applicants, parents
60 and others.

§18C-4-3. Scholarship agreement.

1 (a) Each recipient of an Underwood-Smith teacher
2 scholarship shall enter into an agreement with the
3 senior administrator under which the recipient shall:

4 (1) Provide the board with evidence of compliance
5 with subsection (a), section four of this article; and

6 (2) Within a ten-year period after completing the
7 teacher education for which the scholarship was
8 awarded, teach full time under contract with a county
9 board of education: (A) In a public education program
10 in the state for a period of not less than two years for
11 each year for which a scholarship was received; or (B)
12 in this state in a teacher shortage area as determined
13 by the state board of education, in an exceptional
14 children program in this state, or in a school in an
15 economically disadvantaged area of this state for not less
16 than one year for each year for which a scholarship was
17 received; or

18 (3) Repay all or part of an Underwood-Smith teacher
19 scholarship received under this article plus interest and,
20 if applicable, reasonable collection fees, in accordance
21 with subsection (b), section four of this article, except
22 as provided in subsections (c) and (d) of said section four.

23 (b) Scholarship agreements shall fully disclose the
24 terms and conditions under which assistance under this
25 article is provided and under which repayment may be
26 required, including:

27 (1) A description of the conditions and procedures to
28 be established under section four of this article; and

29 (2) A description of the appeals procedure required to
30 be established under section four of this article.

**§18C-4-4. Renewal conditions; noncompliance; deferral;
excusal.**

1 (a) The recipient of an Underwood-Smith teacher
2 scholarship is eligible for scholarship renewal only
3 during such periods that the recipient is:

4 (1) Enrolled as a full-time student in an accredited
5 institution of higher education in this state;

6 (2) Pursuing a course of study leading to teacher
7 certification at the preschool, elementary or secondary
8 level in this state;

9 (3) Maintaining satisfactory progress as determined
10 by the institution of higher education the recipient is
11 attending; and

12 (4) Complying with such other standards as the boards
13 may establish by rule.

14 (b) Recipients found to be in noncompliance with the
15 agreement entered into under section three of this
16 article shall be required to repay the amount of the
17 scholarship awards received, plus interest, and, where
18 applicable, reasonable collection fees, on a schedule and
19 at a rate of interest prescribed in the program guide-
20 lines. Such guidelines shall also provide for proration of
21 the amount to be repaid by a recipient who teaches for
22 part of the period required under subsection (a), section
23 three of this article and for appeal procedures under
24 which a recipient may appeal any determination of
25 noncompliance.

26 (c) A recipient shall not be considered in violation of
27 the agreement entered into under section three of this
28 article during any period in which the recipient is:

29 (1) Pursuing a full-time course of study at an accred-
30 ited institution of higher education;

31 (2) Serving, not in excess of three years, as a member
32 of the armed services of the United States;

33 (3) Seeking and being unable to find full-time
34 employment as a teacher in a public education or
35 exceptional children program in the state; or

36 (4) Satisfying the provisions of additional repayment
37 exemptions that may be prescribed by the boards by
38 rule.

39 (d) A recipient shall be excused from repayment of a
40 teacher scholarship received under this article if the
41 recipient dies or becomes permanently and totally
42 disabled as established by sworn affidavit of a qualified
43 physician.

**§18C-4-5. Amount and duration of scholarship; relation to
other assistance.**

1 (a) Subject to subsection (b) of this section, each
2 recipient of an Underwood-Smith teacher scholarship is
3 eligible to receive assistance of up to five thousand
4 dollars for each academic year of higher education in

5 preparation for becoming a preschool, elementary or
6 secondary teacher in the public schools of this state. No
7 individual may receive scholarship assistance for more
8 than four academic years for the completion of a
9 bachelor's degree and two academic years for comple-
10 tion of a master's degree.

11 (b) No individual shall receive a scholarship award
12 under this article which exceeds the cost of attendance
13 at the institution the individual is attending. The cost
14 of attendance shall be based upon the actual cost of
15 tuition and fees, and reasonable allowances for books,
16 educational supplies, room and board and other ex-
17 penses necessitated by individual circumstances, in
18 accordance with the program guidelines. For the
19 purposes of establishing an award amount, the senior
20 administrator shall take into account the amount of
21 financial aid assistance the recipient has or will receive
22 from all other sources. If the amount of the Underwood-
23 Smith teacher scholarship assistance award and the
24 amount of assistance awards which the recipient has
25 received from all other sources exceed the cost of
26 attendance, the Underwood-Smith teacher scholarship
27 shall be reduced by the amount by which such combined
28 assistance exceeds the cost of attendance, except that
29 when other assistance to be received by the recipient
30 includes assistance from the West Virginia higher
31 education grant program, the amount to be received
32 from the higher education grant program shall first be
33 reduced.

CHAPTER 66

(Com. Sub. for S. B. 523—By Senators Lucht, Brackenrich and Felton)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section one, 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 two-a, relating to educational broad-

casting; providing definitions; and establishing a distance learning coordinating council.

Be it enacted by the Legislature of West Virginia:

That section one, 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 two-a, to read as follows:

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-1. Legislative findings; definitions.

§10-5-2a. West Virginia distance learning coordinating council; creation; duties.

§10-5-1. Legislative findings; definitions.

1 (a) The Legislature hereby finds and declares that it
2 is the duty of this state to provide the best educational
3 training possible for all its citizens and that the
4 encouragement and use of noncommercial educational
5 radio, television and related media operating and
6 originating from educational broadcasting, closed
7 circuit or related facilities located at a site or sites
8 within this state serving all the citizens of this state on
9 a regional basis or as part of a coordinated statewide
10 plan is a proper, necessary and beneficial means of
11 providing and extending enriched educational instruc-
12 tion to all the citizens of this state at the preschool,
13 elementary, secondary and higher education and adult
14 levels.

15 (b) The following words used in this article and in any
16 proceedings pursuant thereto shall, unless the context
17 clearly indicates a different meaning, be construed as
18 follows:

19 (1) "Distance learning" means educational courses,
20 seminars, programs and teleconferences transmitted
21 electronically and designed to instruct students who are
22 remote from the instructor or other participants; such
23 courses, seminars, programs and teleconferences may
24 constitute all or a significant portion of a class offered
25 for college or public school credit, or they may be
26 provided for faculty development, continuing profes-

27 sional education, for training employees of governmen-
28 tal agencies, nonprofit organizations, business or
29 industry;

30 (2) "EdNet" means those individuals identified as an
31 enterprise of the university of West Virginia college of
32 graduate studies and West Virginia state college on
33 behalf of the state college and university systems who
34 are delegated the responsibility for developing, operat-
35 ing and maintaining facilities for the production and
36 transmission of distance learning; and

37 (3) "SatNet" means those individuals identified as an
38 enterprise of the state college and university systems
39 who are delegated the responsibility for developing and
40 providing distance learning.

**§10-5-2a. West Virginia distance learning coordinating
council; creation; duties.**

1 (a) The Legislature finds that the educational benefits
2 of making a broader range of courses available to West
3 Virginia students, and the economic benefits from
4 continuing education and staff development for busi-
5 nesses, industry and the professions, are immeasurable
6 and that distance learning technology offers an efficient
7 means of delivering such education and personnel
8 development courses. The Legislature further finds that
9 distance learning technology requires a substantial
10 financial investment and the acquisition and utilization
11 of such technology should, therefore, be coordinated
12 among the various affected agencies.

13 (b) To facilitate such coordination, there is hereby
14 created a West Virginia distance learning coordinating
15 council which shall be composed of one representative
16 of each of the following: SatNet, EdNet, the educational
17 broadcasting authority, the West Virginia library
18 commission, the state department of education, the
19 higher education central office and the department of
20 administration's division of information systems and
21 communications. The representative of the department
22 of administration's division of information systems and
23 communications shall call the first meeting of the
24 council and shall chair the meeting until a chair is

25 elected by the council. The chair elected by the council
26 shall serve a term of one year, at which time the council
27 shall elect a new chair. A member of the council may
28 not serve for more than two consecutive terms as chair.

29 The council shall meet at least quarterly and shall
30 develop long-range plans to integrate the instructional
31 telecommunications system, to coordinate distance
32 learning in West Virginia and to clarify the roles of the
33 agencies involved in the state's distance learning
34 enterprise. The council shall submit an annual report to
35 the governor and the Legislature, which includes its
36 recommendations for achieving the best use of limited
37 resources in the development and operation of a distance
38 learning technology system.

39 (c) There is hereby created in the state treasury, a
40 special fund designated the "Distance Learning Fund"
41 which shall be under the jurisdiction of the secretary of
42 administration for use solely for the purposes of the
43 distance learning grant program as provided in this
44 section.

45 Appropriate guidelines for participation by school
46 districts, state institutions of higher education, public
47 libraries and public television stations, in the grant
48 program, shall be established by the distance learning
49 coordinating council subject to approval by the legisla-
50 tive oversight commission on education accountability.
51 Such guidelines shall include application procedures
52 and shall establish policies for awarding grants in the
53 event that more grant applications are received than
54 funds available to honor the applications in any fiscal
55 year. In allocating funds to applicants, the council may
56 give due consideration to revenues available from all
57 other sources. The state board of education shall
58 accredit courses offered through this program at the
59 elementary and secondary education level. The higher
60 education governing boards shall approve courses
61 taught at the post-secondary level.

62 In any fiscal year moneys in the fund shall be used
63 first to ensure that any and all school districts, state
64 institutions of higher education, public libraries and

65 public television stations seeking aid under this pro-
66 gram shall receive telecommunications equipment
67 necessary to participate in the satellite learning process;
68 second, to provide the school districts and state institu-
69 tions of higher education with access to subjects at the
70 advanced level or the remedial level or which are not
71 taught in the schools of the district or the service area
72 or campus; and third, to provide enrichment classes,
73 continuing education and professional development.
74 However, the council may set aside a portion of the
75 funds to be used to contract with state institutions of
76 higher education, state institutions of public education
77 and public television stations to develop instructional
78 programs for grades kindergarten through twelve.
79 Funds may also be used for undergraduate and grad-
80 uate course work suitable for broadcast to the school
81 districts, state institutions of higher education, as
82 appropriate, for continuing education and professional
83 development for business and industry seminars, and to
84 develop the capability to transmit programs cited in this
85 section.

86 Participation by a local school district, a state
87 institution of higher education, a public library or a
88 public television station in the program established by
89 this section shall be voluntary. No school district, state
90 institution of higher education, public library or public
91 television station receiving funds under this program
92 shall use those funds for any purpose other than that for
93 which they were intended. Any school district, state
94 institution of higher education, public library or public
95 television station shall be eligible to receive funds under
96 this program regardless of its curriculum, local wealth
97 or previous contractual arrangements to receive satellite
98 broadcast instruction.

99 The secretary of administration on behalf of the state
100 of West Virginia may contract with institutions of
101 higher education and the state board of education for the
102 development or operation, or both, of state employee
103 training programs transmitted by telecommunications
104 technology.

105 Instructional programs developed under this section

106 which are transmitted one-way through the airwaves or
107 by cable television shall be available to all residents of
108 this state without charge or fee to the extent permitted
109 by the West Virginia constitution. "Without charge or
110 fee" shall not require the providing of equipment to
111 transmit or receive telecommunications instruction or
112 the providing of commercial cable television service. If
113 the instructional program involves two-way, interactive
114 communication between the instructor and the partic-
115 ipant, the district or institution operating the program
116 may prescribe academic prerequisites and limit the
117 number of persons who may enroll in the specific
118 program and give preference to residents of the district
119 or institutional attendance area who are age twenty-one
120 or younger but shall not discriminate against any
121 resident on any other basis. A fee may be charged which
122 will be paid directly by the individual participant, but
123 the fee shall be equal for all participants. If a subscrip-
124 tion fee is charged by the originator of the program, the
125 district or institution may pay the subscription fee for
126 all participants from a grant under this section or from
127 any other public or private fund legally authorized to
128 be used for this purpose. Printed materials designed to
129 facilitate or complement telecommunications programs
130 or electronic reproduction thereof may be made avail-
131 able for loan by the school district, institution of higher
132 education through the public library system or the
133 curriculum technology resource center, subject to the
134 normal rules and regulations of the lending system and
135 in such quantities as may be approved by the governing
136 body of the district or institution

CHAPTER 67

(H. B. 2628—By Delegates Ashley and Brum)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

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

section twenty-one-a, relating to vendors authorized to print ballots; eligibility, application and certificate of authorization; and denial, suspension and revocation of authorization.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-21a. Vendors authorized to print ballots; eligibility; application and certification; denial, suspension and revocation of authorization; appeal.

1 (a) The printing of ballots for any election to be held
2 pursuant to the provisions of this chapter shall be
3 contracted for with a vendor authorized in accordance
4 with the provisions of this section.

5 (b) Any vendor authorized to do business in West
6 Virginia and in good standing may apply for a certifi-
7 cate of authorization to print ballots for elections in this
8 state: *Provided*, That any individual, partnership,
9 association or corporation who does not qualify as a
10 resident vendor pursuant to the provisions of section
11 thirty-seven-a, article three, chapter five-a of this code
12 or who prints the ballots in a state which prohibits that
13 state or any of its political subdivisions from contracting
14 with West Virginia resident vendors for the printing of
15 ballots or which prohibits the printing of ballots outside
16 of such state, is not eligible to obtain a certificate of
17 authorization.

18 (c) (1) Every vendor desiring to print ballots for
19 elections held pursuant to the provisions of this chapter
20 shall, prior to the execution of any contract for the
21 printing of ballots with any state, county, or municipal
22 government, obtain a certificate of authorization to print
23 ballots.

24 (2) A certificate of authorization may be obtained by
25 application to the secretary of state, upon a form
26 prescribed by the secretary of state, which form shall
27 include a statement that all printing, packaging and
28 delivery specifications for ballots set forth in this
29 chapter will be substantially met, and that the vendor
30 applying for certification is eligible in accordance with
31 the provisions of this section.

32 (3) Upon receipt of the completed application, the
33 secretary of state shall issue a certificate of authoriza-
34 tion to print ballots, which certificate shall remain in
35 effect for two years from the date of issuance and may
36 be renewed upon application therefor: *Provided*, That
37 the secretary of state may deny the application to issue
38 or renew the certificate of authorization, or may suspend
39 or revoke the certificate of authorization upon a
40 determination that the vendor has not substantially
41 complied with the printing, packaging and delivery
42 specifications in the printing of ballots for any state,
43 county or municipal election, or that the vendor is not
44 eligible or is no longer eligible to print ballots pursuant
45 to the provisions of this section. The secretary of state
46 shall give written notice of any such determination by
47 certified mail, return receipt requested, to the vendor
48 setting forth the reason for the suspension, revocation or
49 the denial of the application or the denial of the renewal
50 thereof. The applicant may, within sixty days of the
51 receipt of such denial, file a written appeal with the
52 state election commission. The state election commission
53 shall promulgate rules establishing a hearing process
54 for such appeals.

55 (d) On or before the second Monday of January of
56 each year, the secretary of state shall provide a list of
57 all vendors authorized to print ballots for state, county
58 and municipal elections to the clerk of each circuit court
59 of this state.

CHAPTER 68

(S. B. 629—By Senators Humphreys, Wiedebusch, Bailey,
Holliday and Dalton)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section forty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections nine, twenty-one and forty-four, article one; section two-b, article three; sections ten and eleven, article four; sections eleven and twelve, article four-a; sections two, three, four, seven, eleven, thirteen and nineteen, article five; section two, article six; and sections one, six, seven and eight, article ten, all of said chapter; to further amend article five of said chapter by adding thereto a new section, designated section thirteen-a; and to amend and reenact section two, article five, chapter eighteen of said code, all relating to the conduct of elections; providing for the composition of political party committees; providing for the terms of office for the transition in the realignment of the districts; authorizing committee to conduct organizational meeting following certification of election; requiring that meeting of political party executive committees be held only after notice is given; setting forth requirements of official meetings; designating persons responsible for the printing of ballots; reducing number of ballots which must be printed; prescribing the method for the printing of ballots; providing for the packaging of ballots; updating certain terminology; extending the date for the delivery of certain ballots; requiring clerk of circuit court to examine ballot and ballot labels used in voting machines and in electronic voting systems for accuracy; prescribing method by which ballot error may be corrected; increasing fees and expenses paid to election officials; changing occasions when disabled voter's name is removed from special absentee voting list; removing ability to change ballots by labels; rearranging certain code provisions; revising provisions establishing drawing by vote to determine

position on ballot; setting forth ballot label arrangement requirements in voting machines; revising the ballot label requirements for electronic voting systems; requiring that nonpartisan offices and any questions to be voted upon in electronic voting systems be placed on separate pages; permitting political parties to adopt a plan for the election of delegates and alternative delegates to national conventions consistent with their national party rules; setting forth requirements of plan; requiring candidates for the presidency to pay a filing fee or to petition for waiver thereof; eliminating the requirement that political party executive committees determine the votes in primary elections by lot; setting forth requirements of certificate of announcement; prohibiting the filing of candidacy of certain persons affiliated with another political party within sixty days prior to filing; prescribing method by which certification of candidacy may be refused; prescribing and clarifying certain candidacy filing procedures; when person may be guilty of false swearing and subject to criminal penalties; when commitment for delegates to national convention must be received; determining when candidate is or may be deemed "uncommitted"; clarifying prohibition against running for two offices; exceptions; prohibiting the certification of a candidate who fails to withdraw from one of two offices filed for; changing the deadline for candidates to withdraw and have name removed from ballot; removing discretion of ballot commissioners to certify candidates; establishing procedure for notice to voter of candidate's death; reestablishing deadlines for the filling of vacancies; setting forth ballot preparation procedures for primary elections; prescribing ballot titles and headings; setting forth ballot printing requirements; specifying order in which offices are to be placed on the ballot; eliminating notation of names on paper ballots; establishing names of candidates are to be alphabetized; establishing uniform date for drawing by lot; providing for the placement of names of candidates for delegate to national convention; clarifying and setting deadlines for the filling of vacancies by executive committees or the chair thereof; setting forth when vacancy may be filled;

authorizing election commission to determine personal extenuating circumstances for withdrawal; establishing special filing period for board of education races when certain vacancies occur; setting forth ballot preparation procedures for all voting systems; clarifying instructions on straight ticket voting and requiring that such instructions be placed immediately before the listing of candidates in multi-candidate elections; establishing uniform date for drawing by lot by certain candidates in the general election; limiting issues which may be placed on the ballot; eliminating short unexpired terms occurring between general election and commencement of new term; requiring that vacancies in county offices be filled with persons who are of the same political party as the person who vacated the office; establishing procedure for the filling of vacancies on the board of education; and setting new deadlines for the filling of a vacancy prior to an election.

Be it enacted by the Legislature of West Virginia:

That section forty-seven, article one, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections nine, twenty-one and forty-four, article one; section two-b, article three; sections ten and eleven, article four; sections eleven and twelve, article four-a; sections two, three, four, seven, eleven, thirteen and nineteen, article five; section two, article six; and sections one, six, seven and eight, article ten of said chapter be amended and reenacted; that article five of said chapter be further amended by adding thereto a new section, designated section thirteen-a; and that section two, article five, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

- 3. Elections.**
- 18. Education.**

CHAPTER 3. ELECTIONS.

Article

- 1. General Provisions and Definitions.**
- 3. Voting By Absentees.**
- 4. Voting Machines.**
- 4A. Electronic Voting Systems.**
- 5. Primary Elections and Nominating Procedures.**

- 6. Conduct and Administration of Elections.
- 10. Filling Vacancies.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

- §3-1-9. Political party committees; how composed; organization.
- §3-1-21. Printing of official and sample ballots; number; packaging and delivery, correction of ballots.
- §3-1-44. Compensation of election officials; expenses.

§3-1-9. Political party committees; how composed; organization.

1 At the primary election in the year one thousand nine
2 hundred ninety-four, and in every fourth year thereaf-
3 ter, the voters of each political party in each senatorial
4 district shall elect two male and two female members
5 of the state executive committee of the party. In
6 senatorial districts containing two or more counties, not
7 more than two such elected committee members shall
8 be residents of the same county. The committee, when
9 convened and organized as herein provided, shall
10 appoint three additional members of the committee
11 from the state at large. When senatorial districts are
12 realigned following a decennial census, members of the
13 state executive committee previously elected or ap-
14 pointed shall continue in office until the expiration of
15 their terms, and appointments made to fill vacancies on
16 the committee until the next election of executive
17 committee members shall be selected from the pre-
18 viously established districts. At the first election of
19 executive committee members following the realign-
20 ment of senatorial districts, members shall be elected
21 from the newly established districts.

22 At such primary election, the voters of each political
23 party in each county shall elect one male and one female
24 member of the party's executive committee of the
25 congressional district, of the senatorial district and of
26 the delegate district in which such county is situated,
27 if such county be situated in a multi-county senatorial
28 or delegate district. When districts are realigned
29 following a decennial census, members of an executive
30 committee previously elected in a county to represent
31 that county to a congressional or multi-county senatorial
32 or delegate district executive committee shall continue

33 to represent that county in the appropriate newly
34 constituted multi-county district until the expiration of
35 their terms: *Provided*, That the county executive
36 committee of the political party shall determine which
37 previously elected members shall represent the county
38 if the number of multi-county senatorial or delegate
39 districts in the county is decreased; and shall appoint
40 members to complete the remainder of the term if the
41 number of such districts is increased.

42 At the same time such voters of the county in each
43 magisterial district or executive committee district, as
44 the case may be, shall elect one male and one female
45 member of the party's county executive committee,
46 except that in counties having three executive commit-
47 tee districts there shall be elected two male and two
48 female members of the party's executive committee
49 from each magisterial or executive committee district.

50 For the purpose of complying with the provisions of
51 this section, the county commission shall create such
52 executive committee districts as they shall determine,
53 which such districts shall not be fewer than the number
54 of magisterial districts in such counties, nor shall they
55 exceed in number the following: Forty for counties
56 having a population of one hundred thousand persons or
57 more; thirty for counties having a population of fifty
58 thousand to one hundred thousand; twenty for counties
59 having a population of twenty thousand to fifty thou-
60 sand; and such districts in counties having a population
61 of less than twenty thousand persons shall be coexten-
62 sive with the magisterial districts.

63 The executive committee districts shall be as nearly
64 equal in population as practicable, and shall each be
65 composed of compact, contiguous territory. The county
66 commissions shall change the territorial boundaries of
67 such districts as required by the increase or decrease in
68 the population of such districts as determined by a
69 decennial census. Such changes must be made within
70 two years following such census.

71 All members of executive committees, selected for
72 each political division as herein provided, shall reside

73 within the county or district from which chosen. The
74 term of office of all members of executive committees
75 elected at the primary election in the year one thousand
76 nine hundred ninety-four shall begin on the first day
77 of July, following said primary, and shall continue for
78 four years thereafter and until their successors are
79 elected and qualified. Vacancies in the state executive
80 committee shall be filled by the members of the
81 committee for the unexpired term. Vacancies in the
82 party's executive committee of a congressional district,
83 senatorial district, delegate district or county shall be
84 filled by the party's executive committee of the county
85 in which such vacancy exists, and shall be for the
86 unexpired term.

87 As soon as possible after the certification of the
88 election of the new executive committees, as herein
89 provided, they shall convene an organizational meeting
90 within their respective political divisions, on the call of
91 the chairman of corresponding outgoing executive
92 committees, or by any member of the new executive
93 committee in the event there is no corresponding
94 outgoing executive committee and proceed to select a
95 chairman, a treasurer and a secretary, and such other
96 officers as they may desire, each of which officers shall
97 for their respective committees perform the duties that
98 usually appertain to such offices. The organizational
99 meeting may be conducted prior to the beginning of the
100 term, but no official action other than the election of
101 officers and the appointment to fill vacancies on the
102 committee may be made before the first day of July.

103 Any meeting of any political party executive commit-
104 tee shall be held only after public notice and notice to
105 each member is given according to party rules and shall
106 be open to all members affiliated with such party.
107 Meetings shall be conducted according to party rules, all
108 official actions shall be made by voice vote, and minutes
109 shall be maintained and shall be open to inspection by
110 members affiliated with such party.

**§3-1-21. Printing of official and sample ballots; number;
packaging and delivery, correction of ballots.**

1 (a) The board of ballot commissioners for each county
2 shall provide the ballots and sample ballots necessary
3 for the conduct of every election for public officers in
4 which the voters of the county participate.

5 (b) The persons who shall provide the ballots neces-
6 sary for the conduct of all other elections shall be:

7 (1) The secretary of state, for any statewide special
8 election ordered by the Legislature;

9 (2) The board of ballot commissioners, for any county-
10 wide special election ordered by the county commission;

11 (3) The board of education, for any special levy or
12 bond election ordered by the board of education; or

13 (4) The municipal board of ballot commissioners, for
14 any election conducted for or within a municipality,
15 except an election in which the matter affecting the
16 municipality is placed on the county ballot at a county
17 election. Ballots other than those caused to be printed
18 by the proper authorities as specified in this section
19 shall not be cast, received, or counted in any election.

20 (c) When paper ballots are used, the total number of
21 regular official ballots printed shall equal one and one-
22 twentieth times the number of registered voters eligible
23 to vote that ballot. The circuit clerk shall determine the
24 number of absentee official ballots, which number shall
25 be not more than one tenth of the number of registered
26 voters eligible to vote the ballot.

27 (d) The number of regular official ballots packaged
28 for each precinct shall equal the number of registered
29 voters of the precinct. The remaining regular official
30 ballots shall be packaged and delivered to the circuit
31 clerk, who shall retain them unopened until they are
32 required for an emergency. Each package of ballots
33 shall be wrapped and sealed in a manner which will
34 immediately make apparent any attempt to open, alter
35 or tamper with the ballots contained therein. Each
36 package of ballots for a precinct shall be clearly labeled,
37 in a manner which cannot be altered, with the county
38 name, the precinct number, and the number of ballots
39 contained therein. If the packaging material conceals

40 the face of the ballot, a sample ballot identical to the
41 official ballots contained therein shall be securely
42 attached to the outside of the package, or, in the case
43 of ballot cards, the type of ballot shall be included in
44 the label.

45 (e) All absentee ballots necessary for the conduct of
46 absentee voting in all voting systems shall be delivered
47 to the circuit clerk of the appropriate county not later
48 than the forty-second day before the election. All official
49 ballots in paper ballot systems shall be delivered to the
50 circuit clerk of the appropriate county not later than
51 twenty-eight days before the election.

52 (f) Upon a finding of the board of ballot commissioners
53 that an official ballot contains an error which in the
54 opinion of the board is of sufficient magnitude as to
55 confuse or mislead the voters, the board shall cause the
56 error to be corrected, either by the reprinting of the
57 ballots or by the use of stickers printed with the
58 correction and of suitable size to be placed over the error
59 without covering any other portion of the ballot.

§3-1-44. Compensation of election officials; expenses.

1 Each ballot commissioner shall be allowed and paid
2 a sum, to be fixed by the county commission, not
3 exceeding fifty dollars for each day he or she shall serve
4 as such, but, in no case shall a ballot commissioner
5 receive allowance for more than ten days' services for
6 any one primary, general or special election. Each
7 commissioner of election and poll clerk shall be allowed
8 and paid a sum, to be fixed by the county commission,
9 not exceeding fifty dollars for one day's services for
10 attending the school of instruction for election officials
11 if the commissioner or poll clerk provides at least one
12 day's service during an election and a sum not exceeding
13 one hundred dollars for his or her services at any one
14 election: *Provided*, That each commissioner of election
15 and poll clerk shall be paid and allowed a sum not
16 exceeding one hundred dollars for his or her services at
17 any of the three special elections hereinafter specified
18 and described. The commissioners of election obtaining
19 and delivering the election supplies, as provided in

20 section twenty-four of this article, and returning them
21 as provided in articles five and six of this chapter, shall
22 be allowed and paid an additional sum, likewise fixed
23 by the county commission, not exceeding fifty dollars for
24 all such services at any one election and, in addition,
25 shall be allowed and paid mileage at the rate of twenty-
26 five cents per mile necessarily traveled in the perform-
27 ance of such services. The compensation of election
28 officers, cost of printing ballots, and all other expenses
29 incurred in holding and making the return of elections,
30 other than the three special elections hereinafter
31 specified and described, shall be audited by the county
32 commission and paid out of the county treasury.

33 The compensation of election officers, cost of printing
34 ballots, and all other reasonable and necessary expenses
35 in holding and making the return of a special election
36 for the purpose of taking the sense of the voters on the
37 question of calling a constitutional convention, of a
38 special election to elect members of a constitutional
39 convention, and of a special election to ratify or reject
40 the proposals, acts and ordinances of a constitutional
41 convention shall be obligations of the state incurred by
42 the ballot commissioners, clerks of the circuit courts,
43 clerks of the county commissions, and county commis-
44 sions of the various counties as agents of the state, and
45 all such expenses shall be audited by the secretary of
46 state. The secretary of state shall prepare and transmit
47 to the county commissions forms on which the county
48 commissions shall certify all such expenses of such
49 special elections to the secretary of state. If satisfied that
50 such expenses as certified by the county commissions
51 are reasonable and were necessarily incurred, the
52 secretary of state shall requisition the necessary
53 warrants from the auditor of the state to be drawn on
54 the state treasurer, and shall mail such warrants
55 directly to the vendors of such special election services,
56 supplies and facilities.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2b. Special absentee voting list.

1 Notwithstanding the provisions contained in section

2 twenty-five, article two of this chapter, any person who
 3 is registered and otherwise qualified to vote and who is
 4 permanently and totally physically disabled and who is
 5 unable to vote in person at the polls in an election, may
 6 apply to the office of the circuit clerk to have such
 7 person's name placed upon a special absentee voting list.
 8 The special absentee voting list shall be kept by the
 9 circuit clerk in a bound book maintained for such
 10 purpose.

11 An application shall be prescribed by the secretary of
 12 state and shall be in substantially the following form:

13 APPLICATION TO BE PLACED UPON SPECIAL
 14 ABSENTEE VOTING LIST

15 Date _____

16 I, _____,
 17 hereby declare that I am a permanent resident of the
 18 State of West Virginia and of the County of _____,
 19 with permanent address as follows:

20 _____, _____, _____.
 21 Street City State

22 in the magisterial district of _____,
 23 in said County; that I am registered in the precinct of
 24 my residence as provided by law.

25 I declare further that I am permanently and totally
 26 disabled physically and am unable to vote in person at
 27 the polls in an election, and do hereby request that my
 28 name be placed upon the special absentee voting list.

29 _____
 30 Signature of Applicant

31 (or in case the applicant is illiter-
 32 ate he or she shall make his mark
 33 and have it witnessed on the
 34 following lines):

35 _____
 36 Mark of Applicant

37 _____
 38 Signature of Witness

39 STATEMENT OF PHYSICIAN

40 I, _____, hereby declare that I am
 41 a physician, duly licensed to practice in the State of
 42 _____; that I examined
 43 _____, the applicant,
 44 whose signature appears upon the above application on
 45 the _____ day of _____ 19 ____; and that
 46 in my opinion such person is permanently and totally
 47 disabled physically and would be unable to vote in
 48 person at the polls in an election.

49
 50

Signature of Physician

51 Upon receipt of such application, properly completed,
 52 the circuit clerk shall enter the name of such person
 53 upon the special absentee voting list and the application
 54 shall be filed. The person's name shall remain on such
 55 list: (1) Until such person requests in writing that his
 56 or her name be removed; or (2) until such person
 57 removes his or her residence from the county, is purged
 58 from the voter registration books or otherwise becomes
 59 ineligible to vote; or (3) a ballot mailed to the address
 60 provided on the application is returned undeliverable by
 61 the United States postal service; or (4) until the death
 62 of such person.

63 Each person whose name is contained on the special
 64 absentee voting list may make application for voting an
 65 absent voter's ballot by mail as provided in section five
 66 of this article, but such person shall not be required to
 67 produce a statement of a physician at the time of such
 68 application so long as such person's name remains on the
 69 special absentee voting list.

ARTICLE 4. VOTING MACHINES.

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

§3-4-11. Ballot label arrangement in machines; drawing by lot to determine position of candidates on machines; adjustment; records.

§3-4-10. Ballot labels, instructions and other supplies; vacancy changes; procedure and requirements.

1 The ballot commissioners of any county in which
2 voting machines are to be used in any election shall
3 cause to be printed for use in such election the ballot
4 labels for the voting machines and paper ballots for
5 absentee voting, voting by persons unable to use the
6 voting machine and challenged ballots. The labels shall
7 be clearly printed in black ink on clear white material
8 of such size as will fit the ballot frames. The paper
9 ballots shall be printed in compliance with the provi-
10 sions of this chapter governing paper ballots.

11 The heading, the names and arrangement of offices
12 and the printing and arrangement of names of the
13 candidates for each office indicated shall be placed on
14 the ballot for the primary election as nearly as possible
15 according to the provisions of sections thirteen and
16 thirteen-a, article five of this chapter, and for the
17 general election according to the provisions of section
18 two, article six of this chapter: *Provided*, That the
19 staggering of the names of candidates in multi-candi-
20 date races and the instructions to straight ticket voters
21 prescribed by section two, article six of this chapter
22 shall appear on paper ballots but shall not appear on
23 ballot labels for voting machines which mechanically
24 control crossover voting.

25 Each question to be voted on shall be placed at the
26 end of the ballot and shall be printed according to the
27 provisions of the laws and regulations governing such
28 question.

29 The ballot labels so printed shall total in number one
30 and one-half times the total number of corresponding
31 voting machines to be used in the several precincts of
32 the county in such election. All such labels shall be
33 delivered to the clerk of the circuit court at least twenty-
34 eight days prior to the day of the election. The clerk of
35 the circuit court shall determine the number of paper
36 ballots needed for absentee voting and to supply the
37 precincts for challenged ballots and ballots to be cast by
38 persons unable to use the voting machine. All such
39 paper ballots shall be delivered to the clerk of the circuit
40 court at least forty-two days prior to the day of the
41 election.

42 When the ballot labels and absentee ballots are
43 delivered, the clerk of the circuit court shall examine
44 them for accuracy, assure that the appropriate ballots
45 and ballot labels are designated for each voting precinct,
46 and deliver the ballot labels to the clerk of the county
47 commission, who shall insert one set in each machine
48 prior to the inspection of the machines as prescribed in
49 section twelve of this article. The remainder of such
50 ballot labels for each machine shall be retained by the
51 clerk of the county commission for use in an emergency.

52 In addition to all other equipment and supplies
53 required by the provisions of this article, the ballot
54 commissioners shall cause to be printed a supply of
55 instruction cards, sample ballots and facsimile diagrams
56 of the voting machine ballot adequate for the orderly
57 conduct of the election in each precinct in their county.
58 In addition, they shall provide appropriate facilities for
59 the reception and safekeeping of the ballots of absent
60 voters and of challenged voters and of such "independ-
61 ent" voters who shall, in primary elections, cast their
62 votes on nonpartisan candidates and public questions
63 submitted to the voters.

**§3-4-11. Ballot label arrangement in machines; drawing
by lot to determine position of candidates on
machines; adjustment; records.**

1 When the ballot labels are printed and delivered to the
2 clerk of the county commission, they shall be placed in
3 the ballot frames of the voting machines in such manner
4 as will most nearly conform to the arrangement
5 prescribed for paper ballots, and as will clearly indicate
6 the party designation or emblem of each candidate.
7 Each column or row containing the names of the office
8 and candidates for such office shall be so arranged as
9 to clearly indicate the office for which the candidate is
10 running. The names of the candidates for each office
11 indicated shall be placed on the ballot.

12 The clerk of the county commission shall cause the
13 voting machines to be programmed so that each lever
14 is properly set to record a vote and that the voter can
15 vote for the maximum number of candidates allowed for

16 each office and no more. In general elections, the
17 straight ticket lever shall cause a vote to be cast for
18 every candidate of the straight ticket party unless the
19 voter cancels a vote within that party by resetting one
20 or more individual levers at the positions of specific
21 candidates to the no-vote position.

22 The clerk shall then see that the counters referred to
23 in subsection (11), section eight of this article are set at
24 zero (000) and shall lock the operating device and
25 mechanism and devices protecting the counter and
26 ballot labels. The clerk shall then enter in an appro-
27 priate book, opposite the number of each precinct, the
28 identifying or distinguishing number of the specific
29 voting machine or machines to be used in that precinct.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11. Ballot labels, instructions and other supplies; procedure and requirements.

§3-4A-12. Ballot label arrangement in vote recording devices; sealing of devices; record of identifying numbers.

§3-4A-11. Ballot labels, instructions and other supplies; procedure and requirements.

1 The ballot commissioners of any county in which an
2 electronic voting system utilizing voting devices for
3 registering the voter's choices is to be used in any
4 election shall cause to be printed for use in such election
5 the ballot cards and ballot labels, as appropriate, for the
6 electronic voting system.

7 (a) The ballot labels shall be clearly printed in black
8 ink on clear white material of such size as will fit the
9 vote recording devices. Arrows shall be printed on the
10 ballot labels to indicate the place to punch the ballot
11 card, which may be to the right or left of the name or
12 proposition.

13 (b) The ballot labels shall contain the party emblem
14 and shall clearly indicate the party designation of each
15 candidate. The titles of offices may be arranged on the
16 ballot labels in vertical columns or in a series of separate
17 pages, and shall be printed above or at the side of the
18 names of candidates so as to indicate clearly the

19 candidates for each office and the number to be elected.
 20 The names of candidates for each office shall be printed
 21 in vertical columns or on separate pages, grouped by the
 22 offices which they seek.

23 (c) For the primary election, the heading of the ballot,
 24 the type faces, the names and arrangement of offices
 25 and the printing of names and arrangement of candi-
 26 dates within each office shall conform as nearly as
 27 possible to the provisions of sections thirteen and
 28 thirteen-a, article five of this chapter.

29 (d) For the general election, the heading of the ballot,
 30 the straight ticket positions, the instructions to straight
 31 ticket voters, the type faces, the names and arrangement
 32 of offices and the printing of names and the arrange-
 33 ment of candidates within each office shall conform as
 34 nearly as possible to the provisions of section two, article
 35 six of this chapter, except as otherwise provided in this
 36 article.

37 The secretary of state shall assign uniform numbers
 38 which shall be used by all counties using electronic
 39 voting for all straight party tickets and for all candi-
 40 dates running for offices to be voted upon by all of the
 41 voters of the state. After taking into account the
 42 numbers so assigned by the secretary of state, the clerk
 43 of the circuit court shall arrange the offices and the
 44 candidates within each office as prescribed by section
 45 two, article six of this chapter, and shall assign the
 46 appropriate number for each candidate.

47 When one candidate is to be elected and only two
 48 parties are on the ballot, the ballot label and the
 49 arrangement of the ballot shall conform as nearly as
 50 practical to the following example:

51	Democratic Ticket	Republican Ticket
52	For Governor	For Governor
53	(Vote for One)	(Vote for One)

54 (candidate's name) 10 →
 55 (residence, county)
 56 ← 11 (candidate's name)
 57 (residence, county)

58 When more than two parties are on the ballot for an
 59 office, the arrangement of the ballot shall be specified
 60 by the secretary of state, and may conform to the
 61 following example if practical:

62 For Governor
 63 (Vote for One)

64	Democrat	(candidate's name)	10 →
65		(residence, county)	
66	Republican	(candidate's name)	11 →
67		(residence, county)	
68	People's	(candidate's name)	12 →
69		(residence, county)	

70 The ballot label and the arrangement of the ballot for
 71 multi-candidate offices shall conform as nearly as
 72 practical to the following example:

	Democratic Ticket	Republican Ticket
74	For House of Delegates	For House of Delegates
75	First Delegate District	First Delegate District
76	(Vote For Not More	(Vote For Not More
77	Than Two)	Than Two)
78	[If you marked a straight	[If you marked a straight
79	ticket and you mark any	ticket and you mark any
80	candidate in a different	candidate in a different
81	party for this office, you	party for this office, you
82	must mark all your	must mark all your
83	choices because your	choices because your
84	straight ticket	straight ticket
85	vote will not be	vote will not be
86	counted for this office.]	counted for this office.]

87 (candidate's name) 69 →
 88 (residence, county)

89 ←70 (candidate's name)
 90 (residence, county)

91 (candidate's name) 71 →
 92 (residence, county)

93 ←72 (candidate's name)
 94 (residence, county)

95 (e) Any nonpartisan office such as board of education
 96 and any question to be voted on shall be placed on a
 97 separate page or otherwise separated from the partisan
 98 ballots, which separate page shall constitute a separate
 99 ballot where required.

100 (f) In elections in which voters are authorized to vote
 101 for persons whose names do not appear on the ballot
 102 label, a separate write-in ballot, which may be in the
 103 form of a paper ballot or card or may be part of the
 104 secrecy envelope, shall be provided if required to permit
 105 a voter to enter the title of the office and the names of
 106 persons whose names are not on the ballot, for whom he
 107 or she wishes to vote. The manner of voting for write-
 108 in candidates upon electronic voting devices shall be as
 109 prescribed by rules and regulations of the secretary of
 110 state.

111 (g) In addition to all other equipment and supplies
 112 required by the provisions of this article, the ballot
 113 commissioners shall cause to be printed a supply of
 114 instruction cards, sample ballots, facsimile diagrams of
 115 the vote recording device ballot and official printed
 116 ballots or ballot cards adequate for the orderly conduct
 117 of the election in each precinct in their county. In
 118 addition they shall provide all other materials and
 119 equipment necessary to the conduct of the election,
 120 including voting booths, appropriate facilities for the
 121 reception and safekeeping of ballot cards, the ballots of

122 absent voters and of challenged voters and of such
123 "independent" voters who shall, in primary elections
124 cast their votes on nonpartisan candidates and public
125 questions submitted to the voters.

§3-4A-12. Ballot label arrangement in vote recording devices; sealing of devices; record of identifying numbers.

1 In counties using electronic voting systems utilizing
2 vote recording devices:

3 (1) The number of ballot labels printed shall equal one
4 and one-half times the total number of corresponding
5 vote recording devices to be used in the election. All
6 such labels shall be delivered to the clerk of the county
7 commission at least thirty-five days prior to the election.
8 The circuit clerk shall immediately examine the ballot
9 labels for accuracy and assure that the appropriate
10 ballot labels are designated for each voting precinct.

11 (2) The total number of ballot cards printed and the
12 number packaged for each precinct and the require-
13 ments for ballot colors and packaging shall conform as
14 nearly as possible to the requirements for paper ballots.
15 Official ballot cards printed and packaged for the
16 various precincts shall be delivered to the clerk of the
17 circuit court at least twenty-eight days prior to the
18 election.

19 (3) The necessary number of ballot cards, ballot labels,
20 sample ballots, and other supplies necessary for absen-
21 tee voting shall be delivered to the clerk of the circuit
22 court at least forty-two days prior to the election. The
23 clerk shall immediately check the ballot labels to assure
24 their accuracy and shall place them in vote recording
25 devices which are clearly designated for the proper
26 district and/or party for the purpose of absentee voting.

27 (4) When the ballot labels are delivered to the clerk
28 of the county commission, the clerk shall place them in
29 the vote recording devices in the proper order. The
30 remainder of such ballot labels for each machine shall
31 be retained by the clerk of the county commission for
32 use in an emergency.

33 (5) The clerk of the county commission shall then seal

34 the vote recording devices so as to prevent tampering
 35 with ballot labels, and enter in an appropriate book,
 36 opposite the number of each precinct, the identifying or
 37 distinguishing number of the specific vote recording
 38 device or devices to be used in that precinct.

**ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PRO-
 CEDURES.**

- §3-5-2. Delegates to national conventions; alternate delegates.
- §3-5-3. Presidential preference.
- §3-5-4. Nomination of candidates in primary elections.
- §3-5-7. Filing announcements of candidacies; requirements; withdrawal of candidates when section applicable.
- §3-5-11. Withdrawals; filling vacancies in candidacy; publication.
- §3-5-13. Form and contents of ballots and ballot labels.
- §3-5-13a. Order of offices and candidates on the ballot; uniform drawing date.
- §3-5-19. Vacancies in nominations; how filled; fees.

§3-5-2. Delegates to national conventions; alternate delegates.

1 (a) At the primary election to be held in the year one
 2 thousand nine hundred ninety-two, and in each fourth
 3 year thereafter, there shall be elected by the voters of
 4 each political party of the state, in accordance with a
 5 plan adopted by the state party, persons to be delegates
 6 to the national convention of the party to be held next
 7 after the date of such primary.

8 (b) The plan adopted by each political party of the
 9 state shall state the method, subject to compliance with
 10 their national party rules and not inconsistent with the
 11 provisions of this chapter, for the election of persons in
 12 each congressional district of the state as delegates to
 13 the national convention of the party, for the election or
 14 selection of persons in each congressional district of the
 15 state as alternate delegates to the national convention of
 16 the party and for the selection of all remaining delegates
 17 and alternate delegates allocated to the party in their
 18 national convention. Not less than one hundred twenty
 19 days before the primary election to be held in the year
 20 one thousand nine hundred ninety-two, and in every
 21 fourth year thereafter, the governing body of each
 22 political party of the state shall certify the plan adopted
 23 by the party under signature of the state party chair-
 24 man and file the plan with the secretary of state. Any

25 questions regarding whether such plan was rightfully
26 adopted by the party shall be resolved by the party
27 based upon party rules.

28 (c) The plan adopted by each political party of the
29 state shall, to the extent permissible under their
30 national party rules, provide for the following:

31 (1) The voters of each political party shall elect in each
32 congressional district the number of persons as dele-
33 gates to the national convention of the party to which
34 the district is entitled.

35 (2) If the rules of the national political party do not
36 require the apportionment of delegates on the basis of
37 their commitment for president, the persons receiving
38 the highest number of votes as delegates in any
39 congressional district to the number to which the
40 district is entitled, shall be elected delegates. After the
41 election of delegates in each congressional district to the
42 number to which the district is entitled, the persons
43 receiving the next highest votes in each congressional
44 district and having qualified, as may be provided in the
45 plan adopted by the party, shall be elected as alternate
46 delegates to the number of alternate delegates to which
47 the district is entitled.

48 (3) If the rules of the national political party require
49 that the percentage of votes cast for the various
50 presidential candidates determine the apportionment of
51 committed candidates to be elected as delegates or
52 alternates, regardless of whether such committed
53 candidates received the highest number of votes, then
54 the plan adopted by the political party of the state shall
55 prescribe the number of delegates and alternates to be
56 elected under such apportionment, the method by which
57 the apportionment shall be made, and the method by
58 which the secretary of state shall determine which
59 delegates and alternates are elected. A committed
60 candidate for delegate to national convention is one
61 whose preference for a particular presidential candidate
62 appears on the ballot.

63 (4) In the event the number of persons elected in the
64 primary election in a congressional district is less than
65 the number to which the district is entitled as delegates

66 and alternate delegates to the national convention of the
67 political party, the governing body of the political party
68 of the state shall appoint persons from the congressional
69 district to serve as delegates or alternate delegates to the
70 national convention of the party unless the rules of the
71 party otherwise provide.

72 (5) The number of persons which each of the congres-
73 sional districts in the state are entitled to elect as
74 delegates to the national convention of the political party
75 shall be apportioned among the congressional districts
76 in the same proportion to the total number of delegates
77 to the party's national convention elected in all congres-
78 sional districts in the state as the population of the
79 congressional district bears to the total population of the
80 state based upon the census of population taken by the
81 bureau of the census of the United States department
82 of commerce in the year one thousand nine hundred
83 ninety, and in every tenth year thereafter.

84 (d) The official primary ballot at the primary election
85 to be held in the year one thousand nine hundred ninety-
86 two, and in every fourth year thereafter shall, following
87 the names of all candidates for delegates to the national
88 convention of the party, contain the words "For election
89 in accordance with the plan adopted by the party and
90 filed with the secretary of state."

91 (e) Unless and until a political party of the state has
92 adopted and certified a plan for the election of delegates
93 to the national convention of the party and filed the plan
94 with the secretary of state, there shall be elected by the
95 voters of the political party of the state at the primary
96 election to be held in the year one thousand nine
97 hundred ninety-two, and in each fourth year thereafter,
98 the number of persons to which the party is entitled as
99 delegates-at-large, and by the voters of each political
100 party in each congressional district in the state the
101 number of delegates to which the district is entitled. The
102 persons receiving the highest number of votes in the
103 state as delegates-at-large, to the number to which the
104 state is entitled, shall be elected delegates. The persons
105 receiving the highest number of votes as delegates in
106 any congressional district, to the number to which the
107 district is entitled, shall be elected delegates. Each

108 delegate so elected shall then appoint an individual to
109 serve as alternate delegate, and shall by registered
110 letter notify the secretary of state of such appointment
111 within forty days after the primary election.

§3-5-3. Presidential preference.

1 In presidential election years, in addition to the
2 candidates required to be nominated at the primary
3 election, the qualified voters of each political party shall
4 have the opportunity of voting for their choice among
5 those aspiring to be the candidates of their respective
6 parties for president of the United States. The names
7 of such aspirants shall be printed on the official election
8 ballot of their respective parties, as provided in section
9 thirteen of this article, upon the filing with the secretary
10 of state of the certificate of announcement as provided
11 in section seven of this article and the filing fee or
12 petition in lieu of filing fee as provided in sections eight
13 and eight-a of this article, and the ballot shall be
14 marked and the vote shall be counted, canvassed and
15 returned under the same conditions as to names,
16 certificates and other matters, as the names and
17 certificates of the party aspirants for the party nomina-
18 tion for the office of governor.

§3-5-4. Nomination of candidates in primary elections.

1 At each primary election, the candidate or candidates
2 of each political party for all offices to be filled at the
3 ensuing general election by the voters of the entire state,
4 of each congressional district, of each state senatorial
5 district, of each delegate district, of each judicial circuit
6 of West Virginia, of each county, and of each magisterial
7 district in the state shall be nominated by the voters of
8 the different political parties, except that no presiden-
9 tial elector shall be nominated at a primary election.

10 In primary elections a plurality of the votes cast shall
11 be sufficient for the nomination of candidates for office.
12 Where only one candidate of a political party for any
13 office in a political division, including party commit-
14 men and delegates to national conventions, is to be
15 chosen, or where a judicial circuit has two or more
16 circuit judges and one circuit judge is to be chosen for
17 each numbered division within the circuit, the candidate

18 receiving the highest number of votes therefor in the
19 primary election shall be declared the party nominee for
20 such office. Where two or more such candidates are to
21 be chosen in the primary election, the candidates
22 constituting the proper number to be so chosen who
23 shall receive the highest number of votes cast in the
24 political division in which they are candidates shall be
25 declared the party nominees and choices for such offices,
26 except that: (1) Candidates for the office of commis-
27 sioner of the county commission shall be nominated and
28 elected in accordance with the provisions of section ten,
29 article nine of the Constitution of the state of West
30 Virginia; (2) members of county boards of education
31 shall be elected at primary elections in accordance with
32 the provisions of sections five and six of this article; (3)
33 candidates for the House of Delegates shall be nomi-
34 nated and elected in accordance with the residence
35 restrictions provided in section two, article two, chapter
36 one of this code; and (4) in judicial circuits having
37 numbered divisions, each numbered division shall be
38 tallied separately and the candidate in each division
39 receiving a plurality of the votes cast shall be declared
40 the party nominee for the office in that numbered
41 division.

42 In case of tie votes between candidates for party
43 nominations or elections in primary elections, the choice
44 of the political party shall be determined by the
45 executive committee of the party for the political
46 division in which such persons are candidates.

**§3-5-7. Filing announcements of candidacies; require-
ments; withdrawal of candidates when section
applicable.**

1 Any person who is eligible to hold and seeks to hold
2 an office or political party position to be filled by
3 election in any primary or general election held under
4 the provisions of this chapter shall file a certificate of
5 announcement declaring as a candidate for the nomina-
6 tion or election to such office.

7 (a) The certificate of announcement shall be filed as
8 follows:

9 (1) With the secretary of state, if it be an office or

10 political position to be filled by the voters of more than
11 one county;

12 (2) With the clerk of the circuit court, if it be for an
13 office to be filled by the voters of a single county or of
14 a subdivision less than a county;

15 (3) With the recorder or city clerk if it be for an office
16 to be filled by the voters of a municipality.

17 The certificate of announcement shall be filed with the
18 proper officer not earlier than the second Monday in
19 January next preceding the primary election day, and
20 not later than the first Saturday of February next
21 preceding the primary election day, and must be
22 received before midnight, eastern standard time, of that
23 day or, if mailed, shall be postmarked by the United
24 States postal service before that hour.

25 (b) The certificate of announcement shall be in a form
26 prescribed by the secretary of state on which the
27 candidate shall make a sworn statement before a notary
28 public or other officer authorized to give oaths, contain-
29 ing the following information:

30 (1) The date of the election in which the candidate
31 seeks to appear on the ballot;

32 (2) The name of the office sought; the district, if any;
33 and the division, if any;

34 (3) The legal name of the candidate, and the exact
35 name the candidate desires to appear on the ballot,
36 subject to limitations prescribed in section thirteen,
37 article five of this chapter;

38 (4) The county of residence and a statement that the
39 candidate is a legally qualified voter of that county; and
40 the magisterial district of residence for candidates
41 elected from magisterial districts or under magisterial
42 district limitations;

43 (5) The specific address designating the location at
44 which the candidate resides at the time of filing,
45 including number and street or rural route and box
46 number, and city, state and zip code;

47 (6) For partisan elections, the name of the candidate's
48 political party, and a statement that the candidate is a

49 member of and affiliated with that political party as is
50 evidenced by the candidate's current registration as a
51 voter affiliated with that party, and that the candidate
52 has not been registered as a voter affiliated with any
53 other political party for a period of sixty days before the
54 date of filing the announcement;

55 (7) For candidates for delegate to national convention,
56 the name of the presidential candidate to be listed on
57 the ballot as the preference of the candidate on the first
58 convention ballot; or, a statement that the candidate
59 prefers to remain "uncommitted";

60 (8) A statement that the person filing the certificate
61 of announcement is a candidate for the office in good
62 faith;

63 (9) The words "subscribed and sworn to before me this
64 _____ day of _____, 19 _____," and a space for
65 the signature of the officer giving the oath.

66 The secretary of state or the board of ballot commis-
67 sioners, as the case may be, may refuse to certify the
68 candidacy or remove the certification of the candidacy
69 upon receipt of a certified copy of the voter's registration
70 record of the candidate evidencing that the candidate
71 was registered as a voter in a party other than the one
72 named in the certificate of announcement during the
73 sixty days immediately preceding the filing of the
74 certificate: *Provided*, That unless a signed formal
75 complaint of violation of this section and the certified
76 copy of the voter's registration record of the candidate
77 be filed with the officer receiving that candidate's
78 certificate of announcement no later than ten days
79 following the close of the filing period, the candidate
80 shall not be refused certification for this reason.

81 (c) The certificate of announcement shall be sub-
82 scribed to and sworn to by the candidate before some
83 officer qualified to administer oaths, who shall certify
84 the same. Any person who knowingly provides false
85 information on said certificate is guilty of false swearing
86 and shall be punished as set forth in section three,
87 article nine of this chapter.

88 (d) Any candidate for delegate to a national convention
89 may change his or her statement of presidential

90 preference by notifying the secretary of state by letter
91 received by the secretary of state no later than the third
92 Tuesday following the close of candidate filing. When
93 the rules of the political party allow each presidential
94 candidate to approve or reject candidates for delegate
95 to convention who may appear on the ballot as commit-
96 ted to that presidential candidate, the presidential
97 candidate or the candidate's committee on his or her
98 behalf may file a list of approved or rejected candidates
99 for delegate, and the secretary of state shall list as
100 "uncommitted" any candidate for delegate who is
101 disapproved by the presidential candidate.

102 (e) No person shall be a candidate for more than one
103 office or office division at any election: *Provided*, That
104 a candidate for an office may also be a candidate for
105 president of the United States, for membership on a
106 political party executive committee or for delegate to a
107 political party national convention. Notwithstanding the
108 provisions of this section, nothing shall prohibit a
109 candidate from jointly running for or jointly holding the
110 offices of county clerk and circuit clerk in those counties
111 which operate a joint clerkship system.

112 (f) Any candidate who files a certificate of announce-
113 ment for more than one office or division and does not
114 withdraw, as provided by section eleven, article five of
115 this chapter, from all but one office prior to the close
116 of the filing period shall not be certified by the secretary
117 of state or placed on the ballot for any office by the
118 board of ballot commissioners.

119 The provisions of this section shall apply to the
120 primary election held in the year one thousand nine
121 hundred ninety-two and every primary election held
122 thereafter.

**§3-5-11. Withdrawals; filling vacancies in candidacy;
publication.**

1 (a) A candidate who has filed a certificate of an-
2 nouncement and wishes to withdraw and decline to
3 stand as a candidate for the office shall file a signed and
4 notarized statement of withdrawal with the same officer
5 with whom the certificate of announcement was filed.
6 If such statement of withdrawal is received not later

7 than the third Tuesday following the close of candidate
8 filing, the name of a candidate who files that statement
9 of withdrawal may not be printed on the ballot. No
10 candidate who files a statement of withdrawal after that
11 time may have his or her name removed from the ballot.

12 (b) Upon request of the candidate's family, the board
13 of ballot commissioners may remove the name of a
14 candidate who dies before the ballots are printed. If a
15 candidate dies after the ballots are printed but before
16 the election, the clerk of the circuit court shall give a
17 written notice which shall be posted with the sample
18 ballot at each precinct with the county to the following
19 effect: "To the voter: (name) of (residence), a candidate
20 for (office) is deceased."

21 (c) If after the time is closed for announcing as a
22 candidate there is a vacancy on the ballot caused by
23 failure of any person of a party to file for each available
24 seat of each available office, the executive committee of
25 the party for the political division within which such
26 candidate was to be voted for, or its chair if the
27 committee fails to act, may fill the vacancy and certify
28 the candidate named to the appropriate filing officer.
29 Certification of the appointment by the executive
30 committee or its chair, the candidate's certificate of
31 announcement, and the filing fee must be received by
32 the appropriate filing officer as follows: For an appoint-
33 ment by an executive committee, no later than the
34 second Friday following the close of filing, for an
35 appointment by its chair, no later than the third
36 Tuesday following the close of filing. A candidate
37 appointed to fill a vacancy on the ballot under this
38 subsection shall have his or her name printed on the
39 primary ballot for that party.

§3-5-13. Form and contents of ballots and ballot labels.

1 The face of every primary election ballot shall
2 conform as nearly as practicable to that used at the
3 general election.

4 (a) The heading of every ballot shall be printed in
5 display type. The heading shall contain a ballot title, the
6 name of the county, the state, the words "Primary
7 Election" and the month, day and year of the election.

8 The ballot title of the political party ballots shall contain
9 the words "Official Ballot of the (Name) Party" and the
10 official symbol of the political party may be included in
11 the heading. The ballot title of any separate paper ballot
12 or portion of any electronic or voting machine ballot for
13 the board of education shall contain the words "Nonpar-
14 tisan Ballot of Election of Members of the
15 _____ County Board of Education". The
16 districts for which less than two candidates may be
17 elected and the number of available seats shall be
18 specified and the names of the candidates shall be
19 printed without reference to political party affiliation,
20 and without designation as to a particular term of office.
21 Any other ballot or portion of a ballot on a question shall
22 have a heading which clearly states the purpose of the
23 election, according to the statutory requirements for
24 that question.

25 (b) (1) For paper ballots, the heading of the ballot shall
26 be separated from the rest of the ballot by heavy lines,
27 and the offices shall be arranged in columns with the
28 following headings, from left to right across the ballot:
29 "National Ticket", "State Ticket", "County Ticket", and,
30 in a presidential election year, "National Convention",
31 or, in a nonpresidential election year "District Ticket".
32 The columns shall be separated by heavy lines. Within
33 the columns, the offices shall be arranged in the order
34 prescribed in section thirteen-a of this article.

35 (2) For voting machines, electronic voting devices, and
36 any ballot tabulated by electronic means, the offices
37 shall appear in the same sequence as prescribed in
38 section thirteen-a, and under the same headings as
39 prescribed in subsection (a) of this section. The number
40 of pages, columns or rows, where applicable, may be
41 modified to meet the limitations of ballot size and
42 composition requirements, subject to approval by the
43 secretary of state.

44 (3) The title of each office shall be separated from
45 preceding offices or candidates by a line, and shall be
46 printed in bold type, no smaller than eight point. Below
47 the office shall be printed the number of the district, if
48 any, the number of the division, if any, and the words
49 "Vote for _____" with the number to be nominated or

50 elected or "Vote For Not More Than ____" in multi-
51 candidate elections. For offices in which there are
52 limitations relating to the number of candidates which
53 may be nominated, elected or appointed to or hold office
54 at one time from a political subdivision within the
55 district or county in which they are elected, there shall
56 be a clear explanation of such limitation, as prescribed
57 by the secretary of state, printed in bold type imme-
58 diately preceding the names of the candidates for those
59 offices on the ballot in every voting system.

60 (c) The location for indicating the voter's choices on
61 the ballot shall be clearly shown. For paper ballots,
62 other than those tabulated electronically, the official
63 primary ballot shall contain a square formed in dark
64 lines at the left of each name on the ballot, arranged in
65 a perpendicular column of squares before each column
66 of names.

67 (d) (1) The name of every candidate certified by the
68 secretary of state or the board of ballot commissioners
69 shall be printed in capital letters in no smaller than
70 eight point type on the ballot for the appropriate
71 precincts. Subject to the rules promulgated by the
72 secretary of state, the name of each candidate shall
73 appear in the form set out by the candidate on the
74 certificate of announcement, but in no case shall the
75 name misrepresent the identity of the candidate, nor
76 shall the name include any title, position, rank, degree
77 or nickname implying or inferring any status as a
78 member of a class or group or affiliation with any
79 system of belief.

80 (2) The city of residence of every candidate, the state
81 of residence of every candidate residing outside the
82 state, the county of residence of every candidate for an
83 office on the ballot in more than one county, and the
84 magisterial district of residence of every candidate for
85 an office subject to magisterial district limitations, shall
86 be printed in lower case letters beneath the names of
87 the candidates.

88 (3) The arrangement of names within each office shall
89 be determined as prescribed in section thirteen-a of this
90 article.

91 (4) If the number of candidates for an office exceeds
92 the space available on a column or ballot label page and
93 requires that candidates for a single office be separated,
94 to the extent possible, the number of candidates for the
95 office on separate columns or pages shall be nearly
96 equal, and clear instructions given the voter that the
97 candidates for the office are continued on the following
98 column or page.

99 (e) When an insufficient number of candidates has
100 filed for a party to make the number of nominations
101 allowed for the office, or for the voters to elect sufficient
102 members to the board of education or to executive
103 committees, the vacant positions on the ballot shall be
104 filled with the words "No Candidate Filed": *Provided*,
105 That in paper ballot systems which allow for write-ins
106 to be made directly on the ballot, a blank line shall be
107 placed in any vacant position in the office of board of
108 education or for election to any party executive commit-
109 tee. A line shall separate each candidate from every
110 other candidate for the same office.

111 (f) In presidential election years, the words "For
112 election in accordance with the plan adopted by the
113 party and filed with the secretary of state" shall be
114 printed following the names of all candidates for
115 delegate to national convention.

116 (g) All paper ballots shall be printed in black ink on
117 paper sufficiently thick so that the printing or marking
118 cannot be discernible from the back. Ballot cards and
119 paper for printing ballots using electronically sensible
120 ink shall meet minimum requirements of the tabulating
121 systems.

122 (h) Electronically tabulated ballots and ballot cards
123 shall contain perforated tabs at the top of the ballots and
124 shall be printed with unique sequential numbers from
125 one to the highest number representing the total
126 number of ballots or ballot cards printed. On paper
127 ballots, the ballot shall be bordered by a solid line at
128 least one sixteenth of an inch wide, and the ballot shall
129 be trimmed to within one-half inch of that border.

130 (i) On the back of every official ballot or ballot card,
131 there shall be printed the words "Official Ballot" with

132 the name of the county and the date of the election.
133 Beneath shall be two blank lines, followed by the words
134 "Poll Clerks".

135 (j) Absent voters' ballots shall be in all respects like
136 other official ballots, except that three blank lines shall
137 be printed on the back of the ballot or ballot card in the
138 lower left corner with the words "Ballot Commissioners"
139 printed underneath.

140 (k) The face of sample paper ballots and sample ballot
141 labels shall be like other official ballots or ballot labels,
142 except that the word "sample" shall be prominently
143 printed across the front of the ballot in such a way that
144 the names of candidates are not obscured, and the word
145 "sample" may be printed in red ink. No printing shall
146 be placed on the back of the sample.

**§3-5-13a. Order of offices and candidates on the ballot;
uniform drawing date.**

1 (a) The order of offices for state and county elections
2 on all ballots within the state shall be as prescribed
3 herein. When the office does not appear on the ballot in
4 an election, then it shall be omitted from the sequence.
5 When an unexpired term for an office appears on the
6 ballot along with a full term, the unexpired term shall
7 appear immediately below the full term.

8 NATIONAL TICKET: President (and vice president in
9 the general election), United States senator, member of
10 the United States house of representatives

11 STATE TICKET: Governor, secretary of state, auditor,
12 treasurer, commissioner of agriculture, attorney
13 general, justice of the supreme court of appeals, state
14 senator, member of the house of delegates, circuit judge
15 in multi-county districts, any other multi-county office,
16 state executive committee

17 COUNTY TICKET: Circuit judge in single-county
18 districts, clerk of the circuit court, county commissioner,
19 clerk of the county commission, prosecuting attorney,
20 sheriff, assessor, magistrate, surveyor, congressional
21 district executive committee, senatorial district execu-
22 tive committee in multi-county districts, delegate
23 district executive committee in multi-county districts

24 NATIONAL CONVENTION: Delegate to the national
25 convention — at-large, delegate to the national conven-
26 tion — congressional district

27 DISTRICT TICKET: County executive committee.

28 (b) Except for office divisions in which no more than
29 one person has filed a certificate of announcement, the
30 arrangement of names for all offices shall be determined
31 by lot according to the following provisions:

32 (1) On the fourth Tuesday following the close of the
33 candidate filing, beginning at nine o'clock a.m., a
34 drawing by lot shall be conducted in the office of the
35 clerk of the circuit court in each county. Notice of the
36 drawing shall be given on the form for the certificate
37 of announcement, and no further notice shall be
38 required. The clerk of the circuit court shall superintend
39 and conduct the drawing, and the method of conducting
40 the drawing shall be prescribed by the secretary of
41 state.

42 (2) Except as provided herein, the position of each
43 candidate within each office division shall be deter-
44 mined by the position drawn for that candidate individ-
45 ually: *Provided*, That if fewer candidates file for an
46 office division than the total number to be nominated or
47 elected, the vacant positions shall appear following the
48 names of all candidates for the office.

49 (3) Candidates for delegate to national convention who
50 have filed a commitment to a candidate for president
51 shall be listed alphabetically within the group of
52 candidates committed to the same candidate for presi-
53 dent and uncommitted candidates shall be listed
54 alphabetically in an uncommitted category. The position
55 of each group of committed candidates and uncommit-
56 ted candidates shall be determined by lot by drawing
57 the names of the presidential candidates and for an
58 uncommitted category.

59 (4) A candidate or the candidate's representative may
60 attend the drawings.

§3-5-19. Vacancies in nominations; how filled; fees.

1 (a) If any vacancy shall occur in the party nomination
2 of candidates for office nominated at the primary

3 election or by appointment under the provisions of
4 section eleven of this article, the vacancies may be filled,
5 subject to the following requirements and limitations:

6 (1) Each appointment made under this section shall
7 be made by the executive committee of the political
8 party for the political division in which the vacancy
9 occurs: *Provided*, That if the executive committee fails
10 to make an appointment in a duly called meeting or fails
11 to certify the appointment of the candidate to the proper
12 filing officer within the time required, the chairperson
13 of the executive committee may make the appointment
14 not later than two days following the deadline for the
15 executive committee.

16 (2) Each appointment made under this section is
17 complete only upon the receipt by the proper filing
18 officer of the certificate of appointment by the executive
19 committee, or its chairperson, as the case may be, the
20 certificate of announcement of the candidate as pre-
21 scribed in section seven of this article, and, except for
22 appointments made under subdivisions (4), (5) or (6) of
23 this subsection, the filing fee or waiver of fee as
24 prescribed in section eight or eight-a of this article. The
25 proper filing officer is the officer with whom the
26 original certificate of nomination is regularly filed for
27 that office.

28 (3) If a vacancy in nomination is caused by the failure
29 of a candidate to file for an office, or by withdrawal of
30 a candidate no later than the third Tuesday following
31 the close of candidate filing pursuant to the provisions
32 of section eleven of this article, a nominee may be
33 appointed by the executive committee and certified to
34 the proper filing officer no later than the Thursday
35 preceding the primary election.

36 (4) If a vacancy in nomination is caused by the
37 disqualification or incapacity of the candidate, and if the
38 vacancy occurs not later than eighty-four days before
39 the general election, a nominee may be appointed by the
40 executive committee and certified to the proper filing
41 officer no later than seventy-eight days before the
42 general election.

43 (5) If a vacancy in nomination is caused by the

44 withdrawal of the candidate no later than ninety-eight
45 days before the general election due to extenuating
46 personal circumstances which will prevent the candi-
47 date from serving in the office if elected, and if the
48 candidate or the chairperson of the executive committee
49 for the political division applies in writing to the state
50 election commission no later than ninety-five days before
51 the general election for permission to fill the vacancy,
52 the state election commission shall review the reasons
53 for the withdrawal. If the commission finds the circum-
54 stances warrant the withdrawal of the candidate, the
55 commission may authorize appointment by the executive
56 committee to fill the vacancy, upon which authorization
57 a nominee may be appointed by the executive committee
58 and certified to the proper filing officer no later than
59 seventy-eight days before the general election.

60 (6) If a vacancy in nomination is caused by the death
61 of the candidate occurring no later than twenty-five
62 days before the general election, a nominee may be
63 appointed by the executive committee and certified to
64 the proper filing officer no later than twenty-one days
65 following the date of such death, or no later than twenty-
66 two days before the general election, whichever date
67 occurs first.

68 (b) Except as otherwise provided in article ten of this
69 chapter, if any vacancy occurs in a partisan office or
70 position other than political party executive committee,
71 which vacancy creates an unexpired term for a position
72 which would not otherwise appear on the ballot in the
73 general election, and the vacancy occurs after the close
74 of candidate filing for the primary election but not later
75 than eighty-four days before the general election, a
76 nominee of each political party may be appointed by the
77 executive committee and certified to the proper filing
78 officer no later than seventy-eight days before the
79 general election. Appointments shall be filed in the same
80 manner as provided in subsection (a) of this section,
81 except that the filing fee shall be paid before the
82 appointment is complete.

83 (c) When a vacancy occurs in the board of education
84 after the close of candidate filing for the primary
85 election but not later than eighty-four days before the

86 general election, a special candidate filing period shall
87 be established. Candidates seeking election to any
88 unexpired term for board of education shall file a
89 certificate of announcement and pay the filing fee to the
90 clerk of the circuit court no earlier than the first
91 Monday in August and no later than seventy-seven days
92 before the general election.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

§3-6-2. Preparation and form of general election ballots.

1 (a) All ballots prepared under the provisions of this
2 section shall contain:

3 (1) The name and ticket of each party which is a
4 political party under the provisions of section eight,
5 article one of this chapter;

6 (2) The name chosen as the party name by each group
7 of citizens which has secured nomination for two or
8 more candidates by petition under the provisions of
9 section twenty-three of this article;

10 (3) The names of every candidate for any office to be
11 voted for at the election whose nomination in the
12 primary election, nomination by petition or nomination
13 by appointment to fill a vacancy on the ballot has been
14 certified and filed according to law, and no others.

15 (b) The provisions of subsections (b) (3), (c), (d) (1), (d)
16 (2), (g), (h), (i), (j) and (k), section thirteen of article five
17 pertaining to the preparation and form of primary
18 election ballots shall likewise apply to general election
19 ballots.

20 (c) (1) For all ballot systems, the ballot heading shall
21 be in display type and shall contain the words, "Official
22 Ballot, General Election" and the name of the county
23 and the month, day and year of the election.

24 (2) After the heading, each ballot shall contain, laid
25 out in parallel columns, rows or pages as required by
26 the particular voting system, the party emblem, the
27 position for straight party voting for each party and the
28 name of each party as prescribed in subsection (a) of this
29 section. On paper ballots, the position for straight party
30 voting shall be a heavy circle, three-fourths inch in

31 diameter, surrounded by the words "For a straight
32 ticket mark within this circle" printed in bold six point
33 type. On all other ballots or ballot labels, the positions
34 for straight party voting shall be marked "Straight
35 Party Ticket". For ballots tabulated electronically, the
36 secretary of state shall prescribe a uniform number for
37 the straight ticket position for each party.

38 (3) The party whose candidate for president received
39 the highest number of votes at the last preceding
40 presidential election shall be placed in the left, or first
41 column, row or page, as is appropriate to the voting
42 system. The party which received the second highest
43 vote shall be next, and so on. Any groups or third parties
44 which did not have a candidate for president on the
45 ballot in the previous presidential election shall be
46 placed in the sequence in which the final certificates of
47 nomination by petition were filed.

48 (4) (A) Except for lever machine ballot labels, the
49 following general instructions for straight party voters
50 shall be printed in no smaller than eight point bold type:
51 "IF YOU MARKED A STRAIGHT TICKET: When you
52 mark any individual candidate in a different party, that
53 vote will override your straight party vote for that
54 office. When you mark any individual candidate in a
55 different party for an office where more than one will
56 be elected, YOU MUST MARK EACH OF YOUR
57 CHOICES FOR THAT OFFICE because your straight
58 ticket vote will not be counted for that office." The last
59 sentence of the above instructions shall not be included
60 on any ballot which does not contain any office or
61 division where more than one candidate will be elected.

62 On paper ballots, the general instructions shall be
63 placed below the party name and across the top of all
64 columns, followed by a heavy line separating them from
65 the rest of the ballot. On ballots marked with electron-
66 ically sensible ink and on ballot labels for voting devices
67 in punch card systems, the general instructions shall be
68 placed after the position for straight voting and before
69 any office.

70 (B) Except for lever machine ballot labels, the
71 following specific instructions shall be printed on the
72 ballot for any partisan election for an office or division

73 to which more than one candidate is to be elected: "If
74 you marked a straight ticket and you mark any
75 candidate in a different party for this office, you must
76 mark all your choices for this office because your
77 straight ticket vote will not be counted for this office."

78 On paper ballots, the specific instructions shall be
79 placed below the office name of any partisan office
80 where more than one is to be elected, and across the top
81 of all columns for that office before the names of any
82 candidates. On all other ballots and ballot labels, the
83 specific instructions shall be placed above or to the side
84 of the names of the candidates, as the voting system
85 requires.

86 (5) For all ballots, any columns, rows or sections in
87 which the ticket of one party appears shall be clearly
88 separated from the other columns, rows or sections by
89 a heavy line or other clear division. For each party, the
90 offices shall be arranged in the order prescribed in
91 section thirteen-a, article five of this chapter, under the
92 appropriate tickets, which shall be headed "National
93 Ticket", "State Ticket" and "County Ticket". The
94 number of pages, columns or rows, where applicable,
95 may be modified to meet the limitations of ballot size
96 and composition requirements, subject to approval by
97 the secretary of state.

98 (d) The arrangement of names within each office for
99 all ballot systems shall be as follows:

100 (1) In elections for presidential electors, the names of
101 the candidates for president and vice president of each
102 party shall be placed beside a brace with a single voting
103 position, so that a vote for any presidential candidate
104 shall be a vote for the electors of the party for which
105 such candidates were named.

106 (2) The order of names of candidates for any office or
107 division for which more than one is to be elected shall
108 be determined as prescribed in section thirteen-a, article
109 five of this chapter: *Provided*, That the drawing by lot
110 shall be conducted on the seventieth day next preceding
111 the date of the general election, beginning at nine o'clock
112 a.m.

113 (3) Except in voting machine systems, in any office

114 where more than one person is to be elected, the names
 115 of the candidates for the office shall be staggered so that
 116 no two candidates for that office shall appear directly
 117 opposite any other candidate, as shown in the example
 118 below:

119	For House of Delegates	For House of Delegates
120	First Delegate District	First Delegate District
121	(Vote For Not More	(Vote For Not More
122	Than Two)	Than Two)

123 [If you marked a straight ticket and you mark any
 124 candidate in a different party for this office, you must
 125 mark all your choices for this office because your
 126 straight ticket vote will not be counted for this office.]

127 SUSAN B. ANTHONY
 128 City (County)

JOHN ADAMS
 City (County)

131 ABRAHAM LINCOLN
 132 City (County)

JAMES MONROE
 City (County)

135 (4) Each voting system shall provide a means for
 136 voters to vote for any person whose name does not
 137 appear on the ticket by writing it with pen or pencil or
 138 by using stamps, stickers, tapes, labels or other means
 139 of writing in the name of a candidate which does not
 140 interfere with the tabulation of the ballot.

141 (A) In paper ballot systems which allow for write-ins
 142 to be made directly on the ballot, a blank square and
 143 a blank line equal to the space which would be occupied
 144 by the name of the candidate shall be placed under the
 145 proper office for each vacancy in nomination, and for an
 146 office for which more than one is to be elected, any such

147 vacancy shall appear after any other candidates for the
148 office.

149 (B) In machine and electronically tabulated ballot
150 systems in which write-in votes must be made in a place
151 other than on the ballot label, if there is a vacancy in
152 nomination leaving fewer candidates in any party than
153 can be elected to that office, the words "No Candidate
154 Nominated" shall be printed in the space that would be
155 occupied by the name of the candidate, and for an office
156 for which more than one is to be elected, any such
157 vacancy shall appear after any other candidates for the
158 office.

159 (5) In a general election in any county in which
160 unexpired terms of the board of education are to be
161 filled by election, a separate section or page of the ballot
162 shall be set off by means clearly separating the
163 nonpartisan ballot from the ballot for the political party
164 candidates, and shall be headed "Nonpartisan Board of
165 Education".

166 (e) Any constitutional amendment shall be placed
167 following all offices, followed by any other issue upon
168 which the voters shall cast a vote. The heading for each
169 amendment or issue shall be printed in large, bold type
170 according to the requirements of the resolution author-
171 izing such election.

172 (f) The board of ballot commissioners may not place
173 any issue on the ballot for election which is not
174 specifically authorized under the West Virginia consti-
175 tution or statutes, or which has not been properly
176 ordered by the appropriate governmental body charged
177 with calling such election.

ARTICLE 10. FILLING VACANCIES.

§3-10-1. Elections to fill vacancies.

§3-10-6. Vacancy in office of circuit court clerk.

§3-10-7. Vacancies in offices of county commissioner and clerk of county commission.

§3-10-8. Vacancies in offices of prosecuting attorney, sheriff, assessor and surveyor.

§3-10-1. Elections to fill vacancies.

1 Except as provided in sections three and four of this
2 article, elections to fill vacancies shall be conducted to
3 fill any unexpired term when more than one year of the
4 term of office remains at the time of such election. When
5 less than one year of the term of office remains at the
6 time of the election, the person appointed to fill the
7 vacancy shall continue in office until the completion of
8 the term. Elections to fill vacancies shall be held at the
9 same places, and superintended, conducted and re-
10 turned, and the result ascertained, certified and
11 declared, in the same manner, and by the same officers,
12 as in general elections. The persons elected, having first
13 duly qualified, shall enter upon the duties of their
14 respective offices.

§3-10-6. Vacancy in office of circuit court clerk.

1 When a vacancy occurs in the office of clerk of the
2 circuit court, the circuit court by a majority vote of the
3 judges, or the chief judge thereof in vacation, shall fill
4 the same by appointment of a person of the same
5 political party as the officeholder vacating the office
6 until the next general election, or until the completion
7 of the term if the term ends on the thirty-first day of
8 December following the next general election and the
9 person so appointed shall hold office until his or her
10 successor is elected and qualified. At such general
11 election a clerk shall be elected for the unexpired term
12 if the unexpired term is greater than one year. The
13 circuit court, or the chief judge thereof in vacation, shall
14 cause a notice of such election to be published prior to
15 such election as a Class II-0 legal advertisement in
16 compliance with the provisions of article three, chapter
17 fifty-nine of this code, and the publication area for such
18 publication shall be the county. If the vacancy occurs no
19 later than the eighty-fourth day before the primary
20 election held to nominate candidates to be voted for at
21 the general election, at which any such vacancy is to be
22 filled, candidates to fill such vacancy shall be nominated
23 at such primary election in accordance with the time
24 requirements and the provisions and procedures pre-
25 scribed in section eleven, article five of this chapter. If
26 the vacancy occurs after the eighty-fourth day before the

27 primary but not later than the eighty-fourth day before
28 the general election, they shall be nominated by the
29 county executive committee in the manner provided in
30 section nineteen, article five of this chapter, as in the
31 case of filling vacancies in nominations, and the names
32 of the persons, so nominated and certified to the clerk
33 of the circuit court of such county, shall be placed upon
34 the ballot to be voted at such next general election.

**§3-10-7. Vacancies in offices of county commissioner and
clerk of county commission.**

1 Any vacancy in the office of county commissioner or
2 clerk of county commission shall be filled by the county
3 commission of the county, unless the number of vacan-
4 cies in a county commission deprive that body of a
5 quorum, in which case the governor of the state shall
6 fill any vacancy in such county commission necessary to
7 create a quorum thereof. Persons appointed shall be of
8 the same political party as the officeholder vacating the
9 office and shall continue in office until the next general
10 election is certified, or until the completion of the term
11 if the term ends on the thirty-first day of December
12 following the next general election. The vacancy shall
13 be filled by election for the unexpired term if the
14 unexpired term is greater than one year: *Provided*, That
15 in the event a quorum of the county commission cannot
16 agree upon a person to fill a vacancy in the office of
17 county commissioner it shall be the mandatory, nondis-
18 cretionary duty of each such county commissioner,
19 within sixty days from the date such vacancy occurs, to
20 submit in person to the chief judge of the circuit court
21 of such county, the name of one person who is a member
22 of the same political party as was the person whose
23 vacancy is being filled and was such a member for at
24 least one year next preceding the filling of such vacancy
25 and who is legally qualified and willing to fill such
26 vacancy. The judge shall thereupon, in the presence of
27 the quorum of the county commission, cause each name
28 to be written on a separate piece of paper, shall fold or
29 roll up the pieces of paper so as to resemble each other
30 and so that the name written thereon shall not be visible
31 on the outside, and shall deposit the pieces of paper in

32 a box from which one of the county commissioners,
33 selected by lot under the supervision of such judge, shall,
34 in the presence of each other and the judge, draw one
35 of the names and the person whose name is so drawn
36 shall be the county commission's choice to fill such
37 vacancy. The circuit court shall have jurisdiction to
38 compel compliance with the provisions of this proviso.

39 Notice of such election as aforesaid shall be given by
40 order of the county commission and published as
41 prescribed in section six of this article. Nomination of
42 candidates to fill the office for an unexpired term in the
43 office of county commissioner or clerk of the county
44 commission shall be made in the manner prescribed for
45 making nominations to fill a vacancy in the office of the
46 clerk of the circuit court.

**§3-10-8. Vacancies in offices of prosecuting attorney,
sheriff, assessor and surveyor.**

1 Any vacancy occurring in the office of prosecuting
2 attorney, sheriff, assessor or county surveyor shall be
3 filled by the county commission by appointment of a
4 person of the same political party as the officeholder
5 vacating the office, and the appointed person shall hold
6 the office until the next general election is certified, or
7 until the completion of the term if the term ends on the
8 thirty-first day of December following the next general
9 election. Such vacancy shall be filled by election for the
10 unexpired term if the unexpired term is greater than
11 one year. Notice of an election to fill a vacancy in any
12 of the offices named in this section shall be given by the
13 county commission, or by the president thereof in
14 vacation, and published or posted in the manner
15 prescribed in section six of this article. Nomination of
16 candidates to fill any such vacancy shall be made in the
17 manner prescribed in said section six of this article for
18 nominating candidates to fill a vacancy in the office of
19 the clerk of the circuit court.

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-2. Filling vacancies.

1 (a) The board shall, by appointment, fill within forty-
2 five days any vacancy that occurs in its membership. In
3 the event that the board does not fill the vacancy within
4 forty-five days, the state superintendent of schools shall
5 appoint a person to fill the vacancy:

6 (b) (1) When the vacancy occurs after the eighty-
7 fourth day before a general election, and the affected
8 term of office ends on the thirtieth day of June following
9 the next primary election, the person appointed to fill
10 the vacancy shall continue in office until the completion
11 of the term.

12 (2) When the vacancy occurs after the eighty-fourth
13 day before a general election and not later than the close
14 of candidate filing for the next succeeding primary
15 election, and the affected term of office does not end on
16 the thirtieth day of June following the next primary
17 election, an election for the unexpired term shall be held
18 at the next primary election, and the appointment shall
19 continue until a successor is elected and certified.

20 (3) When the vacancy occurs after the close of
21 candidate filing for the primary election and not later
22 than eighty-four days before the general election, the
23 vacancy shall be filled by election in the general
24 election, and the appointment shall continue until a
25 successor is elected and certified.

CHAPTER 69

(Com. Sub. for H. B. 2509—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article eight, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to information required in financial statements prepared in connection with political campaign activities; setting forth specific requirements; providing for the reporting of contributions to membership organizations; and defining certain terms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5a. Information required in financial statement.

1 (a) Each financial statement required by the provi-
2 sions of this article shall contain the following
3 information:

4 (1) The first name, middle initial, if any, and last
5 name, residence and mailing address and telephone
6 number of each candidate, financial agent, treasurer or
7 person, and the full name, address and telephone
8 number of each association, organization or committee
9 filing a financial statement.

10 (2) The balance of cash and any other sum of money
11 on hand at the beginning and the end of the period
12 covered by the financial statement.

13 (3) The first name, middle initial, if any, and the last
14 name in the case of an individual, and the full name of
15 each firm, association or committee, and the amount of
16 such contribution of such individual, firm, association or
17 committee, and, if the aggregate of the sum or sums
18 contributed by any one such individual, firm, association
19 or committee exceeds two hundred fifty dollars there
20 shall also be reported the residence and mailing address
21 and, in the case of an individual, the major business
22 affiliation and occupation. A contribution totaling more
23 than fifty dollars by any one contributor is prohibited
24 unless it is made by money order or by check, and a
25 violation of this provision is subject to section five-d of
26 this article. As used herein, the term "check" shall have
27 the meaning ascribed to that term in section one
28 hundred four, article three, chapter forty-six of this
29 code.

30 (4) The total amount of contributions received during
31 the period covered by the financial statement.

32 (5) The first name, middle initial, if any, and the last

33 name, residence and mailing address of any individual
34 or the full name and mailing address of each firm,
35 association or committee making or cosigning a loan and
36 the amount of any loan received, the date and terms of
37 the loan, including interest and repayment schedule,
38 along with a copy of the loan agreement.

39 (6) The first name, middle initial, if any, and the last
40 name, residence and mailing address of any individual
41 or the full name and mailing address of each firm,
42 association or committee having previously made or
43 cosigned a loan for which payment is made or a balance
44 is outstanding at the end of the period, together with the
45 amount of repayment on the loan made during the
46 period and the balance at the end of the period.

47 (7) The total outstanding balance of all loans at the
48 end of the period.

49 (8) The first name, middle initial, if any, and the last
50 name, residence and mailing address of any individual,
51 or the full name and mailing address of each firm,
52 association or committee to whom each expenditure was
53 made or liability incurred, together with the amount
54 and purpose of each expenditure or liability incurred
55 and the date of each transaction.

56 (9) The total expenditure for the nomination, election
57 or defeat of a candidate or any person or organization
58 advocating or opposing the nomination, election or
59 defeat of any candidate, or the passage or defeat of any
60 issue, thing or item to be voted upon, in whose behalf
61 an expenditure was made or a contribution was given
62 for the primary or other election.

63 (10) The total amount of expenditures made during
64 the period covered by the financial statement.

65 (b) Any unexpended balance at the time of making the
66 financial statements herein provided for shall be
67 properly accounted for in that financial statement and
68 shall appear as a balance in the next following financial
69 statement.

70 (c) Each financial statement required by this section
71 shall contain a separate section setting forth the

72 following information for each fund-raising event held
73 during the period covered by the financial statement:

74 (1) The type of event, date held, and address and
75 name, if any, of the place where the event was held.

76 (2) All of the information required by subdivision (3),
77 subsection (a) of this section.

78 (3) The total of all moneys received at the fund-raising
79 event.

80 (4) The expenditures incident to the fund-raising
81 event.

82 (5) The net receipts of the fund-raising event.

83 (d) When any lump sum payment is made to any
84 advertising agency or other disbursing person who does
85 not file a report of detailed accounts and verified
86 financial statements as required in this section, such
87 lump sum expenditures shall be accounted for in the
88 same manner as provided for herein.

89 (e) Any contribution or expenditure made by or on
90 behalf of a candidate for public office, to any other
91 candidate, or committee for a candidate for any public
92 office in the same election shall be accounted for in
93 accordance with the provisions of this section.

94 (f) No person, firm, association or committee may
95 make any contribution except from their own funds,
96 unless such person, firm, association or committee
97 discloses in writing to the person required to report
98 under this section the first name, middle initial, if any,
99 and the last name in the case of an individual, or the
100 full name in case of a firm, association or committee,
101 residence and mailing address and the major business
102 affiliation and occupation of the person, firm, association
103 or committee which furnished the funds to such
104 contributor. All such disclosures shall be included in the
105 statement required by this section.

106 (g) Any firm, association, committee or fund permit-
107 ted by section eight of this article to be a political
108 committee shall disclose on the financial statement its
109 corporate or other affiliation.

110 (h) No contribution may be made, directly or indi-
111 rectly, in a fictitious name, anonymously or by one
112 person through an agent, relative or other person so as
113 to conceal the identity of the source of the contribution
114 or in any other manner so as to effect concealment of
115 the contributor's identity.

116 (i) No person, firm, association or committee may
117 accept any contribution for the purpose of influencing
118 the nomination, election or defeat of a candidate or for
119 the passage or defeat of any issue or thing to be voted
120 upon unless the identity of the donor and the amount of
121 the contribution is known and reported.

122 (j) When any candidate, organization, committee or
123 person receives any anonymous contribution which
124 cannot be returned because the donor cannot be
125 identified, that contribution shall be donated to the
126 general revenue fund of the state. Any anonymous
127 contribution shall be recorded as such on the candidate's
128 financial statement, but may not be expended for
129 election expenses. At the time of filing, the financial
130 statement shall include a statement of distribution of
131 anonymous contributions, which total amount shall
132 equal the total of all anonymous contributions received
133 during the period.

134 (k) Any membership organization which raises funds
135 for political purposes by payroll deduction assessing
136 them as part of its membership dues or as a separate
137 assessment may report the amount raised as follows:

138 (1) If the portion of dues or assessments designated for
139 political purposes equals twenty-five dollars or less per
140 member over the course of a calendar year, the total
141 amount raised for political purposes through member-
142 ship dues or assessments during the period is reported
143 by showing the amount required to be paid by each
144 member and the number of members.

145 (2) If the total payroll deduction for political purposes
146 of each participating member equals twenty-five dollars
147 or less over the course of a calendar or fiscal year, as
148 specified by the organization, the organization shall
149 report the total amount received for political purposes

150 through such payroll deductions during the reporting
151 period, and to the maximum extent possible, the amount
152 of each yearly payroll deduction contribution level and
153 the number of members contributing at each such
154 specified level. The membership organization shall
155 maintain records of the name and yearly payroll
156 deduction amounts of each participating member.

157 (3) If any member contributes to the membership
158 organization through individual voluntary contributions
159 by means other than payroll deduction, membership
160 dues, or assessments as provided in this subsection, the
161 reporting requirements of subdivision (3), subsection (a)
162 of this section shall apply. Funds raised for political
163 purposes must be segregated from the funds for other
164 purposes and listed in its report.

165 (1) For purposes of this section:

166 (1) "Political purposes" means advocating or opposing
167 the nomination, election or defeat of one or more
168 candidates, supporting the retirement of the debt of a
169 candidate or activities of an established political party
170 or an organization which has declared itself a political
171 party, supporting the administration or activities of a
172 political committee or advocating or opposing the
173 passage of a ballot issue.

174 (2) "Membership organization" means a group that
175 grants bona fide rights and privileges, such as the right
176 to vote, to elect officers or directors, and the ability to
177 hold office, to its members, and which uses a majority
178 of its membership dues for purposes other than political
179 purposes. This term shall not include organizations that
180 grant membership upon receiving a contribution.

181 (3) "Fund-raising event" means an event such as a
182 dinner, reception, testimonial, cocktail party, auction or
183 similar affair through which contributions are solicited
184 or received by such means as the purchase of a ticket,
185 payment of an attendance fee or by the purchase of
186 goods or services.

CHAPTER 70

(H. B. 2139—By Delegates Faircloth and Roop)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article one, chapter fifty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the fees to be charged by sheriffs for service of process, subpoenas and various writs; and increasing the mileage charge for conveying prisoners.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-14. Fees to be charged by sheriffs.

1	The county commission shall determine the amount	
2	which the sheriff may charge, which charges shall not	
3	exceed the following:	
4	For serving on any person a declaration	
5	in ejectment, or an order, notice,	
6	summons or other process where	
7	the body is not taken, except a	
8	subpoena served on a witness,	
9	and making return thereof	\$20.00
10	For summoning a witness	20.00
11	For serving on any person an attachment	
12	or other process under which the body	
13	is taken	20.00
14	For levying an attachment on real	
15	estate and making the return	20.00
16	For making any other levy	20.00
17	For conveying a prisoner to or from	
18	jail, for each mile of necessary	
19	travel either in going or returning25

20	For taking any bond	1.00
21	When a jury is sworn in court, for	
22	summoning and impaneling	
23	such jury	1.00
24	For serving a writ of possession	20.00
25	For issuing receipt to purchaser at	
26	delinquent tax sale	1.00

27 The county commission, giving due regard to the cost
28 thereof, may from time to time prescribe the amount
29 which the sheriff may charge for keeping any property
30 or in removing any property. When, after distraining or
31 levying, he neither sells nor receives payment, and
32 either takes no bond or takes one which is not forfeited,
33 he shall, if guilty of no default, have (in addition to the
34 one dollar for a bond, if one was taken) a fee of three
35 dollars, unless this be more than half of what his
36 commission would have amounted to if he had received
37 payment; in which case he shall (whether a bond was
38 taken or not) have a fee of one dollar at the least, and
39 so much more as is necessary to make the said half of
40 his commission. The commission to be included in a
41 forthcoming bond (when one is taken) shall be five
42 percent on the first three hundred dollars of the money
43 for which the distress or levy is made, and two percent
44 on the residue of such money; but such commission shall
45 not be received, in whole or in part, except as herein-
46 before provided, unless the bond be forfeited, or the
47 amount (including the commission) be paid to the
48 plaintiff. An officer receiving payment in money, or
49 selling property, shall have the like commission of five
50 percent on the first three hundred dollars of the money
51 paid or proceeds from such sale, and two percent on the
52 residue, except that when such payment or sale is on an
53 execution on a forthcoming bond, his commission shall
54 be only half what it would be if the execution were not
55 on such bond. Any amounts collected by the sheriff
56 pursuant to this section shall be credited to the account
57 of the sheriff and used for the expense of providing the
58 services herein described.

CHAPTER 71

(S. B. 118—By Senators Spears and Brackenrich)

[Passed February 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article four, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abolishing the citizens hearing committee of the purchasing division of the department of administration.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the citizens hearing committee.

1 Article four, chapter four of the code of West Virginia,
2 one thousand nine hundred thirty-one, as amended, is
3 hereby repealed.

CHAPTER 72

(H. B. 2842—By Delegates Houvouras and Burk)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one and twenty-four, article two, 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 thirty-three, all relating to creating a financial accounting and reporting section within the finance division of the department of administration; requiring the section to establish and maintain a centralized accounting system and issue certain financial statements; adding board of investments to users of centralized accounting system; and setting forth the powers and responsibilities of the comptroller.

Be it enacted by the Legislature of West Virginia:

That sections one and twenty-four, article two, 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 thirty-three, all to read as follows:

ARTICLE 2. FINANCE DIVISION.

§5A-2-1. Finance division created; director; sections; powers and duties.

§5A-2-24. Management accounting.

§5A-2-33. Financial accounting and reporting section; comptroller; powers and responsibilities.

§5A-2-1. Finance division created; director; sections; powers and duties.

1 The finance division of the department of administration is hereby created. The division shall be under the supervision and control of a director, who shall be appointed by the secretary. There shall be in the finance division, an accounting section, a budget section and a financial accounting and reporting section.

7 The accounting section shall have the duties conferred upon it by this article and by the secretary, including, but not limited to, general financial accounting, payroll, accounts payable and accounts receivable for the department of administration.

12 The budget section shall act as staff agency for the governor in the exercise of his powers and duties under Section 51, Article VI of the state constitution, and shall exercise and perform the other powers and duties conferred upon it by this article.

17 The financial accounting and reporting section shall establish and maintain the centralized accounting system required by section twenty-four of this article and issue annual general purpose financial statements in accordance with generally accepted accounting principles and with this article.

§5A-2-24. Management accounting.

1 It is the intent of this section to establish a centralized accounting system for the offices of the auditor, treasurer, board of investments, secretary of adminis-

4 tration and each spending unit of state government to
5 provide more accurate and timely financial data and
6 increase public accountability.

7 Notwithstanding any provision of this code to the
8 contrary, the secretary shall develop and implement a
9 new centralized accounting system for the planning,
10 reporting and control of state expenditures in accord-
11 ance with generally accepted accounting principles to be
12 used by the auditor, treasurer, board of investments,
13 secretary and all spending units. The accounting system
14 shall provide for adequate internal controls, accounting
15 procedures, recording income collections, systems
16 operation procedures and manuals, and periodic and
17 annual general purpose financial statements, as well as
18 provide for the daily exchange of needed information
19 among users.

20 The financial statements shall be audited annually by
21 outside independent certified public accountants, who
22 shall also issue an annual report on federal funds in
23 compliance with federal requirements.

24 The secretary shall implement the centralized ac-
25 counting system no later than the thirty-first day of
26 December, one thousand nine hundred ninety-three,
27 and, after approval of the system by the governor, shall
28 require its use by all spending units. The auditor,
29 treasurer, board of investments, secretary and every
30 spending unit shall maintain their computer systems
31 and data files in a standard format in conformity with
32 the requirements of the centralized accounting system.
33 Any system changes must be approved in advance of
34 such change by the secretary. The auditor, treasurer,
35 board of investments and secretary shall provide on-line
36 interactive access to the daily records maintained by
37 their offices.

**§5A-2-33. Financial accounting and reporting section;
comptroller; powers and responsibilities.**

1 The financial accounting and reporting section
2 created under section one of this article shall be under
3 the control and supervision of a comptroller. The
4 provisions of this section shall apply to all component

5 units of state government, as defined by generally
6 accepted accounting principles.

7 The comptroller, under the direction and supervision
8 of the director of the finance division, has the power and
9 responsibility to:

10 (1) Maintain financial records supporting the compre-
11 hensive annual financial report required under subsec-
12 tion (8) of this section, in accordance with generally
13 accepted accounting principles;

14 (2) Maintain the official chart of accounts of the state;

15 (3) Maintain the centralized accounting system;

16 (4) Maintain the statewide accounting policies and
17 procedures;

18 (5) Direct the establishment and maintenance of an
19 adequate internal control structure by the various
20 component units of state government;

21 (6) Verify the periodic reconciliation of assets as
22 reported by the board of investments and budgetary
23 fund balances as reported by the state auditor;

24 (7) Issue management financial reports by component
25 unit and department, as well as consolidated manage-
26 ment financial reports, as follows:

27 (a) Monthly budgetary basis reports by revenue and
28 expense, budget compared to actual, and encumbrances;
29 and

30 (b) Financial position reports, including, but not
31 limited to, cash, investments, indebtedness, obligations
32 and accounts payable.

33 (8) Issue a comprehensive annual financial report in
34 accordance with generally accepted accounting
35 principles;

36 (9) Have the general purpose financial statements of
37 the state audited annually by independent certified
38 public accountants;

39 (10) Require the state pension systems, workers'
40 compensation commission, public employees insurance

41 agency, board of risk and insurance management and
 42 the various other component units of the state to prepare
 43 financial statements audited by independent certified
 44 public accountants and submit the audited financial
 45 statements to the financial accounting and reporting
 46 section in the form and within the time frames estab-
 47 lished by the financial accounting and reporting section;

48 (11) Maintain controls over access to the centralized
 49 accounting system and the required modifications, as
 50 well as edits, controls and tables;

51 (12) Promulgate legislative rules in accordance with
 52 article three, chapter twenty-nine-a of this code to
 53 effectuate the intent and purpose of this section:
 54 *Provided*, That such rules may initially be implemented
 55 by emergency rule; and

56 (13) Do all things necessary and convenient to main-
 57 tain the centralized accounting system, to issue financial
 58 reports of the state and to carry out its powers and
 59 responsibilities.

CHAPTER 73

(Com. Sub. for H. B. 2085—By Delegates Love and Schadler)

[Passed March 8, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section sixteen-a, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring the installation of smoke detectors in all one- and two-family dwellings, including manufactured homes; and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-16a. Smoke detectors in one- and two-family dwellings; penalty.

1 (a) On or before the first day of July, one thousand
2 nine hundred ninety-one, an operational smoke detector
3 shall be installed in the immediate vicinity of each
4 sleeping area within all one- and two-family dwellings,
5 including any "manufactured home" as that term is
6 defined in subsection (j), section two, article nine,
7 chapter twenty-one of this code. Such smoke detector
8 shall be capable of sensing visible or invisible particles
9 of combustion and shall meet the specifications and be
10 installed as provided for in the National Fire Protection
11 Association Standard 74, "Standard for the Installation,
12 Maintenance and Use of Household Fire Warning
13 Equipment," 1989 edition, and in the manufacturer's
14 specifications. When activated, the smoke detector shall
15 provide an alarm suitable to warn the occupants of the
16 danger of fire.

17 (b) The owner of each dwelling described in subsec-
18 tion (a) of this section shall provide, install and replace
19 the operational smoke detectors required by this section.
20 So as to assure that the smoke detector continues to be
21 operational, in each dwelling described in subsection (a)
22 which is not occupied by the owner thereof, the tenant
23 in any such dwelling shall perform routine maintenance
24 on the smoke detectors within such dwelling.

25 (c) Where a dwelling is not occupied by the owner and
26 is occupied by an individual who is deaf or hearing
27 impaired, the owner shall, upon written request by or
28 on behalf of such individual, provide and install a smoke
29 detector with a light signal sufficient to warn the deaf
30 or hearing-impaired individual of the danger of fire.

31 (d) An automatic fire sprinkler system installed in
32 accordance with the National Fire Protection Associa-
33 tion Standard 13D, "Standard for the Installation of
34 Sprinkler Systems in Residential Occupancies," 1989
35 edition, may be provided in lieu of smoke detectors.

36 (e) After investigating a fire in any dwelling de-
37 scribed in subsection (a) of this section, the local
38 investigating authority shall issue to the owner a smoke
39 detector installation order in the absence of the required
40 smoke detectors.

41 (f) Any person who violates any provision of this
42 section is guilty of a misdemeanor, and, upon conviction
43 thereof, shall be fined not less than fifty dollars nor
44 more than one hundred dollars.

45 (g) A violation of this section shall not be deemed by
46 virtue of such violation to constitute evidence of
47 negligence or contributory negligence or comparative
48 negligence in any civil action or proceeding for
49 damages.

50 (h) A violation of this section shall not constitute a
51 defense in any civil action or proceeding involving any
52 insurance policy.

53 (i) Nothing in this section shall be construed to limit
54 the rights of any political subdivision in this state to
55 enact laws imposing upon owners of any dwelling
56 described in subsection (a) of this section a greater duty
57 with regard to the installation, repair and replacement
58 of the smoke detectors than is required by this section.

CHAPTER 74

(Com. Sub. for H. B. 2252—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four and five, article two-d, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia guaranteed work force program; allowing participation by firms that create at least ten jobs; allowing training assistance to be provided to help in the retention of jobs; providing for the establishment of program requirements allowing for retraining in certain instances; funding; and allowing certain program activities.

Be it enacted by the Legislature of West Virginia:

That sections three, four and five, article two-d, 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 2D. WEST VIRGINIA GUARANTEED WORK FORCE PROGRAM.

§5B-2D-3. Training program.

§5B-2D-4. Funds.

§5B-2D-5. Program activities.

§5B-2D-3. Training program.

1 The governor's office of community and industrial
2 development shall develop a business and industrial
3 training program, the purpose of which is to provide
4 assistance for new or expanding businesses for the
5 training, retraining or upgrading of the skills of
6 potential employees. The program shall emphasize
7 employee training specifically designed to accommodate
8 the needs of individual employers. The program shall
9 encourage the expansion of existing businesses and
10 industries within the state, promote retention of
11 businesses and industries within the state, promote
12 retention of existing jobs within the state, prevent
13 economic and industrial out-migration, and assist in the
14 relocation of out-of-state businesses and industries in the
15 state. Under this program, the governor's office of
16 community and industrial development may pay up to
17 one hundred percent or one thousand dollars per
18 employee, whichever is less, of training costs of new
19 employees in firms creating at least ten jobs in a one-
20 year period. Training assistance may also be provided
21 to existing businesses in cases in which training,
22 retraining or upgrading services will result in the
23 retention of existing jobs or the creation of additional
24 jobs, or both: *Provided*, That the governor's office of
25 community and industrial development may pay up to
26 one hundred percent or one thousand dollars per
27 employee, whichever is less, for the training, retraining
28 or upgrading. Training costs associated with this
29 program will be paid directly by the governor's office
30 of community and industrial development to the
31 training provider.

32 Provision of training services will depend upon the

33 employer meeting program requirements as set forth by
34 the governor's office of community and industrial
35 development and this article. The state of West Virginia
36 guarantees if employer satisfaction is not achieved, the
37 governor's office of community and industrial develop-
38 ment will carefully review the effectiveness of the
39 recently completed training plan and program with the
40 employer and the training provider. After such review,
41 if the governor's office of community and industrial
42 development determines that the training program was
43 inadequate to meet the employer's specifications and
44 satisfaction as originally agreed to, then those employees
45 so trained shall be eligible for retraining under the
46 guarantee provision except when the training program
47 curriculum and/or provider were selected solely at the
48 discretion of the employer, then no such additional
49 training shall be considered or approved: *Provided*, That
50 in no instance may the cost of training and retraining
51 an employee exceed two thousand dollars.

§5B-2D-4. Funds.

1 The funds made available by this section shall
2 supplement but not displace funds available through
3 existing programs conducted by employers themselves
4 and public programs such as the Job Training Partner-
5 ship Act (JTPA), the Carl D. Perkins Vocational
6 Education Act, the Stewart B. McKinney Homeless
7 Assistance Act, and the JOBS Act, or apportionment
8 fund allocated to the community colleges, regional
9 occupational centers and programs, or other local
10 educational agencies. In addition, it is further the
11 intention of the Legislature that the program estab-
12 lished pursuant to this section shall not replace, parallel,
13 supplant, compete with, or duplicate in any way
14 existing, approved apprenticeship programs.

15 The fund shall consist of all moneys which may be
16 transferred to it by the West Virginia Economic
17 Development Authority (WVEDA) and also any contri-
18 butions, grants or bequests received from federal,
19 private or other sources. Appropriations made from the
20 funds shall be for the purpose of providing contractual
21 services through the governor's office of community and
22 industrial development for vocational related training or
23 retraining provided by public or private training

24 institutions within West Virginia and for contracted
25 services through the governor's office of community and
26 industrial development for vocational related training,
27 retraining or upgrading provided by public or private
28 training institutions located outside of West Virginia
29 and for vocational related training or retraining
30 provided on site, within West Virginia by any training
31 provider as defined in this article.

§5B-2D-5. Program activities.

1 The primary concern in the provision of training
2 services shall be the needs and types of services
3 identified by the employer. A college or university,
4 community college or area vocational education center
5 shall be given initial consideration to provide any
6 training, retraining, or job upgrade training. The
7 employer will have the opportunity to participate in the
8 selection of a training provider and training program
9 curriculum. Training services may begin upon execu-
10 tion of a written agreement between the governor's
11 office of community and industrial development and the
12 employer.

13 Program activities may include, but not be limited to,
14 the following:

15 (a) The performance of a job skills analysis and the
16 designing of a training curriculum for an employer.

17 (b) The recruitment and referral of trainee applicants
18 to an employer.

19 (c) The provision of off site preemployment training
20 to prospective employees of a new or expanding business
21 or industry or to existing employees for purposes of
22 retraining or upgrading: *Provided*, That on site preem-
23 ployment training may be provided if off site preem-
24 ployment training is not practical.

25 (d) Retraining of employees in response to a techno-
26 logical change.

27 (e) The provision of job upgrade training, if the
28 training will retain or increase the employer's total
29 work force.

30 (f) Contracting with persons, public or private educa-
31 tional institutions, agencies or other bodies for training
32 or consultative services for an employer.

33 (g) The provision of materials and supplies used in the
34 training process, instructors with specialized skills,
35 instructional training aids and equipment, consultative
36 services relative to highly specific or technical data and
37 other services.

38 (h) Assisting a foreign employer locating or expand-
39 ing in this state by familiarizing the employer's foreign
40 personnel with the work attitudes, work methods,
41 expectations, customs and life style of employees who
42 work within this state.

43 (i) Taking any other action that is considered to be
44 necessary or desirable for the furtherance of the
45 provisions of this article.

46 Funds may not be awarded or reimbursed to any
47 business or industry for the training, retraining or
48 upgrading of skills of potential employees with the
49 purpose of replacing or supplanting employees engaged
50 in an authorized work stoppage.

CHAPTER 75

(Com. Sub. for H. B. 2141—By Mr. Speaker, Mr. Chambers, and Delegate Grubb)

[Passed February 23, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article five-e, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter twenty by adding thereto a new article, designated article five-j, all relating to providing rule-making and certain enforcement authority regarding infectious medical waste to the secretary of the department of health and human resources; making legislative findings and stating purpose; providing definitions; prohibiting commercial infectious medical waste facilities, exceptions; designating depart-

ment of health and human resources as the primary agency for medical waste management; providing for permitting, licensing and regulation of medical waste by the department of health and human resources; providing powers of secretary of health and human resources; requiring promulgation of rules; permitting the charging of fees; permitting inspections and right of entry onto medical waste generators premises; permitting inspection of records; permitting the issuance of subpoenas and subpoenas duces tecum; providing for enforcement orders, injunctions, civil actions, cease and desist orders; hearings; providing for the regulation of haulers of infectious medical waste by the public service commission; and generally providing for the regulation and control of medical waste.

Be it enacted by the Legislature of West Virginia:

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

Article

5E. Hazardous Waste Management Act.

5J. Medical Waste Act.

ARTICLE 5E. HAZARDOUS WASTE MANAGEMENT ACT.

§20-5E-7. Authority and jurisdiction of other state agencies.

1 (a) The commissioner of highways, in consultation
2 with the director, and avoiding inconsistencies with and
3 avoiding duplication to the maximum extent practicable
4 with legislative rules required to be promulgated
5 pursuant to this article by the director or any other rule-
6 making authority, and in accordance with the provisions
7 of chapter twenty-nine-a of this code, shall promulgate,
8 as necessary, legislative rules governing the transporta-
9 tion of hazardous wastes by vehicle upon the roads and
10 highways of this state. Such legislative rules shall be
11 consistent with applicable rules and regulations issued
12 by the federal department of transportation and
13 consistent with this article: *Provided, That such*

14 legislative rules shall apply to the interstate transpor-
15 tation of hazardous waste within the boundaries of this
16 state, as well as the intrastate transportation of such
17 waste.

18 In lieu of those enforcement and inspection powers
19 conferred upon the commissioner of highways elsewhere
20 by law with respect to the transportation of hazardous
21 waste, the commissioner of highways has the same
22 enforcement and inspection powers as those granted to
23 the chief, his authorized representative or agent, or any
24 authorized employee or agent of the division of natural
25 resources, as the case may be, under sections eleven,
26 twelve, thirteen, fourteen, fifteen, sixteen and seventeen
27 of this article. The limitations of this subsection shall not
28 affect in any way the powers of the division of highways
29 with respect to weight enforcement.

30 (b) The public service commission, in consultation
31 with the director, and avoiding inconsistencies with and
32 avoiding duplication to the maximum extent practicable
33 with rules and regulations required to be promulgated
34 pursuant to this article by the director or any other rule-
35 making authority, and in accordance with the provisions
36 of chapter twenty-nine-a of this code, shall promulgate,
37 as necessary, rules and regulations governing the
38 transportation of hazardous wastes by railroad in this
39 state. Such rules and regulations shall be consistent with
40 applicable rules and regulations issued by the federal
41 department of transportation and consistent with this
42 article: *Provided*, That such rules and regulations apply
43 to the interstate transportation of hazardous waste
44 within the boundaries of this state, as well as the
45 intrastate transportation of such waste.

46 In lieu of those enforcement and inspection powers
47 conferred upon the public service commission elsewhere
48 by law with respect to the transportation of hazardous
49 waste, the public service commission has the same
50 enforcement and inspection powers as those granted to
51 the chief, his authorized representative or agent or any
52 authorized employee or agent of the division of natural
53 resources, as the case may be, under sections eleven,
54 twelve, thirteen, fourteen, fifteen, sixteen and seventeen

55 of this article.

56 (c) The rules and regulations required to be promul-
57 gated pursuant to subsections (a) and (b) of this section
58 shall apply equally to those persons transporting
59 hazardous wastes generated by others and to those
60 transporting hazardous wastes they have generated
61 themselves or combinations thereof. Such rules and
62 regulations shall establish such standards, applicable to
63 transporters of hazardous waste identified or listed
64 under this article, as may be necessary to protect public
65 health, safety and the environment. Such standards
66 shall include, but need not be limited to, requirements
67 respecting (A) record keeping concerning such hazard-
68 ous waste transported, and its source and destination;
69 (B) transportation of such waste only if properly labeled;
70 (C) compliance with the manifest system referred to in
71 subdivision (3), subsection (a), section six of this article;
72 and (D) transportation of all such hazardous waste only
73 to the hazardous waste treatment, storage or disposal
74 facilities which the shipper designates on the manifest
75 form to be a facility holding a permit issued under: (1)
76 This article or any rule and regulation required by this
77 article to be promulgated; (2) Subtitle C; (3) the laws of
78 any other state which has an authorized hazardous
79 waste program pursuant to section 3006 of the Resource
80 Conservation and Recovery Act; or (4) Title I of the
81 Federal Marine Protection, Research and Sanctuaries
82 Act.

83 (d) The secretary of the department of health and
84 human resources, in consultation with the director of the
85 division of natural resources, and avoiding inconsisten-
86 cies with and avoiding duplication to the maximum
87 extent practicable with legislative rules required to be
88 promulgated pursuant to this article by the director of
89 the division of natural resources or any other rule-
90 making authority, shall promulgate rules pursuant to
91 article five-j of this chapter. The secretary of the
92 department of health and human resources shall have
93 the same enforcement and inspection powers as those
94 granted to the chief, his authorized representative or
95 agent or any authorized employee or agent of the

96 division of natural resources, as the case may be, under
97 sections eleven, twelve, thirteen, fourteen, fifteen,
98 sixteen and seventeen of this article, and in addition
99 thereto, the department of health and human resources
100 shall have those inspection and enforcement powers with
101 respect to hazardous waste with infectious characteris-
102 tics as provided for in article five-j of this chapter.

103 (e) The air pollution control commission, in consulta-
104 tion with the director, and avoiding inconsistencies with
105 and avoiding duplication to the maximum extent
106 practicable with rules and regulations required to be
107 promulgated pursuant to this article by the director or
108 any other rule-making authority, and in accordance
109 with the provisions of article twenty, chapter sixteen
110 and chapter twenty-nine-a of this code, shall promulgate
111 such legislative rules establishing air pollution perfor-
112 mance standards and permit requirements and proce-
113 dures as may be necessary to comply with the require-
114 ments of this article. Such permits shall be in addition
115 to those permits required by section eight of this article.
116 All legislative rules promulgated pursuant to this
117 subsection shall be consistent with this article.

118 The commission shall adopt regulations for the
119 monitoring and control of air emissions at hazardous
120 waste treatment storage and disposal facilities, includ-
121 ing, but not limited to, open tanks, surface impound-
122 ments and landfills, as may be necessary to protect
123 human health and the environment.

124 The commission shall promulgate legislative rules
125 establishing standards applicable to the owners and
126 operators of facilities which burn, for purposes of energy
127 recovery, any fuel produced from any hazardous waste
128 identified or listed pursuant to subdivision (2), subsec-
129 tion (a), section six of this article or which is produced
130 from any hazardous waste identified or listed pursuant
131 to subdivision (2), subsection (a), section six of this
132 article and any other material, as may be necessary to
133 protect human health and the environment: *Provided,*
134 That such legislative rules shall be consistent with
135 Subtitle C.

136 With respect to this article, and any legislative rules
137 or regulations promulgated pursuant thereto, the
138 director of the air pollution control commission has the
139 same enforcement and inspection powers as those of the
140 chief under sections eleven, twelve, thirteen, fourteen,
141 fifteen, sixteen and seventeen of this article: *Provided*,
142 That no action for penalties may be initiated by the
143 director of the air pollution control commission without
144 the approval of that commission. Any person aggrieved
145 or adversely affected by an order of the director of the
146 air pollution control commission made and entered in
147 accordance with the provisions of this article, or by the
148 failure or refusal of said director to act within a
149 reasonable time on an application for a permit or by the
150 issuance or denial of or by the terms and conditions of
151 a permit granted under the provisions of this article,
152 may appeal to the air pollution control commission in
153 accordance with the procedure set forth in section six,
154 article twenty, chapter sixteen of this code, and orders
155 made and entered by said commission shall be subject
156 to judicial review in accordance with the procedures set
157 forth in section seven, article twenty, chapter sixteen of
158 this code, except that as to cases involving an order
159 granting or denying an application for a permit,
160 revoking or suspending a permit or approving or
161 modifying the terms and conditions of a permit or the
162 failure to act within a reasonable time on an application
163 for a permit, the petition for judicial review shall be
164 filed in the circuit court of Kanawha County.

165 (f) The director of the division of natural resources
166 has exclusive responsibility for carrying out any
167 requirement of this article with respect to coal mining
168 wastes or overburden for which a permit is issued under
169 the surface coal mining and reclamation act of 1980,
170 article six of this chapter.

171 (g) To the extent that this article relates to activities
172 with respect to oil and gas wells, liquid injection wells
173 and waste disposal wells now regulated by articles four,
174 four-b and seven, chapter twenty-two of this code, the
175 administrator of the office of oil and gas and the shallow
176 gas-well review board has the jurisdiction with respect

177 to the regulation of such activities and shall promulgate
178 such rules and regulations as may be necessary to
179 comply with the requirements of this article: *Provided,*
180 That nothing in this subsection may be construed to
181 diminish or alter the authority and responsibility of the
182 chief or the water resources board under articles five
183 and five-a of this chapter.

184 In lieu of those enforcement and inspection powers
185 conferred upon the administrator of the office of oil and
186 gas and the shallow gas-well review board elsewhere by
187 law, with respect to hazardous wastes, the administrator
188 of the office of oil and gas and the shallow gas-well
189 review board have the same enforcement and inspection
190 powers as those granted to the chief, his authorized
191 representative or agent or any authorized employee or
192 agent of the division of natural resources, as the case
193 may be, under sections eleven, twelve, thirteen, fourteen,
194 fifteen, sixteen and seventeen of this article.

195 (h) The water resources board, in consultation with
196 the director, and avoiding inconsistency with and
197 avoiding duplication to the maximum extent practicable
198 with rules and regulations required to be promulgated
199 pursuant to this article by the director or any other rule-
200 making authority, and in accordance with the provisions
201 of chapter twenty-nine-a of this code, shall, as necessary,
202 promulgate legislative rules governing discharges into
203 the waters of this state of hazardous waste resulting
204 from the treatment, storage or disposal of hazardous
205 waste as may be required by this article. Such legisla-
206 tive rules shall be consistent with this article.

207 (i) All legislative rules promulgated pursuant to this
208 section shall be consistent with rules and regulations
209 promulgated by the federal environmental protection
210 agency pursuant to the resource conservation and
211 recovery act.

212 (j) The director shall submit his written comments to
213 the legislative rule-making review committee regarding
214 all legislative rules promulgated pursuant to this article.

ARTICLE 5J. MEDICAL WASTE ACT.

- §20-5J-1. Short title.
- §20-5J-2. Legislative findings and purpose.
- §20-5J-3. Definitions.
- §20-5J-4. Commercial infectious medical waste facility prohibited.
- §20-5J-5. Designation of secretary of the department of health and human resources as the state infectious medical waste management primary agency; prohibitions; requiring permits.
- §20-5J-6. Powers of secretary; authority to promulgate rules.
- §20-5J-7. Inspections; right of entry; sampling; reports and analyses; subpoenas.
- §20-5J-8. Enforcement orders; hearings.
- §20-5J-9. Civil actions and injunctive relief.
- §20-5J-10. Regulation of infectious medical waste collectors and haulers by the public service commission; limitation of regulation.

§20-5J-1. Short title.

- 1 This article shall be known and cited as the “West
- 2 Virginia Medical Waste Act.”

§20-5J-2. Legislative findings and purpose.

- 1 The Legislature finds that the proper and environ-
- 2 mentally-sound disposal of infectious and noninfectious
- 3 medical waste is an important issue facing all West
- 4 Virginians.

- 5 The Legislature further finds that effective controls
- 6 for the management of medical waste are necessary to
- 7 ensure the protection of the public health, safety and
- 8 welfare, and the environment.

- 9 The Legislature further finds that regulation of the
- 10 generation, handling, storage, transportation, treatment
- 11 and disposal of medical waste is an important and
- 12 necessary function of state government.

- 13 The Legislature further finds that toxic pollutants
- 14 emitted by medical waste incinerators are an important
- 15 public health hazard.

- 16 The Legislature further finds that commercial incin-
- 17 eration of medical waste, and its transportation in the
- 18 infectious state, pose a potentially serious threat to the
- 19 health, safety and welfare of West Virginians.

- 20 The Legislature further finds that safe and cost-
- 21 effective alternatives to the incineration of infectious
- 22 and noninfectious medical waste should be encouraged.

23 The Legislature further finds that the public interest
24 is best served by:

25 (1) Efforts to reduce the volume of medical waste
26 generated at all levels;

27 (2) On-site separation and treatment of infectious
28 medical waste;

29 (3) Treatment and disposal of infectious medical
30 waste in local infectious medical waste management
31 facilities; and

32 (4) Treatment and disposal in approved regional
33 infectious waste management facilities when adminis-
34 trative proceedings result in a finding that on-site or
35 local treatment of infectious medical waste is not
36 feasible.

37 The Legislature further finds that local responsibility
38 for the minimization in volume, and for the treatment
39 and disposal of infectious and noninfectious medical
40 waste is an important part of a sound and rational waste
41 management program.

42 The Legislature further finds that small quantity
43 generators of infectious medical waste should either
44 render such waste noninfectious on-site, or properly
45 label and package the waste for transportation to a local
46 infectious waste management facility for proper treat-
47 ment and disposal.

48 The Legislature further finds that generators of
49 medical waste should be informed and educated in its
50 management; that training should be provided to all
51 workers likely to come in contact with medical waste,
52 including in-home health care workers; and that
53 relevant information on the potential for infection and
54 disease related to medical waste should be made
55 available to the general public, including in-home health
56 care patients.

57 The Legislature further finds that the necessity for
58 transporting infectious medical waste be minimized,
59 and that any infectious medical waste transported be
60 safely packaged and identified by source and content.

61 The Legislature further finds that public policy favors
62 a reduction in the volume of infectious and noninfectious
63 medical waste, the separation of infectious medical
64 waste from noninfectious medical waste, and that efforts
65 to reduce medical waste should be fostered and strongly
66 encouraged at all levels of generation.

67 The Legislature further finds that noninfectious
68 medical waste is solid waste.

69 The Legislature further finds that noninfectious
70 medical waste should be handled by environmentally-
71 sound disposal technologies, and that alternative
72 disposal technologies promoting safe recycling and
73 limiting the need for incineration should be emphasized,
74 developed and utilized.

75 Therefore, it is the policy of the state of West Virginia
76 to prohibit commercial infectious medical waste facili-
77 ties; to regulate and control the generation, handling,
78 storage, transportation, treatment and disposal of
79 infectious and noninfectious medical waste; to reduce
80 the generation of infectious and noninfectious medical
81 waste; to encourage local responsibility for the minim-
82 ization, management and disposal of infectious and
83 noninfectious medical waste; and to authorize the
84 department of health and human resources to promul-
85 gate rules and regulations necessary to carry out the
86 purposes of this article.

§20-5J-3. Definitions.

1 As used in this article:

2 (1) "Commercial infectious medical waste facility"
3 means any infectious medical waste management
4 facility at which thirty-five percent or more by weight
5 of the total infectious medical waste stored, treated, or
6 disposed of by said facility in any calendar year is
7 generated off-site.

8 (2) "Disposal" means the discharge, deposit, injection,
9 dumping, spilling, leaking or placing of any infectious
10 medical waste into or on any land or water so that such
11 waste, or any constituent thereof, may be emitted into
12 the air, discharged into any waters, including ground-

13 water, or otherwise enter into the environment.

14 (3) "Generator" means any person, by site location,
15 whose act or process produces medical waste.

16 (4) "Hospital" means an institution which is primarily
17 engaged in providing to inpatients, by or under the
18 supervision of physicians, diagnostic and therapeutic
19 services for medical diagnosis, treatment and care of
20 injured, disabled or sick persons or services for the
21 rehabilitation of injured, disabled or sick persons. This
22 term also includes psychiatric and tuberculosis
23 hospitals.

24 (5) "Infectious medical waste" means medical waste
25 identified as capable of producing an infectious disease.
26 Medical waste shall be considered capable of producing
27 an infectious disease if it has been, or is likely to have
28 been, contaminated by an organism likely to be patho-
29 genic to healthy humans, if such organism is not
30 routinely and freely available in the community, and
31 such organism has a significant probability of being
32 present in sufficient quantities and with sufficient
33 virulence to transmit disease. For the purposes of this
34 article, infectious medical waste shall include the
35 following:

36 (A) Cultures and stocks of microorganisms and
37 biologicals;

38 (B) Blood and blood products;

39 (C) Pathological wastes;

40 (D) Sharps;

41 (E) Animal carcasses, body parts, bedding and
42 related wastes;

43 (F) Isolation wastes;

44 (G) Any residue or contaminated soil, water or other
45 debris resulting from the cleanup of a spill of any
46 infectious medical waste; and

47 (H) Any waste contaminated by or mixed with
48 infectious medical waste.

49 (6) "Medical waste" means infectious and noninfectious
50 solid waste generated in the course of the diagnosis,
51 treatment or immunization of human beings or
52 animals, or in research pertaining thereto, or in the
53 production or testing of biologicals. Such term does not
54 include low-level radioactive waste, any hazardous
55 waste identified or listed under Subtitle C, or any
56 household waste as defined in the regulations promul-
57 gated pursuant to Subtitle C.

58 (7) "Noncommercial infectious medical waste facility"
59 means any infectious medical waste facility at which
60 less than thirty-five percent by weight of the total
61 infectious medical waste stored, treated or disposed of
62 by said facility in any calendar year is generated off-
63 site.

64 (8) "Noninfectious medical waste" means any medical
65 waste not capable of producing an infectious disease or
66 infectious medical waste which has been rendered
67 noninfectious. Noninfectious medical waste is considered
68 solid waste for purposes of this code.

69 (9) "Off-site" means a facility or area for the collec-
70 tion, storage, transfer, processing, treatment or disposal
71 of infectious medical waste that is not on the generator's
72 site, or a facility or area that received infectious medical
73 waste for storage or treatment that has not been
74 generated on-site.

75 (10) "On-site" means the same or geographically
76 contiguous property which may be divided by a public
77 or private right-of-way, provided the entrance and exit
78 between the properties is at a crossroads intersection,
79 and access is by crossing, as opposed to going along, the
80 right-of-way. Noncontiguous properties owned by the
81 same person but connected by a right-of-way controlled
82 by said person and to which the public does not have
83 access is also considered on-site property. Hospitals with
84 more than one facility located in the same county shall
85 be considered one site.

86 (11) "Secretary" means the secretary of the depart-
87 ment of health and human resources or his or her
88 designee.

89 (12) "Small quantity generator" means any generator
90 of infectious medical waste who generates fifty pounds
91 or less during a one-month period.

92 (13) "Storage" means the containment of infectious
93 medical waste on a temporary basis. Storage shall not
94 constitute disposal of the waste.

95 (14) "Subtitle C" means Subtitle C of the federal
96 Resource Conservation and Recovery Act of 1976, 90
97 Stat. 2806, as amended.

98 (15) "Treatment" means any method, technique or
99 process, including neutralization, designed to change the
100 physical, chemical or biological character or composi-
101 tion of any infectious medical waste so as to render such
102 waste noninfectious.

§20-5J-4. Commercial infectious medical waste facility prohibited.

1 It shall be unlawful to construct or operate a commer-
2 cial infectious medical waste facility in the state of West
3 Virginia: *Provided*, That the secretary may authorize an
4 exception to this prohibition solely for facilities not
5 utilizing incineration technology in any form, including
6 the manufacture or burning of refuse derived fuel:
7 *Provided, however*, That such an exception may be
8 granted only following: (1) The promulgation of legisla-
9 tive rules, in accordance with the provisions of chapter
10 twenty-nine-a of this code, containing guidelines for
11 such an exception that are being fully consistent with
12 the findings and purposes contained in section two of
13 this article; (2) a public hearing on the record in the
14 region affected by the proposed facility; (3) an investi-
15 gation of the infectious medical waste stream in the
16 region affected by the proposed facility; and (4) a
17 determination that programs to minimize and reduce
18 the infectious medical waste stream have been imple-
19 mented.

§20-5J-5. Designation of secretary of the department of health and human resources as the state infectious medical waste management primary agency; prohibitions; requiring permits.

1 (a) The secretary is hereby designated as the infec-
2 tious medical waste management primary agency for
3 this state and is hereby authorized to take all action
4 necessary or appropriate to secure to this state the
5 benefits of this legislation pertaining to infectious
6 medical waste. In carrying out the purposes of this
7 article, the secretary is hereby authorized to cooperate
8 with agencies of the federal government, this state and
9 other states, and other interested persons, in all matters
10 relating to medical waste management.

11 (b) On or after the first day of October, one thousand
12 nine hundred ninety-one, no person may own, construct,
13 modify, operate or close any facility or site for the
14 treatment, storage or disposal of infectious medical
15 waste, nor shall any person store, treat or dispose of any
16 such infectious medical waste without first obtaining a
17 permit from the secretary, unless specifically excluded
18 or exempted by rules promulgated by the secretary.

§20-5J-6. Powers of secretary; authority to promulgate rules.

1 (a) The secretary shall promulgate legislative rules, in
2 accordance with the provisions of chapter twenty-nine-
3 a of this code, necessary to effectuate the findings and
4 purposes of this article. Said rules shall include, but not
5 be limited to, the following:

6 (1) A plan designed to encourage and foster reduction
7 in the volume of infectious and noninfectious medical
8 waste and the separation of infectious and noninfectious
9 medical waste;

10 (2) Guidelines and procedures for the development
11 and implementation of local infectious medical waste
12 management plans, to be followed by all generators, that
13 set forth proper methods for the management of
14 infectious and noninfectious medical waste;

15 (3) Criteria for identifying the characteristics of
16 infectious medical waste and identifying the character-
17 istics of infectious medical waste;

18 (4) Standards applicable to generators of medical
19 waste necessary to protect public health, safety and the

20 environment, which standards shall establish require-
21 ments respecting:

22 (A) Record-keeping practices that accurately identify
23 the quantities of infectious medical waste generated, the
24 constituents thereof which are significant in quantity or
25 in potential harm to human health or the environment,
26 and the disposition of such waste;

27 (B) Labeling practices for containers used in the
28 storage, transportation or disposal of infectious medical
29 waste which will accurately identify such waste;

30 (C) Use of appropriate containers for infectious
31 medical waste;

32 (D) Furnishing of information regarding the general
33 composition of infectious medical wastes to persons
34 transporting, treating, storing or disposing of such
35 waste;

36 (E) Use of a manifest system and other reasonable
37 means to assure that all infectious medical waste is
38 designated for and arrives at treatment, storage or
39 disposal facilities for which the secretary has issued
40 permits, other than facilities on the premises where the
41 waste is generated; and

42 (F) The submission of reports to the secretary, at such
43 times as the secretary deems necessary, setting out the
44 quantity of infectious medical waste generated during
45 a particular time period, and the disposition of such
46 infectious medical waste;

47 (5) Performance standards applicable to owners and
48 operators of facilities for the treatment, storage or
49 disposal of infectious medical waste necessary to protect
50 public health and safety and the environment, which
51 standards shall include, but need not be limited to,
52 requirements respecting:

53 (A) Maintaining records of all infectious medical
54 waste and the manner in which such waste was treated,
55 stored or disposed of;

56 (B) Reporting, monitoring and inspection of and
57 compliance with the manifest system referred to in

58 subdivision (4), subsection (a) of this section;

59 (C) Treatment, storage or disposal of all infectious
60 medical waste received by the facility pursuant to
61 operating methods, techniques and practices as may be
62 satisfactory to the secretary;

63 (D) The location, design and construction of infectious
64 medical waste treatment, disposal or storage facilities;

65 (E) Contingency plans for effective action to minimize
66 unanticipated damage from any treatment, storage or
67 disposal of infectious medical waste;

68 (F) The maintenance or operation of such facilities
69 and requiring additional qualifications as to ownership,
70 continuity of operation, training for personnel and
71 financial responsibility as may be necessary or desira-
72 ble; *Provided*, That no private entity may be precluded
73 by reason of criteria established under this subsection
74 from the ownership or operation of facilities providing
75 infectious medical waste treatment, storage or disposal
76 services where such entity can provide assurances of
77 financial responsibility and continuity of operation
78 consistent with the degree and duration of risks
79 associated with the treatment, storage or disposal of
80 infectious medical waste; and

81 (G) Compliance with the requirements of this article
82 respecting permits for treatment, storage or disposal;

83 (6) The terms and conditions under which the secre-
84 tary shall issue, modify, suspend, revoke or deny permits
85 required by this article. The legislative rules required
86 by this subdivision shall be promulgated by the first day
87 of August, one thousand nine hundred ninety-one;

88 (7) Establishing and maintaining records; making
89 reports; taking samples and performing tests and
90 analyses; installing, calibrating, operating and main-
91 taining monitoring equipment or methods; and provid-
92 ing any other information necessary to achieve the
93 purposes of this article;

94 (8) Standards and procedures for the certification of
95 personnel at infectious medical waste treatment, storage

96 or disposal facilities or sites;

97 (9) Procedures for public participation in the imple-
98 mentation of this article;

99 (10) Procedures and requirements for the use of
100 manifests during the transportation of infectious
101 medical wastes;

102 (11) Procedures and requirements for the submission
103 and approval of a plan by the owners or operators of
104 infectious medical waste storage, treatment and disposal
105 facilities, for closure of such facilities, post-closure
106 monitoring and maintenance, and for both sudden and
107 nonsudden accidental occurrences; and

108 (12) A schedule of fees to recover the costs of process-
109 ing permit applications and renewals, training, enforce-
110 ment, inspections and program development.

111 (b) The legislative rules required by subsection (a)
112 shall be promulgated within six months after the
113 effective date of this article.

114 (c) Within twelve months after the effective date of
115 this article, the secretary shall conduct and publish a
116 study of infectious medical waste management in this
117 state which shall include, but not be limited to:

118 (1) A description of the sources of infectious medical
119 waste generation within the state, including the types
120 and quantities of such waste;

121 (2) A description of current infectious medical waste
122 management practices and costs, including treatment,
123 storage and disposal within the state; and

124 (3) An inventory of existing infectious medical waste
125 treatment, storage and disposal sites.

126 (d) Any person aggrieved or adversely affected by an
127 order of the secretary pursuant to this article, or by the
128 denial or issuance of a permit, or the failure or refusal
129 of said secretary to act within a reasonable time on an
130 application for a permit or the terms or conditions of
131 a permit granted under the provisions of this article,
132 may appeal to a special hearing examiner appointed to

133 hear contested cases in accordance with the provisions
134 of chapter twenty-nine-a of this code. The secretary shall
135 promulgate legislative rules establishing procedures for
136 appeal and the conduct of hearings.

137 (e) In addition to those enforcement and inspection
138 powers conferred upon the secretary elsewhere by law,
139 the secretary shall have the enforcement and inspection
140 powers as provided in sections seven, eight and nine of
141 this article.

142 (f) Nothing in this section shall be construed to
143 diminish or alter the authority of the air pollution
144 control commission or its director under article twenty,
145 chapter sixteen of this code.

**§20-5J-7. Inspections; right of entry; sampling; reports
and analyses; subpoenas.**

1 (a) The secretary, upon the presentation of proper
2 credentials and at reasonable times, may enter any
3 building, property, premises, place, vehicle or permitted
4 facility where infectious medical wastes are or have
5 been generated, treated, stored, transported or disposed
6 of for the purpose of promptly investigating any person's
7 compliance with the provisions of this article, legislative
8 rules or permits issued by the secretary.

9 (b) The secretary shall make periodic inspections of
10 every permitted facility as necessary to effectively
11 implement and enforce the requirements of this article
12 or the legislative rules promulgated by or permits issued
13 by the secretary. After an inspection is made, a report
14 shall be prepared and filed with the secretary. A copy
15 of such inspection report shall be promptly furnished to
16 the person in charge of such building, property,
17 premises, place, vehicle or facility. All inspection
18 reports shall be available to the public in accordance
19 with the provisions of article one, chapter twenty-nine-
20 b of this code.

21 (c) Whenever the secretary has cause to believe that
22 any person is in violation of any provision of this article,
23 any condition of a permit issued by the secretary, any
24 order or any legislative rule promulgated by the

25 secretary under this article, he shall immediately order
26 an inspection of the building, property, premises, place,
27 vehicle or permitted facility at which the alleged
28 violation is occurring.

29 (d) Upon presentation of proper credentials and at
30 reasonable times, the secretary may enter any establish-
31 ment, building, property, premises, vehicle or other
32 place maintained by any person where infectious
33 medical waste is being or has been generated, trans-
34 ported, stored, treated or disposed of to inspect and take
35 samples of waste and the contents of any containers. The
36 division shall promptly provide a copy of any analysis
37 to the owner, operator or agent in charge.

38 (e) Upon presentation of proper credentials and at
39 reasonable times, the secretary shall be given access to
40 all records relating to the generation, transportation,
41 storage, treatment or disposal of infectious medical
42 waste in the possession of any person who generates,
43 stores, treats, transports, disposes of, or otherwise
44 handles or has handled such waste. The secretary shall
45 be furnished with copies of all such records or given the
46 records for the purpose of making copies. If the
47 secretary, upon inspection, investigation or through
48 other means, observes or learns of a violation or
49 probable violation of this article, he is authorized to
50 issue subpoenas and subpoenas duces tecum and to order
51 the attendance and testimony of witnesses and to compel
52 the production of any books, papers, documents, man-
53 ifests and other physical evidence pertinent to such
54 investigation or inspection.

§20-5J-8. Enforcement orders; hearings.

1 (a) If the secretary, upon inspection, investigation or
2 through other means observes, discovers or learns of a
3 violation of the provisions of this article, any permit,
4 order or legislative rules promulgated hereunder, he
5 may:

6 (1) Issue an order stating with reasonable specificity
7 the nature of the violation and requiring compliance
8 immediately or within a specified time. An order issued
9 under this section may suspend, revoke or modify

10 permits, require a person to take remedial action, or
11 require a person to cease and desist activities which
12 violate the provisions of this article;

13 (2) Seek an injunction in accordance with subsection
14 (b) of section nine of this article; or

15 (3) Institute a civil action in accordance with subsec-
16 tion (a) of section nine of this article.

17 (b) Any person who is subject to a cease and desist
18 order may file a notice of request for reconsideration
19 with the secretary within seven days of the issuance of
20 the order. Within ten days of filing of the notice of a
21 request for reconsideration, said person shall have a
22 hearing before the secretary at which he may contest the
23 terms and conditions of the cease and desist order. The
24 filing of a notice of request for reconsideration shall not
25 stay or suspend execution or enforcement of such cease
26 and desist order.

§20-5J-9. Civil actions and injunctive relief.

1 (a) Any person who violates any provision of this
2 article, any permit or any rule or order issued pursuant
3 to this article shall be subject to a civil penalty not to
4 exceed twenty-five thousand dollars for each day of such
5 violation, which penalty shall be recovered in a civil
6 action either in the circuit court of the county wherein
7 the violation occurs or in the circuit court of Kanawha
8 County.

9 (b) The secretary may seek an injunction, or may
10 institute a civil action against any person who violates
11 any provision of this article or any permit, legislative
12 rule or order issued pursuant to this article. In seeking
13 an injunction, it is not necessary for the secretary to post
14 bond nor to allege or prove at any stage of the proceed-
15 ing that irreparable harm will occur if the injunction
16 is not issued or that there is no adequate remedy at law.
17 A petition for an injunction filed pursuant to this section
18 may be filed and relief granted notwithstanding the fact
19 that all administrative remedies provided for in this
20 article have not been exhausted or invoked against the
21 person or persons against whom such relief is sought.

22 (c) At the request of the secretary, the attorney
23 general, or the prosecuting attorney of the county in
24 which the violation occurs, shall assist the secretary in
25 any civil action under this section.

26 (d) In any action brought pursuant to the provisions
27 of this section, the state, or any agency of the state which
28 prevails, may be awarded costs and reasonable attor-
29 ney's fees.

**§20-5J-10. Regulation of infectious medical waste collec-
tors and haulers by the public service
commission; limitation of regulation.**

1 (a) On and after the first day of July, one thousand
2 nine hundred ninety-one, collectors, haulers and trans-
3 porters of infectious medical waste who are "common
4 carriers by motor vehicle," as defined in section two,
5 article one, chapter twenty-four-a of this code, shall be
6 regulated by the public service commission in accor-
7 dance with the provisions of chapter twenty-four-a and
8 rules and regulations promulgated thereunder. The
9 rules of the public service commission shall not conflict
10 nor take precedence over the rules promulgated by the
11 secretary.

12 (b) The commission shall provide a separate and
13 distinct category of special certificates of convenience
14 and necessity for infectious medical waste collectors,
15 haulers and transporters regulated by this section:
16 *Provided*, That within six months of the effective date
17 of this article, the commission may issue such special
18 certificates to existing common carriers of solid waste
19 who are presently transporting infectious medical waste
20 and who demonstrate that they are in compliance with
21 the provisions of this article: *Provided, however*, That
22 such common carriers need not make any additional
23 demonstration of public convenience and necessity.
24 Regulation of collectors, haulers and transporters of
25 medical waste shall be separate and distinct from the
26 regulation of solid waste collectors, haulers and trans-
27 porters provided for in section twenty-three, article
28 twenty-six, chapter sixteen of this code.

29 (c) At any hearing conducted by the public service

- 30 commission pertaining to infectious medical waste
31 collectors, haulers and transporters, the secretary may
32 appear before the commission and present evidence.

CHAPTER 76

(Com. Sub. for H. B. 2461—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to repeal sections four and six, article one, and section five-a, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section seven, article one of said chapter; and to further amend said chapter sixteen by adding thereto a new article, designated article one-a, all relating to the West Virginia health care planning commission; abolishing the board of health; promulgation of rules by the secretary of the department of health and human resources; providing legislative findings; creating the West Virginia health care planning commission and providing for the designation and appointment of members thereto and meetings thereof; continuing and providing for the state health plan and the regional health advisory councils; defining specific health planning duties of the commission, including requiring the commission to hold six public hearings by the thirtieth day of September, one thousand nine hundred ninety-one; to present by the first day of November, one thousand nine hundred ninety-one, an initial report regarding alternative systems of access to health care for all state residents, recommendations for legislative and administrative initiatives consistent with certain principles; to prepare by the first day of July, one thousand nine hundred ninety-two, amendments to the state health plan regarding certificate of need standards; to present by the first day of December, one thousand nine hundred ninety-two, a report making further legislative and administrative proposals, proposing guidelines for expenditures, licensing, and regulatory initiatives, and

recommending the future role of the commission; creating the legislative health care oversight committee; providing for funding; and providing a termination date of the first day of July, one thousand nine hundred ninety-three.

Be it enacted by the Legislature of West Virginia:

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

Article

1. **State Division of Health.**

1A. **Health Care Planning Commission.**

ARTICLE 1. STATE DIVISION OF HEALTH.

§16-1-7. Promulgation of rules and regulations; references to board to mean secretary of department of health and human resources.

1 The secretary of the department of health and human
 2 resources shall have the power to promulgate such rules
 3 and regulations, in accordance with the provisions of
 4 chapter twenty-nine-a of the code, as are necessary and
 5 proper to effectuate the purposes of this chapter and
 6 prevent the circumvention and evasion thereof: *Pro-*
 7 *vided*, That no rules or regulations shall be promulgated
 8 or enforced restricting the subdivision or development
 9 of any parcel of land within which the individual tracts,
 10 lots or parcels exceed two acres each in total surface
 11 area and which individual tracts, lots or parcels have
 12 an average frontage of not less than one hundred fifty
 13 feet even though the total surface area of said tract, lot
 14 or parcel equals or exceeds two acres in total surface
 15 area, and which tracts are sold, leased or utilized only
 16 as single family dwelling units. The provisions next
 17 above notwithstanding, nothing in this section shall be
 18 construed to abate the authority of the department of
 19 health and human resources to: (1) Restrict the subdi-
 20 vision or development of such tract for any more intense
 21 or higher density occupancy than such single family
 22 dwelling unit; (2) promulgate and enforce rules and

23 regulations applicable to single family dwelling units
24 for single family dwelling unit sanitary sewerage
25 disposal systems; or (3) restrict any subdivision or
26 development which might endanger the public health,
27 the sanitary condition of streams, or sources of water
28 supply. The secretary shall have the power to appoint
29 or designate advisory councils of professionals in the
30 areas of hospitals, nursing homes, barbers and beauti-
31 cians, postmortem examinations, mental health and
32 mental retardation centers and such other areas as it
33 deems necessary to advise the secretary on rules and
34 regulations. Such rules and regulations shall include,
35 but not be limited to, the regulation of:

36 (1) The sanitary condition of all institutions and
37 schools, whether public or private, public conveyances,
38 dairies, slaughterhouses, workshops, factories, labor
39 camps, all other places open to the general public and
40 inviting public patronage or public assembly, or
41 tendering to the public any item for human consump-
42 tion, and places where trades or industries are
43 conducted;

44 (2) Occupational and industrial health hazards, the
45 sanitary conditions of streams, sources of water supply,
46 sewerage facilities and plumbing systems, and the
47 qualifications of personnel connected with any of such
48 facilities, without regard to whether such supplies or
49 systems are publicly or privately owned; and the design
50 of all water systems, plumbing systems, sewerage
51 systems, sewage treatment plants, excreta disposal
52 methods, swimming pools in this state, whether publicly
53 or privately owned;

54 (3) Food and drug standards, including cleanliness,
55 proscription of additives, proscription of sale, and other
56 requirements in accordance with article seven of this
57 chapter, as are necessary to protect the health of the
58 citizens of this state;

59 (4) The training and examination requirements for
60 emergency medical service attendants and mobile
61 intensive care paramedics; the designation of the health
62 care facilities, health care services, and the industries

63 and occupations in the state which must have emergency
 64 medical service attendants and mobile intensive care
 65 paramedics employed, and the availability, communica-
 66 tions, and equipment requirements with respect thereto;

67 (5) The collection of data on health status, the health
 68 system and the costs of health care;

69 (6) Other health-related matters which the depart-
 70 ment of health is authorized to supervise, and for which
 71 the rule-making authority has not been otherwise
 72 assigned.

73 Notwithstanding any other provision of this code to
 74 the contrary, whenever in this code there is a reference
 75 to the state board of health, it shall be construed to mean
 76 and shall be a reference to the secretary of the state
 77 department of health and human resources.

ARTICLE 1A. HEALTH CARE PLANNING COMMISSION.

§16-1A-1. Short title.

§16-1A-2. Legislative findings.

§16-1A-3. Health care planning commission created; composition; appoint-
 ment; terms; oaths; removal; vacancies; expenses and compen-
 sation; meetings; quorum; records.

§16-1A-4. State health plan.

§16-1A-5. Specific health planning duties of commission.

§16-1A-6. Legislative health care oversight committee.

§16-1A-7. Funding.

§16-1A-8. Effective date and termination date.

§16-1A-1. Short title.

1 This article shall be known and may be cited as the
 2 "West Virginia Health Care Planning Commission Act."

§16-1A-2. Legislative findings.

1 Based upon careful review of information from health
 2 care providers, governmental entities, third-party
 3 payers, consumers, and other persons involved or
 4 otherwise interested in the state's health care system,
 5 the Legislature makes the following findings:

6 (1) Over one out of five state residents do not have
 7 health insurance, and, thus, must forego basic health
 8 care when they are needed and cannot afford to pay for
 9 health services when they are provided. At least half of
 10 the uninsured are wage earners and their dependents.

11 The number of uninsured is increasing at an alarming
12 rate;

13 (2) Children, low-income working and unemployed
14 persons, disabled persons, and persons with chronic
15 health conditions are especially unable to obtain access
16 to health care. Nearly one hundred thousand children
17 in West Virginia have no health insurance. Failing to
18 obtain preventive and primary care because of their
19 inability to pay, uninsured people endure unnecessary
20 pain, suffering, and permanent physical and mental
21 health problems;

22 (3) The state has twenty-five percent more uncompen-
23 sated charity care than the national average. The costs
24 of providing health care to people who cannot afford to
25 pay are charged in the form of higher health care costs
26 to other health care consumers, especially public and
27 private employers providing health insurance for their
28 employees. The resulting cost shift is an invisible tax,
29 spread among the already insured, and is an unplanned,
30 inefficient method of providing basic preventive,
31 primary and acute care for uninsured and underinsured
32 residents of the state;

33 (4) The costs and charges of health care and health-
34 related insurance are increasing dramatically. Costs of
35 health care services are inappropriately increased by
36 underutilization of certain health care facilities, over-
37 utilization of certain tests and techniques, and inappro-
38 priate use of health care facilities by consumers;

39 (5) The cost of private health insurance is becoming
40 prohibitively expensive for large portions of society,
41 especially small business employers. Disputes over the
42 allocation of health care costs are a continuing source
43 of labor-management conflict;

44 (6) The already low number of health care providers
45 in rural areas of the state is declining. Forty-six counties
46 in the state and large segments of the state's population
47 are medically underserved, especially with regard to
48 primary care, including family practice physicians.
49 Children and their mothers, whether insured or not, are
50 particularly unable to find adequate health care;

51 (7) Too few graduates of the state's medical schools
52 remain in the state to practice in underserved specialties
53 and in underserved regions of the state; and

54 (8) Improvements in the health care system are
55 impeded by lack of resources and statutory authority at
56 existing public agencies and the lack of a single entity
57 charged with developing and implementing proposals to
58 reduce health care costs while increasing access to
59 appropriate basic, quality health care.

**§16-1A-3. Health care planning commission created;
composition; appointment; terms; oaths;
removal; vacancies; expenses and compen-
sation; meetings; quorum; records.**

1 There is hereby created the West Virginia health care
2 planning commission within the office of the governor.
3 There shall be seven members of the commission. Two
4 of the members, designated at the will and pleasure of
5 the governor, shall be full-time state officials having
6 involvement and impact on health policy for the state.
7 The other five members shall be appointed by the
8 governor with the advice and consent of the Senate, and
9 shall not be state officials employed by the state on a
10 full-time basis. Members shall be appointed on the basis
11 of their ability, experience and interest in health care
12 and on their ability to represent the diverse geographic
13 health care needs of the state. No more than three of
14 the five appointed members may be of the same political
15 party and no person serving as a member of the
16 Legislature, or employed in an advisory or support staff
17 capacity at the time of the enactment or amendment of
18 this article shall, during or for a five-year period
19 subsequent to his or her employment, be appointed or
20 serve as a member of the commission. Appointments
21 shall be made by the governor no later than the fifteenth
22 day of April, one thousand nine hundred ninety-one. The
23 governor may remove a commission member only for
24 cause. Within thirty days of removal or resignation of
25 an appointed person, the governor shall appoint a
26 qualified person to fill the vacancy. All members of the
27 commission shall be citizens of the state. Each appointed
28 member of the commission may be paid fifty dollars for

29 each day of performing services as a member and
30 reimbursed for all reasonable and necessary expenses
31 actually incurred in the performance of his or her
32 duties, in the same manner as are members of the
33 Legislature.

34 The governor shall designate a chairperson and a vice
35 chairperson from among the commission members. A
36 staff person designated by the commission shall serve as
37 the secretary-treasurer of the commission but shall not
38 be a voting member. A majority of the members of the
39 commission shall constitute a quorum, and a quorum
40 must be present for the commission to conduct business.
41 Each member of the commission is a voting member.
42 Unless bylaws adopted by the commission require a
43 larger number, action may be taken by majority vote of
44 the members present. The commission shall meet at
45 least twice per month for the first year and shall have
46 staff perform the day-to-day planning functions of the
47 commission. Records of the commission shall be kept in
48 accordance with the provisions of article nine-a, chapter
49 six of this code. The commission may exercise all powers
50 necessary or appropriate to carry out the health
51 planning purposes of this article, said powers being
52 related to developing a comprehensive state health plan.

§16-1A-4. State health plan.

1 (a) The commission shall be responsible for coordinat-
2 ing and developing the health planning research efforts
3 of the state and for amending and modifying the state
4 health plan.

5 (b) The state health plan heretofore approved by the
6 governor shall remain in effect until replaced or
7 modified as follows: The commission staff, contracting
8 as necessary with consultants and experts, shall prepare
9 drafts of all proposed amendments to or modifications
10 of the state health plan and shall then hold public
11 hearings on the amendments or modifications.
12 Following the public hearings, the commission shall
13 submit the proposed amendments or modifications to the
14 governor for his or her approval. Within thirty days of
15 receiving said proposed amendments and modifications,

16 the governor shall either approve or disapprove all or
17 part of said amendments and modifications, and, for any
18 portion of amendments or modifications not approved,
19 shall specify the reason or reasons for nonapproval. Any
20 portions of the amendments or modifications not
21 approved by the governor shall be revised and resubmit-
22 ted to the governor. The commission shall submit to the
23 legislature's joint committee on government and finance
24 any and all amendments or modifications approved by
25 the governor for that committee's review and comment.

26 (c) In addition to other duties required by other
27 provisions of this article, the state health plan shall
28 describe those institutional health services which entail
29 annual operating costs in excess of the expenditure
30 minimum for annual operating costs which are needed
31 to provide for the well-being of persons receiving care
32 within the state. At a minimum, these shall include
33 acute inpatient (including psychiatric inpatient, obstet-
34 rical inpatient, and neonatal inpatient), rehabilitation,
35 and long-term care services. The state health plan shall
36 also describe other health services needed to provide for
37 the well-being of persons receiving care within the state,
38 including, at a minimum, preventive, ambulatory, and
39 home health services and treatment for alcohol and drug
40 abuse. The state health plan shall also describe the
41 number and type of resources, including facilities,
42 personnel, major medical equipment, and other resour-
43 ces required to meet the goal of the plan and shall state
44 the extent to which existing health services facilities are
45 in need of modernization, conversion to other uses, or
46 closure and the extent to which new health services
47 facilities need to be constructed or acquired. Finally, the
48 state health plan shall contain a detailed statement of
49 goals.

50 (d) The regional health advisory councils created
51 under the former provisions of section five-a, article two-
52 d, chapter sixteen of this code shall be continued in each
53 planning and development council region of the state.
54 Each council shall meet at least quarterly and shall
55 review health services and health care needs and
56 organize public hearings on the health care issues

57 within the region. The councils shall regularly report to
58 the commission regarding recommendations on health
59 services and health care needs and concerns in their
60 respective regions. Each council shall consist of three
61 members from each county within the planning and
62 development region, with one member from each county
63 who is actively involved in health care delivery in the
64 county for which said member is appointed, and two
65 members from each county who have no direct affilia-
66 tion with any health care provider and who are
67 consumers of health care services. Members shall be
68 appointed by the governor from lists submitted by the
69 respective county commissions for three-year terms. No
70 more than two members appointed from each county
71 may be from the same political party. Each county
72 commission shall designate which members from its
73 county has a term of one year, who has a term of two
74 years and who has a term of three years, all beginning
75 the first day of April, one thousand nine hundred ninety-
76 one. Thereafter, members shall serve for three-year
77 terms. The presence of a majority of members at council
78 meetings shall constitute a quorum for purposes of
79 transacting business. The commission shall designate at
80 least one staff person to provide support and assistance
81 to the regional health advisory councils.

82 (e) All state agencies shall transfer forthwith to the
83 commission all health-related data and information
84 reasonably requested by the commission in a form
85 reasonably requested by the commission in order to
86 provide the commission with the information it needs to
87 carry out the health planning functions required by this
88 and other sections in this article. The division of health
89 and health care cost review authority shall transmit to
90 the commission such data, records, reports, analyses and
91 summaries filed, collected and developed by the division
92 as are necessary to health planning functions or related
93 to health planning activities.

§16-1A-5. Specific health planning duties of commission.

1 (a) On or before the thirtieth day of September, one
2 thousand nine hundred ninety-one, the commission shall
3 hold at least six public hearings throughout the state for

4 the purposes of gathering information and opinions
5 regarding health services and any other health needs
6 and concerns of health care providers, consumers, and
7 other interested parties. The dates and places of said
8 hearings shall be made public by the first day of July,
9 one thousand nine hundred ninety-one. Each hearing
10 shall be attended by the director and at least one
11 commission member.

12 (b) On or before the first day of November, one
13 thousand nine hundred ninety-one, the commission shall
14 present to the governor and the Legislature a report
15 containing the following:

16 (1) The components of basic, quality health services to
17 which all persons in the state should be entitled;

18 (2) A description of alternative systems, including all-
19 payer and single-payer health insurance models, de-
20 signed to provide all persons in the state with access to
21 basic, quality health care services, detailing the costs,
22 benefits and detriments of each system;

23 (3) A statement as to the reasons that too few
24 graduates of the state's medical schools remain in the
25 state to practice in underserved specialties and under-
26 served regions of the state;

27 (4) Specific recommendations to the governor and the
28 Legislature regarding legislative, regulatory, and
29 executive initiatives designed to develop a health care
30 system in this state that is consistent with the following
31 principles:

32 (i) That all persons in the state have access to
33 appropriate basic, quality health services;

34 (ii) That such access be attained without reliance on
35 any form of uncompensated care or unreimbursed
36 services;

37 (iii) That the financial burden of providing health
38 services to all residents of the state be equitably shared
39 by government, employers, health care providers, and
40 individual citizens;

41 (iv) That consumers be allowed flexibility and free-

42 dom of health care provider choice, within a cost-
43 effective managed health services delivery system;

44 (v) That health care providers receive fair and
45 equitable compensation for their services in a timely and
46 efficient manner;

47 (vi) That a system of reimbursement for health
48 services be developed that minimizes administrative
49 costs and prevents health care providers from needing
50 to differentiate among consumers' sources of payment;

51 (vii) That health care providers have freedom to
52 choose their practice settings, while being provided with
53 incentives to participate in cost-effective systems of
54 health services and to serve underserved areas and
55 populations of the state;

56 (viii) That quality of care be promoted by the ongoing
57 development and enforcement of acceptable standards
58 for health care providers and facilities; and

59 (ix) That illness and injury prevention, wellness, and
60 other health promotion programs and incentives be
61 developed, including preventive health services to
62 improve the health of all residents of the state and
63 reduce the need for expensive long-term care: *Provided,*
64 That the principles defined in this subsection shall not
65 be construed to require the state to create or to fund any
66 specific health care programs.

67 (c) On or before the first day of July, one thousand
68 nine hundred ninety-two, the commission staff shall
69 develop and the commission shall present to the
70 governor proposed amendments and modifications to the
71 certificate of need standards contained in the state
72 health plan heretofore approved by the governor. Said
73 amendments and modifications shall address, among
74 other things, the need to increase the availability of
75 community-based, primary and preventive health
76 services within the state. Within thirty days of receiving
77 said proposed amendments and modifications, the
78 governor shall either approve or disapprove all or part
79 of said amendments and modifications, and, for any

80 portion of amendments or modifications not approved,
81 shall specify the reason or reasons for nonapproval. Any
82 portions of the amendments or modifications not
83 approved by the governor shall be revised and resubmit-
84 ted to the governor by the first day of December, one
85 thousand nine hundred ninety-two.

86 (d) On or before the first day of December, one
87 thousand nine hundred ninety-two, the commission shall
88 present to the governor and the Legislature a report on
89 the health care system in this state that addresses all
90 aspects of the state's health care system and that
91 recommends a comprehensive set of legislative and
92 administrative proposals designed to improve the state's
93 health care system. Said report shall include proposed
94 amendments to the state health plan that will provide
95 guidelines, based upon the principles contained in
96 section 5 (b) (4) (i)-(ix), for future public health-related
97 expenditures, licensing, and regulatory initiatives, and
98 shall make specific recommendations for implementa-
99 tion of said guidelines, including what function the
100 commission should play in future health planning and
101 implementation. All public health-related expenditures,
102 licensing, and regulatory initiatives shall be consistent
103 with the standards and guidelines of these guidelines
104 once approved by governor for inclusion in the state
105 health plan: *Provided*, That any proposed changes to
106 public health-related expenditures, licensing, and
107 regulatory initiatives, other than those requiring only
108 executive action, shall be submitted to the legislature in
109 the form of proposed legislation.

110 (e) In performing all of its above duties, the commis-
111 sion shall solicit input from each of the regional health
112 advisory councils located in this state.

§16-1A-6. Legislative health care oversight committee.

1 The president of the Senate and the speaker of the
2 House of Delegates shall each designate five members
3 of their respective houses, at least one of whom from
4 each house shall be a member of the minority party, to
5 serve on a legislative oversight committee charged with
6 immediate and ongoing oversight of the commission

7 created by this article. This committee shall study,
8 review and examine the work of the commission and its
9 staff and monitor the development and implementation
10 of the state health plan. The committee shall review and
11 make recommendations to the Legislature regarding
12 any plan or policy proposed by the commission.

§16-1A-7. Funding.

1 To the extent the operation and activities of the
2 commission are not funded through the general revenue
3 fund, the health care cost review authority shall provide
4 two hundred thousand dollars and the insurance
5 commission shall provide one hundred fifty thousand
6 dollars, through interagency transfer to the commission:
7 *Provided*, That any amounts so transferred from the
8 insurance commission shall be transferred from special
9 revenues in account number 8016. The commission shall
10 actively solicit grants and other nonstate funding. The
11 commission shall solicit and is authorized to accept
12 foundation and other nonstate financial support in order
13 to carry out the health planning purposes of this article.

§16-1A-8. Effective date and termination date.

1 This article shall be in effect from passage. The
2 commission shall terminate on the first day of July, one
3 thousand nine hundred ninety-three, unless extended by
4 legislation before that date.

CHAPTER 77

(Com. Sub. for S. B. 88—By Senators Spears, Tomblin, Lucht and Felton)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-b, relating to requiring the commissioner of the bureau of public health to establish a uniform health professionals data collection and reporting system; requiring cooperation and support of various health professional boards; and providing for annual reports.

Be it enacted by the Legislature of West Virginia:

That article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be amended by adding thereto a new section, designated section ten-b, to read as follows:

ARTICLE 1. STATE BUREAU OF PUBLIC HEALTH.

§16-1-10b. Establishment of a uniform health professionals data collection system.

1 The commissioner of the bureau of public health shall
2 establish a uniform health professionals data system to
3 collect and maintain data on health professionals in this
4 state. This data shall include, but not be limited to, the
5 following information about each health professional:
6 His or her name, profession, the area of the state where
7 practicing, educational background, employer's name,
8 and number of years practicing within the profession.
9 The boards provided for under articles three, four, four-
10 a, five, seven, seven-a, fourteen, fourteen-a, fifteen,
11 sixteen, twenty, twenty-one, twenty-three and twenty-
12 eight, chapter thirty of this code shall collect the data
13 on health professionals under their jurisdiction on an
14 annual basis and in the format prescribed by the
15 commissioner. Each such board shall be required to pay
16 to the bureau of health an amount, to be determined by
17 the commissioner, to cover expenses incurred by the
18 bureau of health in establishing the uniform health
19 professionals data system required by this section. The
20 commissioner shall publish annually and make availa-
21 ble, upon request, a report setting forth the data which
22 was collected the previous year; areas of the state which
23 the collected data indicates have a shortage of health
24 professionals; and projections, based upon the collected
25 data, as to the need for more health professionals in
26 certain areas.

CHAPTER 78

(Com. Sub. for H. B. 2194—By Mr. Speaker, Mr. Chambers,
and Delegate Burk)

[By Request of the Executive]

[Passed March 6, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, four, five and eleven, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, three, four, five and six, article five-f; and sections three, five, seven, eight, eighteen, twenty, twenty-one and twenty-eight, article twenty-nine-b of said chapter; and to further amend said article twenty-nine-b by adding thereto two new sections, designated sections six and nineteen-a, all relating to health care cost containment; providing definitions; reducing expense and expenditure thresholds governing when certificate of need review is required; eliminating certain exemptions from certificate of need review; extending moratorium on intermediate care and skilled nursing beds; providing for the conversion of certain beds; defining transfer of certificate of need; expanding scope of covered facility reporting and financial disclosure requirements to include related organizations; requiring covered facilities and related organizations to furnish copies of tax returns; requiring confidentiality of tax returns; requiring report to governor and Legislature; continuing health care cost review authority until the first day of July, one thousand nine hundred ninety-seven; deleting term limitation on board membership; increasing salaries of board members; creating health care cost review council to serve as advisory body to the board; exempting staff of health care cost review authority from civil service salary schedules; permitting promulgation of certain emergency rules; mandating cost-based review system; exempting regulations implementing cost-based review system from legislative rule-making; requiring filing of certain contracts; requiring contracts granting discounts to purchasers or third-party payors be reviewed and approved by the health care cost review authority; and changing standard for automatic rate increases.

Be it enacted by the Legislature of West Virginia:

That sections two, four, five and eleven, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted;

that sections one, two, three, four, five and six, article five-f; and sections three, five, seven, eight, eighteen, twenty, twenty-one and twenty-eight, article twenty-nine-b of said chapter be amended and reenacted; and that said article twenty-nine-b be further amended by adding thereto two new sections, designated sections six and nineteen-a, all to read as follows:

Article

2D. Certificate of Need.

5F. Health Care Facility Financial Disclosure.

29B. West Virginia Health Care Cost Review Authority.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

§16-2D-4. Exemptions from certificate of need program.

§16-2D-5. Powers and duties of state health planning and development agency.

§16-2D-11. Nontransference, time period compliance and withdrawal of certificate of need.

§16-2D-2. Definitions.

1 As used in this article, unless otherwise indicated by
2 the context:

3 (a) "Affected person" means:

4 (1) The applicant;

5 (2) An agency or organization representing con-
6 sumers;

7 (3) Any individual residing within the geographic
8 area served or to be served by the applicant;

9 (4) Any individual who regularly uses the health care
10 facilities within that geographic area;

11 (5) The health care facilities which provide services
12 similar to the services of the facility under review and
13 which will be significantly affected by the proposed
14 project;

15 (6) The health care facilities which, prior to receipt
16 by the state agency of the proposal being reviewed, have
17 formally indicated an intention to provide similar
18 services in the future;

19 (7) Third-party payors who reimburse health care
20 facilities similar to those proposed for services;

21 (8) Any agency which establishes rates for health care
22 facilities similar to those proposed; or

23 (9) Organizations representing health care providers.

24 (b) "Ambulatory health care facility" means a facility
25 which is free-standing and not physically attached to a
26 health care facility and which provides health care to
27 noninstitutionalized and nonhomebound persons on an
28 outpatient basis. This definition does not include the
29 private office practice of any one or more health
30 professionals licensed to practice in this state pursuant
31 to the provisions of chapter thirty of this code: *Provided,*
32 That such exemption from review of private office
33 practice shall not be construed to include such practices
34 where major medical equipment otherwise subject to
35 review under the provisions of this article is acquired,
36 offered or developed: *Provided, however,* That such
37 exemption from review of private office practice shall
38 not be construed to include certain health services
39 otherwise subject to review under the provisions of
40 subdivision (1), subsection (a), section four of this article.

41 (c) "Ambulatory surgical facility" means a facility
42 which is free-standing and not physically attached to a
43 health care facility and which provides surgical treat-
44 ment to patients not requiring hospitalization. This
45 definition does not include the private office practice of
46 any one or more health professionals licensed to practice
47 surgery in this state pursuant to the provisions of
48 chapter thirty of this code: *Provided,* That such exemp-
49 tion from review of private office practice shall not be
50 construed to include such practices where major
51 medical equipment otherwise subject to review under
52 the provisions of this article is acquired, offered or
53 developed: *Provided, however,* That such exemption from
54 review of private office practice shall not be construed
55 to include certain health services otherwise subject to
56 review under the provisions of subdivision (1), subsec-
57 tion (a), section four of this article.

58 (d) "Applicant" means: (1) The governing body or the

59 person proposing a new institutional health service who
60 is, or will be, the health care facility licensee wherein
61 the new institutional health service is proposed to be
62 located, and (2) in the case of a proposed new institu-
63 tional health service not to be located in a licensed
64 health care facility, the governing body or the person
65 proposing to provide such new institutional health
66 service. Incorporators or promoters who will not
67 constitute the governing body or persons responsible for
68 the new institutional health service may not be an
69 applicant.

70 (e) "Bed capacity" means the number of beds for
71 which a license is issued to a health care facility, or, if
72 a facility is unlicensed, the number of adult and
73 pediatric beds permanently staffed and maintained for
74 immediate use by inpatients in patient rooms or wards.

75 (f) "Capital expenditure" means an expenditure:

76 (1) Made by or on behalf of a health care facility; and

77 (2) (A) Which (i) under generally accepted accounting
78 principles is not properly chargeable as an expense of
79 operation and maintenance, or (ii) is made to obtain
80 either by lease or comparable arrangement any facility
81 or part thereof or any equipment for a facility or part;
82 and (B) which (i) exceeds the expenditure minimum, or
83 (ii) is a substantial change to the bed capacity of the
84 facility with respect to which the expenditure is made,
85 or (iii) is a substantial change to the services of such
86 facility. For purposes of subparagraph (i), paragraph
87 (B), subdivision (2) of this definition, the cost of any
88 studies, surveys, designs, plans, working drawings,
89 specifications, and other activities, including staff effort
90 and consulting and other services, essential to the
91 acquisition, improvement, expansion, or replacement of
92 any plant or equipment with respect to which an
93 expenditure described in paragraph (B), subdivision (2)
94 of this definition is made shall be included in determin-
95 ing if such expenditure exceeds the expenditure
96 minimum. Donations of equipment or facilities to a
97 health care facility which if acquired directly by such
98 facility would be subject to review shall be considered

99 capital expenditures, and a transfer of equipment or
100 facilities for less than fair market value shall be
101 considered a capital expenditure for purposes of such
102 subdivisions if a transfer of the equipment or facilities
103 at fair market value would be subject to review. A series
104 of expenditures, each less than the expenditure min-
105 imum, which when taken together are in excess of the
106 expenditure minimum, may be determined by the state
107 agency to be a single capital expenditure subject to
108 review. In making its determination, the state agency
109 shall consider: Whether the expenditures are for
110 components of a system which is required to accomplish
111 a single purpose; whether the expenditures are to be
112 made over a two-year period and are directed towards
113 the accomplishment of a single goal within the health
114 care facility's long-range plan; or whether the expend-
115 itures are to be made within a two-year period within
116 a single department such that they will constitute a
117 significant modernization of the department.

118 (g) "Expenditure minimum" means seven hundred
119 fifty thousand dollars per fiscal year.

120 (h) "Health," used as a term, includes physical and
121 mental health.

122 (i) "Health care facility" is defined as including
123 hospitals, skilled nursing facilities, kidney disease
124 treatment centers, including free-standing hemodialysis
125 units, intermediate care facilities, ambulatory health
126 care facilities, ambulatory surgical facilities, home
127 health agencies, rehabilitation facilities and health
128 maintenance organizations; community mental health
129 and mental retardation facilities, whether under public
130 or private ownership, or as a profit or nonprofit
131 organization and whether or not licensed or required to
132 be licensed in whole or in part by the state. For purposes
133 of this definition, "community mental health and mental
134 retardation facility" means a private facility which
135 provides such comprehensive services and continuity of
136 care as emergency, outpatient, partial hospitalization,
137 inpatient and consultation and education for individuals
138 with mental illness, mental retardation or drug or
139 alcohol addiction.

140 (j) "Health care provider" means a person, partner-
141 ship, corporation, facility or institution licensed or
142 certified or authorized by law to provide professional
143 health care service in this state to an individual during
144 that individual's medical care, treatment or
145 confinement.

146 (k) "Health maintenance organization" means a public
147 or private organization, organized under the laws of this
148 state, which:

149 (1) Is a qualified health maintenance organization
150 under Section 1310(d) of the Public Health Service Act,
151 as amended, Title 42 United States Code Section 300e-
152 9(d); or

153 (2) (A) Provides or otherwise makes available to
154 enrolled participants health care services, including
155 substantially the following basic health care services:
156 Usual physician services, hospitalization, laboratory, X
157 ray, emergency and preventive services and out-of-area
158 coverage; and

159 (B) Is compensated except for copayments for the
160 provision of the basic health care services listed in
161 paragraph (A), subdivision (2), subsection (k) of this
162 definition to enrolled participants on a predetermined
163 periodic rate basis without regard to the date the health
164 care services are provided and which is fixed without
165 regard to the frequency, extent or kind of health service
166 actually provided; and

167 (C) Provides physicians' services primarily (i) directly
168 through physicians who are either employees or
169 partners of such organization, or (ii) through arrange-
170 ments with individual physicians or one or more groups
171 of physicians organized on a group practice or individ-
172 ual practice basis.

173 (l) "Health services" means clinically related preven-
174 tive, diagnostic, treatment or rehabilitative services,
175 including alcohol, drug abuse and mental health
176 services.

177 (m) "Home health agency" is an organization primar-
178 ily engaged in providing directly or through contract

179 arrangements, professional nursing services, home
180 health aide services, and other therapeutic and related
181 services, including, but not limited to, physical, speech
182 and occupational therapy and nutritional and medical
183 social services to persons in their place of residence on
184 a part-time or intermittent basis.

185 (n) "Hospital" means an institution which is primarily
186 engaged in providing to inpatients, by or under the
187 supervision of physicians, diagnostic and therapeutic
188 services for medical diagnosis, treatment, and care of
189 injured, disabled or sick persons, or rehabilitation
190 services for the rehabilitation of injured, disabled or sick
191 persons. This term also includes psychiatric and
192 tuberculosis hospitals.

193 (o) "Intermediate care facility" means an institution
194 which provides, on a regular basis, health-related care
195 and services to individuals who do not require the
196 degree of care and treatment which a hospital or skilled
197 nursing facility is designed to provide, but who, because
198 of their mental or physical condition, require health-
199 related care and services above the level of room and
200 board.

201 (p) "Long-range plan" means a document formally
202 adopted by the legally constituted governing body of an
203 existing health care facility or by a person proposing a
204 new institutional health service. Each long-range plan
205 shall consist of the information required by the state
206 agency in regulations adopted pursuant to section eight
207 of this article.

208 (q) "Major medical equipment" means a single unit of
209 medical equipment or a single system of components
210 with related functions which is used for the provision
211 of medical and other health services and which costs in
212 excess of three hundred thousand dollars, except that
213 such term does not include medical equipment acquired
214 by or on behalf of a clinical laboratory to provide clinical
215 laboratory services if the clinical laboratory is independ-
216 ent of a physician's office and a hospital and it has been
217 determined under Title XVIII of the Social Security Act
218 to meet the requirements of paragraphs ten and eleven

219 of Section 1861(s) of such act, Title 42 United States
220 Code Sections 1395x (10) and (11). In determining
221 whether medical equipment costs more than three
222 hundred thousand dollars, the cost of studies, surveys,
223 designs, plans, working drawings, specifications, and
224 other activities essential to the acquisition of such
225 equipment shall be included. If the equipment is
226 acquired for less than fair market value, the term "cost"
227 includes the fair market value.

228 (r) "Medically underserved population" means the
229 population of an urban or rural area designated by the
230 state agency as an area with a shortage of personal
231 health services or a population having a shortage of such
232 services, after taking into account unusual local condi-
233 tions which are a barrier to accessibility or availability
234 of such services. Such designation shall be in regulations
235 adopted by the state agency pursuant to section eight of
236 this article, and the population so designated may
237 include the state's medically underserved population
238 designated by the Federal Secretary of Health and
239 Human Services under Section 330(b)(3) of the Public
240 Health Service Act, as amended, Title 42 United States
241 Code Section 254(b)(3).

242 (s) "New institutional health service" means such
243 service as described in section three of this article.

244 (t) "Offer", when used in connection with health
245 services, means that the health care facility or health
246 maintenance organization holds itself out as capable of
247 providing, or as having the means for the provision of,
248 specified health services.

249 (u) "Person" means an individual, trust, estate,
250 partnership, committee, corporation, association, and
251 other organizations such as joint-stock companies and
252 insurance companies, a state or a political subdivision
253 or instrumentality thereof or any legal entity recognized
254 by the state.

255 (v) "Physician" means a doctor of medicine or
256 osteopathy legally authorized to practice by the state.

257 (w) "Proposed new institutional health service" means

- 258 such service as described in section three of this article.
- 259 (x) "Psychiatric hospital" means an institution which
260 primarily provides to inpatients, by or under the
261 supervision of a physician, specialized services for the
262 diagnosis, treatment and rehabilitation of mentally ill
263 and emotionally disturbed persons.
- 264 (y) "Rehabilitation facility" means an inpatient facility
265 which is operated for the primary purpose of assisting
266 in the rehabilitation of disabled persons through an
267 integrated program of medical and other services which
268 are provided under competent professional supervision.
- 269 (z) "Review agency" means an agency of the state,
270 designated by the governor as the agency for the review
271 of state agency decisions.
- 272 (aa) "Skilled nursing facility" means an institution or
273 a distinct part of an institution which is primarily
274 engaged in providing to inpatients skilled nursing care
275 and related services for patients who require medical or
276 nursing care, or rehabilitation services for the rehabil-
277 itation of injured, disabled or sick persons.
- 278 (bb) "State agency" means the health care cost review
279 authority created, established, and continued pursuant
280 to article twenty-nine-b of this chapter.
- 281 (cc) "State health plan" means the document approved
282 by the governor after preparation by the former
283 statewide health coordinating council, or that document
284 as approved by the governor after amendment by the
285 health care planning council or its successor agency.
- 286 (dd) "Health care planning council" means the body
287 established by section five-a of this article to participate
288 in the preparation and amendment of the state health
289 plan and to advise the state agency.
- 290 (ee) "Substantial change to the bed capacity" of a
291 health care facility means any change, with which a
292 capital expenditure is associated, that increases or
293 decreases the bed capacity, or relocates beds from one
294 physical facility or site to another, but does not include
295 a change by which a health care facility reassigns

296 existing beds as swing beds between acute care and
297 long-term care categories: *Provided*, That a decrease in
298 bed capacity in response to federal rural health
299 initiatives shall be excluded from this definition.

300 (ff) "Substantial change to the health services" of a
301 health care facility means the addition of a health
302 service which is offered by or on behalf of the health
303 care facility and which was not offered by or on behalf
304 of the facility within the twelve-month period before the
305 month in which the service is first offered, or the
306 termination of a health service which was offered by or
307 on behalf of the facility, but does not include the
308 providing of hospice care, ambulance service, wellness
309 centers or programs, adult day care, or respite care by
310 acute care facilities.

311 (gg) "To develop", when used in connection with health
312 services, means to undertake those activities which upon
313 their completion will result in the offer of a new
314 institutional health service or the incurring of a
315 financial obligation, in relation to the offering of such
316 a service.

§16-2D-4. Exemptions from certificate of need program.

1 (a) Except as provided in subdivision (h), section three
2 of this article, nothing in this article or the rules and
3 regulations adopted pursuant to the provisions of this
4 article may be construed to authorize the licensure,
5 supervision, regulation or control in any manner of the
6 following:

7 (1) Private office practice of any one or more health
8 professionals licensed to practice in this state pursuant
9 to the provisions of chapter thirty of this code: *Provided*,
10 That such exemption from review of private office
11 practice shall not be construed to include such practices
12 where major medical equipment otherwise subject to
13 review under the provisions of this article is acquired,
14 offered or developed: *Provided, however*, That such
15 exemption from review of private office practice shall
16 not be construed to include the acquisition, offering or
17 development of one or more health services, including
18 ambulatory surgical facilities or centers, lithotripsy,

19 magnetic resonance imaging and radiation therapy by
20 one or more health professionals. The state agency shall
21 adopt rules pursuant to section eight of this article
22 which specify the health services acquired, offered or
23 developed by health professionals which are subject to
24 certificate of need review;

25 (2) Dispensaries and first-aid stations located within
26 business or industrial establishments maintained solely
27 for the use of employees: *Provided*, That such facility
28 does not contain inpatient or resident beds for patients
29 or employees who generally remain in the facility for
30 more than twenty-four hours;

31 (3) Establishments, such as motels, hotels and board-
32 inghouses, which provide medical, nursing personnel
33 and health related services; and

34 (4) The remedial care or treatment of residents or
35 patients in any home or institution conducted only for
36 those who rely solely upon treatment by prayer or
37 spiritual means in accordance with the creed or tenets
38 of any recognized church or religious denomination.

39 (b) (1) A certificate of need is not required for the
40 offering of an inpatient institutional health service or
41 the acquisition of major medical equipment for the
42 provision of an inpatient institutional health service or
43 the obligation of a capital expenditure for the provisions
44 of an inpatient institutional health service, if with
45 respect to such offering, acquisition or obligation, the
46 state agency has, upon application under subdivision (2),
47 subsection (b) of this section, granted an exemption to:

48 (A) A health maintenance organization or a combina-
49 tion of health maintenance organizations if (i) the
50 organization or combination of organizations has, in the
51 service area of the organization or the service areas of
52 the organizations in the combination, an enrollment of
53 at least fifty thousand individuals, (ii) the facility in
54 which the service will be provided is or will be
55 geographically located so that the service will be
56 reasonably accessible to such enrolled individuals, and
57 (iii) at least seventy-five percent of the patients who can
58 reasonably be expected to receive the institutional

59 health service will be individuals enrolled with such
60 organization or organizations in the combination;

61 (B) A health care facility if (i) the facility primarily
62 provides or will provide inpatient health services, (ii) the
63 facility is or will be controlled, directly or indirectly, by
64 a health maintenance organization or a combination of
65 health maintenance organizations which has, in the
66 service area of the organization or service areas of the
67 organizations in the combination, an enrollment of at
68 least fifty thousand individuals, (iii) the facility is or will
69 be geographically located so that the service will be
70 reasonably accessible to such enrolled individuals, and
71 (iv) at least seventy-five percent of the patients who can
72 reasonably be expected to receive the institutional
73 health service will be individuals enrolled with such
74 organization or organizations in the combination; or

75 (C) A health care facility, or portion thereof, if (i) the
76 facility is or will be leased by a health maintenance
77 organization or combination of health maintenance
78 organizations which has, in the service area of the
79 organization or the service areas of the organizations in
80 the combination, an enrollment of at least fifty thousand
81 individuals and on the date the application is submitted
82 under subdivision (2), subsection (b) of this section, at
83 least fifteen years remain in the term of the lease, (ii)
84 the facility is or will be geographically located so that
85 the service will be reasonably accessible to such enrolled
86 individuals, and (iii) at least seventy-five percent of the
87 patients who can reasonably be expected to receive the
88 new institutional health service will be individuals
89 enrolled with such organization.

90 (2) (A) A health maintenance organization, combina-
91 tion of health maintenance organizations, or other health
92 care facility is not exempt under subdivision (1),
93 subsection (b) of this section from obtaining a certificate
94 of need unless:

95 (i) It has submitted, at such time and in such form
96 and manner as the state agency shall prescribe, an
97 application for such exemption to the state agency;

98 (ii) The application contains such information respect-

99 ing the organization, combination or facility and the
100 proposed offering, acquisition or obligation as the state
101 agency may require to determine if the organization or
102 combination meets the requirements of subdivision (1),
103 subsection (b) of this section or the facility meets or will
104 meet such requirements; and

105 (iii) The state agency approves such application.

106 (B) The state agency shall approve an application
107 submitted under paragraph (A), subdivision (2), subsec-
108 tion (b) of this section if it determines that the applicable
109 requirements of subdivision (1), subsection (b) of this
110 section are met or will be met on the date the proposed
111 activity for which an exemption was requested will be
112 undertaken.

113 (3) A health care facility, or any part thereof, or
114 medical equipment with respect to which an exemption
115 was granted under subdivision (1), subsection (b) of this
116 section, may not be sold or leased and a controlling
117 interest in such facility or equipment or in a lease of
118 such facility or equipment may not be acquired and a
119 health care facility described in paragraph (C), subdi-
120 vision (1), subsection (b) of this section, which was
121 granted an exemption under subdivision (1), subsection
122 (b) of this section, may not be used by any person other
123 than the lessee described in paragraph (C), subdivision
124 (1), subsection (b) of this section, unless:

125 (A) The state agency issues a certificate of need
126 approving the sale, lease, acquisition or use; or

127 (B) The state agency determines, upon application,
128 that the entity to which the facility or equipment is
129 proposed to be sold or leased, which intends to acquire
130 the controlling interest in or to use the facility is:

131 (i) A health maintenance organization or a combina-
132 tion of health maintenance organizations which meets
133 the enrollment requirements of subparagraph (i),
134 paragraph (A), subdivision (1), subsection (b) of this
135 section, and with respect to such facility or equipment,
136 the entity meets the accessibility and patient enrollment
137 requirements of subparagraphs (ii) and (iii), paragraph

138 (A), subdivision (1), subsection (b) of this section; or

139 (ii) A health care facility which meets the inpatient,
140 enrollment and accessibility requirements of subpara-
141 graphs (i), (ii) and (iii), paragraph (B), subdivision (1),
142 subsection (b) of this section and with respect to its
143 patients meets the enrollment requirements of subpara-
144 graph (iv), paragraph (B), subdivision (1), subsection (b)
145 of this section.

146 (4) In the case of a health maintenance organization
147 or an ambulatory care facility or health care facility
148 which ambulatory or health care facility is controlled,
149 directly or indirectly, by a health maintenance organ-
150 ization or a combination of health maintenance organ-
151 izations, the certificate of need requirements apply only
152 to the offering of inpatient institutional health services,
153 the acquisition of major medical equipment, and the
154 obligation of capital expenditures for the offering of
155 inpatient institutional health services and then only to
156 the extent that such offering, acquisition or obligation
157 is not exempt under subdivision (1), subsection (b) of this
158 section.

159 (5) The state agency shall establish the period within
160 which approval or disapproval by the state agency of
161 applications for exemptions under subdivision (1),
162 subsection (b) of this section, shall be made.

163 (c) (1) A health care facility is not required to obtain
164 a certificate of need for the acquisition of major medical
165 equipment to be used solely for research, the addition
166 of health services to be offered solely for research, or the
167 obligation of a capital expenditure to be made solely for
168 research if the health care facility provides the notice
169 required in subdivision (2), subsection (c) of this section,
170 and the state agency does not find, within sixty days
171 after it receives such notice, that the acquisition,
172 offering or obligation will, or will have the effect to:

173 (A) Affect the charges of the facility for the provision
174 of medical or other patient care services other than the
175 services which are included in the research;

176 (B) Result in a substantial change to the bed capacity

177 of the facility; or

178 (C) Result in a substantial change to the health
179 services of the facility.

180 (2) Before a health care facility acquires major
181 medical equipment to be used solely for research, offers
182 a health service solely for research, or obligates a capital
183 expenditure solely for research, such health care facility
184 shall notify in writing the state agency of such facility's
185 intent and the use to be made of such medical equip-
186 ment, health service or capital expenditure.

187 (3) If major medical equipment is acquired, a health
188 service is offered, or a capital expenditure is obligated
189 and a certificate of need is not required for such
190 acquisition, offering or obligation as provided in
191 subdivision (1), subsection (c) of this section, such
192 equipment or service or equipment or facilities acquired
193 through the obligation of such capital expenditure may
194 not be used in such a manner as to have the effect or
195 to make a change described in paragraphs (A), (B) and
196 (C), subdivision (1), subsection (c) of this section unless
197 the state agency issues a certificate of need approving
198 such use.

199 (4) For purposes of this subsection, the term "solely
200 for research" includes patient care provided on an
201 occasional and irregular basis and not as part of a
202 research program.

203 (d) (1) The state agency may adopt regulations
204 pursuant to section eight of this article to specify the
205 circumstances under which a certificate of need may not
206 be required for the obligation of a capital expenditure
207 to acquire, either by purchase or under lease or
208 comparable arrangement, an existing health care
209 facility: *Provided*, That a certificate of need shall be
210 required for the obligation of a capital expenditure to
211 acquire, either by purchase or under lease or compar-
212 able arrangement, an existing health care facility if:

213 (A) The notice required by subdivision (2), subsection
214 (d) of this section is not filed in accordance with that
215 subdivision with respect to such acquisition; or

216 (B) The state agency finds, within thirty days after the
217 date it receives a notice in accordance with subdivision
218 (2), subsection (d) of this section, with respect to such
219 acquisition, that the services or bed capacity of the
220 facility will be changed by reason of said acquisition.

221 (2) Before any person enters into a contractual
222 arrangement to acquire an existing health care facility,
223 such person shall notify the state agency of his or her
224 intent to acquire the facility and of the services to be
225 offered in the facility and its bed capacity. Such notice
226 shall be made in writing and shall be made at least
227 thirty days before contractual arrangements are entered
228 into to acquire the facility with respect to which the
229 notice is given. The notice shall contain all information
230 the state agency requires in accordance with subsections
231 (e) and (s), section seven of this article.

232 (e) The state agency shall adopt regulations, pursuant
233 to section eight of this article, wherein criteria are
234 established to exempt from review the addition of
235 certain health services, not associated with a capital
236 expenditure, that are projected to entail annual operat-
237 ing costs of less than the expenditure minimum for
238 annual operating costs. For purposes of this subsection,
239 "expenditure minimum for annual operating costs"
240 means three hundred thousand dollars for the first
241 twelve months following the effective date of this section
242 and for each twelve-month period thereafter, the state
243 agency may, by regulations adopted pursuant to section
244 eight of this article, adjust the expenditure minimum
245 for annual operating costs to reflect the impact of
246 inflation.

247 (f) The state agency shall adopt rules within ninety
248 days of the effective date of the amendment of this
249 section in the year one thousand nine hundred ninety
250 pursuant to section eight of this article to specify the
251 circumstances under which and the procedures by
252 which a certificate of need may not be required for
253 shared services between two or more acute care
254 facilities providing services made available through
255 existing technology that can reasonably be mobile. The
256 state agency shall specify the types of items in the

257 regulations and under what circumstances mobile MRI
258 and mobile lithotripsy may be so exempted from review.
259 In no case, however, will mobile cardiac catheterization
260 be exempted from certificate of need review. In
261 addition, if the shared services mobile unit proves less
262 cost effective than a fixed unit, the acute care facility
263 will not be exempted from certificate of need review.

264 On a yearly basis, the state agency shall review
265 existing technologies to determine if other shared
266 services should be included under this exemption.

**§16-2D-5. Powers and duties of state health planning and
development agency.**

1 (a) The state agency is hereby empowered to admin-
2 ister the certificate of need program as provided by this
3 article.

4 (b) The state agency shall cooperate with the health
5 care planning council or its successor agency in
6 developing rules and regulations for the certificate of
7 need program to the extent appropriate for the achieve-
8 ment of efficiency in their reviews and consistency in
9 criteria for such reviews.

10 (c) The state agency may seek advice and assistance
11 of other persons, organizations, and other state agencies
12 in the performance of the state agency's responsibilities
13 under this article.

14 (d) For health services for which competition appro-
15 priately allocates supply consistent with the state health
16 plan, the state agency shall, in the performance of its
17 functions under this article, give priority, where
18 appropriate to advance the purposes of quality assur-
19 ance, cost effectiveness and access, to actions which
20 would strengthen the effect of competition on the supply
21 of such services.

22 (e) For health services for which competition does not
23 or will not appropriately allocate supply consistent with
24 the state health plan, the state agency shall, in the
25 exercise of its functions under this article, take actions,
26 where appropriate to advance the purposes of quality
27 assurance, cost effectiveness and access and the other

28 purposes of this article, to allocate the supply of such
29 services.

30 (f) Notwithstanding the provisions of section seven of
31 this article, the state agency may charge a fee for the
32 filing of any application, the filing of any notice in lieu
33 of an application, the filing of any exemption determi-
34 nation request, or the filing of any request for a
35 declaratory ruling. The fees charged may vary accord-
36 ing to the type of matter involved, the type of health
37 service or facility involved, or the amount of capital
38 expenditure involved. The state agency shall implement
39 this subsection by filing procedural rules pursuant to
40 chapter twenty-nine-a of this code. The fees charged
41 shall be deposited into a special fund known as the
42 certificate of need program fund to be expended for the
43 purposes of this article.

44 (g) No hospital, nursing home or other health care
45 facility shall add any intermediate care or skilled
46 nursing beds to its current licensed bed complement.
47 This prohibition also applies to the conversion of acute
48 care or other types of beds to intermediate care or
49 skilled nursing beds: *Provided*, That hospitals eligible
50 under the provisions of section four-a and subsection (i),
51 section five of this article may convert acute care beds
52 to skilled nursing beds in accordance with the provisions
53 of these sections, upon approval by the state agency.
54 Furthermore, no certificate of need shall be granted for
55 the construction or addition of any intermediate care or
56 skilled nursing beds except in the case of facilities
57 designed to replace existing beds in unsafe existing
58 facilities. A health care facility in receipt of a certificate
59 of need for the construction or addition of intermediate
60 care or skilled nursing beds which was approved prior
61 to the effective date of this section must incur an
62 obligation for a capital expenditure within twelve
63 months of the date of issuance of the certificate of need.
64 No extensions shall be granted beyond the twelve-month
65 period.

66 (h) No additional intermediate care facility for the
67 mentally retarded (ICF/MR) beds shall be granted a
68 certificate of need, except that prohibition does not

69 apply to ICF/MR beds approved under the Kanàwha
70 County circuit court order of the third day of August,
71 one thousand nine hundred eighty-nine, civil action
72 number MISC-81-585 issued in the case of *E. H. v.*
73 *Matin*, 168 W. V. 248, 284 S.E.2d 232 (1981), and does
74 not apply to existing ICF/MR beds to be replaced, sold,
75 leased, transferred or operated under contract or other
76 means.

77 (i) Notwithstanding the provisions of subsection (g),
78 section five of this article and, further notwithstanding
79 the provisions of subsection (d), section three of this
80 article, an existing acute care hospital may apply to the
81 health care cost review authority for a certificate of need
82 to convert acute care beds to skilled nursing beds:
83 *Provided*, That the proposed skilled nursing beds are
84 medicare certified only: *Provided, however*, That any
85 hospital which converts acute care beds to medicare
86 certified only skilled nursing beds is prohibited from
87 billing for any medicaid reimbursement for any beds so
88 converted. In converting beds, the hospital must convert
89 a minimum of one acute care bed into one medicare
90 certified only skilled nursing bed. The health care cost
91 review authority may require a hospital to convert up
92 to and including three acute care beds for each medicare
93 certified only skilled nursing bed. The health care cost
94 review authority shall adopt rules to implement this
95 subsection which require that:

96 (1) All acute care beds converted shall be permanently
97 deleted from the hospital's acute care bed complement
98 and the hospital may not thereafter add, by conversion
99 or otherwise, acute care beds to its bed complement
100 without satisfying the requirements of subsection (d),
101 section three of this article for which purposes such an
102 addition, whether by conversion or otherwise, shall be
103 considered a substantial change to the bed capacity of
104 the hospital notwithstanding the definition of that term
105 found in subsection (ee), section two of this article.

106 (2) The hospital shall meet all federal and state
107 licensing certification and operational requirements
108 applicable to nursing homes including a requirement
109 that all skilled care beds created under this subsection

110 shall be located in distinct-part, long-term care units.

111 (3) The hospital must demonstrate a need for the
112 project.

113 (4) The hospital must use existing space for the
114 medicare certified only skilled nursing beds. Under no
115 circumstances shall the hospital construct, lease or
116 acquire additional space for purposes of this section.

117 (5) The hospital must notify the acute care patient,
118 prior to discharge, of facilities with skilled nursing beds
119 which are located in or near the patient's county of
120 residence.

121 Nothing in this subsection shall negatively affect the
122 rights of inspection and certification which are other-
123 wise required by federal law or regulations or by this
124 code of duly adopted regulations of an authorized state
125 entity.

126 (j) Notwithstanding the provisions of subsection (g),
127 section five of this article, a retirement life care center
128 with no skilled nursing beds may apply to the health
129 care cost review authority for a certificate of need for
130 up to sixty skilled nursing beds provided the proposed
131 skilled beds are medicare certified only. On a statewide
132 basis, a maximum of one hundred eighty skilled beds
133 which are medicare certified only may be developed
134 pursuant to this subsection. The state health plan shall
135 not be applicable to projects submitted under this
136 subsection. The health care cost review authority shall
137 adopt rules to implement this subsection which shall
138 include:

139 (1) A requirement that the one hundred eighty beds
140 are to be distributed on a statewide basis;

141 (2) There shall be a minimum of twenty beds and a
142 maximum of sixty beds in each approved unit;

143 (3) The unit developed by the retirement life care
144 center shall meet all federal and state licensing
145 certification and operational requirements applicable to
146 nursing homes;

147 (4) The retirement center must demonstrate a need for

148 the project;

149 (5) The retirement center must offer personal care,
150 home health services and other lower levels of care to
151 its residents; and

152 (6) The retirement center must demonstrate both
153 short and long-term financial feasibility.

154 Nothing in this subsection shall negatively affect the
155 rights of inspection and certification which are other-
156 wise required by federal law or regulations or by this
157 code of duly adopted regulations of an authorized state
158 entity.

159 (k) The provisions of this article are severable and if
160 any provision, section or part thereby shall be held
161 invalid, unconstitutional or inapplicable to any person or
162 circumstance, such invalidity, unconstitutionality or
163 inapplicability shall not affect or impair any other
164 remaining provisions contained herein.

**§16-2D-11. Nontransference, time period compliance and
withdrawal of certificate of need.**

1 (a) A certificate of need is nontransferable and shall
2 be valid for a maximum of one year from the date of
3 issuance. A transfer includes the sale, lease, transfer of
4 stock or partnership shares, or other comparable
5 arrangement which has the effect of transferring the
6 control of the owner of the certificate of need. Upon the
7 expiration of the certificate or during the certification
8 period, the person proposing the new institutional health
9 service shall provide the state agency such information
10 on the development of the project as the state agency
11 may request. The state agency shall periodically monitor
12 capital expenditures obligated under certificates,
13 determine whether sufficient progress is being made in
14 meeting the timetable specified in the approved appli-
15 cation for the certificate and whether there has been
16 compliance with the application and any conditions of
17 certification. The state agency shall take into account
18 recommendations made by the health systems agency in
19 making its determination. The certificate of need may
20 be extended by the state agency for additional periods

21 of time as are reasonably necessary to expeditiously
22 complete the project. A certificate of need may no longer
23 be in effect, and may no longer be required, after
24 written notice of substantial compliance with the
25 approved application and any conditions of certification
26 is issued to the applicant, after the activity is under-
27 taken for which the certificate of need was issued, and
28 after the state agency is provided written notice of such
29 undertaking. The person proposing a new institutional
30 health service may not be issued a license therefor until
31 the state agency has issued a written notice of substan-
32 tial compliance with the approved application and any
33 conditions of certification, nor may a new institutional
34 health service be used until such person has received
35 such notice. A new institutional health service may not
36 be found to be in substantial compliance with the
37 approved application and any conditions of certification
38 if there is a substantial change, as defined in regulations
39 adopted pursuant to subsection (i), section three of this
40 article, in the approved new institutional health service
41 for which change a certificate of need has not been
42 issued.

43 (b) (1) The certificate of need may be withdrawn by
44 the state agency for:

45 (A) Insufficient progress in meeting the timetable
46 specified in the approved application for the certificate
47 and for not making a good faith effort to meet it in
48 developing the project; or

49 (B) Noncompliance with any conditions of certifica-
50 tion; or

51 (C) A substantial change, as defined in regulations
52 adopted pursuant to subsection (i), section three of this
53 article, in an approved new institutional health service
54 for which change a certificate of need has not been
55 issued; or

56 (D) Material misrepresentation by an applicant upon
57 which the state agency relied in making its decision; or

58 (E) Other reasons that may be established by the state
59 agency in regulations adopted pursuant to section eight

60 of this article.

61 (2) Any decision of the state agency to withdraw a
62 certificate of need shall be based solely on:

63 (A) The provisions of this article and on regulations
64 adopted in accordance with section eight of this article;
65 and

66 (B) The record established in administrative proceed-
67 ings held with respect to the state agency's proposal to
68 withdraw the certificate.

69 (3) In the case of a proposed withdrawal of a certifi-
70 cate of need:

71 (A) After commencement of a hearing on the state
72 agency's proposal to withdraw a certificate of need and
73 before a decision is made on withdrawal, there may be
74 no ex parte contacts between (i) the holder of the
75 certificate of need, any person acting on behalf of the
76 holder, or any person in favor of the withdrawal and (ii)
77 any person in the state agency who exercises responsi-
78 bility respecting withdrawal of the certificate;

79 (B) The state agency shall follow the notification of
80 review provisions of subsections (g) and (h), the public
81 hearing provisions of subsection (n), the notification of
82 the status of review and findings provisions of subsec-
83 tion (g), the annual report provisions of subsection (r),
84 and the reconsideration provisions of subsection (t), all
85 of section seven of this article, and the conditional
86 decision provisions of subsection (d), the notification of
87 decision and findings provisions of subsection (h), and
88 the statement to the applicable health systems agency
89 provisions of subsection (k), all of section nine of this
90 article; and

91 (C) Appeals of withdrawals of certificates of need shall
92 be made pursuant to section ten of this article.

93 (4) A new institutional health service may not be
94 acquired, offered, or developed within this state if a
95 certificate of need authorizing that new institutional
96 health service has been withdrawn by the state agency
97 and the acquisition, offering, or development of the new

98 institutional health service is subject to review under
99 this article.

**ARTICLE 5F. HEALTH CARE FACILITY FINANCIAL DIS-
CLOSURE.**

§16-5F-1. Legislative findings; purpose; intent of article.

§16-5F-2. Definitions.

§16-5F-3. General powers and duties of the board regarding reporting and review.

§16-5F-4. Reports required to be published and filed; form of reports; right of inspection.

§16-5F-5. Injunctions.

§16-5F-6. Failure to make, publish or distribute reports; penalty; appeal to supreme court of appeals.

§16-5F-1. Legislative findings; purpose; intent of article.

1 (1) The West Virginia Legislature finds that the rising
2 cost of health care and services provided by health care
3 facilities are matters of vital concern to the people of
4 this state and have a direct relationship to the ability
5 of the people to obtain necessary health care.

6 (2) The citizens of this state have an inherent right to
7 receive and have available to them health care programs
8 and services which are capable of meeting individual
9 needs.

10 (3) Such services should be available to all citizens in
11 all regions of this state.

12 (4) The furnishing of health care services is an
13 essential public service.

14 (5) The public has a right to know the financial
15 position of facilities and related organizations.

16 It is the purpose of this article to provide that the
17 facilities and organizations covered herein shall make a
18 public disclosure of their financial position and to bring
19 about a review as to the reasonableness of the costs of
20 health care services.

§16-5F-2. Definitions.

1 As used in this article:

2 (1) "Annual report" means an annual financial report
3 for the covered facility's or related organization's fiscal

4 year prepared by an accountant or the covered facility's
5 or related organization's auditor.

6 (2) "Board" means the West Virginia health care cost
7 review authority.

8 (3) "Covered facility" means any hospital, skilled
9 nursing facility, kidney disease treatment center,
10 including a free-standing hemodialysis unit; interme-
11 diate care facility; ambulatory health care facility;
12 ambulatory surgical facility; home health agency;
13 rehabilitation facility; health maintenance organization;
14 or community mental health or mental retardation
15 facility, whether under public or private ownership or
16 as a profit or nonprofit organization and whether or not
17 licensed or required to be licensed in whole or in part
18 by the state.

19 (4) "Related organization" means an organization,
20 whether publicly owned, nonprofit, tax-exempt, or for
21 profit, related to a covered facility through common
22 membership, governing bodies, trustees, officers, stock
23 ownership, family members, partners or limited
24 partners including, but not limited to, subsidiaries,
25 foundations, related corporations and joint ventures. For
26 the purposes of this subsection family members shall
27 mean brothers and sisters whether by the whole or half
28 blood, spouse, ancestors and lineal descendents.

29 (5) "Rates" means all rates, fees or charges imposed
30 by any covered facility for health care services.

31 (6) "Records" includes accounts, books, charts, con-
32 tracts, documents, files, maps, papers, profiles, reports,
33 annual and otherwise, schedules and any other fiscal
34 data, however recorded or stored.

**§16-5F-3. General powers and duties of the board re-
garding reporting and review.**

1 (a) In addition to the powers granted to the board
2 elsewhere in this article, the board shall have the powers
3 as indicated by this section and it shall be its duty to:

4 (1) Promulgate rules and regulations in accordance
5 with the provisions of article three, chapter twenty-nine-

6 a of this code, to implement and make effective the
7 powers, duties and responsibilities contained in the
8 provisions of this article.

9 (2) Require the filing of fiscal information by covered
10 facilities and related organizations relating to any
11 matter affecting the cost of health care services in this
12 state.

13 (3) Exercise, subject to the limitations and restrictions
14 herein imposed, all other powers which are reasonably
15 necessary or essential to carry out the expressed
16 purposes of this article.

17 (4) Require the filing of copies of all tax returns
18 required by federal and state law to be filed by covered
19 facilities and related organizations.

20 (b) The board shall also investigate and recommend
21 to the Legislature whether other health care providers
22 should be made subject to the provisions of this article.

23 (c) The board shall, not later than December thirty-
24 first of each year, prepare and transmit to the governor
25 and to the clerks of both houses of the Legislature a
26 report containing the material and data as required by
27 section four of this article, based upon the most recent
28 data available.

29 The board shall, no later than the first day of July,
30 one thousand nine hundred ninety-two, prepare and
31 transmit to the governor and to the clerks of both houses
32 of the Legislature a special report containing the
33 material and data collected on related organizations.
34 The report shall further explain the effect of the
35 financial activities of the related organizations as
36 represented by the collected data and its relationship to
37 the rate setting powers of the board specified in section
38 nineteen, article twenty-nine-b of this chapter.

**§16-5F-4. Reports required to be published and filed;
form of reports; right of inspection.**

1 (a) Every covered facility and related organization
2 defined in this article, within one hundred twenty days
3 after the end of each of their fiscal years, unless an

4 extension be granted by the board for good cause shown,
5 shall be required to file with the board and publish, as
6 a Class I legal advertisement, pursuant to section two,
7 article three, chapter fifty-nine of the code of West
8 Virginia, in a qualified newspaper published within the
9 county within which such covered facility or related
10 organization is located, an annual report prepared by
11 the covered facility's or related organization's auditor or
12 an independent accountant.

13 Such report shall contain a complete statement of the
14 following:

15 (1) Assets and liabilities;

16 (2) Income and expenses;

17 (3) Profit or loss for the period reported;

18 (4) A statement of ownership for persons owning more
19 than five percent of the capital stock outstanding and
20 the dividends paid thereon, if any, and to whom paid for
21 the period reported unless the covered facility or related
22 organization be duly registered on the New York stock
23 exchange, American stock exchange, any regional stock
24 exchange, or its stock traded actively over the counter.
25 Such statement shall further contain a disclosure of
26 ownership by any parent company or subsidiary, if
27 applicable.

28 Such annual report shall also include a prominent
29 notice that the details concerning the contents of the
30 advertisement, together with the other reports, state-
31 ments and schedules required to be filed with the board
32 by the provisions of this section, shall be available for
33 public inspection and copying at the board's office.

34 (b) Every covered facility and related organization
35 shall also file with the board the following statements,
36 schedules or reports in such form and at such intervals
37 as may be specified by the board, but at least annually:

38 (1) A statement of services available and services
39 rendered;

40 (2) A statement of the total financial needs of such
41 covered facility or related organization and the resour-

42 ces available or expected to become available to meet
43 such needs;

44 (3) A complete schedule of such covered facility's or
45 related organization's then current rates with costs
46 allocated to each category of costs, in accordance with
47 the rules and regulations as promulgated by the board
48 pursuant to section three hereof;

49 (4) A copy of such reports made or filed with the
50 federal health care financing administration, or its
51 successor, as the board may deem necessary or useful
52 to accomplish the purposes of this article;

53 (5) A statement of all charges, fees or salaries for
54 goods or services rendered to the covered facility or
55 related organization for the period reported which shall
56 exceed in total the sum of fifty-five thousand dollars and
57 a statement of all charges, fees or other sums collected
58 by the covered facility or related organization for or on
59 the account of any person, firm, partnership, corpora-
60 tion or other entity, however structured, which shall
61 exceed in total the sum of fifty-five thousand dollars
62 during the period reported;

63 (6) Such other reports of the costs incurred in
64 rendering services as the board may prescribe. The
65 board may require the certification of specified financial
66 reports by the covered facility's or related organization's
67 auditor or independent accountant; and

68 (7) A copy of all tax returns required to be filed by
69 federal and state law.

70 (c) Notwithstanding any provision to the contrary
71 herein, any data or material that is furnished to the
72 board pursuant to the provisions of subdivision (4),
73 subsection (b) of this section need not be duplicated by
74 any other requirements of this section requiring the
75 filing of data and material.

76 (d) No report, statement, schedule or other filing
77 required or permitted to be filed hereunder shall
78 contain any medical or individual information person-
79 ally identifiable to a patient or a consumer of health
80 services, whether directly or indirectly. All such reports,

81 statements and schedules filed with the board under this
82 section shall be open to public inspection and shall be
83 available for examination during regular hours. Copies
84 of such reports shall be made available to the public
85 upon request and the board may establish fees reason-
86 ably calculated to reimburse the board for its actual
87 costs in making copies of such reports: *Provided*, That
88 all tax returns filed pursuant to this article shall be
89 confidential and it shall be unlawful for the board or any
90 member of its staff to divulge or make known in any
91 manner the tax return, or any part thereof, of any
92 covered facility or related organization.

93 (e) Whenever further fiscal information is deemed
94 necessary to verify the accuracy of any information set
95 forth in any statement, schedule or report filed by a
96 covered facility or related organization under the
97 provisions of this article, the board shall have the
98 authority to require the production of any records
99 necessary to verify such information.

100 (f) From time to time, the board shall engage in or
101 carry out analyses and studies relating to health care
102 costs, the financial status of any covered facility or
103 related organization or any other appropriate related
104 matters, and make determinations of whether, in its
105 opinion, the rates charged by a covered facility are
106 economically justified.

§16-5F-5. Injunctions.

1 Whenever it appears that any covered facility or
2 related organization, required to file or publish such
3 reports, as provided in this article, has failed to file or
4 publish such reports, the attorney general, upon the
5 request of the board, may apply in the name of the state
6 to, and the circuit court of the county in which such
7 covered facility or related organization is located shall
8 have jurisdiction for the granting of a mandatory
9 injunction to compel compliance with the provisions of
10 this article.

§16-5F-6. Failure to make, publish or distribute reports; penalty; appeal to supreme court of appeals.

1 Every covered facility and related organization failing
2 to make and transmit to the board any of the reports

3 required by law or failing to publish or distribute the
 4 reports as so required shall forthwith be notified by the
 5 board and, if such failure continues for ten days after
 6 receipt of said notice, such delinquent facility or
 7 organization shall be subject to a penalty of one
 8 thousand dollars for each day thereafter that such
 9 failure continues, such penalty to be recovered by the
 10 board through the attorney general in a civil action and
 11 paid into the state treasury to the account of the general
 12 fund. Review of any final judgment or order of the
 13 circuit court shall be by appeal to the West Virginia
 14 supreme court of appeals.

**ARTICLE 29B. WEST VIRGINIA HEALTH CARE COST REVIEW
 AUTHORITY.**

§16-29B-3. Definitions.

§16-29B-5. West Virginia health care cost review authority continued;
 composition of the board; qualifications; terms; oath;
 compensation and expenses of members; vacancies; appoint-
 ment of chairman, and meetings of the board.

§16-29B-6. Advisory council.

§16-29B-7. Staff.

§16-29B-8. Powers generally; budget expenses of the board.

§16-29B-18. Hospital and related organizations' annual financial reporting.

§16-29B-19a. Additional legislative findings and directives.

§16-29B-20. Rate determination.

§16-29B-21. Procedure for obtaining initial rate schedule; adjustments and
 revisions of rate schedules.

§16-29B-28. Termination date.

§16-29B-3. Definitions.

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

3 (a) "Charges" means the economic value established
 4 for accounting purposes of the goods and services a
 5 hospital provides for all classes of purchasers;

6 (b) "Class of purchaser" means a group of potential
 7 hospital patients with common characteristics affecting
 8 the way in which their hospital care is financed.
 9 Examples of classes of purchasers are medicare bene-
 10 ficiaries, welfare recipients, subscribers of corporations
 11 established and operated pursuant to article twenty-
 12 four, chapter thirty-three of this code, members of
 13 health maintenance organizations and other groups as

14 defined by the board;

15 (c) "Board" means the three member board of
16 directors of the West Virginia health care cost review
17 authority, an autonomous division within the state
18 department of health;

19 (d) "Health care provider" means a person, partner-
20 ship, corporation, facility or institution licensed,
21 certified or authorized by law to provide professional
22 health care service in this state to an individual during
23 this individual's medical care, treatment or
24 confinement;

25 (e) "Hospital" means a facility subject to licensure as
26 such under the provisions of article five-b of this chapter
27 and any acute care facility operated by the state
28 government which is primarily engaged in providing to
29 inpatients, by or under the supervision of physicians,
30 diagnostic and therapeutic services for medical diagno-
31 sis, treatment and care of injured, disabled or sick
32 persons, and does not include state mental health
33 facilities or state long-term care facilities;

34 (f) "Person" means an individual, trust, estate,
35 partnership, committee, corporation, association or
36 other organization such as a joint stock company, estate
37 or political subdivision or instrumentality thereof;

38 (g) "Purchaser" means a consumer of patient care
39 services, a natural person who is directly or indirectly
40 responsible for payment for such patient care services
41 rendered by a hospital, but does not include third-party
42 payors;

43 (h) "Rates" means all value given or money payable
44 to hospitals for health care services, including fees,
45 charges and cost reimbursements;

46 (i) "Records" means accounts, books and other data
47 related to health care costs at health care facilities
48 subject to the provisions of this article which do not
49 include privileged medical information, individual
50 personal data, confidential information, the disclosure of
51 which is prohibited by other provisions of this code and
52 the laws enacted by the federal government, and

53 information, the disclosure of which would be an
54 invasion of privacy;

55 (j) "Third-party payor" means any natural person,
56 person, corporation or government entity responsible for
57 payment for patient care services rendered by hospitals;
58 and

59 (k) "Related organization" means an organization,
60 whether publicly owned, nonprofit, tax-exempt or for
61 profit, related to a hospital through common member-
62 ship, governing bodies, trustees, officers, stock owner-
63 ship, family members, partners or limited partners
64 including, but not limited to, subsidiaries, foundations,
65 related corporations and joint ventures. For the pur-
66 poses of this subsection family members shall mean
67 brothers and sisters, whether by the whole or half blood,
68 spouse, ancestors and lineal descendents.

**§16-29B-5. West Virginia health care cost review author-
ity continued; composition of the board;
qualifications; terms; oath; compensation
and expenses of members; vacancies; ap-
pointment of chairman, and meetings of
the board.**

1 The "West Virginia Health Care Cost Review Author-
2 ity," heretofore created as an autonomous division of the
3 department of health, hereinafter referred to as the
4 board, is hereby continued as an autonomous division of
5 the department of health and human resources.

6 (a) The board shall consist of three members, ap-
7 pointed by the governor, with the advice and consent of
8 the Senate. The board members shall be citizens and
9 residents of this state. No more than two of said board
10 members may be members of the same political party.
11 One board member shall have a background in health
12 care finance or economics, one board member shall have
13 previous employment experience in human services,
14 business administration or substantially related fields
15 and one board member shall be a consumer of health
16 services with a demonstrated interest in health care
17 issues.

18 (b) Each board member shall, before entering upon
19 the duties of his office, take and subscribe to the oath
20 provided by section five, article IV of the constitution
21 of the state of West Virginia, which oath shall be filed
22 in the office of the secretary of state. The governor shall
23 designate one of the board members to serve as
24 chairman at the governor's will and pleasure. The
25 chairman shall be the chief administrative officer of the
26 board. The governor may remove any board member
27 only for incompetency, neglect of duty, gross immoral-
28 ity, malfeasance in office or violation of the provisions
29 of this article. The governor shall appoint three board
30 members, one for a term of two years, one for a term
31 of four years and one for a term of six years, with all
32 the terms beginning on the effective date of this article.
33 All future appointments shall be for terms of six years,
34 except that an appointment to fill a vacancy shall be for
35 the unexpired term only.

36 (c) No person while in the employ of, or holding any
37 official relation to, any hospital subject to the provisions
38 of this article, or who has any pecuniary interest therein,
39 may serve as a member of the board or as an employee
40 thereof. Nor may any such board member be a candi-
41 date for or hold public office or be a member of any
42 political committee while acting as such board member;
43 nor may any board member or employee of said board
44 receive anything of value, either directly or indirectly,
45 from any hospital subject to the provisions of this article.
46 Should any of the board members become a candidate
47 for any public office or for membership on any political
48 committee, the governor shall remove said board
49 member from the board and shall appoint a new board
50 member to fill the vacancy created. No board member
51 may accept employment with any hospital subject to the
52 jurisdiction of the board within two years after said
53 board member ceases to be a board member.

54 (d) The concurrent judgment of two of the board
55 members when in session as the board shall be deemed
56 the action of the board. A vacancy in the board shall not
57 affect the right or duty of the remaining board members
58 to function as a board.

59 (e) In order to adequately compensate the chairman
60 of the board and other members of the board for
61 additional duties newly imposed by law and not
62 heretofore required by law, the annual salary of the
63 chairman of the board shall be fifty-five thousand
64 dollars and the annual salary of the other board
65 members shall be thirty-six thousand five hundred
66 dollars: *Provided*, That effective the first day of July,
67 one thousand nine hundred ninety-one, the annual salary
68 of other board members shall be fifty-one thousand two
69 hundred dollars.

§16-29B-6. Advisory council.

1 There is created the West Virginia health care cost
2 review council, hereinafter referred to as the council.

3 (a) The council is composed of thirteen members. Five
4 of the members shall be defined as government
5 members, those members being the secretary of the
6 department of health and human resources, the workers'
7 compensation commissioner or the successor to his or
8 her duties and responsibilities, the director of the public
9 employees insurance agency, the commissioner of
10 insurance, and the director of the division of vocational
11 rehabilitation, or their respective designated represen-
12 tatives. Eight members shall be defined as nongovern-
13 ment members who shall be appointed by the governor,
14 with the advice and consent of the Senate, and shall be
15 selected as follows: One representative of the health
16 insurance industry, one administrator of a small
17 hospital, one administrator of a large hospital, one
18 physician, and four members who are consumers of
19 health services. When selecting the members who are
20 consumers of health services, in addition to other
21 factors, consideration shall be given to constituencies of
22 organized labor, major purchasers of health insurance,
23 and senior citizens.

24 (b) No more than five of the nongovernment members
25 of the council may belong to the same political party,
26 and at least two but no more than four may reside in
27 the same congressional district. Selection of all nongov-
28 ernment members of the council shall be made with due

29 diligence to ensure membership thereon by persons
30 representing all cultural, demographic, and ethnic
31 segments of the population of the state. Nongovernment
32 members of the council shall be appointed for terms of
33 three years each, except that of the members first
34 appointed, three members shall be appointed for terms
35 of one year, three members for terms of two years, and
36 two members for terms of three years. Members shall
37 be eligible for reappointment for a second three-year
38 term. Vacancies shall be filled in the same manner as
39 the original appointments for the duration of the
40 unexpired term. The board shall appoint a chairman of
41 the council who shall serve at the will and pleasure of
42 the board.

43 (c) The presence of a majority of the members of the
44 council shall constitute a quorum for the transaction of
45 business. The council shall elect from among its
46 members a vice chairman and such other officers as are
47 necessary. The council shall meet no less than four times
48 during the calendar year, and additional meetings shall
49 be held upon a call of the chairman or a majority of the
50 members, or the board.

51 (d) The council shall serve as an advisory body to the
52 board on the development of health care cost contain-
53 ment policy, strategies and methods, and shall review
54 and from time to time make recommendations in regard
55 thereto and on state-of-the-art concepts in health care
56 policy at the national, state and local level and their
57 application to the deliberations of the board. The council
58 shall serve as a conduit for the collection and transmis-
59 sion of information to the board regarding the conse-
60 quences of board policy upon health care cost contain-
61 ment and upon hospitals that are subject to the
62 provisions of this article. The council shall serve as a
63 means of coordinating health care cost containment
64 policy among departments of state government. The
65 council shall review decisions of the board and make
66 public comments thereon as it sees fit.

67 (e) In order to assist with the council's deliberations,
68 the board's staff shall gather information on cost
69 containment efforts, including, but not limited to, the

70 provision of alternative delivery systems, prospective
71 payment systems, alternative rate-making methods, and
72 programs of consumer education. The council shall pay
73 particular attention to the economic and health status
74 impact of such efforts on purchasers or classes of
75 purchasers, particularly the elderly and those on low or
76 fixed incomes.

77 (f) The board staff shall further gather information on
78 state-of-the-art advances in medical technology, the cost
79 effectiveness of such advances and their impact on
80 health care advances in hospital and health care
81 management practices, and any other state-of-the-art
82 concepts relating to health care cost containment, health
83 care improvement or other issues the council finds
84 relevant and directs staff to investigate. The board staff
85 shall prepare and keep a register of such information
86 and update it on an annual basis.

87 (g) The board shall consider any recommendations of
88 the council regarding additions or modifications to the
89 board's rate setting and cost containment responsibili-
90 ties as well as other responsibilities under the board's
91 purview.

92 (h) The council shall make its own report to the board,
93 the governor and the Legislature within thirty days of
94 the close of each fiscal year. This report shall include
95 summaries of all meetings of the council and any public
96 comments on board decisions, together with any sugges-
97 tions and policy recommendations.

98 (i) Council members shall be reimbursed from the
99 board funds for sums necessary to carry out its
100 responsibilities and for reasonable travel expenses to
101 attend council meetings.

§16-29B-7. Staff.

1 (a) The board may employ such persons as may be
2 necessary to effect the provisions of this article. The
3 board shall set the respective salaries or compensations
4 of all staff. Any person employed by the board other
5 than on a part-time basis shall devote full time to the
6 performance of his or her duties as such employee

7 during the regular working hours of the board.

8 (b) The board shall appoint general counsel who shall
9 act as legal counsel to the board. The general counsel
10 shall serve at the will and pleasure of the board:

11 (1) The general counsel may act to bring and to defend
12 actions on behalf of the board in the courts of the state
13 and in federal courts.

14 (2) In all adjudicative matters before the board, the
15 general counsel shall advise the board. The staff shall
16 represent itself in all such actions before the board.

17 (c) The board may contract with third parties,
18 including state agencies, for any services that may be
19 necessary to perform the duties imposed upon it by this
20 article where such contractual agreements will promote
21 economy, avoid duplication of effort or make the best use
22 of available expertise.

23 (d) The board shall identify which members of the
24 staff of the health care cost review authority shall be
25 exempted from the salary schedules or pay plan adopted
26 by the state personnel board, and further identify such
27 staff members by job classification or designation,
28 together with the salary or salary ranges for each such
29 job classification or designation. This information shall
30 be filed by the board with the director of the division
31 of personnel no later than the first day of July, one
32 thousand nine hundred ninety-one, and thereafter as
33 necessary.

§16-29B-8. Powers generally; budget expenses of the board.

1 (a) In addition to the powers granted to the board
2 elsewhere in this article, the board may:

3 (1) Adopt, amend and repeal necessary, appropriate
4 and lawful policy guidelines, rules and regulations in
5 accordance with article three, chapter twenty-nine-a of
6 this code: *Provided*, That subsequent amendments and
7 modifications to any rule promulgated pursuant to this
8 article and not exempt from the provisions of article
9 three, chapter twenty-nine-a of this code may be

10 implemented by emergency rule;

11 (2) Hold public hearings, conduct investigations and
12 require the filing of information relating to matters
13 affecting the costs of services in hospitals subject to the
14 provisions of this article and may subpoena witnesses,
15 papers, records, documents and all other data in
16 connection therewith. The board may administer oaths
17 or affirmations in any hearing or investigation;

18 (3) Apply for, receive and accept gifts, payments and
19 other funds and advances from the United States, the
20 state or any other governmental body, agency or
21 agencies or from any other private or public corporation
22 or person (with the exception of hospitals subject to the
23 provisions of this article, or associations representing
24 them, doing business in the state of West Virginia,
25 except in accordance with subsection (c) of this section),
26 and enter into agreements with respect thereto, includ-
27 ing the undertaking of studies, plans, demonstrations or
28 projects. Any such gifts or payments that may be
29 received or any such agreements that may be entered
30 into shall be used or formulated only so as to pursue
31 legitimate, lawful purposes of the board, and shall in no
32 respect inure to the private benefit of a board member,
33 staff member, donor or contracting party;

34 (4) Lease, rent, acquire, purchase, own, hold, con-
35 struct, equip, maintain, operate, sell, encumber and
36 assign rights or dispose of any property, real or
37 personal, consistent with the objectives of the board as
38 set forth in this article: *Provided*, That such acquisition
39 or purchase of real property or construction of facilities
40 shall be consistent with planning by the state building
41 commissioner and subject to the approval of the
42 Legislature;

43 (5) Contract and be contracted with and execute all
44 instruments necessary or convenient in carrying out the
45 board's functions and duties; and

46 (6) Exercise, subject to limitations or restrictions
47 herein imposed, all other powers which are reasonably
48 necessary or essential to effect the express objectives
49 and purposes of this article.

50 (b) The board shall annually prepare a budget for the
51 next fiscal year for submission to the governor and the
52 Legislature which shall include all sums necessary to
53 support the activities of the board and its staff.

54 (c) Each hospital subject to the provisions of this
55 article shall be assessed by the board on a pro rata basis
56 using the gross revenues of each hospital as reported
57 under the authority of section eighteen of this article as
58 the measure of the hospital's obligation. The amount of
59 such fee shall be determined by the board except that
60 in no case shall the hospital's obligation exceed one tenth
61 of one percent of its gross revenue. Such fees shall be
62 paid on or before the first day of July in each year and
63 shall be paid into the state treasury and kept as a special
64 revolving fund designated "health care cost review
65 fund," with the moneys in such fund being expendable
66 after appropriation by the Legislature for purposes
67 consistent with this article. Any balance remaining in
68 said fund at the end of any fiscal year shall not revert
69 to the treasury, but shall remain in said fund and such
70 moneys shall be expendable after appropriation by the
71 Legislature in ensuing fiscal years.

72 (d) During the board's start-up period, before the first
73 day of July, one thousand nine hundred eighty-four, each
74 hospital subject to the provisions of this article shall be
75 assessed by the board on a pro rata basis using the gross
76 revenues of each hospital as reported under the provi-
77 sions of article five-f, chapter sixteen of this code.
78 Within sixty days of passage of this article, the
79 department of health shall notify each hospital of the
80 amount of such fee, which in no case shall exceed one
81 tenth of one percent of the gross revenue of each
82 hospital, the total amount of which fees shall not in any
83 event exceed five hundred thousand dollars during said
84 start-up period. Such fees shall be paid into the
85 aforementioned special fund in two equal installments,
86 the first of which shall be paid on the first day of April,
87 one thousand nine hundred eighty-three, the second of
88 which shall be paid on the first day of January, one
89 thousand nine hundred eighty-four.

90 (e) Each hospital's assessment shall be treated as an

91 allowable expense by the board.

92 (f) The board is empowered to withhold rate approvals
93 if any such fees remain unpaid.

§16-29B-18. Hospital and related organizations' annual financial reporting.

1 (a) It shall be the duty of every hospital which comes
2 under the jurisdiction of this article to file with the
3 board the following financial statements or reports in a
4 form and at intervals specified by the board, but at least
5 annually:

6 (1) A balance sheet detailing the assets, liabilities and
7 net worth of the hospital for its preceding fiscal year;

8 (2) A statement of income and expenses for the
9 preceding fiscal year;

10 (3) A statement of services rendered and services
11 available; and

12 (4) Such other reports as the board may prescribe.

13 Where more than one licensed hospital is operated by
14 the reporting organization, the information required by
15 this section shall be reported for each hospital
16 separately.

17 (b) It shall be the duty of every related organization
18 to file with the board, within thirty days from the
19 effective date of this section, the following financial
20 statements or reports for each of its three prior fiscal
21 years:

22 (1) A balance sheet detailing the assets, liabilities and
23 net worth of the related organization;

24 (2) A statement of income and expenses;

25 (3) A statement of cash flows; and

26 (4) Such other information as the board may
27 prescribe.

28 After the initial filing of the financial information
29 required by this subsection, every related organization
30 shall thereafter file annual financial reports with the

31 board in a form specified by the board.

32 (c) The annual financial statements filed pursuant to
33 this section shall be prepared in accordance with the
34 system of accounting and reporting adopted under
35 section seventeen of this article. The board may require
36 attestations from responsible officials of the hospitals or
37 related organizations that such reports have to the best
38 of their knowledge been prepared truthfully and in
39 accordance with the prescribed system of accounting
40 and reporting.

41 (d) All reports filed under any provisions of this
42 article, except personal medical information personally
43 identifiable to a purchaser and any tax return, shall be
44 open to public inspection and shall be available for
45 examination at the offices of the board during regular
46 business hours.

47 (e) Whenever a further investigation is deemed
48 necessary or desirable to verify the accuracy of any
49 information set forth in any statement, schedule or
50 report filed by a hospital or related organization under
51 the provisions of this section, the board may require a
52 full or partial audit of the records of the hospital or
53 related organization.

§16-29B-19a. Additional legislative findings and directives.

1 The Legislature hereby finds and declares that a cost-
2 based rate review system is more effective in containing
3 the cost of acute care hospital services than a revenue-
4 based system. Accordingly, the Legislature directs the
5 board to create a task force to advise the board on the
6 development of a methodology to implement a cost-based
7 rate review system. One member of the task force shall
8 be designated by the governor, one member shall be
9 designated by the president of the Senate, one member
10 shall be designated by the speaker of the House of
11 Delegates, and six members of the task force shall be
12 appointed by the board. The board shall develop a cost-
13 based rate review system and shall adopt regulations to
14 implement the cost-based rate review methodology by
15 the first day of July, one thousand nine hundred ninety-

16 two: *Provided*, That the board shall file a report with
17 the governor, the president of the Senate, and the
18 speaker of the House of Delegates by the first day of
19 December, one thousand nine hundred ninety-one, which
20 shall outline the status of the development of the cost-
21 based rate review methodology. Regulations promul-
22 gated by the board to implement the cost-based rate
23 review system shall be exempt from the requirements
24 of article three, chapter twenty-nine-a of this code. Upon
25 implementation of the regulations, the task force shall
26 be dissolved.

27 The Legislature further directs the board to imple-
28 ment the utilization review and quality assurance
29 program established by section twenty-three of this
30 article.

31 The Legislature further finds and directs that the
32 hospital cost containment methodology-phase one
33 adopted by the board effective the twenty-eighth day of
34 May, one thousand nine hundred eighty-five, and
35 approved by the Legislature effective the eighth day of
36 March, one thousand nine hundred eighty-six, shall
37 remain in effect during the development period of the
38 cost based rate review system.

39 The Legislature further finds and declares that
40 discounts to third-party payors by hospitals have
41 contributed to cost shifting thereby increasing the cost
42 of acute care hospital services to purchasers and other
43 third-party payors. Accordingly, the Legislature directs
44 that every hospital who contracts with a third-party
45 payor for the payment of patient care services shall file
46 with the board a copy of every contract in force on the
47 first day of January, one thousand nine hundred ninety-
48 one. No third-party payor shall be entitled to a greater
49 discount than the discount specified in any contract in
50 effect on the first day of January, one thousand nine
51 hundred ninety-one, unless a subsequent contract is
52 approved by the board pursuant to the provisions of
53 section twenty of this article.

54 The Legislature further directs the board to examine
55 the problems associated with health care costs in this

56 state, including those associated with discount contracts
57 and the shifting of costs, and file a report with the
58 governor, the president of the Senate, and the speaker
59 of House of Delegates on or before the first day of
60 January, one thousand nine hundred ninety-two, which
61 outlines the problems and which includes recommenda-
62 tions for legislative action to resolve the problems
63 identified. This report shall include a separate exami-
64 nation of those problems associated with hospitals
65 located within twenty miles of the borders of this state
66 and separate recommendations on resolving those
67 problems.

§16-29B-20. Rate determination.

1 (a) Upon commencement of review activities, no rates
2 may be approved by the board nor payment be made
3 for services provided by hospitals under the jurisdiction
4 of the board by any purchaser or third-party payor to
5 or on behalf of any purchaser or class of purchasers
6 unless:

7 (1) The costs of the hospital's services are reasonably
8 related to the services provided and the rates are
9 reasonably related to the costs;

10 (2) The rates are equitably established among all
11 purchasers or classes of purchasers within a hospital
12 without discrimination unless federal or state statutes or
13 regulations conflict with this requirement. On and after
14 the effective date of this section, a summary of every
15 proposed contract for the payment of patient care
16 services between a purchaser or third-party payor and
17 a hospital shall be filed by the hospital with its rate
18 application for review by the board. No contract for the
19 payment of patient care services between a purchaser
20 or third-party payor and a hospital which establishes
21 discounts to the purchaser or third-party payor shall
22 take effect until it is approved by the board. The board
23 shall approve or deny the proposed contract within the
24 overall rate review period established in section twenty-
25 one of this article. No discount shall be approved by the
26 board which constitutes an amount below the actual cost
27 to the hospital.

28 The hospital shall demonstrate to the board that the
29 cost of any discount contained in the contract will not
30 be shifted to any other purchaser or third-party payor.
31 The hospital shall further demonstrate that the discount
32 will not result in a decrease in its proportion of
33 medicare, medicaid or uncompensated care patients. In
34 addition, the hospital shall demonstrate to the board
35 that the discount is based upon criteria which consti-
36 tutes a quantifiable economic benefit to the hospital. All
37 information submitted to the board shall be certified by
38 the hospital administrator as to its accuracy and
39 truthfulness;

40 (3) The rates of payment for medicaid are reasonable
41 and adequate to meet the costs which must be incurred
42 by efficiently and economically operated hospitals
43 subject to the provisions of this article. The rates shall
44 take into account the situation of hospitals which serve
45 disproportionate numbers of low income patients and
46 assure that individuals eligible for medicaid have
47 reasonable access, taking into account geographic
48 location and reasonable travel time, to inpatient hospital
49 services of adequate quality;

50 (4) The rates are equitable in comparison to prevailing
51 rates for similar services in similar hospitals as
52 determined by the board; and

53 (5) In no event shall a hospital's receipt of emergency
54 disaster funds from the federal government be included
55 in such hospital's gross revenues for either rate-setting
56 or assessment purposes.

57 (b) In the interest of promoting efficient and appro-
58 priate utilization of hospital services, the board shall
59 review and make findings on the appropriateness of
60 projected gross revenues for a hospital as such revenues
61 relate to charges for services and anticipated incidence
62 of service. The board shall further render a decision as
63 to the amount of net revenue over expenditures that is
64 appropriate for the effective operation of the hospital.

65 (c) When applying the criteria set forth above, the
66 board shall consider all relevant factors, including, but
67 not limited to, the following: The economic factors in the

68 hospital's area; the hospital's efforts to share services;
69 the hospital's efforts to employ less costly alternatives
70 for delivering substantially similar services or produc-
71 ing substantially similar or better results in terms of the
72 health status of those served; the efficiency of the
73 hospital as to cost and delivery of health care; the
74 quality of care; occupancy level; a fair return on
75 invested capital, not otherwise compensated for;
76 whether the hospital is operated for profit or not for
77 profit; costs of education; and income from any invest-
78 ments and assets not associated with patient care,
79 including, but not limited to, parking garages, residen-
80 ces, office buildings, and income from related organiza-
81 tions and restricted funds whether or not so associated.

82 (d) Wages, salaries and benefits paid to or on behalf
83 of nonsupervisory employees of hospitals subject to this
84 article shall not be subject to review unless the board
85 first determines that such wages, salaries and benefits
86 may be unreasonably or uncustomarily high or low. Said
87 exemption does not apply to accounting and reporting
88 requirements contained in this article, nor to any that
89 may be established by the board. "Nonsupervisory
90 personnel," for the purposes of this section, means, but
91 is not limited to, employees of hospitals subject to the
92 provisions of this article who are paid on an hourly
93 basis.

94 (e) Reimbursement of capital and operating costs for
95 new services and capital projects subject to article two-
96 d of this chapter shall not be allowed by the board if
97 such costs were incurred subsequent to the eighth day
98 of July, one thousand nine hundred seventy-seven, unless
99 they were exempt from review or approved by the state
100 health planning and development agency prior to the
101 first day of July, one thousand nine hundred eighty-four,
102 pursuant to the provisions of article two-d of this
103 chapter.

104 (f) The board shall consult with relevant licensing
105 agencies and may require them to provide written
106 findings with regard to their statutory functions and
107 information obtained by them in the pursuit of those
108 functions. Any licensing agency empowered to suggest

109 or mandate changes in buildings or operations of
110 hospitals shall give notice to the board together with any
111 findings.

112 (g) Rates shall be set by the board in advance of the
113 year during which they apply except for the procedure
114 set forth in subsection (c), section twenty-one of this
115 article and shall not be adjusted for costs actually
116 incurred.

117 (h) All determinations, orders and decisions of the
118 board with respect to rates and revenues shall be
119 prospective in nature.

120 (i) No hospital may charge for services at rates in
121 excess of those established in accordance with the
122 requirements of and procedures set forth in this article.

123 (j) Notwithstanding any other provision of this article,
124 the board shall approve all requests for rate increases
125 by hospitals which are licensed for one hundred beds or
126 less and which are not located in a standard metropol-
127 itan statistical area where the rate of increase is equal
128 to or less than the lowest rate of inflation as established
129 by a recognized inflation index for either the national
130 or regional hospital industry. The board may, by
131 regulation, impose reporting requirements to ensure
132 that a hospital does not exceed the rate of increases
133 permitted herein.

134 (k) Notwithstanding any other provision of this article,
135 the board shall develop an expedited review process
136 applicable to all hospitals licensed for more than one
137 hundred beds or that are located in a standard metro-
138 politan statistical area for rate increase requests which
139 may be based upon a recognized inflation index for the
140 national or regional hospital industry.

**§16-29B-21. Procedure for obtaining initial rate sched-
ule; adjustments and revisions of rate
schedules.**

1 (a) No hospital subject to this article may change or
2 amend its schedule of rates except in accordance with
3 the following procedures:

4 (1) Any request for a change in rate schedules or other
5 changes must be filed in writing to the board with such
6 supporting data as the hospital seeking to change its
7 rates considers appropriate, in the form prescribed by
8 the board. Upon receipt of notice, the board, if it
9 considers necessary, may hold a public hearing on the
10 proposed change. Such hearing shall be held no later
11 than forty-five days after receipt of the notice. The
12 review of the proposed change may not exceed an overall
13 period of one hundred eighty days from the date of filing
14 to the date of the board's order. If the board fails to
15 complete its review of the proposed change within the
16 time period specified for the review, the proposed
17 change shall be deemed to have been approved by the
18 board. Any proposed change shall go into effect upon the
19 date specified in the order. The review period is
20 complete upon the date of the board's final order
21 notwithstanding an appeal of the order to the agency of
22 the state designated by the governor, a circuit court, or
23 the supreme court of appeals by an affected party;

24 (2) Each hospital shall establish, in a written report
25 which shall be incorporated into each proposed rate
26 application, that it has thoroughly investigated and
27 considered:

28 (A) The economic and social impact of any proposed
29 rate increase, or service decrease, on hospital cost
30 containment and upon health care purchasers, including
31 classes of purchasers, such as the elderly and low and
32 fixed income persons;

33 (B) State-of-the-art advances in health care cost
34 containment, hospital management and rate design, as
35 alternatives to or in mitigation of any rate increase, or
36 service decrease, which report shall describe the state-
37 of-the-art advances considered and shall contain specific
38 findings as to each consideration, including the reasons
39 for adoption or rejection of each;

40 (C) Implementation of cost control systems, including
41 the elimination of unnecessary or duplicative facilities
42 and services, promotion of alternative forms of care, and
43 other cost control mechanisms;

44 (D) Initiatives to create alternative delivery systems;
45 and

46 (E) Efforts to encourage third-party payors, includ-
47 ing, but not limited to, insurers, health service, care and
48 maintenance organizations, to control costs, including a
49 combination of education, persuasion, financial incen-
50 tives and disincentives to control costs;

51 (3) In the event the board modifies the request of a
52 hospital for a change in its rates so that the hospital
53 obtains only a partial increase in its rate schedule, the
54 hospital shall have the right to accept the benefits of the
55 partial increase in rates and charge its purchasers
56 accordingly without in any way adversely affecting or
57 waiving its right to appeal that portion of the decision
58 and order of the board which denied the remainder of
59 the requested rate increase.

60 (b) The board shall allow a temporary change in a
61 hospital's rates which may be effective immediately
62 upon filing and in advance of review procedures when
63 a hospital files a verified claim that such temporary rate
64 changes are in the public interest, and are necessary to
65 prevent insolvency, to maintain accreditation or for
66 emergency repairs or to relieve undue financial hard-
67 ship. The verified claim shall state the facts supporting
68 the hospital's position, the amount of increase in rates
69 required to alleviate the situation, and shall summarize
70 the overall effect of the rate increase. The claim shall
71 be verified by either the chairman of the hospital's
72 governing body or by the chief executive officer of the
73 hospital.

74 (c) Following receipt of the verified claim for tempor-
75 ary relief, the board shall review the claim through its
76 usual procedures and standards; however, this power of
77 review does not affect the hospital's ability to place the
78 temporary rate increase into effect immediately. The
79 review of the hospital's claim shall be for a permanent
80 rate increase and the board may include such other
81 factual information in the review as may be necessary
82 for a permanent rate increase review. As a result of its
83 findings from the permanent review, the board may

84 allow the temporary rate increase to become permanent,
85 to deny any increase at all, to allow a lesser increase,
86 or to allow a greater increase.

87 (d) When any change affecting an increase in rates
88 goes into effect before a final order is entered in the
89 proceedings, for whatever reasons, where it deems it
90 necessary and practicable, the board may order the
91 hospital to keep a detailed and accurate account of all
92 amounts received by reason of the increase in rates and
93 the purchasers and third-party payors from whom such
94 amounts were received. At the conclusion of any
95 hearing, appeal or other proceeding, the board may
96 order the hospital to refund with interest to each
97 affected purchaser and/or third-party payor any part of
98 the increase in rates that may be held to be excessive
99 or unreasonable. In the event a refund is not practicable,
100 the hospital shall, under appropriate terms and condi-
101 tions determined by the board, charge over and amor-
102 tize by means of a temporary decrease in rates whatever
103 income is realized from that portion of the increase in
104 rates which was subsequently held to be excessive or
105 unreasonable.

106 (e) The board, upon a determination that a hospital
107 has overcharged purchasers or charged purchasers at
108 rates not approved by the board or charged rates which
109 were subsequently held to be excessive or unreasonable,
110 may prescribe rebates to purchasers and third-party
111 payors in effect by the aggregate total of the overcharge.

112 (f) The board may open a proceeding against any
113 hospital at any time with regard to compliance with
114 rates approved and the efficiency and effectiveness of
115 the care being rendered in the hospital.

§16-29B-28. Termination date.

1 Pursuant to the provisions of section four, article ten,
2 chapter four of this code, the health care cost review
3 authority shall continue to exist until the first day of
4 July, one thousand nine hundred ninety-seven, to allow
5 for a completion of an audit by the joint committee on
6 government operations.

CHAPTER 79

(H. B. 2929—By Delegates Rutledge and Williams)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two-g, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the name of the division of health to the bureau of public health and the director of health to the commissioner of public health; and permit funding of a special funds account.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2G. SPECIAL SUPPLEMENTARY FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN (WIC).

§16-2G-1. Voucher or coupon redemption and payment.

1 With respect to the vouchers or coupons or drafts
2 authorized by the bureau of public health in the
3 administration of the special supplementary food
4 program for women, infants and children, commonly
5 known as the WIC program, under the auspices and
6 guidelines of the United States department of agricul-
7 ture, such vouchers or coupons or drafts, when received
8 by a vendor from a holder thereof in exchange for food,
9 food stuffs, or authorized goods or services, may be
10 deposited by the vendor in any federally insured bank
11 in this state for collection and payment thereof, and such
12 bank shall accept the same as equivalent to a negotiable
13 instrument from a holder in due course pursuant to
14 chapter forty-six of this code, and shall collect the funds
15 for such vouchers or coupons so received.

16 All moneys received from the United States depart-
17 ment of agriculture under the WIC program, except for
18 moneys to be used for administration, shall be deposited
19 by the commissioner of the bureau of public health in

20 a special account in a federally insured bank in this
21 state, and notwithstanding other provisions of this code
22 to the contrary, this special account may be funded by
23 the commissioner of the bureau of public health as a
24 special advance payment imprest funds account to be
25 reconciled at least annually by the state treasurer from
26 which said bank can daily make required wire transfers
27 to pay each day's presentments of vouchers or coupons
28 or drafts. The commissioner of the bureau of public
29 health shall select the bank by competitive bidding in
30 the same manner as the state treasurer selects depos-
31 itory banks for state funds, subject to applicable federal
32 laws or regulations governing such selection.

33 The provisions of this section enacted in the year one
34 thousand nine hundred eighty-nine shall take effect on
35 the first day of April, one thousand nine hundred ninety,
36 except that the commissioner shall commence proced-
37 ures for the selection of the bank and for implemen-
38 tation of the other provisions of this section upon the
39 passage hereof.

40 Nothing in this section shall make such vouchers or
41 coupons or drafts negotiable instruments for any
42 purpose other than expressly set forth herein or as
43 permitted by applicable federal laws or regulations.

CHAPTER 80

(Com. Sub. for H. B. 2616—By Delegates Spencer and Kessel)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-a, article five, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to registration of newborn infants and minors with a hearing impairment or with risk of developing a hearing impairment; requiring that such information be recorded and reported to the commission on the hearing impaired on forms provided by the commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. VITAL STATISTICS.

§16-5-12a. Registration of infants born with specified birth defects; requiring physician or midwife to check for defects, registration of minors with previously undiagnosed birth defects; form for reporting birth defects to be provided by and filed with registrar of vital statistics; confidentiality; exceptions; parental consent to subsequent reporting to various agencies; form for hearing impairment to be provided by and filed with commission on hearing impaired; definitions; registration of infants born with hearing impairments or risk of hearing impairment; registration of minors with previously undiagnosed hearing impairments.

1 (a) When a live birth occurs, the physician or midwife
2 in attendance at, or present immediately after, the birth
3 shall examine the infant for any of the following birth
4 defects:

5 (1) Anencephaly;

6 (2) Spina bifida;

7 (3) Hydrocephaly;

8 (4) Cleft palate;

9 (5) Total cleft lip;

10 (6) Esophageal atresia and atenosis;

11 (7) Rectal and anal atresia;

12 (8) Hypospadias;

- 13 (9) Reduction and deformity — upper limb;
- 14 (10) Reduction and deformity — lower limb;
- 15 (11) Congenital dislocation of the hip;
- 16 (12) Down's syndrome;
- 17 (13) Visual impairments; and
- 18 (14) Others as may be requested by the director of
19 health.

20 (b) If any such impairment is found in an infant,
21 and/or if such impairment is found in any subsequent
22 examination of any minor which has not been previously
23 diagnosed, the examining physician, midwife or other
24 health care provider licensed under chapter thirty of the
25 code shall within thirty days of the examination make
26 a report of the diagnosis to the state registrar of vital
27 statistics on forms provided by the state registrar of
28 vital statistics. The report shall include the name of the
29 child, the name or names of the parents or parent or
30 guardian and a description of the impairment.

31 (c) The information received by the state registrar
32 pursuant to this section pertaining to the identity of the
33 persons named shall be kept confidential: *Provided,*
34 That if consent of the parents, or if only one of the
35 parents exists, of the parent, or of the guardian is
36 obtained, the registrar may provide such information to
37 the division of health, the division of human resources,
38 the department of education, the division of vocational
39 rehabilitation, and the school for the deaf and the blind
40 so that such information can be utilized to provide
41 assistance or services for the benefit of the child.

42 (d) The commission on the hearing impaired as
43 provided for in section one, article fourteen, chapter five
44 of this code shall develop and provide a form, to every
45 physician or midwife attending a birth or providing
46 medical care to a newborn infant, which assists the
47 physician or midwife in collecting information from the

48 infant's family about the infant's potential for a hearing
49 impairment. The form shall identify an infant with a
50 hearing impairment or at risk of developing a hearing
51 impairment. For purposes of this section, an infant with
52 a hearing impairment is a child at birth with a
53 significant hearing loss which prevents the acquisition
54 of speech and language through normal channels. An
55 infant at risk of being hearing impaired is a child at
56 birth who is at a higher risk than normal of being
57 hearing impaired due to one or more of the following
58 factors present at birth:

59 (1) Family history of a congenital hearing loss;

60 (2) Rubella or virus during pregnancy;

61 (3) Congenital ear, nose or throat anomalies;

62 (4) Below normal birth weight;

63 (5) Abnormal level of jaundice;

64 (6) Anoxia or apnea; and

65 (7) A low APGAR score derived from the evaluation
66 of the infant's color, muscle tone, reflexes, pulse rate and
67 respiration.

68 (e) If any such hearing impairment or risk of hearing
69 impairment is found in an infant, and/or if such
70 impairment or risk of hearing impairment is found in
71 any subsequent examination of any minor which has not
72 been previously diagnosed, the examining physician,
73 midwife shall within thirty days of the examination
74 make a report of the diagnosis to the commission on the
75 hearing impaired on the forms provided by the commis-
76 sion on the hearing impaired. The report shall include
77 the name of the child, the name or names of the parents
78 or parent or guardian and a description of the hearing
79 impairment or of the risk of hearing impairment.

CHAPTER 81

(S. B. 391—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article five-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the state continuum of care services for elderly, impaired and terminally ill.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article relating to the coordination of continuum of care for the elderly, impaired and terminally ill.

1 Article five-d, chapter sixteen of the code of West
2 Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 82

(Com. Sub. for S. B. 104—By Senators Burdette, Mr. President, Holliday,
M. Manchin, Pritt, Wehrle, Blatnik, Humphreys and Lucht)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-k, relating to the provision of early intervention services for infants and toddlers with or at risk of having a developmental delay; setting forth findings and purpose; designating the department of health and human resources as the coordinating agency and setting forth the department's responsibilities; defining certain terms; establishing a coordinating council; and setting forth the council's responsibilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5K. EARLY INTERVENTION SERVICES FOR CHILDREN WITH DEVELOPMENTAL DELAYS.

§16-5K-1. Legislative findings and statement of purpose.

§16-5K-2. Definitions.

§16-5K-3. Responsibilities of the department of health and human resources.

§16-5K-4. Interagency coordinating council.

§16-5K-5. Provision of early intervention services.

§16-5K-1. Legislative findings and statement of purpose.

1 The Legislature hereby finds and declares that early
2 intervention services for children who are developmen-
3 tally delayed is essential in helping to maximize each
4 child's potential and is in the best interest of the state.
5 These early intervention services will reduce future
6 educational costs, minimize the likelihood of having to
7 provide institutional care and enhance the capacity of
8 families to meet the special needs of the children. In
9 order to meet this important need, a statewide compre-
10 hensive, coordinated, interagency program of early
11 intervention services is required for children and the
12 families of children from birth to thirty-six months of
13 age who are developmentally delayed. By facilitating
14 coordination of payment for early intervention services
15 from various public and private sources, enhancing the
16 capacity to provide quality early intervention services,
17 and expanding and improving existing services, the
18 interagency program will ensure that children who are
19 developmentally delayed will receive necessary services
20 which are cost effective.

§16-5K-2. Definitions.

1 Unless the context clearly otherwise indicates, as used
2 in this article:

3 (a) "Cabinet" means the governor's cabinet on children
4 and families.

5 (b) "Council" means the governor's early intervention
6 interagency coordinating council.

7 (c) "Department" means the department of health and
8 human resources.

9 (d) "Early intervention services" means developmental
10 services which:

11 (1) Are designed to meet the developmental needs of
12 developmentally delayed infants and toddlers and the
13 needs of the family related to enhancing the child's
14 development;

15 (2) Are selected in collaboration with the parents;

16 (3) Are provided under public supervision in confor-
17 mity with an individualized family service plan, and at
18 no cost to families;

19 (4) Meet the state's early intervention standards, as
20 established by the department of health and human
21 resources with the assistance of the governor's early
22 intervention interagency coordinating council;

23 (5) Include audiology case management, family
24 training, counseling and home visits, health services
25 necessary to enable a child to benefit from other early
26 intervention services, medical services only for diagnos-
27 tic or evaluation purposes, nursing services, nutrition
28 services, occupational therapy, physical therapy, psycho-
29 logical services, social work services, special instruction,
30 speech-language pathology and transportation; and

31 (6) Are provided by licensed or otherwise qualified
32 personnel, including audiologists, nurses, nutritionists,
33 occupational therapists, physical therapists, physicians,
34 psychologists, social workers, special educators, speech-
35 language pathologists and paraprofessionals appro-
36 priately trained and supervised.

37 (e) "Infants and toddlers with developmental delay"
38 means children from birth to thirty-six months of age
39 who need early intervention services for any of the
40 following reasons:

41 (1) They are experiencing developmental delays, as
42 measured by appropriate diagnostic instruments and
43 procedures, in one or more of the following areas:
44 Cognitive development, physical development, language

45 and speech development, psycho-social development or
46 self-help skills; or

47 (2) They have a diagnosed physical or mental condi-
48 tion that has a high probability of resulting in develop-
49 mental delay.

**§16-5K-3. Responsibilities of the department of health
and human resources.**

1 (a) The department of health and human resources is
2 the administering agency for the development of a
3 statewide, comprehensive, coordinated, interagency
4 system of early intervention services.

5 (b) Consistent with the provisions of Public Law 99-
6 457, as enacted by the Congress of the United States,
7 the department has the following responsibilities:

8 (1) To carry out the general administration, supervi-
9 sion and monitoring of early intervention programs and
10 activities;

11 (2) To resolve complaints regarding the requirements
12 of Public Law 99-457;

13 (3) To identify and coordinate all available resources
14 within the state from federal, state, local and private
15 sources;

16 (4) To enter into formal interagency agreements with
17 other state agencies involved in early intervention; and

18 (5) To resolve intraagency and interagency disputes
19 and to ensure that early intervention services are
20 provided in a timely manner pending the resolution of
21 such disputes.

22 (c) The department may adopt rules necessary to
23 carry out the purposes of this article.

24 (d) The department of health and human resources
25 and the department of education shall enter into a
26 formal interagency agreement regarding early interven-
27 tion services. The agreement shall define the financial
28 responsibility of each agency, describe the transition of
29 services to children and their families between service
30 systems, and establish procedures for resolving disputes.

§16-5K-4. Interagency coordinating council.

1 (a) The governor's early intervention interagency
2 coordinating council is hereby established. The council
3 is composed of fifteen members appointed by the
4 governor with additional ex officio members represent-
5 ing specific agencies serving infants and toddlers with
6 developmental delays.

7 (b) The membership of the council shall consist of the
8 following:

9 (1) At least three parents of children, ages birth
10 through six years of age, who have developmental
11 delays;

12 (2) At least three persons, representative of the public
13 or private service providers;

14 (3) At least one member of the House of Delegates
15 recommended by the speaker of the House of Delegates
16 and one member of the Senate recommended by the
17 Senate president;

18 (4) At least one person from higher education involved
19 in training individuals to provide services under this
20 article; and

21 (5) A representative of each of the agencies involved
22 in the provision of or payment for early intervention
23 services to infants and toddlers with developmental
24 delays and their families.

25 (c) The council shall meet at least quarterly and in
26 such place as it considers necessary.

27 (d) The council is responsible for the following
28 functions:

29 (1) To advise and assist the department of health and
30 human resources in the development and implementa-
31 tion of early intervention policies;

32 (2) To assist the department in achieving the full
33 participation of all relevant state agencies and
34 programs;

35 (3) To collaborate with the governor's cabinet on

36 children and families in the coordination of early
 37 intervention services with other programs and services
 38 for children and families;

39 (4) To assist the department in the effective implemen-
 40 tation of a statewide system of early intervention
 41 services;

42 (5) To assist the department in the resolution of
 43 disputes;

44 (6) To advise and assist the department in the
 45 preparation of grant applications; and

46 (7) To prepare and submit an annual report to the
 47 governor, the Legislature and the United States secre-
 48 tary of education on the status of early intervention
 49 programs within the state.

§16-5K-5. Provision of early intervention services.

1 (a) The department may enter into contracts with
 2 public or private providers of early intervention services
 3 who meet state early intervention standards.

4 (b) Within available resources, as determined by the
 5 department, appropriate early intervention services
 6 shall be made available to eligible children and their
 7 families.

CHAPTER 83

(Com. Sub. for H. B. 2582—By Delegates P. White and S. Cook)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-l, relating to creating a state long-term care ombudsman program within the commission on aging; short title; legislative purpose; definitions; employment of a state long-term care ombudsman, qualifications and duties; creation of regional long-term care ombudsman programs; employment of regional long-term care

ombudsmen, qualifications and duties; creation of long-term care ombudsman volunteer programs; qualifications of ombudsman volunteers; duties; training and certification of long-term care ombudsman volunteers; investigation of complaints, including administrative and legal actions; access to long-term care facilities; access to records; subpoena powers; cooperation among government departments or agencies; confidentiality of investigations; limitations on liability for good faith actions of ombudsmen and persons assisting ombudsmen and for long-term care facilities for the actions of ombudsman and good faith actions of employees assisting ombudsmen; availability of legal counsel; penalties for willful interference, retaliatory actions; facility posting of long-term care ombudsman program information; funding; promulgation of rules; and severability.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article five-1, to read as follows:

ARTICLE 5L. LONG-TERM CARE OMBUDSMAN PROGRAM.

- §16-5L-1. Short title.
- §16-5L-2. Legislative purpose.
- §16-5L-3. Definitions.
- §16-5L-4. Creation of the state long-term care ombudsman program.
- §16-5L-5. State long-term care ombudsman; qualifications; duties.
- §16-5L-6. Establishment of regional long-term care ombudsman programs.
- §16-5L-7. Regional long-term care ombudsmen; qualifications; duties; training; certification.
- §16-5L-8. Long-term care ombudsman volunteers; qualifications; duties.
- §16-5L-9. Long-term care ombudsman volunteer training and certification.
- §16-5L-10. Investigation of complaints.
- §16-5L-11. Access to long-term care facilities.
- §16-5L-12. Access to records.
- §16-5L-13. Subpoena powers.
- §16-5L-14. Cooperation among government departments or agencies.
- §16-5L-15. Confidentiality of investigations.
- §16-5L-16. Limitations on liability.
- §16-5L-17. Availability of legal counsel.
- §16-5L-18. Willful interference; retaliation; penalties.
- §16-5L-19. Facility posting of long-term care ombudsman program information.

§16-5L-20. Funding for long-term care ombudsman programs.

§16-5L-21. Promulgation of rules.

§16-5L-22. Severability.

§16-5L-1. Short title.

1 This article may be known and cited as the “West
2 Virginia Long-Term Care Ombudsman Program Act.”

§16-5L-2. Legislative purpose.

1 The Legislature recognizes that the state commission
2 on aging, as set forth in article fourteen, chapter twenty-
3 nine of this code, pursuant to a grant from the federal
4 government, has established a West Virginia long-term
5 care ombudsman program. The Legislature declares
6 that it is the public policy of this state to encourage
7 community contact and involvement with residents of
8 long-term care facilities. The Legislature finds that in
9 order to comply with the federal Older Americans Act
10 of 1965, as amended, and to effectively assist residents
11 of long-term care facilities in the assertion of their civil
12 and human rights, the structure, powers and duties of
13 the West Virginia long-term care ombudsman program
14 shall be herein defined under this article.

§16-5L-3. Definitions.

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

3 (a) “Government agency” means any department,
4 division, office, bureau, board, commission, council,
5 authority, or any other agency or instrumentality
6 created by the state or political subdivision thereof or
7 to which the state is a party or by any county or
8 municipality which is responsible for the regulation,
9 visitation, inspection, or supervision of long-term care
10 facilities or which provides services to residents or long-
11 term care facilities;

12 (b) “Long-term care facility” means any nursing
13 home, personal care home, or residential board and care
14 home as defined in section two, article five-c of this
15 chapter; nursing homes operated by the federal govern-
16 ment or the state government; extended care facilities
17 operated in connection with hospitals; and any similar

18 institution, residence or place, or any part or unit
19 thereof, however named, in this state which is adver-
20 tised, offered, maintained or operated by the ownership
21 or management for consideration, for the express and
22 implied purpose of providing accommodations and care
23 or personal assistance to one or more persons who are
24 ill or otherwise incapacitated or are dependent upon the
25 services of others by reasons of physical or mental
26 impairment and who are not related within the degree
27 of consanguinity of second cousin to the owner or
28 manager of the institution, residence or place;

29 (c) "Long-term care ombudsman volunteer" or "om-
30 budsman volunteer" means any uncompensated individ-
31 ual who performs the duties enumerated under section
32 eight of this article: *Provided*, That the individual has
33 received appropriate certification as set forth in section
34 nine of this article;

35 (d) "Personal assistance" means personal services,
36 including, but not limited to, the following: Help in
37 walking, bathing, dressing, feeding or getting in or out
38 of bed, or supervision required because of the age or
39 mental impairment of the resident;

40 (e) "Regional long-term care ombudsman" means any
41 paid staff of a designated regional long-term care
42 ombudsman program who has obtained appropriate
43 certification from the state commission on aging and
44 meets the qualifications set forth in section seven of this
45 article;

46 (f) "Resident" means an individual living in a nursing
47 home, personal care home, a residential board and care
48 home, or any long-term care facility as defined in
49 subsection (b) of this section, or who has lived in such
50 a setting, or who has made application to live in such
51 a setting: *Provided*, That nothing in this article shall be
52 construed to give a long-term care ombudsman the right
53 to obtain the waiting list of a long-term care facility;

54 (g) "State long-term care ombudsman" means an
55 individual who meets the qualifications of section five
56 of this article and who is employed by the state
57 commission on aging to implement the state long-term

58 care ombudsman program as set forth in this article;
59 and

60 (h) "Guardian" means a person lawfully invested with
61 the power and charged with the duty of taking care of
62 another person and managing the property and rights
63 of another person who for some peculiarity of status or
64 defect of age, understanding or self control is considered
65 incapable of administering his or her own affairs, to
66 include committees or other references under the code.

§16-5L-4. Creation of the state long-term care ombudsman program.

1 There is hereby created within the state commission
2 on aging, as set forth in article fourteen, chapter twenty-
3 nine of this code, the West Virginia long-term care
4 ombudsman program, pursuant to the Older Americans
5 Act of 1965, as amended.

§16-5L-5. State long-term care ombudsman; qualifications; duties.

1 (a) The state commission on aging shall employ a state
2 long-term care ombudsman to effect the purposes of this
3 article. The state long-term care ombudsman shall have
4 at least a master's degree in gerontology, social work,
5 health or a related field and shall have demonstrated
6 experience in one of the following areas: (1) The field
7 of aging; (2) health care; (3) community programs; (4)
8 long-term care issues; (5) working with health care
9 providers; (6) working with an involvement in volunteer
10 programs; and (7) administrative and managerial
11 experience. In lieu of the above educational and
12 experience qualifications, the state long-term care
13 ombudsman shall have a four-year degree in gerontol-
14 ogy, social work, health or a related field, plus five years
15 of full-time equivalent experience in gerontology, social
16 work, health or a related field. The state long-term care
17 ombudsman shall participate in ongoing training
18 programs related to his or her duties or responsibilities.
19 The state long-term care ombudsman shall not have
20 been employed within the past two years prior to the
21 date of his or her employment under this section by a
22 long-term care facility, or by any association of long-
23 term care facilities, or by any organization or corpora-

24 tion that directly or indirectly regulates, owns, or
25 operates a long-term care facility.

26 (b) Neither the state long-term care ombudsman nor
27 any member of his or her immediate family shall have,
28 or have had within the two years preceding his or her
29 employment under this section, any pecuniary interest
30 in the provision of long-term care. For the purposes of
31 this section, the term "immediate family" shall mean the
32 spouse, children, natural mother, natural father, natural
33 brothers or natural sisters of the state long-term care
34 ombudsman.

35 (c) The duties of the state long-term care ombudsman
36 shall include, but are not limited to, the following:

37 (1) Establishing a mandatory statewide procedure to
38 receive, investigate, and resolve complaints filed on
39 behalf of a resident, or filed on the state or regional
40 long-term care ombudsman's own initiative on behalf of
41 residents, relating to action, inaction or decisions of
42 providers of long-term care services, or the representa-
43 tives of such providers, of public agencies, or of social
44 service agencies, which may adversely affect the health,
45 safety, welfare and rights of such residents;

46 (2) Monitoring the development and implementation
47 of federal, state and local legislation, regulations and
48 policies with respect to long-term care facilities;

49 (3) Advocating for the rights of residents in long-term
50 care facilities;

51 (4) Establishing a mandatory statewide training
52 program and certification procedures for regional long-
53 term care ombudsmen, excluding clerical staff, which
54 shall include training in the following areas: (i) The
55 review of medical records; (ii) regulatory requirements
56 for long-term care facilities; (iii) confidentiality of
57 records; (iv) techniques of complaint investigation; (v)
58 the effects of institutionalization; and (vi) the special
59 needs of the elderly;

60 (5) Establishing and maintaining a statewide uniform
61 reporting system to collect and analyze data relating to
62 complaints and conditions in long-term care facilities for

63 the purpose of identifying and resolving significant
64 problems faced by residents as a class. Such data shall
65 be submitted to the office of health facility licensure and
66 certification of the department of health and human
67 resources on a regular basis;

68 (6) Promulgating mandatory statewide rules, regula-
69 tions and training related to the use of long-term care
70 ombudsman volunteers in the program, including
71 procedures to assure that the responsibility and author-
72 ity of ombudsman volunteers shall be restricted to
73 activities which do not involve access to confidential
74 resident or facility records, which do not involve
75 complaint investigation other than information gather-
76 ing to ascertain the nature and facts of a complaint, and
77 which do not involve the initiation or pursuit of legal
78 proceedings, actions or remedies; and

79 (7) Other duties as mandated by the Older Americans
80 Act of 1965, as amended.

**§16-5L-6. Establishment of regional long-term care
ombudsman programs.**

1 (a) The state commission on aging shall designate and
2 maintain regional long-term care ombudsman programs
3 encompassing all planning and development areas of the
4 state under the direction of the state long-term care
5 ombudsman. Any regional long-term care ombudsman
6 program so designated and maintained shall be a
7 representative of the state long-term care ombudsman
8 program.

9 (b) In order to be so designated, a regional long-term
10 care ombudsman program shall meet the following
11 requirements: (1) It shall have no pecuniary, licensing,
12 or organizational interest with long-term care facilities
13 or an association thereof; and (2) it shall (i) maintain a
14 private, nonprofit status as defined under the Internal
15 Revenue Code of 1986, or (ii) function as a local or
16 regional government agency.

**§16-5L-7. Regional long-term care ombudsmen; qualifi-
cations; duties; training; certification.**

1 (a) Each regional long-term care ombudsman pro-

2 gram shall employ one or more regional long-term care
3 ombudsmen to effect the purposes of this article. The
4 regional long-term care ombudsman shall have at least
5 a four-year degree in gerontology, social work, health,
6 or a related field and demonstrated experience in one
7 of the following areas: (1) The field of aging; (2) health
8 care or social service programs; (3) community pro-
9 grams; and (4) long-term care issues: *Provided*, That
10 persons employed in a designated regional long-term
11 care ombudsman program on the date of enactment of
12 this article may be given a waiver from these require-
13 ments provided that within one year from the date of
14 enactment of this article they enter into a program
15 leading to a degree in gerontology, social work, health
16 or a related field or complete fifty hours of continuing
17 education units in gerontology, social work, health or a
18 related field every two calendar year periods. The
19 regional long-term care ombudsman shall participate in
20 ongoing training programs related to his or her duties
21 or responsibilities. The regional long-term care ombuds-
22 man may not have been employed within the past two
23 years prior to the date of his or her employment under
24 this section by a long-term care facility, or by any
25 association of long-term care facilities, or by any
26 organization or corporation that directly or indirectly
27 regulates, owns, or operates a long-term care facility.

28 (b) Neither the regional long-term care ombudsman
29 nor any member of his or her immediate family may
30 have, or have had within the two years preceding his
31 or her employment under this section, any pecuniary
32 interest in the provision of long-term care. For the
33 purposes of this section, the term "immediate family"
34 shall mean the spouse, children, natural mother, natural
35 father, natural brothers or natural sisters of the regional
36 long-term care ombudsman.

37 (c) The duties of the regional long-term care ombuds-
38 man shall include, but are not limited to, the following:

39 (1) Regularly monitoring long-term care facilities and
40 investigating complaints filed on behalf of a resident, or
41 filed on the regional long-term care ombudsman's own
42 initiative, relating to the health, safety, welfare and

43 rights of such residents, in accordance with complaint
44 investigation procedures developed by the state long-
45 term ombudsman care program: *Provided*, That nothing
46 in this section shall be construed as to grant a regional
47 long-term care ombudsman the right of entry to a long-
48 term care facility's drug rooms or to treatment rooms
49 occupied by a resident unless prior consent has been
50 obtained from the resident;

51 (2) Monitoring the development and implementation
52 of federal, state and local laws, regulations and policies
53 with respect to long-term care facilities;

54 (3) Training certified volunteers in accordance with
55 the training and certification program developed by the
56 state long-term care ombudsman program;

57 (4) Encouraging, cooperating with, and assisting the
58 development and operation of referral services which
59 can provide current, valid and reliable information on
60 long-term care facilities and alternatives to institution-
61 alization to persons in need of these services and the
62 general public;

63 (5) Submitting reports as required by the state long-
64 term care ombudsman program; and

65 (6) Other duties as mandated by the Older Americans
66 Act of 1965, as amended.

67 (d) The state long-term care ombudsman shall de-
68 velop and implement procedures for training and
69 certification of regional long-term care ombudsmen.
70 Regional long-term care ombudsmen who satisfactorily
71 complete the training requirements shall be certified by
72 the state commission on aging and shall be given
73 identification cards which shall be presented to em-
74 ployees of a long-term care facility upon request. No
75 regional long-term care ombudsman may investigate
76 any complaint filed with the West Virginia long-term
77 care ombudsman program unless such person has been
78 certified by the state commission on aging. Consistent
79 with the provisions of this article and any rules and
80 regulations promulgated pursuant to section twenty-one,
81 certified regional long-term ombudsmen shall be

82 representatives of the state long-term care ombudsman
83 program.

**§16-5L-8. Long-term care ombudsman volunteers; quali-
fications; duties.**

1 (a) The regional long-term care ombudsman pro-
2 grams shall each create and maintain a volunteer
3 program to effect the purposes of this article, pursuant
4 to rules promulgated by the state long-term care
5 ombudsman and the state commission on aging.

6 (b) A long-term care ombudsman volunteer shall have
7 demonstrated interest in the field of aging and long-
8 term care issues and be able to communicate effectively
9 orally and in writing.

10 (c) No long-term care ombudsman volunteer nor any
11 member of his or her immediate family shall have, or
12 have had within the two years preceding his or her
13 employment under this section, any pecuniary interest
14 in the provision of long-term care. Nor shall any long-
15 term care ombudsman volunteer perform his or her
16 duties in any specific facility in which an immediate
17 family member of the long-term care ombudsman
18 volunteer is or has been a resident or applicant of that
19 specific facility. For the purposes of this section, the
20 term "immediate family" shall mean the spouse,
21 children, natural mother, natural father, natural
22 brothers or natural sisters of the long-term care
23 ombudsman volunteer.

24 (d) The long-term care ombudsman volunteer shall
25 perform only those duties assigned by the regional long-
26 term care ombudsman, including, but not limited to, the
27 following:

28 (1) Regularly visiting and talking with residents of
29 long-term care facilities, and inspecting all public areas
30 of the facility;

31 (2) Interviewing residents, family members and
32 employees of long-term care facilities to ascertain the
33 nature and facts of a complaint;

34 (3) Preparing reports for the regional long-term care

35 ombudsman's review or approval relating to complaint
36 interviews and the health, safety, welfare and rights of
37 residents of long-term care facilities;

38 (4) Informing residents as to the availability of
39 ombudsman services;

40 (5) Establishing and maintaining a cooperative
41 working relationship with employees of long-term care
42 facilities;

43 (6) Working to establish and maintain resident and
44 family councils to encourage interaction among resi-
45 dents, their families and long-term care facility staff;
46 and

47 (7) Performing other duties as assigned by the
48 regional long-term care ombudsman which are not
49 contrary to this article, to any applicable federal law,
50 or to rules promulgated by the state long-term care
51 ombudsman and the state commission on aging.

52 (e) Notwithstanding the duties described above, no
53 ombudsman volunteer may undertake or be assigned
54 duties involving complaint investigation activities, as
55 defined in section ten of this article, except for informa-
56 tion gathering to ascertain the nature and facts of a
57 complaint for the ombudsman's review. No ombudsman
58 volunteer, during the course of his or her volunteer
59 service, may initiate or pursue legal proceedings, actions
60 or remedies on behalf of a resident or long-term care
61 ombudsman program relating to a long-term care
62 facility, its employees, or its residents.

**§16-5L-9. Long-term care ombudsman volunteer training
and certification.**

1 (a) The state long-term care ombudsman shall develop
2 procedures for training and certification of long-term
3 care ombudsman volunteers. The regional long-term
4 care ombudsman shall implement certification training
5 for all ombudsman volunteers in accordance with the
6 procedures developed by the state long-term care
7 ombudsman. No ombudsman volunteer shall perform
8 any of the duties enumerated in section eight of this
9 article prior to the completion of the training program,
10 except as a supervised portion of that training program.

11 (b) Ombudsman volunteers who have satisfactorily
12 completed the training and certification requirements
13 shall be given identification cards valid for one year
14 which shall be presented to employees of a long-term
15 care facility upon request. Every year thereafter, the
16 long-term care ombudsman volunteer shall complete at
17 least seven hours of additional training before a new
18 identification card is issued. Consistent with the
19 provisions of this article and any rules and regulations
20 promulgated pursuant to section twenty-one, certified
21 long-term ombudsman volunteers shall be representa-
22 tives of the state long-term care ombudsman program.

§16-5L-10. Investigation of complaints.

1 (a) Upon receipt of a complaint filed on behalf of a
2 resident, or on his or her own initiative, a state or
3 regional long-term care ombudsman shall investigate
4 any act, practice, policy or procedure of any long-term
5 care facility or government agency which affects the
6 health, safety, welfare or rights of any resident.

7 (b) Investigative activities of the state or regional
8 long-term care ombudsman shall include, but shall not
9 be limited to: Information gathering, mediation, nego-
10 tiation, informing parties of the status of the investiga-
11 tion, notification to any aggrieved party of alternative
12 processes, reporting of suspected violations to a licensing
13 or certifying agency, and the reporting of suspected
14 criminal violations to the appropriate authorities.

15 (c) The state or regional long-term care ombudsman
16 need not investigate any complaint upon determining
17 that:

18 (1) The complaint is trivial, frivolous, vexatious or not
19 made in good faith;

20 (2) The complaint has been too long delayed to justify
21 present investigation;

22 (3) The resources available, considering the estab-
23 lished priorities, are insufficient for an adequate
24 investigation;

25 (4) The matter complained of is not within the

26 investigatory authority of the long-term care ombuds-
27 man program; or

28 (5) A real or apparent conflict of interest exists and
29 no other ombudsman is available to investigate the
30 complaint in an impartial manner. If a determination
31 is made by a regional long-term care ombudsman not
32 to investigate any complaint, then the complaint shall
33 be referred to the state long-term care ombudsman who
34 shall make a final decision as to whether the matter
35 warrants further investigation.

36 (d) State and regional long-term care ombudsmen
37 may institute actions on behalf of residents to obtain
38 injunctive and declaratory relief, but not damages. In
39 order to enable ombudsman to bring such actions, the
40 secretary of the department of health and human
41 resources shall either:

42 (1) Establish an administrative hearing process under
43 the procedures for contested cases defined at article five,
44 chapter twenty-nine-a of this code to be available to any
45 state or regional ombudsmen bringing an action on
46 behalf of a resident against a long-term care facility or
47 governmental agency; or

48 (2) Ensure that state and regional ombudsmen have
49 sufficient access to legal counsel to bring actions on
50 behalf of residents in civil court: *Provided*, That nothing
51 in this subsection shall be construed to prevent a
52 resident of a long-term care facility from filing directly,
53 on his or her own behalf, a suit for relief of any sort
54 in any state or federal court.

55 (e) The state commission on aging and other appro-
56 priate state governmental agencies shall establish and
57 implement cooperative agreements for receiving,
58 processing, responding to and resolving complaints
59 involving state governmental agencies under the
60 provisions of this section.

§16-5L-11. Access to long-term care facilities.

1 (a) A state or regional long-term care ombudsman
2 shall, with proper identification, have access to any long-
3 term care facility for the purposes of investigations of

4 a complaint filed pursuant to section ten of this article.
5 The state or regional long-term care ombudsman may
6 enter a facility at a time appropriate to the complaint.
7 The visit may be announced in advance or be made
8 unannounced as appropriate to the complaint under
9 investigation. Upon entry of the facility, the state or
10 regional long-term care ombudsman shall promptly and
11 personally advise one of the following persons of his or
12 her presence: (1) The administrator or acting adminis-
13 trator; (2) the residence director; or (3) another available
14 supervisory agent of the facility. If entry is refused by
15 the person in charge of said facility, the long-term care
16 ombudsman may apply to the magistrate court of the
17 county in which the facility is located for a warrant
18 authorizing entry, and the court shall issue an appro-
19 priate warrant if it finds good cause therefor.

20 (b) For activities other than those specifically related
21 to the investigation of a complaint, a state or regional
22 long-term care ombudsman, upon proper identification,
23 shall have access to any long-term care facility between
24 the hours of 8:00 a.m. and 8:00 p.m. in order to:

25 (1) Visit, talk with, and make ombudsman and social
26 services available to all residents;

27 (2) Inform residents of their rights and entitlements,
28 and their corresponding obligations, under applicable
29 federal and state laws by means of distribution of
30 educational materials and discussion in groups and with
31 individual residents;

32 (3) Assist residents in asserting their legal rights
33 regarding claims for public assistance, medical assist-
34 ance, and other public entitlements; and

35 (4) Supervise, direct or assist a long-term care
36 ombudsman volunteer in the performance of his or her
37 assigned duties.

38 Access to long-term care facilities under this section
39 shall be deemed to include the right to private commun-
40 ication with residents.

41 (c) A state or regional long-term care ombudsman
42 who has access to a facility under this section shall not

43 enter the living area of a resident without identifying
44 himself or herself to the resident. After identifying
45 himself or herself, an ombudsman shall be permitted to
46 enter the living area of a resident unless that resident
47 communicates on that particular occasion the resident's
48 desire to prevent the ombudsman from entering. A
49 resident shall have the right to terminate, at any time,
50 any visit by a representative of the ombudsman pro-
51 gram who has access under this section or any other
52 applicable section of this article.

53 (d) Access to a facility pursuant to subsection (a) or
54 (b) of this section includes the right to tour the facility
55 unescorted: *Provided*, That individual residents may
56 terminate at any time any communication by an
57 ombudsman having access under this section and that
58 nothing in this section shall be construed as to grant a
59 long-term care volunteer ombudsman the right of entry
60 to the drug rooms and treatment rooms of a long-term
61 care facility.

§16-5L-12. Access to records.

1 (a) The long-term care ombudsman is allowed access
2 to any resident's records, including medical records,
3 reasonably necessary to any investigation carried out
4 pursuant to the provisions of section ten of this article,
5 under the following conditions:

6 (1) If the resident is competent and has the ability to
7 write, access may only be obtained by the written
8 consent of the resident;

9 (2) If the resident is competent but unable to write,
10 oral consent may be given in the presence of a third
11 party who shall witness the resident's consent in
12 writing;

13 (3) If the resident is under a guardianship committee
14 as set forth in article eleven, chapter twenty-seven of
15 this code or has granted a medical power of attorney
16 which is in effect as set forth in article thirty-a, chapter
17 sixteen of this code, or granted any other power of
18 attorney which is in effect, access may only be obtained
19 by the written consent of the guardian or attorney in

20 fact, unless the existence of guardianship, medical
21 power of attorney or attorney in fact is unknown to the
22 long-term care ombudsman upon investigation and to
23 the long-term care facility, or unless the guardian or
24 attorney in fact cannot be reached through normal
25 communications channels within five working days;

26 (4) If the resident is unable to express written or oral
27 consent and there is no guardian or attorney in fact or
28 the notification of the guardian or attorney in fact is not
29 achieved for the reasons set forth in subsection (3) of this
30 section, or if the resident is deceased, inspection of
31 records may be made by the ombudsman.

32 (b) The state or regional long-term care ombudsman
33 is allowed access to all records of any long-term care
34 facility that are reasonably necessary for the investiga-
35 tion of a complaint under section ten of this article,
36 including, but not limited to, facility incident reports,
37 dietary records, policies and procedures of the facility
38 that the facility is required to maintain under federal
39 or state law, admission agreements, staffing schedules,
40 any document depicting the actual staffing pattern of
41 the facility and resident council and grievance commit-
42 tee minutes.

§16-5L-13. Subpoena powers.

1 (a) The state long-term care ombudsman, or the
2 designee of the state long-term care ombudsman, may,
3 in the course of any investigation carried out pursuant
4 to section ten of this article:

5 (1) Apply to the circuit court of the appropriate
6 county or the circuit court of the county of Kanawha for
7 the issuance of a subpoena to compel at a specific time
8 and place, by subpoena, the appearance, before a person
9 authorized to administer oaths, the sworn testimony of
10 any person whom the state or regional long-term care
11 ombudsman reasonably believes may be able to give
12 information relating to a matter under investigation; or

13 (2) Apply to the circuit court of the appropriate
14 county or the circuit court of the county of Kanawha for
15 the issuance of a subpoena duces tecum to compel any

16 person to produce at a specific time and place, before
17 a person authorized to administer oaths, any documents,
18 books, records, papers, objects or other evidence which
19 the state or regional long-term care ombudsman
20 reasonably believes may relate to a matter under
21 investigation.

22 (b) No subpoena or subpoena duces tecum applied for
23 by the state ombudsman or designee pursuant to
24 subsection (a) of this section shall be issued until a
25 circuit court judge in term or vacation thereof has
26 personally reviewed the application and accompanying
27 affidavits and approved, by a signed order entered by
28 the judge, the issuance of the subpoena or subpoena
29 duces tecum. Subpoenas or subpoenas duces tecum
30 applied for pursuant to this section may be issued on an
31 ex parte basis following review and approval of the
32 application by the judge in term or vacation thereof.

33 (c) The attorney general shall, upon request, provide
34 legal counsel and services to the long-term care
35 ombudsman program in all administrative proceedings
36 and in all proceedings in any circuit court and the West
37 Virginia supreme court of appeals. The prosecuting
38 attorney of any county shall provide without compensa-
39 tion legal counsel and services in criminal actions to the
40 long-term care ombudsman program in circuit court
41 proceedings in that county.

**§16-5L-14. Cooperation among government departments
or agencies.**

1 (a) The state or regional long-term care ombudsman
2 shall have access to publicly disclosable records of any
3 state government department, agency, or office reason-
4 ably necessary to any investigation carried out pursuant
5 to section ten of this article. The regional long-term care
6 ombudsman shall be notified of and be allowed to
7 observe any survey conducted by a government agency
8 affecting the health, safety, welfare or rights of
9 residents of a long-term facility.

10 (b) The state long-term care ombudsman shall de-
11 velop referral procedures to refer any complaint to any
12 appropriate state government department, agency or

13 office. The department or agency shall acknowledge
14 receipt and disposition within thirty calendar days on
15 any complaint referred to it by a state or regional long-
16 term care ombudsman.

17 (c) When abuse, neglect or exploitation of a resident
18 of a long-term care facility is suspected, the state or
19 regional long-term care ombudsman shall make a
20 referral to the office of adult protective services of the
21 department of health and human resources and to the
22 office of health facility licensure and certification of the
23 department of health and human resources. The state or
24 regional long-term care ombudsman shall coordinate
25 with the office of adult protective services and the office
26 of health facility licensure and certification on any
27 investigation of suspected abuse, neglect or exploitation
28 undertaken by those offices under the provisions of this
29 subsection.

30 (d) Any state government department, agency, or
31 office which responds to a complaint referred to it by
32 a state or regional long-term care ombudsman shall
33 forward to the long-term care ombudsman copies of
34 publicly disclosable inspection reports and plans of
35 correction, and notices of any citations and sanctions
36 levied against the long-term care facility identified in
37 the complaint.

38 (e) The state or regional long-term care ombudsman
39 shall seek to establish coordination with programs
40 which provide legal services for the elderly, including,
41 but not limited to, programs funded by the federal legal
42 services corporation or under the Older Americans Act
43 of 1965, as amended.

§16-5L-15. Confidentiality of investigations.

1 (a) Information relating to any investigation of a
2 complaint pursuant to section ten of this article that
3 contains the identity of the complainant or resident shall
4 remain confidential except:

5 (1) Where disclosure is authorized in writing by the
6 complainant, or resident or the guardian, committee,
7 attorney in fact or representative of the resident;

8 (2) Where disclosure is necessary to the office of adult

9 protective services of the department of health and
10 human resources in order for such office to determine
11 the appropriateness of initiating an investigation
12 regarding potential abuse, neglect or emergency
13 circumstances as defined in article six, chapter nine of
14 this code;

15 (3) Where disclosure is necessary to the office of
16 health facility licensure and certification of the depart-
17 ment of health and human resources in order for such
18 office to determine the appropriateness of initiating an
19 investigation to determine facility compliance with
20 applicable rules of licensure and/or certification; or

21 (4) Upon order of any appropriate county circuit court
22 after the judge in term or vacation thereof has con-
23 ducted a hearing following adequate notice to all parties
24 and rendered a determination as the interests of justice
25 may require.

26 (b) Notwithstanding any other section within this
27 article, all information, records and reports received by
28 or developed by a state or regional long-term care
29 ombudsman which relate to a resident of a facility,
30 including written material identifying a resident, are
31 confidential and are not subject to the provisions of
32 chapter twenty-nine-b of this code, and shall not be
33 disclosed or released by the long-term care ombudsman,
34 except under the circumstances enumerated in this
35 section.

36 (c) Nothing in subsection (a) or (b) of this section shall
37 be construed to prohibit the preparation and submission
38 by any state or regional long-term ombudsman of
39 statistical data and reports, as required to implement
40 the provisions of this article or any applicable federal
41 law, exclusive of any material that identifies any
42 resident or complainant.

43 (d) The executive director of the state commission on
44 aging shall have access to the records and files of the
45 long-term care ombudsman program to verify its
46 effectiveness and quality where the identity of any
47 complainant or resident is not disclosed.

§16-5L-16. Limitations on liability.

1 (a) An ombudsman participating in an investigation
2 carried out pursuant to section ten of this article and
3 long-term care ombudsman volunteers who are perform-
4 ing their duties pursuant to section eight of this article
5 shall be immune from any civil liability that otherwise
6 might result by reason of his or her participation in the
7 investigation as long as such participation is not
8 violative of any applicable law, rule or regulation, done
9 within the scope of their employment and done in good
10 faith.

11 (b) If an act or omission by any long-term care
12 ombudsman, or by any facility employee acting in good
13 faith at the direction of a long-term care ombudsman
14 pursuant to a specific resident complaint, causes a
15 resident's rights to be violated, no long-term care
16 facility, its owners, administrators, officers, director,
17 agents, consultants, employees or any member of
18 management shall be held civilly liable as a result of
19 said act or omission.

§16-5L-17. Availability of legal counsel.

1 The state commission on aging shall establish and
2 maintain procedures to ensure that:

3 (a) Adequate legal counsel is available to the long-
4 term care ombudsman program for advice, consultation
5 and representation as necessary for any state or regional
6 long-term care ombudsman or ombudsman volunteer in
7 connection with the performance of the ombudsman's or
8 ombudsman volunteer's official duties; and

9 (b) The long-term care ombudsman program has the
10 ability to pursue administrative, legal and other
11 appropriate remedies on behalf of residents of long-term
12 care facilities.

§16-5L-18. Willful interference; retaliation; penalties.

1 (a) Any individual who willfully interferes with or
2 impedes a state or regional long-term care ombudsman
3 or ombudsman volunteer in the performance of his or

4 her official duties shall be guilty of a misdemeanor, and,
5 upon conviction thereof, shall be fined not more than one
6 hundred dollars, or imprisoned in the county jail for not
7 more than ninety days, or both fined and imprisoned.

8 (b) Any individual who institutes or commits a
9 discriminatory, disciplinary, retaliatory or reprisal
10 action against any officer or employee of a long-term
11 care facility or government department or agency,
12 against any resident of a long-term care facility or
13 against any guardian, attorney in fact or against any
14 family member of any resident of a long-term care
15 facility for having filed a complaint with or provided
16 information in good faith to a state or regional long-term
17 ombudsman or ombudsman volunteer to aid the long-
18 term care ombudsman or ombudsman volunteer in
19 carrying out the duties pursuant to this article is guilty
20 of a misdemeanor, and, upon conviction thereof, shall be
21 fined not more than one hundred dollars, or imprisoned
22 in the county jail for not more than ninety days, or both
23 fined and imprisoned.

24 (c) Any individual violating the provisions of subsec-
25 tion (a) or (b) of this section shall, for the second or any
26 subsequent offense under either of these subsections, be
27 guilty of a misdemeanor, and, upon conviction thereof,
28 shall be fined not more than two hundred fifty dollars,
29 or imprisoned in the county jail for not more than ninety
30 days, or both fined and imprisoned. Each day of a
31 continuing violation after conviction shall be considered
32 a separate offense.

33 (d) There shall be a rebuttable presumption in any
34 civil action that any reprisal action, as defined below,
35 within ninety days of the incident, is discriminatory,
36 disciplinary or retaliatory in violation of the public
37 policy of this state. For the purpose of this section, the
38 term "reprisal action" refers to action taken by the
39 entity involved in a complaint or report against the
40 person making the complaint or report, or the person
41 with respect to whom the complaint or report was made
42 because of the complaint or report, and includes, but is
43 not limited to, the following:

- 44 (1) Discharge of transfer from a long-term care
45 facility;
- 46 (2) Termination of service;
- 47 (3) Restriction or prohibition of access to the long-
48 term care facility or its residents;
- 49 (4) Discharge from or termination of employment;
- 50 (5) Demotion or reduction in remuneration for
51 services;
- 52 (6) Any restriction of rights affecting the person's
53 ability to perform his or her employment duties or
54 responsibilities or affecting the person's health, safety or
55 welfare; or
- 56 (7) Any restriction against a state or regional long-
57 term care ombudsman or ombudsman volunteer which
58 impedes the carrying out of duties pursuant to this
59 article.
- 60 (e) Nothing in this section shall be construed as to
61 infringe upon the rights of an employer to supervise,
62 discipline or terminate an employee for other reasons.

§16-5L-19. Facility posting of long-term care ombudsman program information.

1 Every long-term care facility in this state shall
2 provide each resident with a copy and shall post in a
3 conspicuous location in at least ten-point type a notice
4 of information on the long-term care ombudsman
5 program. Such notice shall include: (1) The name,
6 address and telephone number of the designated long-
7 term care ombudsman program serving the region in
8 which the facility is located; (2) a brief description of
9 the services provided by the long-term care ombudsman
10 program; and (3) a statement as to the penalties for
11 willful interference and retaliation as provided in
12 section eighteen of this article. The form and wording
13 of the notice shall be approved by the state long-term
14 care ombudsman program.

§16-5L-20. Funding for long-term care ombudsman programs.

1 The state long-term care ombudsman program shall
2 receive such funds as are appropriated pursuant to the
3 Older Americans Act of 1965, as amended, for the
4 operation of the state long-term care ombudsman
5 program, and shall receive such funds as are appro-
6 priated by the Legislature for the operation of the
7 program.

8 The regional long-term care ombudsman program
9 shall receive such funds as are appropriated by the area
10 agencies on aging pursuant to the Older Americans Act
11 of 1965, as amended.

12 Any long-term care ombudsman program may solicit
13 and receive funds, gifts and contributions to support the
14 operation of the program. No program shall solicit or
15 receive any funds, gifts or contributions where the
16 solicitation or receipt would jeopardize the indepen-
17 dence and objectivity of the program.

§16-5L-21. Promulgation of rules.

1 Pursuant to chapter twenty-nine-a of this code, the
2 state long-term care ombudsman and the state commis-
3 sion on aging shall promulgate rules to effectuate the
4 purposes and provisions of this article.

§16-5L-22. Severability.

1 If any provision of this article, or the application
2 thereof to any provision or circumstance, shall be held
3 unconstitutional or otherwise invalid, such invalidity or
4 unconstitutionality shall not affect the provisions or
5 application of this article which can be given effect
6 without the unconstitutional or invalid provisions of
7 application, and to this end the provisions of this article
8 are declared to be severable.

CHAPTER 84

(Com. Sub. for H. B. 2822—By Delegate Brown)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and three,
article twenty-two, chapter sixteen of the code of West

Virginia, one thousand nine hundred thirty-one, as amended, relating to the detection and control of phenylketonuria, galactosemia, hypothyroidism, and authorizing additional testing for certain other diseases in newborn children; authorizing the bureau of public health to test for and establish programs relating to the same; requiring hospitals, birthing centers, parents or guardians, as well as physicians, to test for such diseases on newborns; replacing the department of health with the bureau of public health; authorizing the state public health commissioner to promulgate rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. DETECTION AND CONTROL OF PHENYLKETONURIA, GALACTOSEMIA, HYPOTHYROIDISM, AND CERTAIN OTHER DISEASES IN NEWBORN CHILDREN.

§16-22-1. Findings.

§16-22-2. Program to combat mental retardation or other severe health hazards; rules; facilities for making tests.

§16-22-3. Tests for phenylketonuria, galactosemia and hypothyroidism and certain other diseases specified by the state public health commissioner; reports; assistance to afflicted children; public health commissioner to promulgate rules.

§16-22-1. Findings.

1 The Legislature finds that phenylketonuria, galactose-
2 mia, hypothyroidism, and certain other diseases are
3 usually associated with mental retardation or other
4 severe health hazards. Laboratory tests are readily
5 available to aid in the detection of these diseases and
6 hazards to the health of those suffering thereof may be
7 lessened or prevented by early detection and treatment.
8 Damage from these diseases, if untreated in the early
9 months of life, is usually rapid and not appreciably
10 affected by treatment.

§16-22-2. Program to combat mental retardation or other severe health hazards; rules; facilities for making tests.

1 The state bureau of public health is hereby authorized
2 to establish and carry out a program designed to combat
3 mental retardation or other severe health hazards in our
4 state's population due to phenylketonuria, galactosemia,
5 hypothyroidism, and certain other diseases specified by
6 the state public health commissioner, and may adopt
7 reasonable rules and regulations necessary to carry out
8 such a program. The bureau of public health shall
9 establish and maintain facilities at its state hygienic
10 laboratory for testing specimens for the detection of
11 phenylketonuria, galactosemia, hypothyroidism, and
12 certain other diseases specified by the state public
13 health commissioner. Tests shall be made by such
14 laboratory of specimens upon request by physicians,
15 hospital medical personnel and other individuals
16 attending newborn infants. The state bureau of public
17 health is authorized to establish additional laboratories
18 throughout the state to perform tests for the detection
19 of phenylketonuria, galactosemia, hypothyroidism, and
20 certain other diseases specified by the state public
21 health commissioner.

§16-22-3. Tests for phenylketonuria, galactosemia and hypothyroidism and certain other diseases specified by the state public health commissioner; reports; assistance to afflicted children; public health commissioner to promulgate rules.

1 (a) The hospital or birthing center in which an infant
2 is born, the parents or legal guardians, the physician
3 attending a newborn child, or any person attending a
4 newborn child not under the care of a physician shall
5 require and ensure that each such child be tested for
6 phenylketonuria, galactosemia, hypothyroidism, and
7 certain other diseases specified by the state public
8 health commissioner according to current recommenda-
9 tions of the state bureau of public health. Any test found
10 positive for phenylketonuria, galactosemia, hypothyroid-
11 ism, or certain other diseases specified by the state
12 public health commissioner shall be promptly reported
13 to the state bureau of public health by the director of
14 the laboratory performing such test.

15 (b) The state bureau of public health, in cooperation
16 with other state departments and agencies, and with
17 attending physicians, is authorized to provide medical,
18 dietary and related assistance to children determined to
19 be afflicted with phenylketonuria, galactosemia, hypo-
20 thyroidism and certain other diseases specified by the
21 state public health commissioner.

22 (c) The state public health commissioner is authorized
23 to promulgate rules pursuant to chapter twenty-nine of
24 this code to implement the provisions of this section,
25 with the approval of the secretary of the department of
26 health and human resources.

CHAPTER 85

(Com. Sub. for S. B. 416—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five, six, seven, eight and nine, article thirty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto three new sections, designated sections eleven, twelve and thirteen, all relating to the West Virginia natural death act; amending definitions; providing for the definition of life-prolonging intervention; procedures for executing a living will; providing additional circumstances for witnessing a living will and deleting the requirement that the witnesses must attest to the declarant's competency; providing for advising persons of the existence and availability of living will and medical power of attorney forms and giving assistance in completing such forms; providing for implementation of a living will when person is in a persistent vegetative state; revocation; physician's duty to communicate and document terminal condition or persistent vegetative state; capacity and intent of declarant; liability and inability of physician to comply with the living will; deleting penalties for willful fraud

in preparation, execution or concealment of a living will; insurance; preservation of existing rights; continuation of an existing living will; reciprocity; relation to existing law; and severability.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight and nine, article thirty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections eleven, twelve and thirteen, all to read as follows:

ARTICLE 30. WEST VIRGINIA NATURAL DEATH ACT.

- §16-30-2. Definitions.
- §16-30-3. Executing a living will.
- §16-30-4. Revocation.
- §16-30-5. Physician's duty to confirm, communicate and document terminal condition or persistent vegetative state; medical record identification.
- §16-30-6. Competency and intent of declarant.
- §16-30-7. Liability and protection of living will; transfer.
- §16-30-8. Insurance.
- §16-30-9. Preservation of existing rights; no presumption; living wills previously executed.
- §16-30-11. Reciprocity.
- §16-30-12. Relation to existing law.
- §16-30-13. Severability.

§16-30-2. Definitions.

- 1 For the purposes of this article, the terms:
- 2 (1) "Attending physician" means the physician se-
- 3 lected by, or assigned to, a person and who has primary
- 4 responsibility for the treatment and care of the person;
- 5 (2) "Declarant" means a person who has executed a
- 6 living will;
- 7 (3) "Health care provider" means a person, partner-
- 8 ship, corporation, facility or institution licensed,
- 9 certified or authorized by law to provide professional
- 10 health care services in this state;
- 11 (4) "Health care representative" means a person
- 12 eighteen years of age or older appointed by another
- 13 person to make health care decisions pursuant to the

14 provisions of article thirty-a of this chapter or similar
15 act of another state and recognized as valid under the
16 laws of this state;

17 (5) "Incapacity", or words of like import, means the
18 inability, because of physical or mental impairment, to
19 appreciate the nature and implications of a health care
20 decision, to make an informed choice regarding the
21 alternatives presented and to communicate that choice
22 in an unambiguous manner as determined by two
23 physicians or by one physician and one licensed psychol-
24 ogist, both of whom are licensed to practice in this state,
25 and additionally, have examined the declarant. The
26 declarant's attending physician shall be one of those who
27 makes the determination required herein;

28 (6) "Life-prolonging intervention" means any medical
29 procedure or intervention which, when applied to a
30 person, would serve solely to artificially prolong the
31 dying process or to maintain the person in a persistent
32 vegetative state. The term "life-prolonging intervention"
33 does not include the administration of medication or the
34 performance of any other medical procedure deemed
35 necessary to provide comfort or to alleviate pain;

36 (7) "Living will" means a written, witnessed advance
37 directive governing the withholding or withdrawing of
38 life-prolonging intervention, voluntarily executed by a
39 person in accordance with the requirements of section
40 three of this article;

41 (8) "Persistent vegetative state" means a permanent
42 and irreversible state as diagnosed by the attending
43 physician and a second physician in which the person
44 has intact brain stem function but no higher cortical
45 function and has neither self-awareness or awareness of
46 the surroundings in a learned manner;

47 (9) "Physician" means a person licensed and author-
48 ized to practice medicine; and

49 (10) "Terminal condition" means an incurable condi-
50 tion caused by injury, disease or illness, which in the
51 judgment of the attending physician and a second
52 physician would result in death within a relatively short
53 time.

§16-30-3. Executing a living will.

1 (a) Any mentally competent person eighteen years of
2 age or older may execute at any time a living will
3 governing the withholding or withdrawal of life-
4 prolonging intervention from himself or herself. A
5 living will made pursuant to this article shall be: (1) In
6 writing; (2) executed by the declarant or by another
7 person in the declarant's presence at the declarant's
8 express direction if the declarant is physically unable to
9 do so; (3) dated; (4) signed in the presence of two or more
10 witnesses at least eighteen years of age; and (5) signed
11 and attested by such witnesses whose signatures and
12 attestations shall be acknowledged before a notary
13 public as provided in subsection (d) of this section.

14 (b) In addition, a witness may not be:

15 (1) The person who signed the living will on behalf of
16 and at the direction of the declarant;

17 (2) Related to the declarant by blood or marriage;

18 (3) Entitled to any portion of the estate of the
19 declarant according to the laws of intestate succession
20 of the state of the declarant's domicile or under any will
21 of the declarant or codicil thereto: *Provided*, That the
22 validity of the living will shall not be affected when a
23 witness at the time of witnessing such living will was
24 unaware of being a named beneficiary of the declarant's
25 will;

26 (4) Directly financially responsible for declarant's
27 medical care;

28 (5) The attending physician; or

29 (6) The declarant's health care representative, proxy
30 or successor health care representative.

31 (c) It shall be the responsibility of the declarant to
32 provide for notification to his or her attending physician
33 and other health care providers of the existence of the
34 living will. An attending physician, when presented
35 with the living will, shall make the living will or a copy
36 of the living will a part of the declarant's medical
37 records.

38 (d) At the time of admission to any hospital or
39 extended care facility, each person shall be advised of
40 the existence and availability of living will and medical
41 power of attorney forms and shall be given assistance
42 in completing such forms if the person desires: *Provided,*
43 That under no circumstances may admission to a
44 hospital or extended care facility be predicated upon a
45 person having completed either a medical power of
46 attorney or living will.

47 (e) The living will may, but need not, be in the
48 following form, and may include other specific direc-
49 tions not inconsistent with other provisions of this
50 article. Should any of the other specific directions be
51 held to be invalid, such invalidity shall not affect other
52 directions of the living will which can be given effect
53 without the invalid direction and to this end the
54 directions in the living will are severable.

55

"LIVING WILL

56 "Living will made this _____ day
57 of _____ (month, year).
58 I, _____, being of sound mind,
59 willfully and voluntarily declare that in the absence of
60 my ability to give directions regarding the use of life-
61 prolonging intervention, it is my desire that my dying
62 shall not be artificially prolonged under the following
63 circumstances:

64 "If at any time I should be certified by two physicians
65 who have personally examined me, one of whom is my
66 attending physician, to have a terminal condition or to
67 be in a persistent vegetative state, I direct that life-
68 prolonging intervention that would serve solely to
69 artificially prolong the dying process or maintain me in
70 a persistent vegetative state be withheld or withdrawn,
71 and that I be permitted to die naturally with only the
72 administration of medication or the performance of any
73 other medical procedure deemed necessary to keep me
74 comfortable and alleviate pain.

75 "SPECIAL DIRECTIVES OR LIMITATIONS ON
76 THIS DECLARATION: (If none, write "none".)

77 "It is my intention that this living will be honored as
78 the final expression of my legal right to refuse medical
79 or surgical treatment and accept the consequences
80 resulting from such refusal.

81 "I understand the full import of this living will.

82 "Signed _____

83 "Address _____

84 _____

85 "I did not sign the declarant's signature above for or
86 at the direction of the declarant. I am at least eighteen
87 years of age and am not related to the declarant by blood
88 or marriage, entitled to any portion of the estate of the
89 declarant according to the laws of intestate succession
90 of the state of the declarant's domicile or to the best of
91 my knowledge under any will of declarant or codicil
92 thereto, or directly financially responsible for declar-
93 ant's medical care. I am not the declarant's attending
94 physician or the declarant's health care representative,
95 proxy or successor health care representative under a
96 medical power of attorney.

97 "Witness _____

98 "Address _____

99 _____

100 "Witness _____

101 "Address _____

102 _____

103 "STATE OF _____,

104 "COUNTY OF _____,

105 "The foregoing instrument was acknowledged before
106 me this _____ (date) by the
107 declarant and by the two witnesses whose signatures
108 appear above.

109 "My commission expires: _____

110 "_____

111 Signature of Notary Public.”

§16-30-4. Revocation.

1 (a) A living will may be revoked at any time only by
2 the declarant or at the express direction of the declar-
3 ant, without regard to the declarant’s mental state by
4 any of the following methods:

5 (1) By being destroyed by the declarant or by some
6 person in the declarant’s presence and at his direction;

7 (2) By a written revocation of the living will signed
8 and dated by the declarant or person acting at the
9 direction of the declarant. Such revocation shall become
10 effective only upon delivery of the written revocation to
11 the attending physician by the declarant or by a person
12 acting on behalf of the declarant. The attending
13 physician shall record in the declarant’s medical record
14 the time and date when he or she receives notification
15 of the written revocation; or

16 (3) By a verbal expression of the intent to revoke the
17 living will in the presence of a witness eighteen years
18 of age or older who signs and dates a writing confirming
19 that such expression of intent was made. Any verbal
20 revocation shall become effective only upon communica-
21 tion of the revocation to the attending physician by the
22 declarant or by a person acting on behalf of the
23 declarant. The attending physician shall record, in the
24 declarant’s medical record, the time, date and place of
25 when he or she receives notification of the revocation.

26 (b) There is no criminal or civil liability on the part
27 of any person for failure to act upon a revocation made
28 pursuant to this section unless that person has actual
29 knowledge of the revocation.

§16-30-5. Physician’s duty to confirm, communicate and document terminal condition or persistent vegetative state; medical record identification.

1 (a) An attending physician who has been notified of
2 the existence of a living will executed under this article,
3 without delay after the diagnosis of a terminal condition

4 or persistent vegetative state of the declarant, shall take
5 the necessary steps to provide for confirmation, written
6 certification and documentation of the declarant's
7 terminal condition or persistent vegetative state in the
8 declarant's medical record.

9 (b) Once confirmation, written certification and
10 documentation of the declarant's terminal condition is
11 made, the attending physician shall verbally or in
12 writing inform the declarant of his or her terminal
13 condition or the declarant's health care representative,
14 next of kin or other responsible person, if the declarant
15 lacks capacity to comprehend such information and
16 shall document such communication in the declarant's
17 medical record.

18 (c) All inpatient health care facilities shall develop a
19 system to visibly identify a person's chart which
20 contains a living will as set forth in this article.

§16-30-6. Competency and intent of declarant.

1 (a) The desires of a capable declarant at all times
2 supersede the effect of the living will.

3 (b) If a person is incapacitated at the time of the
4 decision to withhold or withdraw life-prolonging
5 intervention, the person's living will executed in
6 accordance with section three of this article is presumed
7 to be valid. For the purposes of this article, a physician
8 or health facility may presume in the absence of actual
9 notice to the contrary that a person who executed a
10 living will was of sound mind when it was executed. The
11 fact that a person executed a living will is not an
12 indication of the persons's mental incapacity.

§16-30-7. Liability and protection of living will; transfer.

1 (a) No health care provider or employee thereof who
2 in good faith and pursuant to reasonable medical
3 standards causes or participates in the withholding or
4 withdrawing of life-prolonging intervention from a
5 person pursuant to a living will made in accordance
6 with this article shall, as a result thereof, be subject to
7 criminal or civil liability.

8 (b) An attending physician who cannot comply with
9 the living will of a declarant pursuant to this article
10 shall, in conjunction with the health care representative,
11 next of kin of the declarant or other responsible person,
12 effect the transfer of the declarant to another physician
13 who will honor the living will of the declarant. Transfer
14 under these circumstances does not constitute abandon-
15 ment.

§16-30-8. Insurance.

1 (a) The withholding or withdrawal of life-prolonging
2 intervention from a declarant in accordance with the
3 provisions of this article does not, for any purpose,
4 constitute a suicide and does not constitute the crime of
5 assisting suicide.

6 (b) The making of a living will pursuant to section
7 three of this article does not affect in any manner the
8 sale, procurement or issuance of any insurance policy
9 nor does it modify the terms of an existing policy. No
10 insurance policy may be legally impaired or invalidated
11 in any manner by the withholding or withdrawal of life-
12 prolonging intervention from an insured person, not-
13 withstanding any term of the policy to the contrary.

14 (c) No health care provider or health care service plan,
15 health maintenance organization, insurer issuing
16 disability insurance, self-insured employee welfare
17 benefit plan, nonprofit medical service corporation or
18 mutual nonprofit hospital service corporation shall
19 require any person to execute a living will as a condition
20 for being insured for or receiving health care services.

**§16-30-9. Preservation of existing rights; no presumption;
living wills previously executed.**

1 (a) Nothing in this article impairs or supersedes any
2 legal right or legal responsibility which any person may
3 have to effect the withholding or withdrawal of life-
4 prolonging intervention in any lawful manner. In such
5 respect the provisions of this article are cumulative.

6 (b) This article creates no presumption concerning the
7 intention of a person who has not executed a living will
8 to consent to the use or withholding of life-prolonging

9 intervention in the event of a terminal condition or
10 persistent vegetative state.

11 (c) A living will executed prior to the effective date
12 of this article and which expressly provides for the
13 withholding or withdrawal of life-prolonging interven-
14 tion or for the termination of life-sustaining procedures
15 in substantial compliance with the provisions of section
16 three of this article is hereby recognized as a valid living
17 will, as though it were executed in compliance with the
18 provisions of this article.

§16-30-11. Reciprocity.

1 A living will executed in another state is validly
2 executed for the purposes of this article if it is executed
3 in compliance with the laws of this state or with the laws
4 of the state where executed and expressly provides for
5 the withholding or withdrawal of life-prolonging
6 intervention or for the termination of life-sustaining
procedure.

§16-30-12. Relation to existing law.

1 Nothing in this article shall be construed to abrogate
2 the common law doctrine of medical necessity.

§16-30-13. Severability.

1 The provisions of this article are severable and if any
2 provision, section or part thereof shall be invalid,
3 unconstitutional or inapplicable to any person or
4 circumstance, such invalidity, unconstitutionality or
5 inapplicability shall not affect or impair any other
6 remaining provisions contained herein.

CHAPTER 86

(S. B. 384—By Senator Lucht)

[Passed March 8, 1991: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as

amended, relating to establishing four stakes races including a West Virginia futurity race and a Frank Gall memorial stakes race; increasing sire owners share; decreasing purse supplements; and providing for administration and funding of restricted races.

Be it enacted by the Legislature of West Virginia:

That section thirteen-b, 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.

§19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; non-restricted purse supplements.

1 The racing commission shall deposit moneys required
2 to be withheld by an association or licensee in subsection
3 (b), section nine of this article in a banking institution
4 of its choice in a special account to be known as "West
5 Virginia Racing Commission Special Account — West
6 Virginia Thoroughbred Development Fund". Notice of
7 the amount, date and place of such deposit shall be given
8 by the racing commission, in writing, to the state
9 treasurer. The purpose of the fund is to promote better
10 breeding and racing of thoroughbred horses in the state
11 through awards and purses for accredited breed-
12 ers/raisers, sire owners and thoroughbred race horse
13 owners. A further objective of the fund is to aid in the
14 rejuvenation and development of the present horse
15 tracks now operating in West Virginia for capital
16 improvements, operations or increased purses between
17 the first day of July, one thousand nine hundred eighty-
18 four, and the thirty-first day of October, one thousand
19 nine hundred ninety-two: *Provided*, That five percent of
20 the deposits required to be withheld by an association
21 or licensee in subsection (b), section nine of this article
22 shall be placed in a special revenue account hereby
23 created in the state treasury called the "administration
24 and promotion account". The racing commission is

25 authorized to expend the moneys deposited in the
26 administration and promotion account at such times and
27 in such amounts as the commission determines to be
28 necessary for purposes of administering and promoting
29 the thoroughbred development program: *Provided,*
30 *however,* That during any fiscal year in which the
31 commission anticipates spending any money from such
32 account, the commission shall submit to the executive
33 department during the budget preparation period prior
34 to the Legislature convening before that fiscal year for
35 inclusion in the executive budget document and budget
36 bill the recommended expenditures, as well as requests
37 of appropriations for the purpose of administration and
38 promotion of the program. The commission shall make
39 an annual report to the Legislature on the status of the
40 administration and promotion account, including the
41 previous year's expenditures and projected expenditures
42 for the next year.

43 The funds shall be established forthwith and operate
44 on an annual basis.

45 (a) Funds will be expended for awards and purses in
46 the following manner:

47 (i) Fifteen percent of the fund shall be available for
48 distribution for events taking place between the first
49 day of July, one thousand nine hundred eighty-four, and
50 the thirty-first day of December, one thousand nine
51 hundred eighty-five;

52 (ii) Fifty percent of the fund shall be available for
53 distribution for events taking place between the first
54 day of January, one thousand nine hundred eighty-six,
55 and the thirty-first day of December, one thousand nine
56 hundred eighty-six;

57 (iii) Seventy-five percent of the fund shall be available
58 for distribution for events taking place between the first
59 day of January, one thousand nine hundred eighty-
60 seven, and the thirty-first day of December, one
61 thousand nine hundred eighty-seven;

62 (iv) One hundred percent of the fund shall be available
63 thereafter; and

64 (v) After the first day of July, one thousand nine
65 hundred ninety-one, and after the thirty-first day of
66 December, one thousand nine hundred ninety-one, and
67 annually thereafter, the first one hundred thousand
68 dollars of the fund shall be available for distribution for
69 a maximum of four stakes races. One of these races shall
70 be the West Virginia futurity and the second shall be
71 the Frank Gall memorial stakes. The remaining races
72 may be chosen by the committee set forth in subsection
73 (b) of this section.

74 (b) Awards and purses will be distributed as follows:

75 (i) The breeders/raisers of accredited thoroughbred
76 horses that earn a purse at any West Virginia meet will
77 receive a bonus award calculated at the end of the year
78 as a percentage of the fund dedicated to the breed-
79 ers/raisers, which shall be sixty percent of the fund
80 available for distribution in any one year. The total
81 amount available for the breeders'/raisers' awards shall
82 be distributed according to the ratio of purses earned
83 by an accredited race horse to the total amount earned
84 in such races by all accredited race horses for that year
85 as a percentage of the fund dedicated to the breed-
86 ers/raisers. However, no breeder/raiser may receive
87 from the fund dedicated to breeders'/raisers' awards an
88 amount in excess of the earnings of the accredited horse
89 at West Virginia meets. In addition, should a horse's
90 breeder and raiser qualify for the same award on the
91 same horse, they will each be awarded one half of the
92 proceeds. Of the funds available for distribution in any
93 one year to breeders/raisers, neither the breeders as a
94 group nor the raisers as a group shall, until the first day
95 of January, one thousand nine hundred ninety-four,
96 qualify for more than sixty and one-tenth percent of
97 such funds.

98 (ii) The owner of a West Virginia sire of an accredited
99 thoroughbred horse that earns a purse in any race at

100 a West Virginia meet will receive a bonus award
101 calculated at the end of the year as a percentage of the
102 fund dedicated to sire owners, which shall be fifteen
103 percent of the fund available for distribution in any one
104 year. The total amount available for the sire owners'
105 awards shall be distributed according to the ratio purses
106 earned by the progeny of accredited West Virginia
107 stallions in such races for a particular stallion to the
108 total purses earned by the progeny of all accredited
109 West Virginia stallions in such races. However, no sire
110 owner may receive from the fund dedicated to sire
111 owners an amount in excess of thirty-five percent of the
112 accredited earnings for each sire.

113 (iii) The owner of an accredited thoroughbred horse
114 that earns a purse in any race at a West Virginia meet
115 will receive a restricted purse supplement award
116 calculated at the end of the year, which shall be twenty-
117 five percent of the fund available for distribution in any
118 one year, based on the ratio of the earnings in such races
119 of a particular race horse to the total amount earned by
120 all accredited race horses in such races during that year
121 as a percentage of the fund dedicated to purse supple-
122 ments. However, the owners may not receive from the
123 fund dedicated to purse supplements an amount in
124 excess of thirty-five percent of the total accredited
125 earnings for each accredited race horse.

126 (iv) In no event shall purses earned at a meet held at
127 a track which did not make a contribution to the
128 thoroughbred development fund out of the daily pool on
129 the day the meet was held qualify or count toward
130 eligibility for an award under this section.

131 (v) Any balance in the breeders/raisers, sire owners
132 and purse supplement funds after yearly distributions
133 shall: (1) Be utilized to fund the races established in
134 subsection (d) of this section; and (2) revert back into the
135 general account of the fund for distribution in the next
136 year.

137 Distribution shall be made on the fifteenth of each

138 February for the preceding year's achievements.

139 (c) The remainder, if any, of the fund that is not
140 available for distribution in the above program in any
141 one year is reserved for regular purses, marketing
142 expenses and for capital improvements in the amounts
143 and under the conditions provided hereinafter. Fifty
144 percent of such remainder shall be reserved for
145 payments into the regular purse fund established in
146 subsection (b), section nine of this article. Up to five
147 hundred thousand dollars per year shall be available for:
148 (1) Capital improvements at the eligible licensed horse
149 racing tracks in the state; and (2) marketing and
150 advertising programs above and beyond two hundred
151 fifty thousand dollars for the eligible licensed horse
152 racing tracks in the state: *Provided*, That moneys shall
153 be expended for capital improvements or marketing and
154 advertising purposes as described above only in accord
155 with a plan filed with and receiving the prior approval
156 of the racing commission, and on a basis of fifty percent
157 participation by the licensee and fifty percent partici-
158 pation by moneys from the fund, in the total cost of
159 approved projects: *Provided, however*, That funds
160 approved for one track may not be used at another track
161 unless the first track ceases to operate or is viewed by
162 the commission as unworthy of additional investment
163 due to financial or ethical reasons.

164 (d) Each pari-mutuel thoroughbred horse track shall
165 provide at least the following restricted races in
166 accordance with the following time schedules:

167 (i) The first day of July, one thousand nine hundred
168 eighty-four, to the thirty-first day of December, one
169 thousand nine hundred eighty-four — one restricted
170 race per eight racing days;

171 (ii) The first day of January, one thousand nine
172 hundred eighty-five, to the thirty-first day of December,
173 one thousand nine hundred eighty-five — one restricted
174 race per seven racing days;

175 (iii) The first day of January, one thousand nine

176 hundred eighty-six, to the thirty-first day of December,
177 one thousand nine hundred eighty-six — one restricted
178 race per six racing days;

179 (iv) The first day of January, one thousand nine
180 hundred eighty-seven, to the thirty-first day of De-
181 cember, one thousand nine hundred eighty-seven — one
182 restricted race per five racing days;

183 (v) The first day of January, one thousand nine
184 hundred eighty-eight, to the thirty-first day of De-
185 cember, one thousand nine hundred eighty-eight — one
186 restricted race per four racing days;

187 (vi) The first day of January, one thousand nine
188 hundred eighty-nine, to the thirty-first day of December,
189 one thousand nine hundred eighty-nine — one restricted
190 race per three racing days; and thereafter.

191 The restricted races established in this subsection
192 shall be administered by a three-member committee
193 consisting of: (1) The racing secretary; (2) a member
194 appointed by the authorized representative of a majority
195 of the owners and trainers at the thoroughbred track;
196 and (3) a member appointed by a majority of the
197 thoroughbred breeders. The purses shall be twenty
198 percent larger than the purses for similar type races at
199 each track. Restricted races shall be funded by each
200 racing association from:

201 (1) Moneys placed in the general purse fund up to a
202 maximum of one hundred fifty thousand dollars per
203 year.

204 (2) Moneys as provided in subdivision (v), subsection
205 (b) of this section shall be placed in a special fund called
206 the "West Virginia accredited race fund". The racing
207 schedules, purse amounts and types of races are subject
208 to the approval of the West Virginia racing commission.

209 (e) No association or licensee qualifying for the
210 alternate tax provision of subsection (b), section ten of
211 this article shall be eligible for participation in any of
212 the provisions of this section.

CHAPTER 87

(S. B. 581—By Senators Tomblin, Craigo and Humphreys)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six-a, relating to requiring the commissioner of the division of human services to develop caseload standards; creating a caseload standards committee to make recommendations to the commissioner; allowing representatives of employee organizations to serve in an advisory role; allowing the caseload standards to be used as a basis of the department of health and human resources personal services budget request; and defining terms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF HUMAN SERVICES AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-6a. Commissioner to develop caseload standards; committee; definitions.

1 The commissioner shall develop caseload standards
2 based on the actual duties of employees in each program
3 area of the department and may take into consideration
4 existing professional caseload standards. Standards
5 shall be reasonable and achievable.

6 A caseload standards committee shall be established
7 and composed of two employees from each program area
8 in each region. The members shall be elected by the
9 employees from each program area from among all the
10 employees in the program area. A subcommittee
11 composed of the members from each program of

12 services provided shall meet with the appropriate office
13 director to develop caseload standards for each pro-
14 gram. The committee shall meet at least twice yearly
15 and shall report recommendations to the commissioner
16 through the personnel advisory committee representa-
17 tive under existing procedures.

18 Representatives of an employee organization may
19 serve in an advisory role.

20 The caseload standards which are developed establish-
21 ing minimum and maximum caseloads shall be advisory
22 for the department in the hiring of staff and in
23 individual caseload assignments, and may be used as a
24 basis of the department of health and human resources
25 personal services budget request to the governor and the
26 Legislature.

27 As used in this section:

28 "Caseload standards" means a measurable numerical
29 minimum and maximum workload which an employee
30 can reasonably be expected to perform in a normal
31 workday or workweek, based on the number, variety
32 and complexity of cases handled or number of different
33 job functions performed.

34 "Professional caseload standards" means standards
35 established by national standard setting authorities,
36 when they exist, or caseload standards used in other
37 states which have similar job titles.

CHAPTER 88

(H. B. 2257—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section forty-five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reducing the period of time for which a Class K nonresident fishing license is issued; reducing the

license fee; and providing for trout stamps for an additional fee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-45. Class K nonresident three-day, statewide, fishing license.

1 A Class K license shall be a nonresident fishing license
2 and shall entitle the licensee to fish for all fish except
3 trout in all counties of the state for a period not to
4 exceed three days. It shall be issued only to citizens of
5 the United States or Canada and to unnaturalized
6 persons possessing the permit required by section
7 twenty-nine of this article who are not residents of this
8 state. The fee therefor shall be five dollars.

9 Trout fishing is not permitted with a Class K license
10 unless such license has affixed thereto an appropriate
11 trout stamp as prescribed by the division of natural
12 resources. The fee for a trout stamp shall be seven
13 dollars and fifty cents. The trout stamp is in addition
14 to a Class K license.

CHAPTER 89

(Com. Sub. for H. B. 2462—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to repeal section twenty, article twenty-four, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section fifteen, article twenty-five; to amend and reenact sections two and nine, article two; to amend and reenact section five-b, article three; to amend and reenact sections fourteen, fifteen and sixteen, article four; to

further amend said article four by adding thereto a new section, designated section nineteen; to amend and reenact section one, article six; section twelve, article seven; sections five, seven and fifteen, article eight; section one, article ten; to amend article sixteen-b by adding thereto a new section, designated section four; to amend article twenty by adding thereto a new section, designated section twenty; to amend article twenty-b by adding thereto a new section, designated section nine; to amend and reenact section two, article twenty-two; section two, article twenty-three; sections four, five, six, ten, fourteen, sixteen, seventeen and nineteen, article twenty-four; to further amend said article twenty-four by adding thereto a new section, designated section forty-four; to amend and reenact sections two, six, seven and nine, article twenty-five; to further amend said article twenty-five by adding thereto a new section, designated section twenty-one; to amend and reenact sections two, four, nine, seventeen and twenty-four, article twenty-five-a; to further amend said article twenty-five-a by adding thereto a new section, designated section thirty-two; to amend and reenact sections three and eight, article twenty-six-a; section five, article twenty-seven; section eight, article thirty-one; section eight, article thirty-two; and section seven, article thirty-three, all of said chapter thirty-three; and to further amend chapter thirty-three by adding thereto a new article, designated article thirty-four-a, all relating to insurance; salary of the insurance commissioner; reimbursement for educational and training expenses of employees of insurance commissioner; examination of insurers, agents, brokers and solicitors; annual fee; special accounts; access to books, records, etc.; capital and surplus requirements; general provisions; annual statement by insurer; reinsurance; limit of risk, domestic to comply with reciprocal state laws; insurance policy; scope of article; assets and liabilities; valuation of real property; investments; limitation of investments in one person; government obligations; real property mortgages; rehabilitation and liquidation; definitions; accident and sickness rates, rates and rating organizations and rate making and authority of commissioner to

promulgate rules and regulations regarding affiliate and subsidiary operating results; definitions; farmers' mutual fire insurance companies, applicability of other provisions, fraternal benefit societies, applicability of other provisions; hospital service corporations, medical service corporations, dental service corporations and health service corporations, exemptions; applicability of insurance laws; licenses; name of corporation; commissioner to enforce article; approval of contracts, forms, rates and fees; investments; bonds of corporate officers and employees; minimum statutory surplus; definitions; commencement of delinquency proceeding; ex parte orders, injunctions and other orders; grounds for liquidation; authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results; health care corporations, definitions; supervision and regulation by insurance commissioner; exemption from insurance laws; licenses; annual report; authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results; health maintenance organization act, definitions; issuance of certificate of authority; annual report; examinations; statutory construction and relationship to other laws; authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results; West Virginia life and health insurance and health insurance guaranty association act, scope of article; powers and duties of association; insurance holding company systems; standards; consolidated or combined audits; captive insurance; examinations and investigations; risk retention; examination regarding financial condition; standards and commissioner's authority for companies deemed to be in hazardous financial condition, definitions; purpose; standards; commissioner's authority; election of proceedings; immunity from liability; rules and severability of provisions.

Be it enacted by the Legislature of West Virginia:

That section twenty, article twenty-four and section fifteen, article twenty-five, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

be repealed; that sections two and nine, article two; section five-b, article three; and sections fourteen, fifteen and sixteen, article four be amended and reenacted; that said article four be further amended by adding thereto a new section, designated section nineteen; that section one, article six; section twelve, article seven; sections five, seven and fifteen, article eight; section one, article ten be amended and reenacted; that article sixteen-b be amended by adding thereto a new section, designated section four; to amend article twenty by adding thereto a new section, designated section twenty; to amend article twenty-b by adding thereto a new section, designated section nine; that section two, article twenty-two; section two, article twenty-three; sections four, five, six, ten, fourteen, sixteen, seventeen and nineteen, article twenty-four be amended and reenacted; that article twenty-four be further amended by adding thereto a new section, designated section forty-four; that sections two, six, seven and nine, article twenty-five be amended and reenacted; that said article twenty-five be further amended by adding thereto a new section, designated section twenty-one; that sections two, four, nine, seventeen and twenty-four, article twenty-five-a be amended and reenacted; that said article twenty-five-a be further amended by adding thereto a new section, designated section thirty-two; that sections three and eight, article twenty-six-a; section five, article twenty-seven; section eight, article thirty-one; section eight, article thirty-two; and section seven, article thirty-three, all of said chapter thirty-three, be amended and reenacted; and that said chapter thirty-three be further amended by adding thereto a new article, designated article thirty-four-a, all to read as follows:

CHAPTER 33. INSURANCE.

Article

2. Insurance Commissioner.
3. Licensing, Fees and Taxation of Insurance.
4. General Provisions.
6. The Insurance Policy.
7. Assets and Liabilities.
8. Investments.
10. Rehabilitation and Liquidation.
- 16B. Accident and Sickness Rates.
20. Rates and Rating Organizations.
- 20B. Rates and Malpractice Insurance Policies.
22. Farmers' Mutual Fire Insurance Companies.
23. Fraternal Benefit Societies.

- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Organizations.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.
- 26A. West Virginia Life and Health Insurance Guaranty Association Act.
- 27. Insurance Holding Company Systems.
- 31. Captive Insurance.
- 32. Risk Retention Act.
- 33. Annual Audited Financial Report.
- 34A. Standards and Commissioner's Authority for Companies Deemed to be in Hazardous Financial Condition.

ARTICLE 2. INSURANCE COMMISSIONER.

- §33-2-2. Compensation and expenses of commissioner and employees; location of office.
- §33-2-9. Examination of insurers, agents, brokers and solicitors; access to books, records, etc.

§33-2-2. Compensation and expenses of commissioner and employees; location of office.

1 The commissioner shall receive an annual salary of
2 forty-seven thousand eight hundred dollars and actual
3 expenses incurred in the performance of official
4 business, which compensation shall be in full for all
5 services. The office of the commissioner shall be
6 maintained in the capitol or other suitable place in
7 Charleston. The commissioner may employ such persons
8 and incur such expenses as may be necessary in the
9 discharge of his duties and shall fix the compensation
10 of such employees, but such compensation shall not
11 exceed the appropriation therefor. The commissioner
12 may reimburse employees for reasonable expenses
13 incurred for job-related training and educational
14 seminars and courses. All compensation for salaries and
15 expenses of the commissioner and his employees shall be
16 paid monthly out of the state treasury by requisition
17 upon the auditor, properly certified by the commis-
18 sioner.

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

- 1 (a) The commissioner, his deputies, other employees or
2 his accredited examiners shall, at such times as he
3 deems necessary, but at least once every three years,

4 visit each domestic insurer and thoroughly examine its
5 financial condition and methods of doing business and
6 ascertain whether it has complied with all the laws and
7 regulations of this state. The commissioner at such times
8 as he deems necessary may cause an examination to be
9 conducted of any foreign or alien insurer licensed to
10 transact insurance in this state. The commissioner may
11 examine the affairs of any insurer applying for a license
12 to transact any insurance business in this state.
13 Personnel conducting such examinations of either a
14 domestic, foreign or alien insurer shall be compensated
15 for each day worked at a rate set by the commissioner.
16 Such personnel shall also be reimbursed for their travel
17 and living expenses at the rate set by the commissioner.
18 The commissioner may, at his sole discretion as he
19 deems necessary, appoint other individuals who are not
20 employees of the department of insurance to conduct or
21 participate in such examinations. Such individuals shall
22 include, but not be limited to, independent certified
23 public accountants, independent actuaries, qualified
24 insurance examiners or other individuals with particu-
25 lar skills or areas of expertise deemed competent by the
26 insurance commissioner, or any combination of the
27 foregoing. Such personnel who are not employees of the
28 department of insurance shall all be compensated for
29 their work, travel and living expenses at rates approved
30 by the commissioner, or as otherwise provided by law.
31 As used in this section the costs of an examination shall
32 mean: (1) The entire compensation for each day worked
33 by all personnel, including those who are not employees
34 of the department of insurance, the conduct of such
35 examination calculated as hereinbefore provided; (2)
36 travel and living expenses of all personnel, including
37 those who are not employees of the department of
38 insurance, directly engaged in the conduct of such
39 examination, calculated at the rates as hereinbefore
40 provided for; (3) all other incidental expenses incurred
41 by or on behalf of such personnel in the conduct of such
42 authorized examination. All insurers subject to the
43 provisions of this section of the code shall annually pay
44 to the commissioner on or before the first day of July,
45 one thousand nine hundred ninety-one, and every first

46 day of July thereafter, an examination assessment fee
47 of eight hundred dollars. Four hundred and fifty dollars
48 of this fee shall be paid to the treasurer of the state to
49 the credit of a special revolving fund to be known as the
50 "Commissioner's Examination Revolving Fund" which
51 is hereby established and three hundred and fifty
52 dollars shall be paid to the treasurer of the state. The
53 commissioner may at his discretion, upon notice to the
54 insurers subject to this section, increase this examina-
55 tion assessment fee or levy an additional examination
56 assessment fee of two hundred fifty dollars. In no event
57 shall the total examination assessment fee including any
58 additional examination assessment fee levied exceed one
59 thousand five hundred dollars per insurer in any
60 calendar year. The moneys collected by the commis-
61 sioner from an increase or additional examination
62 assessment fee shall be paid to the treasurer of the state
63 to be credited to the "Commissioner's Examination
64 Revolving Fund". Any funds expended or obligated by
65 the commissioner from the "Commissioner's Examina-
66 tion Revolving Fund" shall be expended or obligated
67 solely for defrayment of the costs of examinations of the
68 financial affairs of insurance companies made by the
69 commissioner pursuant to this section or for the
70 purchase of equipment and supplies, travel, education
71 and training for his deputies, other employees and
72 accredited examiners necessary for the commissioner to
73 fulfill the statutory obligations created by this section.
74 The commissioner may at his discretion require other
75 individuals who are not employees of the department of
76 insurance who have been appointed by the commissioner
77 to conduct or participate in the examination of insurers
78 to bill and receive payments directly from insurers
79 being examined for their work, travel and living
80 expenses as previously provided for in this section. For
81 purposes of this section, "insurance company" includes
82 any domestic or foreign stock company, mutual com-
83 pany, mutual protective association, farmers' mutual fire
84 companies, fraternal benefit society, reciprocal or inter-
85 insurance exchange, nonprofit medical care corporation,
86 nonprofit health care corporation, nonprofit hospital
87 service association, nonprofit dental care corporation,

88 health maintenance organization, captive insurance
89 company, risk retention group or other insurer, regard-
90 less of the type of coverage written, benefits provided,
91 or guarantees made by each. The commissioner shall
92 make a full written report of each such examination of
93 an insurer, certified to by the commissioner or the
94 examiner in charge of such examination. The commis-
95 sioner shall furnish a copy of the report to the insurer
96 examined not less than ten days prior to filing the same
97 in his office. If such insurer so requests in writing,
98 within such ten-day period, the commissioner shall
99 consider the objections of such insurer to the report as
100 proposed, and shall not so file the report until after such
101 modifications, if any, have been made therein as the
102 commissioner deems proper. The report, when filed,
103 shall be admissible in evidence in any action or
104 proceeding brought by the commissioner against the
105 insurer examined, or its officers or agents, and shall be
106 prima facie evidence of the facts stated therein. The
107 commissioner or his examiners may at any time testify
108 and offer other proper evidence as to information
109 secured during the course of an examination, whether
110 or not a written report of the examination has at that
111 time been either made, served or filed in the commis-
112 sioner's office. The examination of an alien insurer shall
113 be limited to its United States business. In lieu of
114 making his own examination, the commissioner may
115 accept a full report of the last recent examination of a
116 foreign or alien insurer, certified to by the insurance
117 supervisory official of the state of domicile of a foreign
118 insurer or the state of entry into the United States of
119 an alien insurer.

120 (b) The commissioner may also cause to be examined
121 at such times as he deems necessary the books, records,
122 papers, documents, correspondence and methods of
123 doing business of any agent, broker or solicitor licensed
124 by this state.

125 (c) For such purposes the commissioner, his deputies
126 and employees shall have free access to all books,
127 records, papers, documents and correspondence of all
128 such insurers (whether domestic, foreign or alien),

129 agents, brokers and solicitors wherever such books,
130 records, papers, documents and records are situate.

131 (d) The commissioner may revoke the license of any
132 such insurer, agent, broker or solicitor who refuses to
133 submit to such examination.

134 (e) The commissioner may withhold from public
135 inspection any examination or investigation report for
136 such time as he may deem prudent, but no such report
137 shall be withheld from public inspection for longer than
138 ninety days after the same has been filed.

139 (f) In addition to conducting an examination, the
140 commissioner, his deputies, other employees or other
141 individuals appointed by the commissioner who are not
142 employees of the department of insurance, may as the
143 commissioner deems necessary analyze or review any
144 phase of the operations or methods of doing business of
145 an insurer, agent, broker, solicitor or other individual
146 or corporation transacting or attempting to transact an
147 insurance business in the state of West Virginia. The
148 commissioner may use the full resources provided by
149 this section in carrying out these responsibilities,
150 including such personnel and equipment provided by
151 this section as the commissioner deems necessary.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURANCE.

§33-3-5b. Capital and surplus requirements.

1 No insurer shall hereafter be licensed to transact the
2 business of insurance in the state of West Virginia
3 unless it has fully paid in capital stock, if a stock
4 insurer, or surplus, if a mutual insurer, of at least one
5 million dollars. In addition, each such insurer shall have
6 and maintain additional surplus funds of at least one
7 million dollars: *Provided*, That insurers duly licensed to
8 transact insurance in West Virginia prior to the
9 effective date of this section whose capital and surplus
10 requirements are increased by virtue of this section
11 shall have until the first day of January, one thousand
12 nine hundred ninety-three, to meet such increased
13 requirements. Such capital and surplus shall be unen-
14 cumbered.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-14. Annual statement by insurer.

§33-4-15. Reinsurance.

§33-4-16. Limit of risk.

§33-4-19. Domestic to comply with reciprocal state laws.

§33-4-14. Annual statement by insurer.

1 (a) Each licensed insurer shall annually on or before
2 March first unless the time is extended by the commis-
3 sioner for good cause shown, file with the commissioner
4 a true statement of its financial condition, transactions
5 and affairs as of the December thirty-first preceding;
6 said statement shall be on the appropriate national
7 association of insurance commissioners annual state-
8 ment blank which should be prepared in accordance
9 with the national association of insurance commissioners
10 annual statement instructions handbook and follow the
11 accounting practices and procedures prescribed by the
12 national association of insurance commissioners account-
13 ing practices and procedures manual as amended. The
14 commissioner may require that all or part of the
15 information contained in the annual statement blank be
16 submitted to the department in a computer-readable
17 form compatible with the electronic data processing
18 system of the department. The statement of an alien
19 insurer shall relate only to its transactions and affairs
20 in the United States unless the commissioner requires
21 otherwise.

22 (b) Each domestic, foreign and alien insurer, organ-
23 ization or corporation who is subject to the requirements
24 of this section shall annually on or before the first day
25 of March each year, file with the national association of
26 insurance commissioners, and pay the fee established by
27 the national association of insurance commissioners for
28 filing, review or processing of the information, a copy
29 of its annual statement convention blank, along with
30 such additional filings as prescribed by the commis-
31 sioner for the preceding year. The information filed with
32 the national association of insurance commissioners
33 shall be in the same format and scope as that required
34 by the commissioner and shall include the signed jurat
35 page and any other required information. Any amend-

36 ments and addenda to the annual statement filing
37 subsequently filed with the commissioner shall also be
38 filed with the national association of insurance
39 commissioners.

40 (c) Foreign insurers that are domiciled in a state
41 which has a law substantially similar to subsection (a)
42 of this section shall be deemed in compliance with this
43 section.

44 (d) In the absence of actual malice, members of the
45 national association of insurance commissioners, their
46 duly authorized committees, subcommittees, and task
47 forces, their delegates, national association of insurance
48 commissioners employees, and all others charged with
49 the responsibility of collecting, reviewing, analyzing and
50 disseminating the information developed from the filing
51 of the annual statement convention blanks shall be
52 acting as agents of the commissioner under the author-
53 ity of this article and shall not be subject to civil liability
54 for libel, slander or any other cause of action by virtue
55 of their collection, review, and analysis or dissemination
56 of the data and information collected from the filings
57 required hereunder.

58 (e) All financial analysis ratios and examination
59 synopses concerning insurance companies that are
60 submitted to the department by the national association
61 of insurance commissioners insurance regulatory
62 information system are confidential and may not be
63 disclosed by the department.

64 (f) The commissioner may suspend, revoke or refuse
65 to renew the certificate of authority of any insurer
66 failing to file its annual statement when due or within
67 any extension of time which the commissioner, for good
68 cause, may have granted.

69 (g) Any variance to the requirements of this section
70 shall require the express authorization of the
71 commissioner.

72 (h) The commissioner pursuant to chapter twenty-
73 nine-a may promulgate rules and regulations to effec-
74 tuate the requirements of this article.

§33-4-15. Reinsurance.

1 (a) An insurer shall reinsure its risks, or any part
2 thereof, only in solvent insurers having surplus to
3 policyholders not less in amount than the paid-in capital
4 required under this chapter of a stock insurer licensed
5 to transact like kinds of insurance.

6 (b) An insurer shall so reinsure in such alien insurers
7 only as are authorized to transact insurance in at least
8 one state of the United States or have in the United
9 States a duly authorized attorney-in-fact to accept
10 service of legal process against the insurer as to any
11 liability which might arise on account of such
12 reinsurance.

13 (c) No credit shall be allowed, as an asset or as a
14 deduction from liability, to any ceding insurer for
15 reinsurance unless the reinsurance is in insurers either
16 licensed in West Virginia to transact insurance of the
17 kind being reinsured or which have been approved by
18 the commissioner in writing; nor unless the reinsurance
19 is payable by the assuming insurer on the basis of the
20 liability of the ceding insurer under the contracts
21 reinsured without diminution because of the insolvency
22 of the ceding insurer nor unless under the reinsurance
23 contract the liability for such reinsurance is assumed by
24 the assuming insurer or insurers as of the same effective
25 date.

26 (d) Any licensed insurer may accept reinsurance for
27 the same kinds of insurance and within the same limits
28 as it is authorized to transact direct insurance.

29 (e) No insurer shall reinsure all or substantially all of
30 its risks on property or lives located in West Virginia,
31 or substantially all of a major class thereof, unless the
32 reinsurance agreement be filed with and approved by
33 the commissioner.

§33-4-16. Limit of risk.

1 (a) No insurer shall retain any risk on any one subject
2 of insurance, whether located or to be performed in
3 West Virginia or elsewhere, in an amount exceeding ten
4 percent of its surplus to policyholders.

5 (b) A "subject of insurance" for the purpose of this
6 section, as to insurance against fire and hazards other
7 than windstorm or earthquake, includes all properties
8 insured by the same insurer which are customarily
9 considered by insurers to be subject to loss or damage
10 from the same fire or other such hazard insured against.

11 (c) Reinsurance in licensed or approved insurers as
12 authorized by section fifteen of this article shall be
13 deducted in determining risk retained. As to surety risk,
14 deduction shall also be made of the amount assumed by
15 any established incorporated cosurety and the value and
16 security deposited, pledged or held subject to the
17 surety's consent and for the surety's protection.

18 (d) "Surplus to policyholders" for the purpose of this
19 section shall be deemed to include any voluntary
20 reserves which are not required pursuant to law, and
21 shall be determined from the last sworn statement of the
22 insurer on file with the commissioner or by the last
23 report of examination by the commissioner, whichever
24 is the more recent at time of assumption of such risk.

25 (e) As to alien insurers this section shall apply only
26 to risks and surplus to policyholders of the insurer's
27 United States branch.

28 (f) This section shall not apply to life or accident and
29 sickness insurance, title insurance, nor to any policy or
30 type of coverage as to which the maximum possible loss
31 to the insurer is not reasonably ascertainable on
32 issuance of the policy.

§33-4-19. Domestic to comply with reciprocal state laws.

1 No domestic insurer shall transact insurance in any
2 "reciprocal state" in which it is not then duly and
3 properly licensed to transact insurance.

4 (a) A reciprocal state, as used herein, shall mean a
5 state which has in effect a similar prohibition against
6 insurers domiciled in that state.

7 (b) This section shall not apply to:

8 (1) Contracts entered into where the prospective
9 insurant is personally present in the state in which the

10 insurer is authorized to transact insurance when they
11 sign the application.

12 (2) The issuance of certificates under a lawfully
13 transacted group life or group disability policy, where
14 the master policy was entered into in a state in which
15 the insurer was then authorized to transact insurance.

16 (3) Insurance covering persons or risks located in a
17 reciprocal state, under contracts solicited and issued in
18 states in which the insurer is then licensed. Nor shall
19 it prohibit insurance effectuated by the insurer as an
20 unauthorized insurer in accordance with the laws of the
21 reciprocal state.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-1. Scope of article.

1 This article shall not apply to reinsurance.

ARTICLE 7. ASSETS AND LIABILITIES.

§33-7-12. Valuation of real property.

1 (a) In the event of a default real property acquired
2 pursuant to a mortgage loan or contract for sale, in the
3 absence of a recent appraisal as prescribed in subsection
4 (b) of this section twelve, shall not be valued at an
5 amount greater than the unpaid principal of the
6 defaulted loan or contract at the date of such acquisition,
7 together with any taxes and expenses paid or incurred
8 in connection with such acquisition, and the cost of
9 improvements thereafter made by the insurer and any
10 amounts thereafter paid by the insurer on assessments
11 levied for improvements in connection with the
12 property.

13 (b) The value of other real property acquired or held
14 by an insurer shall be subject to the approval of the
15 commissioner. The commissioner may, at his discretion
16 at the time such investment is made, or at any time,
17 cause any such real property to be appraised by a
18 licensed real estate appraiser, subject to the Real Estate
19 Appraiser Licensing and Certification Act pursuant to
20 article fourteen, chapter thirty-seven, appointed or
21 approved by the commissioner, and the reasonable

22 expense of such appraisal shall be paid by the insurer.
23 No insurer may hereafter make any increase in the
24 valuation of any real properties unless and until such
25 increased valuation shall be likewise approved by the
26 commissioner.

ARTICLE 8. INVESTMENTS.

§33-8-5. Limitation of investments in one person.

§33-8-7. Government obligations.

§33-8-15. Real property mortgages.

§33-8-5. Limitation of investments in one person.

1 An insurer shall not, except with the consent of the
2 commissioner, have at one time any combination of
3 investments in or loans upon the security of the
4 obligations, property, or securities of any one person,
5 institution or corporation, aggregating an amount
6 exceeding five percent of the insurer's assets. This
7 restriction shall not apply to investments in or loans
8 upon the security of general obligations of the United
9 States or fully guaranteed by the United States or the
10 District of Columbia or any state of the United States
11 or of political subdivisions of the state of West Virginia
12 or other states of the United States, made pursuant to
13 section seven of this article, or include policy loans made
14 under section nineteen of this article or investments in
15 foreign securities pursuant to section eight of this
16 article. Pursuant to section 106(b) of the "Secondary
17 Mortgage Market Enhancement Act of 1984," an act of
18 the Congress of the United States, this section prohibits
19 domestic insurers from exercising the investment
20 authority granted any person, trust, corporation,
21 partnership, association, business trust or business
22 entity pursuant to section 106(a) (1) or (2) of that act.

§33-8-7. Government obligations.

1 An insurer may invest any of its funds in:

2 (a) Bonds or securities which are the direct obligation
3 of or which are secured or guaranteed in whole or in
4 part as to principal and interest by the United States,
5 any state or territory of the United States or the District
6 of Columbia, where there exists the power to levy taxes

7 for the prompt payment of the principal and interest of
8 such bonds or evidences of indebtedness, and in bonds
9 issued by the federal land banks or securities issued by
10 the federal home loan bank system. Pursuant to section
11 106(b) of the "Secondary Mortgage Market Enhance-
12 ment Act of 1984," an act of the Congress of the United
13 States, this section prohibits domestic insurers from
14 exercising the investment authority granted any person,
15 trust, corporation, partnership, association, business
16 trust or business entity pursuant to section 106(a) (1) or
17 (2) of that act.

18 (b) Bonds or evidences of indebtedness which are
19 direct general obligations of any county, district, city,
20 town, village, school district, park district or other
21 political subdivision of this state or any other state or
22 territory of the United States or the District of
23 Columbia, which shall not be in default in the payment
24 of any of its general obligation bonds, either principal
25 or interest, at the date of such investment; where they
26 are payable from ad valorem taxes levied on all the
27 taxable property located therein and the total indebted-
28 ness after deducting sinking funds and all debts
29 incurred for self-sustaining public works does not
30 exceed ten per centum of the actual value of all taxable
31 property therein on the basis of which the last assess-
32 ment was made before the date of such investment.

§33-8-15. Real property mortgages.

1 (a) An insurer may invest in entire first mortgages on
2 improved unencumbered real estate or the entire issue
3 of bonds secured thereby located within any state worth
4 at least thirty-three and one third per centum more than
5 the amount loaned thereon, based on sound appraisal by
6 a competent appraiser and duly certified by him,
7 provided that the investment in any one mortgage or
8 any one issue of bonds or any one contract for deed does
9 not exceed twenty-five thousand dollars or two per
10 centum of the insurer's assets, whichever is the greater.

11 (b) "Improved real estate," as used in this section,
12 means all farmland which has been reclaimed and is
13 used for the purpose of husbandry, whether for tillage

14 or pasture, and all real property on which permanent
15 buildings suitable for residence or commercial use are
16 situated.

17 (c) Real property shall not be deemed to be encum-
18 bered within the meaning of this section by reason of
19 the existence of instruments reserving or excepting
20 mineral rights and interests, rights-of-way, sewer rights
21 and rights in walls or easements, nor by reason of
22 building restrictions or other restrictive covenants, nor
23 by reason of the fact that it is subject to lease under
24 which rents or profits are reserved to the owners:
25 *Provided*, That the security for such investment is a full
26 and unrestricted first lien upon such real property and
27 that there is no condition nor right of reentry or
28 forfeiture under which such investments can be cut off,
29 subordinated or otherwise disturbed.

30 (d) Notwithstanding the restrictions set forth in this
31 section any insurer may invest (1) in bonds or notes
32 secured by mortgage or trust deed insured by the
33 federal housing administration or in debentures issued
34 by it under the terms of an act of Congress of the United
35 States entitled the "National Housing Act," as heretofore
36 or hereafter amended and (2) in securities issued by
37 national mortgage associations established by or under
38 the authority of the National Housing Act, and (3) in
39 bonds or notes secured by mortgage or trust deed
40 guaranteed as to principal by the administrator of
41 veterans' affairs pursuant to the provisions of Title III
42 of an act of Congress of the United States as of June
43 twenty-two, one thousand nine hundred forty-four,
44 entitled the "Servicemen's Re-Adjustment Act of one
45 thousand nine hundred forty-four," as heretofore or
46 hereafter amended. Pursuant to section 106(b) of the
47 "Secondary Mortgage Market Enhancement Act of
48 1984," an act of the Congress of the United States, this
49 section prohibits domestic insurers from exercising the
50 investment authority granted any person, trust, corpo-
51 ration, partnership, association, business trust or
52 business entity pursuant to section 106(a) (1) or (2) of
53 that act.

54 (e) Notwithstanding the restrictions herein set forth,

55 the amount of any first mortgage investment as limited
56 by subsection (a) of this section may be exceeded if and
57 to the extent that such excess shall be guaranteed by the
58 administrator of veterans' affairs pursuant to the
59 provisions of Title III of an act of Congress of the United
60 States of June twenty-two, one thousand nine hundred
61 forty-four, entitled the "Servicemen's Re-Adjustment
62 Act of one thousand nine hundred forty-four," as
63 heretofore or hereafter amended. Pursuant to section
64 106(b) of the "Secondary Mortgage Market Enhance-
65 ment Act of 1984," an act of the Congress of the United
66 States, this section prohibits domestic insurers from
67 exercising the investment authority granted any person,
68 trust, corporation, partnership, association, business
69 trust or business entity pursuant to section 106(a) (1) or
70 (2) of that act.

71 (f) No such insurer shall in any manner, either
72 directly or indirectly, by means of corporations, holding
73 companies, trustees or otherwise, invest in real estate
74 securities junior to first mortgages unless the first
75 mortgage in its entirety is owned by the insurer.

ARTICLE 10. REHABILITATION AND LIQUIDATION.

§33-10-1. Definitions.

1 For the purpose of this article the following defini-
2 tions shall apply:

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

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

18 (c) "Insurer" means any person, firm, corporation,
19 association or aggregation of persons doing an insurance
20 business and which is or has been subject to the
21 insurance supervisory authority of, or to liquidation,
22 rehabilitation, reorganization or conservation by the
23 commissioner or the equivalent insurance supervisory
24 official of another state.

25 (d) "Delinquency proceeding" means any proceeding
26 commenced against an insurer pursuant to this article
27 for the purpose of liquidating, rehabilitating, reorgan-
28 izing or conserving such insurer.

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

31 (f) "Foreign country" means any other jurisdiction not
32 in any state.

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

43 (h) "Ancillary state" means any state other than a
44 domiciliary state.

45 (i) "Reciprocal state" means any state other than this
46 state in which in substance and effect the provisions of
47 the Uniform Insurers Liquidation Act, as defined in
48 section twenty-one of this article, are in force, including
49 the provisions requiring that the insurance commis-
50 sioner or equivalent insurance supervisory official be the
51 receiver of a delinquent insurer.

52 (j) "General assets" means all property, real, personal
53 or otherwise, not specifically mortgaged, pledged,
54 deposited or otherwise encumbered for the security or
55 benefit of specified persons or a limited class or classes

56 of persons, and as to such specifically encumbered
57 property the term includes all such property or its
58 proceeds in excess of the amount necessary to discharge
59 the sum or sums secured thereby. Assets held in trust
60 and assets held on deposit for the security or benefit of
61 all policyholders or all policyholders and creditors in
62 more than a single state shall be deemed general assets.

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

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

70 (m) "Secured claim" means any claim secured by
71 mortgage, trust deed, pledge, deposit as security,
72 escrow, or otherwise, but not including special deposit
73 claim or claims against general assets. The term also
74 includes claims which more than four months prior to
75 the commencement of delinquency proceedings in the
76 state of the insurer's domicile have become liens upon
77 specific assets by reason of judicial process.

78 (n) "Receiver" means receiver, liquidator, rehabilita-
79 tor, or conservator as the context may require.

80 (o) "Guaranty association" means the West Virginia
81 Insurance Guaranty Association created by article
82 twenty-six of this chapter, the West Virginia Life and
83 Health Insurance Guaranty Association Act created by
84 article twenty-six-a of this chapter, and any other
85 similar entity now or hereafter created by the Legisla-
86 ture of this state for the payment of claims of insolvent
87 insurers.

88 (p) "Foreign guaranty association" means any similar
89 entities now in existence in or hereafter created by the
90 Legislature of any other state.

ARTICLE 16B. ACCIDENT AND SICKNESS RATES.

§33-16B-4. Authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results.

1 The commissioner may as he deems necessary after
2 notice and hearing promulgate rules and regulations in
3 accordance with chapter twenty-nine-a of this code to
4 define the commissioner's authority to consider the
5 operating results of an insurer's affiliates and subsidiar-
6 ies in the rate making and solvency determination of
7 that insurer.

ARTICLE 20. RATES AND RATING ORGANIZATIONS.

§33-20-20. Authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results.

1 The commissioner may as he deems necessary after
2 notice and hearing promulgate rules and regulations in
3 accordance with chapter twenty-nine-a of this code to
4 define the commissioner's authority to consider the
5 operating results of an insurer's affiliates and subsidiar-
6 ies in the rate making and solvency determination of
7 that insurer.

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.

§33-20B-9. Authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results.

1 The commissioner may as he deems necessary after
2 notice and hearing promulgate rules and regulations in
3 accordance with chapter twenty-nine-a of this code to
4 define the commissioner's authority to consider the
5 operating results of an insurer's affiliates and subsidiar-
6 ies in the rate making and solvency determination of
7 that insurer.

ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.

§33-22-2. Applicability of other provisions.

1 Each company to the same extent such provisions are
2 applicable to domestic mutual insurers shall be gov-
3 erned by and be subject to the following articles of this
4 chapter: Article one (definitions), article two (insurance
5 commissioner), article four (general provisions) except

6 that section sixteen of article four shall not be applicable
7 thereto, article seven (assets and liabilities), article ten
8 (rehabilitation and liquidation) except that under the
9 provisions of section thirty-two of said article ten no
10 assessment shall be levied against any former member
11 of a farmers' mutual fire insurance company who is no
12 longer a member of the company at the time the order
13 to show cause was issued, article eleven (unfair practices
14 and frauds), article twelve (agents, brokers and solici-
15 tors) except that the agents' license fee shall be five
16 dollars, article twenty-six (West Virginia Insurance
17 Guaranty Association Act), article thirty (mine subsi-
18 dence insurance) except that under the provisions of
19 section six, article thirty, a farmers' mutual insurance
20 company shall have the option of offering mine subsi-
21 dence coverage to all of its policyholders but shall not
22 be required to do so, article thirty-three (annual audited
23 financial report), article thirty-four (administrative
24 supervision), article thirty-four-a (standards and com-
25 missioner's authority for companies deemed to be in
26 hazardous financial condition) and article thirty-five
27 (criminal sanctions for failure to report impairment),
28 but only to the extent these provisions are not inconsis-
29 tent with the provisions of this article.

ARTICLE 23. FRATERNAL BENEFIT SOCIETIES.

§33-23-2. Applicability of other provisions.

1 Every fraternal benefit society shall be governed and
2 be subject, to the same extent as other insurers
3 transacting like kinds of insurance, to the following
4 articles of this chapter: Article one (definitions), article
5 two (insurance commissioner), article four (general
6 provisions), article six, section thirty (fee for form and
7 rate filing), article seven (assets and liabilities), article
8 ten (rehabilitation and liquidation), article eleven
9 (unfair trade practices), article twelve (agents, brokers,
10 solicitors and excess lines), article thirteen (life insur-
11 ance), article fifteen-a (long-term care insurance),
12 article twenty-seven (insurance holding company sys-
13 tems), article thirty-three (annual audited financial
14 report), article thirty-four (administrative supervision),
15 article thirty-four-a (standards and commissioner's

16 authority for companies deemed to be in hazardous
17 financial condition) and article thirty-five (criminal
18 sanctions for failure to report impairment).

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

- §33-24-4. Exemptions; applicability of insurance laws.
§33-24-5. Licenses; name of corporation.
§33-24-6. Commissioner to enforce article; approval of contracts, forms,
rates and fees.
§33-24-10. Investments; bonds of corporate officers and employees, minimum
statutory surplus.
§33-24-14. Definitions.
§33-24-16. Commencement of delinquency proceedings.
§33-24-17. Ex parte orders, injunctions and other orders.
§33-24-19. Grounds for liquidation.
§33-24-44. Authority of commissioner to promulgate rules and regulations
regarding affiliate and subsidiary operating results.

***§33-24-4. Exemptions; applicability of insurance laws.**

1 Every such corporation is hereby declared to be a
2 scientific, nonprofit institution and as such exempt from
3 the payment of all property and other taxes. Every such
4 corporation, to the same extent such provisions are
5 applicable to insurers transacting similar kinds of
6 insurance and not inconsistent with the provisions of this
7 article, shall be governed by and be subject to the
8 provisions as hereinbelow indicated, of the following
9 articles of this chapter: Article two (insurance commis-
10 sioner), article four (general provisions) except that
11 section sixteen of article four shall not be applicable
12 thereto, article six, section thirty-four (fee for form and
13 rate filing), article six-c (guaranteed loss ratio), article
14 seven (assets and liabilities), article ten (rehabilitation
15 and liquidation), article eleven (unfair practices and
16 frauds), article twelve (agents, brokers and solicitors),
17 section fourteen, article fifteen (individual policies),
18 article fifteen-a (long-term care insurance), section
19 three-a, article sixteen (mental illness), section three-c,
20 article sixteen (group accident and sickness insurance),
21 section three-d, article sixteen (medicare supplement),
22 section three-f, article sixteen (treatment of temporo-

*Clerk's Note: This section was also amended by S. B. 535 (Chapter 93),
which passed prior to this act.

23 mandibular joint disorder and craniomandibular dis-
24 order), article sixteen-c (small employer group policies),
25 article sixteen-d (marketing and rate practices for small
26 employers), article twenty-six-a (West Virginia life and
27 health insurance guaranty association act), after the
28 first day of October, one thousand nine hundred ninety-
29 one, article twenty-seven (insurance holding company
30 systems), article twenty-eight (individual accident and
31 sickness insurance minimum standards), article thirty-
32 three (annual audited financial report), article thirty-
33 four (administrative supervision), article thirty-four-a
34 (standards and commissioner's authority for companies
35 deemed to be in hazardous financial condition) and
36 article thirty-five (criminal sanctions for failure to
37 report impairment); and no other provision of this
38 chapter shall apply to such corporations unless specif-
39 ically made applicable by the provisions of this article.
40 If, however, any such corporation shall be converted into
41 a corporation organized for a pecuniary profit, or if it
42 shall transact business without having obtained a license
43 as required by section five of this article, it shall
44 thereupon forfeit its right to these exemptions.

§33-24-5. Licenses; name of corporation.

1 (a) No such corporation shall enter into any contract
2 with a subscriber until it has obtained from the
3 commissioner a license as provided in this section.
4 Application for a license shall be made on forms to be
5 prescribed and furnished by the commissioner.

6 (b) The application shall be accompanied by a copy of
7 the following documents: (1) Certificate of incorporation;
8 (2) bylaws; (3) contracts between the corporation and
9 participating hospitals, physicians, dentists or other
10 health agencies; (4) proposed contracts to be issued to
11 subscribers, setting forth the hospital, medical or dental
12 service to which subscribers are entitled, and the table
13 of rates to be charged for such service; and (5) financial
14 statement showing the amount of contributions paid, or
15 agreed to be paid, to the corporation for working capital,
16 the name or names of each contributor and the terms
17 of each contribution.

18 (c) The commissioner shall, upon payment to him of
19 a license fee of two hundred dollars, issue a license
20 authorizing the corporation to transact business in this
21 state in the area to be served by it, if he is satisfied (1)
22 that the applicant is incorporated in this state under the
23 provisions of article one, chapter thirty-one of this code,
24 as a bona fide nonprofit corporation, (2) that the
25 contracts between the corporation and participating
26 hospitals, physicians, dentists and other health agencies
27 contain all the terms required by section seven of this
28 article, (3) that the working capital available to the
29 corporation will be sufficient to pay all operating
30 expenses, other than payment for hospital, medical or
31 dental services, for a reasonable period after the
32 issuance of the license, and (4) that the proposed plan
33 will serve the best interests of all of the people of the
34 area in which the corporation intends to operate,
35 regardless of their race, color or economic status. Any
36 license so issued may be renewed annually upon
37 payment to the commissioner of a renewal fee of two
38 hundred dollars.

39 (d) The term of such license, renewal, refusal to
40 license, revocation, suspension or penalty in lieu thereof
41 shall be governed by the provisions of sections eight,
42 nine, ten and eleven, article three of this chapter, in the
43 same manner that these sections are applicable to
44 insurers generally.

45 (e) No such corporation shall include in its name the
46 words "insurance," "casualty," "surety," "health and
47 accident," "accident and sickness," "mutual," or any
48 other words descriptive of the insurance business; nor
49 shall its name be so similar to that of any insurer which
50 was licensed to transact insurance in this state when
51 such corporation was formed, as to tend, in the opinion
52 of the commissioner, to confuse the public.

**§33-24-6. Commissioner to enforce article; approval of
contracts, forms, rates and fees.**

1 (a) It shall be the duty of the commissioner to enforce
2 the provisions of this article. If the commissioner finds
3 that a corporation is impaired, he may issue such orders

4 and otherwise require that the corporation take all
5 actions that in his judgment are necessary for the
6 corporation to cure the impairment. Failure of the
7 corporation to follow such orders and directions is
8 evidence that the management is incompetent and
9 grounds for an order of rehabilitation or liquidation, as
10 the commissioner deems appropriate.

11 (b) No such corporation shall deliver or issue for
12 delivery any subscriber's contract, changes in the terms
13 of such contract, application, rider or endorsement, until
14 a copy thereof and the rates pertaining thereto have
15 been filed with and approved by the commissioner. All
16 such forms filed with the commissioner shall be deemed
17 approved after the expiration of sixty days from the date
18 of such filing unless the commissioner shall have
19 disapproved the same, stating his reasons for such
20 disapproval in writing. Such forms may be used prior
21 to the expiration of such periods if written approval
22 thereof has been received from the commissioner.

23 (c) No rates to be charged subscribers shall be used
24 or established by any such corporation unless and until
25 the same have been filed with the commissioner and
26 approved by him. The procedure for such filing and
27 approval shall be the same as that prescribed in
28 subsection (b) of this section for the approval of forms.
29 The commissioner shall approve all such rates which are
30 not excessive, inadequate or unfairly discriminatory.

31 (d) The commissioner shall pass upon the actuarial
32 soundness of the schedule of fees to be paid hospitals,
33 physicians, dentists and other health agencies.

**§33-24-10. Investments; bonds of corporate officers and
employees, minimum statutory surplus.**

1 (a) The funds of any such corporation shall be invested
2 only as follows:

3 (1) Fifty percent of such funds shall be in cash or
4 government securities of the type described in section
5 seven of article eight of this chapter.

6 (2) The balance of such funds may be in cash or
7 invested in the classes of investments described in the

8 following sections of article eight of this chapter: Section
9 nine (certificates of deposit of federally insured institu-
10 tions), section eleven (corporate obligations), section
11 twelve (building and savings and loan shares, interna-
12 tional bank), section thirteen (preferred or guaranteed
13 stock), section fourteen (common stock), section sixteen
14 (real property) and section eighteen (revenue bonds). All
15 such investments shall be subject to all the restrictions
16 and conditions contained in said article eight as
17 applying to similar investments of insurers generally.

18 (b) Every officer or employee of any such corporation,
19 who is entrusted with the handling of its funds, shall
20 furnish, in such amount as may with the approval of the
21 commissioner be fixed by the board of directors of the
22 corporation, a bond with corporate surety, conditioned
23 upon the faithful performance of all his duties.

24 (c) A corporation shall have and maintain statutory
25 surplus funds of at least two million dollars: *Provided*,
26 That any such corporation duly licensed under this
27 article in West Virginia prior to the effective date of this
28 section whose surplus requirements are increased by
29 virtue of this section shall be required to maintain
30 statutory surplus funds of at least five hundred thousand
31 dollars after the effective date of this section, and any
32 such corporation shall then be subject to the full two
33 million dollar statutory surplus requirement after the
34 first day of October, one thousand nine hundred ninety-
35 one.

§33-24-14. Definitions.

1 For the purpose of sections fourteen through forty-six
2 of this article:

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

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

18 (c) "Corporation" shall be defined in section two of this
19 article.

20 (d) "Delinquency proceeding" means any proceeding
21 commenced against a corporation pursuant to this
22 article for the purpose of liquidating, rehabilitating,
23 supervising, reorganizing or conserving such
24 corporation.

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

27 (f) "Foreign country" means any other jurisdiction not
28 in any state.

29 (g) "Domiciliary state" means the state of West
30 Virginia for any corporation.

31 (h) "Ancillary state" means any state other than West
32 Virginia.

33 (i) "Reciprocal state" means any state other than this
34 state in which in substance and effect the provisions of
35 the Uniform Insurers Liquidation Act, as defined in
36 section twenty-one of article ten of chapter thirty-three,
37 are in force, including the provisions requiring that the
38 insurance commissioner or equivalent insurance super-
39 visory official be the receiver of a delinquent insurer.

40 (j) "General assets" means all property, real, personal
41 or otherwise, not specifically mortgaged, pledged,
42 deposited or otherwise encumbered for the security or
43 benefit of specified persons or a limited class or classes
44 of persons, and as to such specifically encumbered
45 property the term includes all such property or its
46 proceeds in excess of the amount necessary to discharge
47 the sum or sums secured thereby. Assets held in trust
48 and assets held on deposit for the security or benefit of
49 all policyholders or all policyholders and creditors in

50 more than a single state shall be deemed general assets.

51 (k) "Preferred claim" means any claim with respect
52 to which the terms of this article accord priority of
53 payments from the general assets of the insurer.

54 (l) "Special deposit claim" means any claim secured
55 by a deposit made pursuant to statute for the security
56 or benefit of a limited class or classes of persons, but
57 not including any general assets.

58 (m) "Secured claim" means any claim secured in a
59 manner consistent with article nine of the uniform
60 commercial code as codified in article nine, chapter
61 forty-six of this code, whether by mortgage, trust, deed,
62 pledge, deposit as security, escrow, or otherwise, but not
63 including special deposit claim or claims against
64 general assets. The term also includes claims which
65 more than four months prior to the commencement of
66 delinquency proceedings have become liens upon
67 specific assets by reason of judicial process.

68 (n) "Receiver" means receiver, liquidator, rehabilita-
69 tor, supervisor or conservator as the context may
70 require.

71 (o) "Statutory surplus" means the minimum amount
72 of unencumbered surplus which an association or
73 corporation must maintain pursuant to the require-
74 ments of this article.

75 (p) "Surplus" means the amount by which an associ-
76 ation's or corporation's assets exceeds its liabilities and
77 required reserves based upon the financial information
78 which would be required by this chapter for the
79 preparation of the association's or corporation's annual
80 statement.

§33-24-16. Commencement of delinquency proceedings.

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

5 (1) That there exist any grounds that would justify a
6 court order for a delinquency proceeding against a

7 corporation under this article;

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

10 (3) The contents of an order deemed necessary by the
11 commissioner.

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

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

37 (d) Entry of a seizure order under this section shall
38 not constitute an anticipatory breach of any contract of
39 the corporation.

40 (e) A corporation subject to an ex parte order under
41 this section may petition the court at any time after the
42 issuance of such order for a hearing and review of the
43 order. The court shall hold such hearing and review not
44 more than fifteen days after the request. Subject to the
45 approval of the court, a hearing under this subsection

46 may be held privately in chambers if the corporation
47 proceeded against so requests.

48 (f) If, at any time after the issuance of such an order,
49 it appears to the court that any person whose interest
50 is or will be substantially affected by the order did not
51 appear at the hearing and has not been served, the court
52 may order that notice be given. An order that notice be
53 given shall not stay the effect of any order previously
54 issued by the court.

§33-24-17. Ex parte orders, injunctions and other orders.

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

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

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

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

26 (b) Any person having possession of and refusing to
27 deliver any of the books, records, or assets of a
28 corporation against whom a seizure order has been
29 issued by the commissioner shall be guilty of a misde-

30 meanor and punishable by fine not exceeding one
31 thousand dollars or imprisoned not more than one year,
32 or both such fine and imprisonment.

33 (c) Whenever the commissioner makes any seizure as
34 provided in section sixteen, it shall be the duty of the
35 sheriff of any county of this state, and of the police
36 department of any municipality therein, to furnish the
37 commissioner, upon demand, with such deputies,
38 patrolmen or officers as may be necessary to assist the
39 commissioner in making and enforcing any such seizure.

40 (d) Notwithstanding any other provision of law, no
41 bond shall be required of the commissioner as a
42 prerequisite for the issuance of any injunction or
43 restraining order pursuant to this section.

§33-24-19. Grounds for liquidation.

1 The commissioner may apply to the court for an order
2 appointing him as a receiver (if his appointment as
3 receiver shall not be then in effect) and directing him
4 to liquidate the business of such corporation regardless
5 of whether or not there has been a prior order directing
6 him to rehabilitate such corporation, upon any of the
7 grounds specified in section eighteen of this article, or
8 if such corporation:

9 (a) Has ceased transacting business for a period of one
10 year; or

11 (b) Is an insolvent corporation and has commenced
12 voluntary liquidation or dissolution, or attempts to
13 commence or prosecute any action or proceeding to
14 liquidate its business or affairs, or to dissolve its
15 corporate charter, or to procure the appointment of a
16 receiver, trustee, custodian, or sequestrator under any
17 law except this chapter.

**§33-24-44. Authority of commissioner to promulgate
rules and regulations regarding affiliate
and subsidiary operating results.**

1 The commissioner may as he deems necessary after
2 notice and hearing promulgate rules and regulations in
3 accordance with chapter twenty-nine-a of this code to

- 4 define the commissioner's authority to consider the
- 5 operating results of an insurer's affiliates and subsidiar-
- 6 ies in the rate making and solvency determination of
- 7 that insurer.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-2. Definitions.

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

§33-25-9. Annual report.

§33-25-21. Authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results.

§33-25-2. Definitions.

1 For the purpose of this article, unless the context
2 otherwise indicates:

3 (a) "Health care corporation" or "corporation" shall
4 mean a corporation organized and licensed under the
5 provisions of this article.

6 (b) "Direct health care services" shall, subject to the
7 limitations contained in this article, include all such
8 services as are designed to preserve or restore a person's
9 health.

10 (c) "Subscriber" shall mean a person (including, as the
11 case may be, the members of his family) who subscribes
12 to the direct health care plan of a corporation.

13 (d) "Commissioner" means the insurance commis-
14 sioner of the state of West Virginia.

15 (e) "Statutory surplus" means the minimum amount
16 of unencumbered surplus which an association or
17 corporation must maintain pursuant to the require-
18 ments of this article.

19 (f) "Surplus" means the amount by which an associ-
20 ation's or corporation's assets exceeds its liabilities and
21 required reserves based upon the financial information
22 which would be required by this chapter for the
23 preparation of the association's or corporation's annual
24 statement.

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

*Clerk's Note: This section was also amended by S. B. 535 (Chapter 93), which passed prior to this act.

1 Corporations organized under this article shall be
2 subject to supervision and regulation by the insurance
3 commissioner. Such corporations organized under this
4 article, to the same extent such provisions are applicable
5 to insurers transacting similar kinds of insurance and
6 not inconsistent with the provisions of this article, shall
7 be governed by and be subject to the provisions as
8 hereinbelow indicated, of the following articles of this
9 chapter: Article six-c (guaranteed loss ratio), article
10 seven (assets and liabilities), article eight (investments),
11 article ten (rehabilitation and liquidation), section
12 fourteen, article fifteen (individual policies), article
13 sixteen-c (small employer group policies), article
14 sixteen-d (marketing and rate practices for small
15 employers), article twenty-seven (insurance holding
16 company systems), article thirty-three (annual audited
17 financial report), article thirty-four-a (standards and
18 commissioner's authority for companies deemed to be in
19 hazardous financial condition) and article thirty-five
20 (criminal sanctions for failure to report impairment);
21 and no other provision of this chapter shall apply to such
22 corporations unless specifically made applicable by the
23 provisions of this article.

§33-25-7. Licenses.

1 (a) Before it may issue any contract to a subscriber,
2 a corporation desiring to establish, maintain and operate
3 a direct health care plan must first obtain from the
4 commissioner a license as provided in this section.

5 (b) Applications for an original license shall be made
6 on forms prescribed and furnished by the commissioner
7 and shall be accompanied by the following documents
8 and information: (1) Certificate of incorporation; (2)
9 bylaws; (3) list of names and residence addresses of all
10 officers and board of directors of the corporation; (4)
11 contracts between the corporation and persons, firms,
12 corporations or associations to render direct health care
13 services; (5) proposed contracts to be issued to subscrib-
14 ers setting forth in detail the direct health care services
15 to which subscribers are entitled and the table of rates
16 to be charged for such services; (6) financial statement
17 showing the assets and liabilities of the corporation, the

18 amount of contributions paid, or agreed to be paid, to
19 the corporation for working capital, the names or name
20 of each contributor and the terms of each contribution;
21 and (7) any additional information as the commissioner
22 may require.

23 (c) Within thirty days after receipt of an application,
24 the commissioner shall, upon payment to him of a
25 license fee of two hundred dollars, issue a license
26 authorizing the corporation to transact business in this
27 state in the area to be served by it, if he is satisfied (1)
28 that the applicant is incorporated in this state under the
29 provisions of article one, chapter thirty-one of the code
30 of West Virginia as a bona fide, nonprofit corporation,
31 (2) that the health care plan which the corporation
32 proposes to operate, as well as the forms of all contracts
33 which it proposes to issue under such health care plan,
34 are based upon sound business principles and will be in
35 every respect equitable, just and fair to the subscriber,
36 (3) that the working capital available to the corporation
37 will be sufficient to pay all operating expenses during
38 the subscription period, (4) that the proposed plan will
39 adequately serve the best interests of all the people of
40 the area in which the corporation intends to operate,
41 regardless of their race, color or religion, and (5) that
42 the corporation shall have and maintain statutory
43 surplus funds of at least two million dollars: *Provided,*
44 That corporations duly licensed under this article in
45 West Virginia prior to the effective date of this section
46 whose surplus requirements are increased by virtue of
47 this section shall have until the first day of January, one
48 thousand nine hundred ninety-four, to meet such
49 increased requirements.

50 (d) The commissioner may refuse to license a corpo-
51 ration when he determines that such corporation has not
52 complied with the laws of this state, or that it is not in
53 the best interest of the people of the state that such
54 corporation be licensed, or that such corporation would
55 transact business in this state in an improper, illegal or
56 unjust manner. In such event, the commissioner shall
57 enter an order refusing such license and the applicant
58 therefor may have a hearing and judicial review in

59 accordance with the applicable provisions of article two
60 of this chapter relating to hearings before and judicial
61 review of orders entered by the commissioner.

62 (e) All licenses issued under the provisions of this
63 article shall expire at midnight on the thirty-first day
64 of March next following the date of issuance. The
65 commissioner shall renew annually the license of all
66 corporations which qualify and make applications
67 therefor upon a form prescribed by the commissioner
68 upon payment to the commissioner of a renewal fee of
69 two hundred dollars.

70 (f) The commissioner shall, after notice and hearing,
71 refuse to renew or shall revoke or suspend the license
72 of a corporation, if the corporation: (1) Violates any
73 provision of this article; (2) fails to comply with any
74 lawful rule, regulation or order of the commissioner; (3)
75 is transacting its business in an illegal, improper or
76 unjust manner, or is operating in contravention of its
77 articles of incorporation or any amendments thereto, of
78 its bylaws, or of its health care plan; (4) is found by the
79 commissioner to be in an unsound condition or in such
80 condition as to jeopardize its obligations to subscribers
81 and those with whom it has contracted; (5) compels
82 subscribers to its health care program to accept less
83 than the obligation due them under their contracts or
84 agreements with the corporation; (6) refuses to be
85 examined or to produce its accounts, records and files
86 for examination by the commissioner when required; (7)
87 fails to pay any final judgment rendered against it in
88 West Virginia within thirty days after the judgment
89 became final or time for appeal expired, whichever is
90 later; (8) fails to pay when due to the state of West
91 Virginia any fees, charges or penalties required by this
92 chapter.

93 In those cases where the commissioner has the right
94 to revoke, suspend or terminate the license or any
95 renewal thereof of said corporation, the commissioner
96 shall, by order, require the corporation to pay to the
97 state of West Virginia a penalty in the sum not
98 exceeding one thousand dollars, and on the failure of the
99 corporation to pay the penalty within thirty days after

100 notice thereof, the commissioner shall revoke or suspend
101 the license of the corporation.

102 When any license has been revoked, suspended or
103 terminated, the commissioner may reinstate the license
104 when he is satisfied that the conditions causing the
105 revocation, suspension or termination have ceased to
106 exist and are unlikely to recur.

107 In the event the commissioner revokes, suspends or
108 terminates a license, the corporation may demand a
109 hearing in the manner provided in article two of this
110 chapter.

§33-25-9. Annual report.

1 Every corporation shall annually on or before the first
2 day of March, file, with its application for renewal
3 license, a report, verified by an officer of the corpora-
4 tion, with the commissioner, showing its condition on the
5 last day of the preceding calendar year, on forms
6 required by section fourteen, article four of this chapter,
7 which report shall include:

8 (a) A financial statement of such corporation, includ-
9 ing its balance sheet and its receipts and disbursements
10 for the preceding calendar year;

11 (b) A list of the names and residence addresses of all
12 its officers and directors, and the total amount of
13 expense reimbursement to all officers and directors
14 during the preceding calendar year;

15 (c) The number of subscribers' contracts issued by
16 such corporation and outstanding;

17 (d) The names of those persons (other than subscrib-
18 ers), corporations, associations, and institutions with
19 which such corporation has agreements;

20 (e) Number and type of services currently covered
21 under the health care plan of the corporation.

**§33-25-21. Authority of commissioner to promulgate
rules and regulations regarding affiliate
and subsidiary operating results.**

1 The commissioner may as he deems necessary after

2 notice and hearing promulgate rules and regulations in
 3 accordance with chapter twenty-nine-a of this code to
 4 define the commissioner's authority to consider the
 5 operating results of an insurer's affiliates and subsidiar-
 6 ies in the rate making and solvency determination of
 7 that insurer.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-2. Definitions.

§33-25A-4. Issuance of certificate of authority.

§33-25A-9. Annual report.

§33-25A-17. Examinations.

§33-25A-24. Statutory construction and relationship to other laws.

§33-25A-32. Authority of commissioner to promulgate rules and regulations regarding affiliate and subsidiary operating results.

§33-25A-2. Definitions.

1 (1) "Basic health care services" means physician,
 2 hospital, out-of-area, podiatric, laboratory, X ray,
 3 emergency, short-term mental health services not
 4 exceeding twenty outpatient visits in any twelve-month
 5 period, and cost-effective preventive services including
 6 immunizations, well-child care, periodic health evalua-
 7 tions for adults, voluntary family planning services,
 8 infertility services and children's eye and ear examina-
 9 tions conducted to determine the need for vision and
 10 hearing corrections.

11 (2) "Commissioner" means the commissioner of
 12 insurance.

13 (3) "Consumer" means any person who is not a
 14 provider of care or an employee, officer, director or
 15 stockholder of any provider of care.

16 (4) "Copayment" means a nominal payment required
 17 of enrollees as a condition of the receipt of specific
 18 health services.

19 (5) "Employee" means a person in some official
 20 employment or position working for a salary or wage
 21 continuously for no less than one calendar quarter and
 22 who is in such a relation to another person that the latter
 23 may control the work of the former and direct the
 24 manner in which the work shall be done.

25 (6) "Employer" means any individual, corporation,
26 partnership, other private association, or state or local
27 government that employs the equivalent of at least
28 twenty-five full-time employees during any four consec-
29 utive calendar quarters.

30 (7) "Enrollee" means an individual who has been
31 voluntarily enrolled in a health maintenance organiza-
32 tion, including individuals on whose behalf a contractual
33 arrangement has been entered into with a health
34 maintenance organization to receive health care
35 services.

36 (8) "Evidence of coverage" means any certificate,
37 agreement or contract issued to an enrollee setting out
38 the coverage and other rights to which the enrollee is
39 entitled.

40 (9) "Health care services" means any services or goods
41 included in the furnishing to any individual of medical,
42 mental or dental care, or hospitalization or incident to
43 the furnishing of such care of hospitalization, osteopath-
44 ic services, home health, health education, rehabilita-
45 tion, as well as the furnishing to any person of any and
46 all other services or goods for the purpose of preventing,
47 alleviating, curing or healing human illness or injury.

48 (10) "Health maintenance organization" means a
49 public or private organization which provides, or
50 otherwise makes available to enrollees, health care
51 services, including at a minimum basic health care
52 services:

53 (a) Is compensated except for copayments for the
54 provision of basic health care services to enrollees solely
55 on a predetermined periodic rate basis;

56 (b) Provides physicians' services primarily (i) directly
57 through physicians who are either employees or
58 partners of such organization, or (ii) through arrange-
59 ments with individual physicians or one or more groups
60 of physicians organized on a group practice or individ-
61 ual practice basis, or (iii) through some combination of
62 (i) and (ii) above;

63 (c) Assures the availability, accessibility and quality

64 including effective utilization of the health care services
65 which it provides or makes available through clearly
66 identifiable focal points of legal and administrative
67 responsibility.

68 (11) "Individual practice basis" means any agreement
69 or arrangement to provide medical services on behalf of
70 a health maintenance organization among or between
71 physicians or between a health maintenance organiza-
72 tion and individual physicians or groups of physicians,
73 where the physicians are not employees or partners of
74 such health maintenance organization and are not
75 members of or affiliated with a medical group.

76 (12) "Medical group" means (a) a professional corpo-
77 ration, partnership, association, or other organization
78 which is composed solely of health professionals licensed
79 to practice medicine or osteopathy and of such other
80 licensed health professionals, including podiatrists,
81 dentists and optometrists, as are necessary for the
82 provision of health services for which the group is
83 responsible; (b) a majority of the members of which are
84 licensed to practice medicine or osteopathy; (c) as their
85 principal professional activity engage in the coordinated
86 practice of their profession; (d) pool their income for
87 practice as members of the group and distribute it
88 among themselves according to a prearranged salary,
89 drawing account or other plan; and (e) share medical
90 and other records and substantial portions of major
91 equipment and professional, technical and administra-
92 tive staff.

93 (13) "Premium" means a predetermined periodic rate
94 unrelated to the actual or potential utilization of services
95 of any particular person which is charged by the health
96 maintenance organization for health services provided
97 to an enrollee.

98 (14) "Provider" means any physician, hospital or other
99 person or organization which is licensed or otherwise
100 authorized in this state to furnish health care services.

101 (15) "Service area" means the area identified by a
102 health maintenance organization as the area within
103 which health care services will be provided by the

104 health maintenance organization.

105 (16) "Statutory surplus" means the minimum amount
106 of unencumbered surplus which an association or
107 corporation must maintain pursuant to the require-
108 ments of this article.

109 (17) "Surplus" means the amount by which an
110 association's or corporation's assets exceeds its liabilities
111 and required reserves based upon the financial informa-
112 tion which would be required by this chapter for the
113 preparation of the association's or corporation's annual
114 statement.

§33-25A-4. Issuance of certificate of authority.

1 (1) Upon receipt of an application for a certificate of
2 authority, the commissioner shall determine whether
3 the application for a certificate of authority, with
4 respect to health care services to be furnished has
5 demonstrated:

6 (a) The willingness and potential ability to assure that
7 basic health services will be provided in such a manner
8 as to enhance and assure both the availability and
9 accessibility of adequate personnel and facilities;

10 (b) Arrangements for an ongoing evaluation of the
11 quality of health care;

12 (c) A procedure to develop, compile, evaluate and
13 report statistics relating to the cost of its operations, the
14 pattern of utilization of its services, the quality,
15 availability and accessibility of its services, and such
16 other matters as may be reasonably required by
17 regulation.

18 (2) The commissioner shall issue or deny a certificate
19 of authority to any person filing an application within
20 one hundred twenty days after receipt of the application.
21 Issuance of a certificate of authority shall be granted
22 upon payment of the application fee prescribed, if the
23 commissioner is satisfied that the following conditions
24 are met:

25 (a) The health maintenance organization's proposed
26 plan of operation meets the requirements of subsection
27 (1) of this section;

28 (b) The health maintenance organization will effec-
29 tively provide or arrange for the provision of at least
30 basic health care services on a prepaid basis except for
31 copayments: *Provided*, That nothing herein shall be
32 construed to relieve a health maintenance organization
33 from the obligations to provide health care services
34 because of the nonpayment of copayments unless the
35 enrollee fails to make payment in at least three instances
36 over any twelve-month period: *Provided, however*, That
37 nothing herein shall permit a health maintenance
38 organization to charge copayments to medicare benefi-
39 ciaries or medicaid recipients in excess of the copay-
40 ments permitted under those programs, nor shall a
41 health maintenance organization be required to provide
42 services to such medicare beneficiaries or medicaid
43 recipients in excess of the benefits compensated under
44 such programs;

45 (c) The health maintenance organization is financially
46 responsible and may reasonably be expected to meet its
47 obligations to enrollees and prospective enrollees. In
48 making this determination, the commissioner may
49 consider:

50 (i) The financial soundness of the health maintenance
51 organization's arrangements for health care services
52 and proposed schedule of charges used in connection
53 therewith;

54 (ii) That the health maintenance organization shall
55 have and maintain fully paid-in capital stock, if a for-
56 profit stock corporation, or statutory surplus funds, if a
57 nonprofit corporation, of at least one million dollars. In
58 addition, each such health maintenance organization
59 shall have and maintain additional surplus funds of at
60 least one million dollars: *Provided*, That health mainte-
61 nance organizations duly licensed under this article
62 prior to the effective date of this section whose fully
63 paid-in capital stock and surplus requirements are
64 increased by virtue of this section shall be required to
65 maintain fully paid-in capital stock, if a for-profit stock
66 corporation, or statutory surplus funds, if a nonprofit
67 corporation, be at least two hundred fifty thousand

68 dollars and additional surplus funds of two hundred
69 fifty thousand dollars after the first day of January, one
70 thousand nine hundred ninety-two. Any such corpora-
71 tion shall then be subject to the full paid-in capital and
72 surplus requirements of this section after the first day
73 of January, one thousand nine hundred ninety-four;

74 (iii) Any arrangements which will guarantee for a
75 reasonable period of time the continued availability or
76 payment of the cost of health care services in the event
77 of discontinuance of the plan;

78 (iv) Any agreement with providers for the provision
79 of health care services;

80 (d) Reasonable provisions have been made for emer-
81 gency and out-of-area health care services;

82 (e) The enrollees will be afforded an opportunity to
83 participate in matters of policy and operation pursuant
84 to section six of this article;

85 (f) The health maintenance organization has demon-
86 strated that it will assume full financial risk on a
87 prospective basis for the provision of health care
88 services, including hospital care: *Provided*, That the
89 requirement of this subdivision shall not prohibit a
90 health maintenance organization from obtaining insur-
91 ance or making other arrangements (i) for the cost of
92 providing to any enrollee comprehensive health mainte-
93 nance services, the aggregate value of which exceeds
94 four thousand dollars in any year, (ii) for the cost of
95 providing comprehensive health care services to its
96 members on a nonelective emergency basis, or while
97 they are outside the area served by the organization, or
98 (iii) for not more than ninety-five percent of the amount
99 by which the health maintenance organization's costs for
100 any of its fiscal years exceed one hundred five percent
101 of its income for such fiscal years.

102 (3) A certificate of authority shall be denied only after
103 compliance with the requirements of section twenty-one
104 of this article.

105 (4) Except as provided in subsection (2), section three
106 of this article, no person who has not been issued a

107 certificate of authority shall use the words "health
108 maintenance organization" or the initials "HMO" in its
109 name, contracts or literature: *Provided*, That persons
110 who are operating under a contract with, operating in
111 association with, enrolling enrollees for, or otherwise
112 authorized by a health maintenance organization
113 licensed under this article to act on its behalf may use
114 the terms "health maintenance organization" or "HMO"
115 for the limited purpose of denoting or explaining their
116 association or relationship with the authorized health
117 maintenance organization. No health maintenance
118 organization which has a minority of board members
119 who are consumers shall use the words "consumer
120 controlled" in its name or in any way represent to the
121 public that it is controlled by consumers.

§33-25A-9. Annual report.

1 (1) Every health maintenance organization shall
2 annually, on or before the first day of March, file a
3 report verified by at least two principal officers with the
4 commissioner, covering the preceding calendar year.

5 (2) Such report shall be required by section fourteen,
6 article four of this chapter and shall include:

7 (a) A financial statement of the organization, includ-
8 ing its balance sheet and receipts and disbursements for
9 the preceding year certified by an independent certified
10 public accountant, reflecting at least (i) all prepayment
11 and other payments received for health care services
12 rendered, (ii) expenditures to all providers, by classes or
13 groups of providers, and insurance companies or
14 nonprofit health service plan corporations engaged to
15 fulfill obligations arising out of the health maintenance
16 contract, and (iii) expenditures for capital improve-
17 ments, or additions thereto, including, but not limited
18 to, construction, renovation or purchase of facilities and
19 capital equipment;

20 (b) The number of new enrollees enrolled during the
21 year, the number of enrollees as of the end of the year
22 and the number of enrollees terminated during the year;

23 (c) A summary of information compiled pursuant to

24 subdivision (c), subsection (1), section four of this article
25 in such form as may be required by the department of
26 health;

27 (d) A report of the names and residence addresses of
28 all persons set forth in subdivision (c), subsection (4),
29 section three of this article who were associated with the
30 health maintenance organization during the preceding
31 year, and the amount of wages, expense reimburse-
32 ments, or other payments to such individuals for
33 services to the health maintenance organization, includ-
34 ing a full disclosure of all financial arrangements
35 during the preceding year required to be disclosed
36 pursuant to subdivision (c), subsection (4), section three
37 of this article; and

38 (e) Such other information relating to the performance
39 of the health maintenance organization as is reasonably
40 necessary to enable the commissioner to carry out his
41 duties under this article.

§33-25A-17. Examinations.

1 (1) The commissioner may make an examination of the
2 affairs of any health maintenance organization and
3 providers with whom such organization has contracts,
4 agreements or other arrangements as often as he deems
5 it necessary for the protection of the interests of the
6 people of this state but not less frequently than once
7 every three years.

8 (2) The commissioner shall contract with the depart-
9 ment of health to make examinations concerning the
10 quality of health care services of any health mainte-
11 nance organization and providers with whom such
12 organization has contracts, agreements or other ar-
13 rangements as often as it deems necessary for the
14 protection of the interests of the people of this state but
15 not less frequently than once every three years: *Pro-*
16 *vided*, That in making the foregoing examination, the
17 department of health shall utilize the services of persons
18 or organizations with demonstrable expertise in assess-
19 ing quality of health care.

20 (3) Every health maintenance organization and

21 affiliated provider shall submit its books and records to
22 such examinations and in every way facilitate them. For
23 the purpose of examinations, the commissioner and the
24 department of health shall have all powers necessary to
25 conduct such examinations, including, but not limited
26 to, the power to issue subpoenas, the power to admin-
27 ister oaths to, and examine the officers and agents of the
28 health maintenance organization and the principles of
29 such providers concerning their business.

30 (4) The health maintenance organization shall be
31 subject to the provisions of section nine, article two of
32 this chapter in regard to the expense and conduct of
33 examinations.

34 (5) In lieu of such examination, the commissioner may
35 accept the report of an examination made by other
36 states.

***§33-25A-24. Statutory construction and relationship to
other laws.**

1 (1) Except as otherwise provided in this article,
2 provisions of the insurance law and provisions of
3 hospital or medical service corporation laws shall not be
4 applicable to any health maintenance organization
5 granted a certificate of authority under this article. This
6 provision shall not apply to an insurer or hospital or
7 medical service corporation licensed and regulated
8 pursuant to the insurance laws or the hospital or
9 medical service corporation laws of this state except
10 with respect to its health maintenance corporation
11 activities authorized and regulated pursuant to this
12 article.

13 (2) Factually accurate advertising or solicitation
14 regarding the range of services provided, the premiums
15 and copayments charged, the sites of services and hours
16 of operation, and any other quantifiable, nonprofessional
17 aspects of its operation by a health maintenance
18 organization granted a certificate of authority, or its
19 representative shall not be construed to violate any
20 provision of law relating to solicitation or advertising by
21 health professions: *Provided*, That nothing contained

*Clerk's Note: This section was also amended by S. B. 535 (Chapter 93), which passed prior to this act.

22 herein shall be construed as authorizing any solicitation
23 or advertising which identifies or refers to any individ-
24 ual provider, or makes any qualitative judgment
25 concerning any provider.

26 (3) Any health maintenance organization authorized
27 under this article shall not be deemed to be practicing
28 medicine and shall be exempt from the provision of
29 chapter thirty of this code, relating to the practice of
30 medicine.

31 (4) The provisions of article six-c (guaranteed loss
32 ratio), article seven (assets and liabilities); article eight
33 (investments); section fourteen, article fifteen (individ-
34 ual policies), section three-f of article sixteen of this
35 chapter concerning treatment of temporomandibular
36 disorder and craniomandibular disorder; article sixteen-
37 c (small employer group policies), article sixteen-d
38 (marketing and rate practices for small employers),
39 article twenty-seven (insurance holding company sys-
40 tems), article thirty-four-a (standards and commission-
41 er's authority for companies deemed to be in hazardous
42 financial condition) and article thirty-five (criminal
43 sanctions for failure to report impairment) shall be
44 applicable to any health maintenance organization
45 granted a certificate of authority under this article.

46 (5) Any long-term care insurance policy delivered or
47 issued for delivery in this state by a health maintenance
48 organization shall comply with the provisions of article
49 fifteen-a of this chapter.

**§33-25A-32. Authority of commissioner to promulgate
rules and regulations regarding affiliate
and subsidiary operating results.**

1 The commissioner may as he deems necessary after
2 notice and hearing promulgate rules and regulations in
3 accordance with chapter twenty-nine-a of this code to
4 define the commissioner's authority to consider the
5 operating results of an insurer's affiliates and subsidiar-
6 ies in the rate making and solvency determination of
7 that insurer.

§33-26A-3. Scope of article.

§33-26A-8. Powers and duties of association.

§33-26A-3. Scope of article.

1 (a) This article shall provide coverage for those
2 policies and contracts specified in subsection (b) of this
3 section to:

4 (1) Persons who, regardless of where they reside
5 (except for nonresident certificate holders under group
6 policies or contracts), are the beneficiaries, assignees or
7 payees of the persons covered under paragraph (2)
8 below;

9 (2) Persons who are owners of or certificate holders
10 under such policies or contracts and who are residents
11 of the state; and

12 (3) Persons who are owners of or certificate holders
13 under such policies or contracts who are not residents
14 of the state, but only under the following conditions:

15 (A) The insurer which issued any such policy or
16 contract is domiciled in this state;

17 (B) The insurer never held a license or certificate of
18 authority in the state where the person resides;

19 (C) The state where the person resides has an
20 association similar to the association created by this
21 article; and

22 (D) The person residing in another state is not eligible
23 for coverage by the association in that state.

24 (b) This article shall apply to direct life insurance
25 policies, health insurance policies, annuity contracts,
26 and contracts supplemental to life and health insurance
27 policies and annuity contracts issued by persons licensed
28 to transact insurance in this state at any time.

29 (c) This article shall not apply to:

30 (1) Any such policies or contracts, or any part of such
31 policies or contracts, under which the risk is borne by
32 the policyholder;

33 (2) Any such policy or contract or part thereof

34 assumed by the impaired insurer under a contract of
35 reinsurance, other than reinsurance for which assump-
36 tion certificates have been issued.

§33-26A-8. Powers and duties of association.

1 In addition to the powers and duties enumerated in
2 other sections of this article:

3 (a) If a domestic insurer is an impaired insurer, the
4 association may, prior to an order of liquidation or
5 rehabilitation, and subject to any conditions imposed by
6 the association other than those which impair the
7 contractual obligations of the impaired insurer, and
8 approved by the impaired insurer and the
9 commissioner:

10 (1) Guarantee or reinsure, or cause to be guaranteed,
11 assumed or reinsured, all the covered policies of
12 residents of the impaired insurer;

13 (2) Provide such moneys, pledges, notes, guarantees or
14 other means as are proper to effectuate subdivision (1),
15 subsection (a) of this section, and assure payment of the
16 contractual obligations of the impaired insurer pending
17 action under said subdivision (1), subsection (a); and

18 (3) Lend money to the impaired insurer.

19 (b) If a foreign or alien insurer is an impaired insurer,
20 the association may, prior to an order of liquidation,
21 rehabilitation or conservation, with respect to the
22 covered policies of residents and subject to any condi-
23 tions imposed by the association other than those which
24 impair the contractual obligations of the impaired
25 insurer, and approved by the impaired insurer and the
26 commissioner:

27 (1) Guarantee or reinsure, or cause to be guaranteed,
28 assumed or reinsured, the impaired insurer's covered
29 policies of residents;

30 (2) Provide such moneys, pledges, notes, guarantees or
31 other means as are proper to effectuate subdivision (1),
32 subsection (b) of this section, and assure payment of the
33 impaired insurer's contractual obligations to residents
34 pending action under subdivision (1), subsection (b); and

35 (3) Lend money to the impaired insurer.

36 (c) If a domestic insurer is an impaired insurer under
37 an order of liquidation or rehabilitation, the association
38 shall, subject to the approval of the commissioner, (1)
39 guarantee, assume or reinsure, or cause to be guaran-
40 teed, assumed or reinsured the covered policies of the
41 impaired insurer which cover residents, (2) assure
42 payment of the contractual obligations of the impaired
43 insurer to residents, and (3) provide such moneys,
44 pledges, notes, guarantees, or other means as are
45 reasonably necessary to discharge such duties. If the
46 association fails to act within a reasonable period of
47 time, the commissioner shall have the powers and duties
48 of the association under this article with respect to such
49 domestic impaired insurer.

50 (d) If a foreign or alien insurer is an impaired insurer
51 under an order of liquidation, rehabilitation or conser-
52 vation, the association shall, subject to the approval of
53 the commissioner:

54 (1) Guarantee, assume or reinsure, or cause to be
55 guaranteed, assumed or reinsured, the covered policies
56 of residents;

57 (2) Assure payment of the contractual obligations of
58 the impaired insurer to residents; and

59 (3) Provide such moneys, pledges, notes, guarantees,
60 or other means as are reasonably necessary to discharge
61 such duties. If the association fails to act within a
62 reasonable period of time, the commissioner shall have
63 the powers and duties of the association under this
64 article with respect to such foreign or alien impaired
65 insurer.

66 (e) In carrying out its duties under subsections (c) and
67 (d) of this section, the association may request that there
68 be imposed policy liens, contract liens, moratoriums on
69 payments, or other similar means and such liens,
70 moratoriums, or similar means may be imposed if the
71 commissioner:

72 (1) Finds that the amounts which can be assessed
73 under this article are less than the amounts needed to

74 assure full and prompt performance of the impaired
75 insurer's contractual obligations, or that the economic or
76 financial conditions as they affect member insurers are
77 sufficiently adverse to render the imposition of policy or
78 contract liens, moratoriums, or similar means to be in
79 the public interest; and

80 (2) Approves the specific policy liens, contract liens,
81 moratoriums, or similar means to be used.

82 Before being obligated under subsections (c) and (d)
83 of this section, the association may request that there be
84 imposed temporary moratoriums or liens on payments
85 of cash values and policy loans and such temporary
86 moratoriums and liens may be imposed if they are
87 approved by the commissioner.

88 (f) The association shall have no liability under this
89 section for any covered policy of a foreign or alien
90 insurer whose domiciliary jurisdiction or state of entry
91 provides, by statute or regulation, for residents of this
92 state protection substantially similar to that provided by
93 this article for residents of other states.

94 (g) The association may render assistance and advice
95 to the commissioner, upon his request, concerning
96 rehabilitation, payment of claims, continuations of
97 coverage, or the performance of other contractual
98 obligations of any impaired insurer.

99 (h) The association shall have standing to appear
100 before any court in this state with jurisdiction over an
101 impaired insurer concerning which the association is or
102 may become obligated under this article. Such standing
103 shall extend to all matters germane to the powers and
104 duties of the association, including, but not limited to,
105 proposals for reinsuring or guaranteeing the covered
106 policies of the impaired insurer and the determination
107 of the covered policies and contractual obligations.

108 (i) Any person receiving benefits under this article
109 shall be deemed to have assigned his rights under the
110 covered policy to the association to the extent of the
111 benefits received because of this article whether the
112 benefits are payments of contractual obligations or

113 continuation of coverage. The association may require
114 an assignment to it of such rights by any payee, policy
115 or contract owner, beneficiary, insured or annuitant as
116 a condition precedent to the receipt of any rights or
117 benefits conferred by this article upon such person. The
118 association shall be subrogated to these rights against
119 the assets of any impaired insurer.

120 The subrogation rights of the association under this
121 subsection shall have the same priority against the
122 assets of the impaired insurer as that possessed by the
123 person entitled to receive benefits under this article.

124 (j) The contractual obligations of the impaired insurer
125 for which the association becomes or may become liable
126 shall be as great as but no greater than the contractual
127 obligations of the impaired insurer would have been in
128 the absence of an impairment unless such obligations
129 are reduced as permitted by subsection (e) of this
130 section, but the association shall have no liability with
131 respect to any portion of a covered policy to the extent
132 that the death benefit coverage on any one life exceeds
133 an aggregate of three hundred thousand dollars.

134 (k) The association may:

135 (1) Enter into such contracts as are necessary or
136 proper to carry out the provisions and purposes of this
137 article.

138 (2) Sue or be sued, including taking any legal actions
139 necessary or proper for recovery of any unpaid assess-
140 ments under section nine.

141 (3) Borrow money to effect the purposes of this article.
142 Any notes or other evidence of indebtedness of the
143 association not in default shall be legal investments for
144 domestic insurers and may be carried as admitted
145 assets.

146 (4) Employ or retain such persons as are necessary to
147 handle the financial transactions of the association, and
148 to perform such other functions as become necessary or
149 proper under this article.

150 (5) Negotiate and contract with any liquidator,

151 rehabilitator, conservator, or ancillary receiver to carry
152 out the powers and duties of the association.

153 (6) Take such legal action as may be necessary to avoid
154 payment of improper claims.

155 (7) Exercise, for the purposes of this article and to the
156 extent approved by the commissioner, the powers of a
157 domestic life or health insurer, but in no case may the
158 association issue insurance policies or annuity contracts
159 other than those issued to perform the contractual
160 obligations of the impaired insurer.

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-5. Standards.

1 (a) *Transactions with affiliates.* — Material transac-
2 tions by registered insurers with their affiliates shall be
3 subject to the following standards:

4 (1) The terms shall be fair and reasonable;

5 (2) The books, accounts and records of each party shall
6 be so maintained as to clearly and accurately disclose
7 the precise nature and details of the transactions; and

8 (3) The insurer's surplus as regards policyholders
9 following any dividends or distributions to shareholder
10 affiliates shall be reasonable in relation to the insurer's
11 outstanding liabilities and adequate to its financial
12 needs.

13 (b) *Adequacy of surplus.* — For purposes of this
14 article, in determining whether an insurer's surplus as
15 regards policyholders is reasonable in relation to the
16 insurer's outstanding liabilities and adequate to its
17 financial needs, the following factors, among others,
18 shall be considered:

19 (1) The size of the insurer as measured by its assets,
20 capital and surplus, reserves, premium writings,
21 insurance in force and other appropriate criteria;

22 (2) The extent to which the insurer's business is
23 diversified among the several lines of insurance;

24 (3) The number and size of risks insured in each line

25 of business;

26 (4) The extent of the geographical dispersion of the
27 insurer's insured risks;

28 (5) The nature and extent of the insurer's reinsurance
29 program;

30 (6) The quality, diversification and liquidity of the
31 insurer's investment portfolio;

32 (7) The recent past and projected future trend in the
33 size of the insurer's surplus as regards policyholders;

34 (8) The surplus as regards policyholders maintained
35 by other comparable insurers; and

36 (9) The adequacy of the insurer's reserves.

37 (c) *Dividends and other distributions.* — No insurer
38 subject to registration under section four of this article
39 shall pay any extraordinary dividend or make any other
40 extraordinary distribution to its shareholders until (i)
41 thirty days after the commissioner has received notice
42 of the declaration thereof and has not within such period
43 disapproved such payment, or (ii) the commissioner
44 shall have approved such payment within such thirty-
45 day period.

46 For purposes of this section, an extraordinary divi-
47 dend or distribution includes any dividend or distribu-
48 tion of cash or other property, whose fair market value
49 together with that of other dividends or distributions
50 made within the preceding twelve months exceeds the
51 greater of (i) ten percent of such insurer's surplus as
52 regards policyholders as of the thirty-first day of
53 December next preceding, or (ii) the net gain from
54 operations of such insurer, if such insurer is a life
55 insurer, or the net investment income, if such insurer
56 is not a life insurer, for the twelve-month period ending
57 the thirty-first day of December next preceding, but
58 shall not include pro rata distributions of any class of
59 the insurer's own securities.

60 Notwithstanding any other provision of law, an
61 insurer may declare an extraordinary dividend or
62 distribution which is conditional upon the commission-

63 er's approval thereof, and such a declaration shall confer
64 no rights upon shareholders until (i) the commissioner
65 has approved the payment of such dividend or distribu-
66 tion or (ii) the commissioner has not disapproved such
67 payment within the thirty-day period referred to above.

68 (d) The following transactions involving a domestic
69 insurer and any person in its holding company system
70 may not be entered into unless the insurer has notified
71 the commissioner in writing of its intention to enter into
72 such transaction at least thirty days prior thereto, or
73 such shorter period as the commissioner may permit,
74 and the commissioner has not disapproved it within such
75 period:

76 (1) Sales, purchases, exchanges, loans or extensions of
77 credit, guarantees, or investments provided such
78 transactions are equal to or exceed: The lesser of one
79 percent of the insurer's admitted assets or ten percent
80 of surplus as regards policyholders; each as of the thirty-
81 first day of December next preceding;

82 (2) Loans or extensions of credit to any person who is
83 not an affiliate, where the insurer makes such loans or
84 extensions of credit with the agreement or understand-
85 ing that the proceeds of such transactions, in whole or
86 in substantial part, are to be used to make loans or
87 extensions of credit to, purchase assets of, or to make
88 investments in, any affiliate of the insurer making such
89 loans or extensions of credit provided such transactions
90 are equal to or exceed: The lesser of one percent of the
91 insurer's admitted assets or ten percent of surplus as
92 regards policyholders; each as of the thirty-first day of
93 December next preceding;

94 (3) Reinsurance agreements or modifications thereto
95 in which the reinsurance premium or a change in the
96 insurer's liabilities equals or exceeds five percent of the
97 insurer's surplus as regards policyholders, as of the
98 thirty-first day of December next preceding, including
99 those agreements which may require as consideration
100 the transfer of assets from an insurer to a nonaffiliate,
101 if an agreement or understanding exists between the
102 insurer and nonaffiliate that any portion of such assets

103 will be transferred to one or more affiliates of the
104 insurer;

105 (4) All management agreements, service contracts and
106 all cost-sharing arrangements not within the ordinary
107 course of business; and

108 (5) Any material transactions, specified by regulation,
109 which the commissioner determines may adversely
110 affect the interests of the insurer's policyholders.

111 Nothing herein contained shall be deemed to authorize
112 or permit any transactions which, in the case of an
113 insurer not a member of the same holding company
114 system, would be otherwise contrary to law.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-8. Examinations and investigations.

1 At least once in three years, and whenever the
2 commissioner determines it to be prudent, he shall
3 personally, or by some competent person appointed by
4 him, visit each captive insurance company and tho-
5 roughly inspect and examine its affairs to ascertain its
6 financial condition, its ability to fulfill its obligations
7 and whether it has complied with the provisions of this
8 chapter. The commissioner upon application, in his
9 discretion, may extend the aforesaid three-year period
10 to five years, provided said captive insurance company
11 is subject to a comprehensive annual audit during such
12 period of a scope satisfactory to the commissioner by
13 independent auditors approved by him. The captive
14 insurance company shall be subject to the provisions of
15 section nine, article two of this chapter in regard to the
16 expense and conduct of the examination.

ARTICLE 32. RISK RETENTION ACT.

§33-32-8. Examination regarding financial condition.

1 Any risk retention group must submit to an exami-
2 nation by the commissioner to determine its financial
3 condition if the commissioner of the jurisdiction in
4 which the group is chartered has not initiated an
5 examination or does not initiate an examination within
6 sixty days after a request by the commissioner of this

7 state. Any such examination shall be coordinated to
8 avoid unjustified repetition and conducted in an
9 expeditious manner. The risk retention group shall be
10 subject to the provisions of section nine, article two of
11 this chapter in regard to the expense and conduct of the
12 examination.

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

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

1 (a) The commissioner may, upon written application,
2 permit any insurer that is a member of an insurance
3 holding company system to file audited, consolidated or
4 combined financial statements in lieu of separate annual
5 audited financial statements if the commissioner, in his
6 discretion, deems such method of filing reasonable and
7 appropriate. Consolidated or combined filings will be
8 considered reasonable and appropriate if the commis-
9 sioner determines that the audit work performed under
10 a consolidated filing is adequate to ascertain the
11 financial condition of the insurer. If such approval is
12 granted, a columnar consolidating or combining work-
13 sheet shall be filed with the report incorporating the
14 following:

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

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

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

22 (4) Explanations of consolidating and eliminating
23 entries shall be included; and

24 (5) A reconciliation shall be included of any differ-
25 ences between the amounts shown in the individual
26 insurer columns of the worksheet and comparable
27 amounts shown on the annual statements of the insurers.

28 (b) The commissioner shall require any insurer to file
29 separate annual audited financial statements although
30 permission had previously been given to file on a

31 consolidated basis or combined basis if the commissioner
 32 determines the reasons or circumstances given for
 33 approval of the consolidated audit, pursuant to subsec-
 34 tion (a) of this section, no longer exist.

35 (c) An insurer who does not receive approval from the
 36 commissioner to file an audited financial report cover-
 37 ing combined or consolidated audited financial state-
 38 ments for the insurer and any of its subsidiaries or
 39 affiliates must file pursuant to all the requirements of
 40 this article a separate audited financial report for the
 41 insurer and each subsidiary or affiliate.

42 (d) Notwithstanding any provision of this section, the
 43 commissioner may require an insurer to file a separate
 44 audited financial report for the insurer and each
 45 subsidiary or affiliate.

ARTICLE 34A. STANDARDS AND COMMISSIONER'S AUTHORITY FOR COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION.

§33-34A-1. Definitions.

§33-34A-2. Purpose.

§33-34A-3. Standards.

§33-34A-4. Commissioner's authority.

§33-34A-5. Election of proceedings.

§33-34A-6. Immunity from liability.

§33-34A-7. Rules.

§33-34A-8. Severability of provisions.

§33-34A-1. Definitions.

1 For the purposes of this article the following defini-
 2 tions shall apply:

3 (a) "Insurer" means and includes every person
 4 engaged as indemnitor, surety or contractor in the
 5 business of entering into contracts of insurance or of
 6 annuities as limited to any insurer who is doing an
 7 insurer business, or has transacted insurance in this
 8 state, and against whom claims arising from that
 9 transaction may exist now or in the future. This shall
 10 include, but not be limited to, any domestic insurer as
 11 defined in section six, article one of this chapter and any
 12 foreign insurer as defined in section seven, article one
 13 of this chapter, including any stock insurer, mutual

14 insurer, reciprocal insurer, farmers' mutual fire
15 insurance company, fraternal benefit society, hospital
16 service corporation, medical service corporation, dental
17 service corporation, health service corporation, health
18 care corporation, health maintenance organization,
19 captive insurance company or risk retention group.

20 (b) A "noninvestment grade bond" shall mean a bond
21 that has been rated by the securities valuation office of
22 the national association of insurance commissioners of
23 having a designation of class four equals low quality,
24 class five equals lower quality and class six equals in
25 or near default.

§33-34A-2. Purpose.

1 The purpose of this article is to set forth the standards
2 which the insurance commissioner may use for identi-
3 fying insurers found to be in such condition as to render
4 the continuance of their business hazardous to the public
5 or to holders of their policies or certificates of insurance.
6 This article shall not be interpreted to limit the powers
7 granted the commissioner by any laws or parts of laws
8 of this state, nor shall this article be interpreted to
9 supersede any laws or parts of laws of this state.

§33-34A-3. Standards.

1 The following standards, either singularly or a
2 combination of two or more, may be considered by the
3 commissioner to determine whether the continued
4 operation of any insurer transacting an insurance
5 business in this state might be deemed to be hazardous
6 to the policyholders, creditors or the general public. The
7 commissioner may consider:

8 (a) Adverse findings reported in financial condition
9 and market conduct examination reports;

10 (b) The national association of insurance commission-
11 ers insurance regulatory information system and its
12 related reports;

13 (c) A company which is under suspension, revocation
14 or rehabilitation in another state;

15 (d) The insurer's asset portfolio when viewed in light

16 of current economic conditions is not of sufficient value,
17 liquidity, or diversity to assure the company's ability to
18 meet its outstanding obligations as they mature;

19 (e) The total of the noninvestment grade bonds equals
20 twenty percent of the total bond portfolio;

21 (f) The ratios of commission expense, general insur-
22 ance expense, policy benefits and reserve increases as to
23 annual premium and net investment income which
24 could lead to an impairment of capital and surplus;

25 (g) The ability of an assuming reinsurer to perform
26 and whether the insurer's reinsurance program provides
27 sufficient protection for the company's remaining
28 surplus after taking into account the insurer's cash flow
29 and the classes of business written as well as the
30 financial condition of the assuming reinsurer;

31 (h) The insurer's operating loss in the last twelve-
32 month period or any shorter period of time, including,
33 but not limited to, net capital gain or loss, change in
34 nonadmitted assets, and cash dividends paid to share-
35 holders, is greater than fifty percent of such insurer's
36 remaining surplus as regards policyholders in excess of
37 the minimum required;

38 (i) Whether any affiliate, subsidiary or reinsurer is
39 insolvent, threatened with insolvency, or delinquent in
40 payment of its monetary or other obligation;

41 (j) Contingent liabilities, pledges or guaranties which
42 either individually or collectively involve a total amount
43 which in the opinion of the commissioner may affect the
44 solvency of the insurer;

45 (k) Whether any "controlling person" of an insurer is
46 delinquent in the transmitting to, or payment of, net
47 premiums to such insurer;

48 (l) The age and collectibility of receivables;

49 (m) Whether the management of an insurer, including
50 officers, directors, or any other person who directly or
51 indirectly controls the operation of such insurer, fails to
52 possess and demonstrate the competence, fitness and
53 reputation deemed necessary to serve the insurer in such

54 position;

55 (n) Whether management of an insurer has failed to
56 respond to inquiries relative to the condition of the
57 insurer or has furnished false and misleading informa-
58 tion concerning an inquiry;

59 (o) Whether management of an insurer either has filed
60 any false or misleading sworn financial statement, or
61 has released a false or misleading financial statement
62 to lending institutions or to the general public, or has
63 made a false or misleading entry, or has omitted an
64 entry of material amount in the books of the insurer;

65 (p) A ratio of gross premiums written to surplus as
66 to policyholders exceeds ten to one and net premium
67 written to surplus as to policyholders exceeds four to
68 one:

69 (1) Projected annual net or gross premiums shall be
70 based on the actual writings to date for the insurer's
71 current calendar year or the insurer's writings for the
72 previous calendar year or both. Ratios shall be computed
73 on an annualized basis;

74 (2) For the purposes of this subsection, "gross
75 premiums written" means direct premiums written and
76 reinsurance assumed, and "net premiums written"
77 means direct premiums written and reinsurance as-
78 sumed less reinsurance ceded;

79 (3) This ratio shall not apply to life insurance written
80 by life or life and health insurers;

81 (q) A ratio of current assets to current liabilities
82 which is below one;

83 (r) The total investments in parent, subsidiaries and
84 affiliates exceeds one hundred percent of surplus as
85 regards policyholders in excess of the minimum re-
86 quired by statute or order of the commissioner;

87 (s) Whether the insurer has grown so rapidly and to
88 such an extent that it lacks adequate financial and
89 administrative capacity to meet its obligations in a
90 timely manner; and

91 (t) Whether the company has experienced or will
92 experience in the foreseeable future cash flow and/or
93 liquidity problems.

§33-34A-4. Commissioner's authority.

1 (a) For the purposes of making a determination of an
2 insurer's financial condition under this regulation, the
3 commissioner may:

4 (1) Disregard any credit or amount receivable result-
5 ing from transactions with a reinsurer which is
6 insolvent, impaired or otherwise subject to a delin-
7 quency proceeding;

8 (2) Make appropriate adjustments to asset values
9 attributable to investments in or transactions with
10 parents, subsidiaries, or affiliates;

11 (3) Refuse to recognize the stated value of accounts
12 receivable if the ability to collect receivables is highly
13 speculative in view of the age of the account or the
14 financial condition of the debtor; or

15 (4) Increase the insurer's liability in an amount equal
16 to any contingent liability, pledge or guarantee not
17 otherwise included if there is a substantial risk that the
18 insurer will be called upon to meet the obligation
19 undertaken within the next twelve-month period.

20 (b) If the commissioner determines that the continued
21 operation of the insurer licensed to transact business in
22 this state may be hazardous to the policyholders or the
23 general public, then the commissioner may, upon his
24 determination, issue an order requiring the insurer to:

25 (1) Reduce the total amount of present and potential
26 liability for policy benefits by reinsurance;

27 (2) Reduce, suspend or limit the volume of business
28 being accepted or renewed;

29 (3) Reduce general insurance and commission ex-
30 penses by specified methods;

31 (4) Increase the insurer's capital and surplus;

32 (5) Suspend or limit the declaration and payment of

33 dividend by an insurer to its stockholders or to its
34 policyholders;

35 (6) File reports in a form acceptable to the commis-
36 sioner concerning the market value of an insurer's
37 assets;

38 (7) Limit or withdraw from certain investments or
39 discontinue certain investment practices to the extent
40 the commissioner deems necessary;

41 (8) Document the adequacy of premium rates in
42 relation to the risks insured; or

43 (9) File, in addition to regular annual statements,
44 interim financial reports on the form adopted by the
45 national association of insurance commissioners or on
46 such format as promulgated by the commissioner. If the
47 insurer is a foreign insurer the commissioner's order
48 may be limited to the extent provided by statute.

49 (c) An order issued pursuant to the provisions of this
50 article shall be subject to review pursuant to applicable
51 state administrative proceedings under article two of
52 this chapter.

§33-34A-5. Election of proceedings.

1 Nothing contained in this article shall preclude the
2 commissioner from initiating judicial proceedings to
3 place an insurer in rehabilitation or liquidation proceed-
4 ings or other delinquency proceedings, however desig-
5 nated under the laws of this state, regardless of whether
6 the commissioner has issued an order pursuant to the
7 provisions of this article.

§33-34A-6. Immunity from liability.

1 There shall be no liability on the part of, and no cause
2 of action of any nature shall arise against, the insurance
3 commissioner or the division or its employees or agents
4 thereof for any action taken by them in the performance
5 of their powers and duties under this article.

§33-34A-7. Rules.

1 The commissioner may after notice and hearing
2 promulgate reasonable rules in accordance with chapter

3 twenty-nine-a of this code, as are necessary and proper
4 to effectuate the purposes of this article.

§33-34A-8. Severability of provisions.

1 In the event any part or provision of this article be
2 held to be unconstitutional by any court of competent
3 jurisdiction, such holding and decision of the court shall
4 not affect the validity and constitutionality of the
5 remaining parts and provisions of this article.

CHAPTER 90

(Com. Sub. for H. B. 2801—By Delegates J. Martin and Michael)

[Passed March 9, 1991; in effect June 30, 1991. Approved by the Governor.]

AN ACT to amend article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto three new sections, designated sections sixteen, seventeen and eighteen, all relating to the creation of the office of consumer advocacy concerning health care and insurance costs; the powers and duties of the office and its director; and funding for the office.

Be it enacted by the Legislature of West Virginia:

That article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto three new sections, designated sections sixteen, seventeen and eighteen, all to read as follows:

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-16. Office of consumer advocacy established; appointed by insurance commissioner; director of consumer advocacy; promulgation of rules and regulations.

§33-2-17. Authority of office of consumer advocacy; retroactive effect of authority prohibited.

§33-2-18. Funding.

§33-2-16. Office of consumer advocacy established; appointed by insurance commissioner; director of consumer advocacy; promulgation of rules and regulations.

1 There is hereby created within the agency of the
2 insurance commissioner the office of consumer advoca-
3 cacy. The director of the office of consumer advocacy
4 shall be a full-time position and shall be appointed by
5 the commissioner for a term of four years and may be
6 discharged only for failure to carry out the duties of the
7 office or for other good and sufficient cause.

8 The insurance commissioner shall provide office
9 space, equipment and supplies for the office.

10 The director shall promulgate rules pursuant to
11 article three, chapter twenty-nine-a of this code in order
12 to effect the purposes of this section, section seventeen,
13 and section eighteen of this article.

14 On or before the first day of each regular session of
15 the Legislature, the director shall file with the the
16 governor, the clerk of the Senate and the clerk of the
17 House of Delegates a report detailing the actions taken
18 by the division in the preceding calendar year.

**§33-2-17. Authority of office of consumer advocacy;
retroactive effect of authority prohibited.**

1 (a) In addition to the authority established under the
2 rules promulgated by the director, the office of con-
3 sumer advocacy is authorized to:

4 (1) Institute, intervene in, or otherwise participate in,
5 as an advocate for the public interest and the interests
6 of insurance consumers, proceedings in state and federal
7 courts, before administrative agencies, or before the
8 health care cost review authority, concerning applica-
9 tions or proceedings before the health care cost review
10 authority or the review of any act, failure to act, or order
11 of the health care cost review authority;

12 (2) At the request of one or more policyholders, or
13 whenever the public interest is served, to advocate the
14 interests of those policyholders in proceedings arising
15 out of any filing made with the insurance commissioner
16 by any insurance company or relating to any complaint
17 alleging an unfair or deceptive act or practice in the
18 business of insurance;

19 (3) Institute, intervene in, or otherwise participate in,
20 as an advocate for the public interest and the interests
21 of insurance consumers, proceedings in state and federal
22 courts, before administrative agencies, or before the
23 insurance commissioner, concerning applications or
24 proceedings before the commissioner or the review of
25 any act, failure to act, or order of the insurance
26 commissioner;

27 (4) Review and compile information, data and studies
28 of the reasonable and customary rate schedules of health
29 care providers and health insurers, for the purposes of
30 reviewing, establishing, investigating, or supporting any
31 policy regarding health care insurance rates;

32 (5) Exercise all the same rights and powers regarding
33 examination and cross-examination of witnesses, presen-
34 tation of evidence, rights of appeal and other matters as
35 any party in interest appearing before the insurance
36 commissioner or the health care cost review authority;

37 (6) Hire consultants, experts, lawyers, actuaries,
38 economists, statisticians, accountants, clerks, steno-
39 graphers, support staff, assistants, and other personnel
40 necessary to carry out the provisions of this section and
41 sections sixteen and eighteen of this article, which
42 personnel shall be paid from special revenue funds
43 appropriated for the use of the office;

44 (7) Contract for the services of technically qualified
45 persons in the area of insurance matters to assist in the
46 preparation and presentation of matters before the
47 courts, the insurance commissioner, administrative
48 agencies, or the health care cost review authority, which
49 persons shall be paid from special revenue funds
50 appropriated for the use of the office;

51 (8) Make recommendations to the Legislature concern-
52 ing legislation to assist the office in the performance of
53 its duties;

54 (9) Communicate and exchange data and information
55 with other federal or state agencies, divisions, depart-
56 ments, or officers, and with other interested parties
57 including, but not limited to, health care providers,

58 insurance companies, consumers or other interested
59 parties; and

60 (10) Perform other duties to effect the purposes of the
61 office.

62 (b) The provisions of this section do not apply to any
63 filing made by an insurance company, or act or order
64 performed or issued by the commissioner, or complaint
65 filed by a policyholder with the commissioner prior to
66 the thirtieth day of June, one thousand nine hundred
67 ninety-one. All proceedings and orders in connection
68 with these prior matters shall be governed by the law
69 in effect at the time of the filing, or performance or
70 issuance of the act or order.

71 (c) The scope of authority granted under this section
72 and section sixteen of this article is restricted to matters
73 related to health care costs and health insurance
74 policies, subscriber contracts issued by organizations
75 under article twenty-four of this chapter, health care
76 corporations under article twenty-five of this chapter,
77 health maintenance organizations under article twenty-
78 five-a of this chapter, contracts supplemental to health
79 insurance policies, and other matters related to health
80 insurance issues identified by rules of the commissioner
81 promulgated under section one of this article and
82 chapter twenty-nine-a of this code.

§33-2-18. Funding.

1 The office of consumer advocacy shall be funded in an
2 amount to be appropriated by the Legislature from
3 special revenue funds.

CHAPTER 91

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

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter thirty-three of the code
of West Virginia, one thousand nine hundred thirty-one,

as amended, by adding thereto two new sections, designated sections five-a and eleven-b, relating to insurance; requiring certain signatures on life or accident and sickness insurance applications; exemptions; and policy provisions providing the insured a ten-day free examination of policy.

Be it enacted by the Legislature of West Virginia:

That article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections five-a and eleven-b, to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-5a. Application for life or accident and sickness insurance; signatures required; exemptions; right of insured to return policy.

§33-2-11b. Right to return life or accident and sickness insurance policy, certificate or contract.

§33-6-5a. Application for life or accident and sickness insurance; signatures required; exemptions; right of insured to return policy.

1 (a) All applications for life or accident and sickness
2 insurance, as defined in section ten, article one of this
3 chapter, to be issued in this state shall:

4 (1) If application is made by the proposed insured,
5 include the signature of both the proposed insured and
6 the agent;

7 (2) If application is made by the proposed insured, be
8 completed by a licensed and appointed agent in the
9 presence of the proposed insured;

10 (3) If application is made by a spouse upon the other
11 spouse, include the signature of the spouse procuring the
12 insurance and the agent; or

13 (4) If application is made by any person having an
14 insurable interest in the life of a minor, or any person
15 upon whom a minor is dependent for support and
16 maintenance, include the signature of the person
17 procuring the insurance and the agent.

18 (b) Upon the hand delivery of a policy of life or

19 accident and sickness insurance, a delivery receipt must
20 be signed and dated by the insured and returned to the
21 insurer for filing.

22 If the delivery of a policy of life or accident and
23 sickness insurance is by mail, it shall either: (1) Be sent
24 by certified mail from the insurer, return receipt
25 requested, and the date of receipt noted thereon shall be
26 considered the date of receipt for the purposes of section
27 eleven-b of this article, or (2) the insurer shall prepare
28 a certificate of mailing. For the purposes of this section,
29 a certificate of mailing means a record prepared and
30 retained in accordance with general business practices
31 indicating the date that the policy was mailed to the
32 insured, and it shall be presumed that the policy was
33 received by the insured twenty days from the date of
34 mailing.

35 (c) Any amendments to the application after it is
36 originally signed by the proposed insured shall be
37 expressly disclosed in writing to the proposed insured
38 and his or her signature is obtained to verify agreement
39 with the changes: *Provided*, That the failure of the
40 insurer to notify the insured of any change, or the
41 failure of the insured to execute such signature, shall not
42 invalidate the existence of insurance coverage.

43 (d) The following shall be exempt from the require-
44 ments of subdivisions (1), (2), (3) and (4) of subsection
45 (a) herein:

46 (1) Group life or group accident and sickness insur-
47 ance applications if the insurer will accept all prospec-
48 tive principal insureds with no underwriting restric-
49 tions on the individual proposed insureds;

50 (2) Group life or group accident and sickness insu-
51 rance applications if there is underwriting as to the
52 individual proposed insureds and the applications are
53 completed without a licensed and appointed agent
54 present, but the insurer verifies the information on the
55 application by telephone with the proposed insured;

56 (3) Applications for life or accident and sickness
57 insurance if the insurance is solely mass marketed and

58 the only contact with the insured is by mail, mass media
59 or telephone; and

60 (4) Applications for life or accident and sickness
61 insurance if the insurer is an underwriter for supple-
62 mental retirement plans and additional retirement
63 plans provided to eligible employees of the governing
64 boards of state institutions of higher education pursuant
65 to the provisions of section four-a, article twenty-three,
66 chapter eighteen of this code.

§33-6-11b. Right to return life or accident and sickness insurance policy, certificate or contract.

1 All life or sickness and accident insurance policies,
2 certificates or contracts issued to persons in this state
3 shall have a notice prominently printed on the first page
4 of the policy, certificate or contract stating in substance
5 that the insured person or person obtaining the policy
6 shall have the right to return the policy within ten days
7 of its receipt and to have the premium refunded if, after
8 examination of the policy, certificate or contract, the
9 person obtaining the insurance is not satisfied for any
10 reason.

CHAPTER 92

(S. B. 616—By Senators Craigo, Dittmar, Sharpe, Hawse, Bailey,
Minard, Wooton and Pritt)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-nine, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to collision, comprehensive, property or bodily injury coverage for insureds operating loaned motor vehicles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. THE INSURANCE POLICY.

§33-6-29. Motor vehicle policy; injuries to guest passengers; coverage for loaned motor vehicles.

1 No insurer shall issue any policy of bodily injury or
2 property damage liability insurance which excludes
3 coverage to the owner or operator of a motor vehicle on
4 account of bodily injury or property damage to any
5 guest or invitee who is a passenger in such motor
6 vehicle.

7 Every policy or contract of liability insurance which
8 insures a motor vehicle licensed in this state with
9 collision, comprehensive, property or bodily injury
10 coverage shall extend these coverages to cover the
11 insured individual while operating a motor vehicle
12 which is loaned to the insured by a person, firm or
13 corporation engaged in the business of selling, repairing
14 or servicing motor vehicles, without consideration, as a
15 replacement vehicle while the insured's vehicle is out of
16 use because of breakdown, repair or servicing. The
17 extension of property damage coverage shall include
18 coverage for damage to or loss of the loaned vehicle as
19 a result of the negligence of the insured.

CHAPTER 93

(Com. Sub. for S. B. 535—Originating in the Committee on Finance)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto three new articles, designated articles six-c, sixteen-c and sixteen-d; to amend article fifteen of said chapter by adding thereto a new section, designated section fifteen; to amend and reenact section four, article twenty-four; section six, article twenty-five; and section twenty-four, article twenty-five-a of said chapter, all relating to individual and employer group accident and sickness insurance policies; establishing a guaranteed loss ratio for insurers of individual

policies; definition of terms; establishment of guaranteed loss ratio by insurance commissioner; calculation of ratios; minimum rates; participation and review; duties of insurance commissioner; allowing the insurance commissioner to promulgate rules; form of guarantees; provisions of guarantee; refunds of premiums; disclosure; rejection of guarantees, notice and hearing; establishment of minimum benefits and coverages for individual accident and sickness insurance policies by insurance commissioner; basic benefits; exemptions; regulating employer group accident and sickness insurance policies; declaration of findings and purpose; defining terms; exempting insurance policies issued pursuant to this article from including certain benefits otherwise mandated by law; designating minimum benefits and coverages required in such policies; permitting insurers to offer optional or other benefits; permitting deductibles and copayments; insurance commissioner establishing minimum benefits and coverages; basic policy benefits; requiring certain policy provisions; prohibiting discrimination; requiring an insurer to disclose specified information to an eligible employee upon offering coverage pursuant to this article; requiring certain written acknowledgments by eligible employee members who apply for such coverage; requiring certification by employer; permitting insurance commissioner to promulgate rules; creating exemptions from premium tax; authorizing the insurance commissioner to review and approve all marketing communication used to market insurance policies issued to small employers; defining applicable terms; plans subject to this article and exceptions; application of article; prohibiting discrimination in marketing; requiring insurers issuing such policies to maintain records and file annual reports with the insurance commissioner; establishing premium rates, classes of employers, maximum rates and eligibility for rate increases; authorizing the insurance commissioner to promulgate rules; regarding renewability of coverage and exceptions; disclosure requirements; suspension of requirements; effective date; equality of terms; pre-existing conditions; restrictions; benefits upon conver-

sion; obligations of employers; and applying said provisions to certain health care insurers or providers.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto three new articles, designated articles six-c, sixteen-c and sixteen-d; that article fifteen of said chapter be amended by adding thereto a new section, designated section fifteen; and that section four, article twenty-four; section six, article twenty-five; and section twenty-four, article twenty-five-a of said chapter, be amended and reenacted, all to read as follows:

Article

- 6C. **Guaranteed Loss Ratios as Applied to Individual Sickness and Accident Insurance Policies.**
- 15. **Accident and Sickness Insurance.**
- 16C. **Employer Group Accident and Sickness Insurance Policies.**
- 16D. **Marketing and Rate Practices for Small Employer Accident and Sickness Insurance Policies.**
- 24. **Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.**
- 25. **Health Care Corporations.**
- 25A. **Health Maintenance Organization Act.**

ARTICLE 6C. GUARANTEED LOSS RATIOS AS APPLIED TO INDIVIDUAL SICKNESS AND ACCIDENT INSURANCE POLICIES.

- §33-6C-1. **Loss ratio guarantees; definitions.**
- §33-6C-2. **Insurance commissioner to establish guaranteed loss ratios; minimum rates; participation by insurer; calculation of ratios; minimum rate; application.**
- §33-6C-3. **Duties of insurance commissioner; promulgation of rules.**
- §33-6C-4. **Form of guarantee; requirements.**
- §33-6C-5. **Premium refunds; calculation of the same; payments.**
- §33-6C-6. **Disclosure of rating practices; renewability provisions.**
- §33-6C-7. **Rejection of guarantees; notice; hearing.**

§3-6C-1. Loss ratio guarantees; definitions.

- 1 As used in this article:
- 2 (a) "Commissioner" means the insurance commis-
- 3 sioner of West Virginia;
- 4 (b) "Experience period" means, for any given rate

5 filing for which a loss ratio guarantee is made, the
6 period beginning on the first day of the calendar year
7 during which the guaranteed rates first take effect and
8 ending on the last day of the calendar year during which
9 the insurer earns one million dollars in premiums on the
10 form in West Virginia or, if the annual premium earned
11 on the form in West Virginia is less than one million
12 dollars, earns nationally;

13 (c) "Form" means individual sickness and accident
14 policy forms of any insurer offering such benefits;

15 (d) "Loss ratio" means the ratio of incurred claims to
16 earned premium; and

17 (e) "Successive experience period" means the expe-
18 rience period beginning on the first day following the
19 end of the preceding experience period.

**§33-6C-2. Insurance commissioner to establish guaran-
teed loss ratios; minimum rates; participation
by insurer; calculation of ratios; minimum
rate; application.**

1 (a) The insurance commissioner shall establish a
2 guaranteed loss ratio which may be implemented by any
3 insurer offering individual sickness and accident
4 insurance policies. The loss ratios shall be calculated by
5 the commissioner and each individual insurer and shall
6 be based upon studies and relevant information collected
7 from various sources, including, but not limited to, the
8 health care cost review authority and the national
9 association of insurance commissioner's rate filing
10 guidelines: *Provided*, That the guaranteed loss ratio
11 shall not be less than fifty-five percent. The guaranteed
12 loss ratio for each insurer shall be published by the
13 insurance commissioner in the register maintained by
14 the secretary of state.

15 (b) The guaranteed loss ratio shall be based upon
16 experience periods during which the insurer earns one
17 million dollars in premium in West Virginia: *Provided*,
18 That if the annual earned premium volume in West
19 Virginia is less than one million dollars, the loss ratio
20 guarantee shall be based on such other actuarially sound

21 methods as the commissioner may determine are
22 appropriate, including, but not limited to, the actual
23 nationwide loss ratios: *Provided, however,* That if the
24 aggregate earned premium for all states is less than one
25 million dollars, the experience period will be extended
26 until the end of the calendar year in which one million
27 dollars of earned premium is attained.

28 (c) Any insurer may apply to the commissioner to
29 operate on a guaranteed loss ratio basis. The insurance
30 commissioner shall review each application and, in his
31 or her discretion, approve or reject the same. Any
32 insurer approved by the commissioner shall be exempt
33 from filing rate increase applications as required by the
34 commissioner and other provisions of this chapter.

§33-6C-3. Duties of insurance commissioner; promulga- tion of rules.

1 (a) The insurance commissioner shall promulgate
2 rules and regulations pursuant to chapter twenty-nine-
3 a of this code establishing procedures for implementing
4 the provisions of this article.

5 (b) The commissioner shall have the authority to
6 examine the records and files of any insurer to deter-
7 mine compliance with the provisions of this article, the
8 costs of which such examination shall be borne by the
9 insurer.

10 (c) The insurance commissioner shall develop all
11 forms, contracts or other documents to be used for the
12 purposes outlined in this article.

§33-6C-4. Form of guarantee; requirements.

1 (a) Individual sickness and accident policy benefits
2 under a policy form shall be deemed reasonable in
3 relation to the premium charged, as required by
4 paragraph (e), section nine, article six of this chapter,
5 if the premium rates are filed pursuant to a loss ratio
6 guarantee which meets the requirements of this article.
7 The insurance commissioner shall not withdraw approv-
8 al of a form on the grounds that benefits are unreason-
9 able in relation to premiums charged so long as the

10 insurer complies with the terms of the loss ratio
11 guarantee.

12 (b) Each insurer of individual sickness and accident
13 policy benefits shall execute and deliver to the insurance
14 commissioner a loss ratio guarantee, to be provided by
15 the commissioner, which guarantee shall be signed by
16 an officer of the insurer.

17 (c) Each loss ratio guarantee shall contain, at a
18 minimum, the following:

19 (1) A recitation of the anticipated lifetime and
20 durational target loss ratios contained in the original
21 actuarial memorandum filed with the policy form when
22 it was originally approved;

23 (2) A guarantee that the actual West Virginia loss
24 ratios for the experience period in which the new rates
25 take effect, and for each experience period thereafter
26 until new rates are filed, will meet or exceed the
27 anticipated lifetime and durational target loss ratios
28 contained in the original actuarial memorandum noted
29 above;

30 (3) A guarantee that the actual West Virginia, or, if
31 applicable, national, loss ratio results for the experience
32 period at issue will be independently audited at the
33 insurer's expense; that such audit will be completed in
34 the second quarter of the year following the end of the
35 experience period; and that the results of such audit will
36 be reported to the insurance commissioner not later than
37 the thirtieth day of June following the end of the
38 experience period;

39 (4) A guarantee that if the actual loss ratio during an
40 experience period is less than the anticipated loss ratio
41 for that period, then West Virginia policyholders will
42 receive a proportional refund based on premium earned,
43 which refunds shall be calculated and paid pursuant to
44 section thirty-nine of this article; and

45 (5) A guarantee that the insurer does not engage in
46 any discriminatory practices prohibited by section four,
47 article eleven of this chapter or any such practice which
48 discriminates against any individual on the basis of his
49 or her legal occupation, race, religion or residence.

§33-6C-5. Premium refunds; calculation of the same; payments.

1 (a) Refunds to West Virginia policyholders made
2 pursuant to section four of this article and based upon
3 annual earned premium volume in West Virginia shall
4 be calculated by multiplying the anticipated loss ratio
5 by the applicable earned premium during the experi-
6 ence period and subtracting from that result the
7 actual incurred claims during the experience period.

8 (b) Refunds to West Virginia policyholders made
9 pursuant to section four of this article and based upon
10 national annual earned premium volume shall be
11 calculated by:

12 (1) Multiplying the anticipated loss ratio by the
13 applicable earned premium during the experience
14 period and subtracting from that result the actual
15 incurred claims during the experience period; and

16 (2) Multiplying the results of subsection (1) by the
17 total earned premium during the experience period
18 from all West Virginia policyholders eligible for
19 refunds; and

20 (3) Dividing the results of subsection (2) by the total
21 earned premium during that period in all states on the
22 policy form.

23 (c) Refunds must be made to all West Virginia
24 policyholders who are insured under the applicable
25 policy form as of the last day of the experience period.
26 Such refund shall include interest, at the current
27 accident and health reserve interest rate established by
28 the national association of insurance commissioners,
29 from the end of the experience period until the date of
30 payment. Payment shall be made during the third
31 quarter of the year following the experience period for
32 which a refund is determined to be due.

33 (d) Refunds of less than ten dollars shall be aggre-
34 gated and held by the insurer in a policyholder's liability
35 fund and shall be used to offset any future rate
36 increases.

§33-6C-6. Disclosure of rating practices; renewability provisions.

1 Each insurer providing individual sickness and
2 accident policy benefits shall make reasonable disclo-
3 sure in solicitation and sales materials provided to
4 individuals of the following:

5 (a) The extent to which premium rates for individuals
6 are established or adjusted according to the claim
7 experience, health status or duration of coverage of the
8 individual or his or her dependents;

9 (b) Provisions concerning the insurer's right to change
10 premium rates and factors, including case characteris-
11 tics, which affect changes in premium rates;

12 (c) A description of the class of insureds to which the
13 individual is or will be included; and

14 (d) Provisions relating to renewability of coverage.

§33-6C-7. Rejection of guarantees; notice; hearing.

1 (a) The insurance commissioner may reject any loss
2 ratio guarantee filed by an insurer within sixty days
3 from the date on which it was filed for any of the
4 following reasons:

5 (1) The insurer has demonstrated an inability to
6 adequately monitor its loss ratios;

7 (2) The insurer has failed to take timely rate increases
8 in accordance with sound actuarial principles during
9 the three-year period prior to filing the loss ratio
10 guarantee;

11 (3) The insurer has not complied with the terms of a
12 previously filed loss ratio guarantee;

13 (4) The insurer has submitted false, misleading or
14 fraudulent material or information to the commissioner;

15 (5) The insurer is impaired, insolvent or such other
16 similar financial condition as defined in article ten or
17 any other article of this chapter; or

18 (6) Such other criteria as the commissioner, by
19 legislative rule or regulation, may determine is
20 appropriate.

21 (b) The insurance commissioner may reject or cancel
22 any loss ratio guarantee filed by an insurer which had
23 been previously approved if, upon review and investiga-
24 tion, the commissioner determines that the insurer has
25 not complied with the provisions of the guarantee or this
26 article.

27 (c) In the event a newly submitted loss ratio guarantee
28 is rejected, the commissioner shall, within sixty days
29 after the date the loss ratio guarantee was filed, mail
30 notice of the rejection to the insurer. In the event an
31 existing or previously approved loss ratio guarantee is
32 cancelled, the commissioner shall mail notice of the
33 rejection or cancellation to the insurer within fifteen
34 days of the decision to cancel. In either situation, the
35 insurer may, within ten days of being notified of its
36 rejection or cancellation, request a hearing before the
37 commissioner, which hearing shall be held within forty-
38 five days from the date the request is made.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-15. Insurance commissioner to establish minimum benefits and coverages for an individual policy design; basic policy benefits; exemptions.

1 (a) The insurance commissioner shall establish
2 minimum benefits which may be included in any
3 individual accident and sickness insurance policy issued
4 pursuant to this article. The commissioner may accept
5 bids on designs for such minimum plans and shall
6 compile a final basic benefit plan for use by insurers
7 within six months after the effective date of this article.

8 (b) The basic policy plan established by the insurance
9 commissioner may include coverage for the services of
10 medical physicians or surgeons, podiatrists, physician
11 assistants, osteopathic physicians or surgeons, chiro-
12 practitioners, midwives, advanced nurse practitioners, or
13 any other professional health care provider as deemed
14 appropriate by the insurance commissioner.

15 (c) The following shall serve as a guide to the

16 commissioner in the design of a basic policy issued
17 pursuant to this article:

18 (1) Inpatient hospital care up to twenty days per year;

19 (2) Outpatient hospital care including, but not limited to,
20 surgery and anesthesia, pre-admission testing,
21 radiation therapy and chemotherapy;

22 (3) Accident or emergency care through emergency
23 room care and emergency admissions to a hospital;

24 (4) Physician office visits for primary, preventive,
25 well, acute or sick care, up to four visits per year, and
26 laboratory fees, surgery and anesthesia, diagnostic X
27 rays, physician care in a hospital inpatient or outpatient
28 setting;

29 (5) Prenatal care, including a minimum of one
30 prenatal office visit per month during the first two
31 trimesters of pregnancy, two office visits per month
32 during the seventh and eighth months of pregnancy, and
33 one office visit per week during the ninth month and
34 until term. Coverage for each such visit shall include
35 necessary appropriate screening, including history,
36 physical examination, and such laboratory and diagnos-
37 tic procedures as may be deemed appropriate by the
38 physician based upon recognized medical criteria for the
39 risk group of which the patient is a member. Coverage
40 for each office visit shall also include such prenatal
41 counseling as the physician deems appropriate;

42 (6) Obstetrical care, including physician's services,
43 delivery room and other medically necessary hospital
44 services; and

45 (7) X-ray and laboratory services in connection with
46 mammograms or pap smears when performed for
47 cancer screening or diagnostic purposes, at the direction
48 of a physician, including, but not limited to, the
49 following:

50 (A) Baseline or other recommended mammograms for
51 women age thirty-five to thirty-nine, inclusive;

52 (B) Mammograms recommended or required for
53 women age forty to forty-nine, inclusive, every two years
54 or as needed;

55 (C) A mammogram every year for women age fifty
56 and over; or

57 (D) A pap smear annually or more frequently based
58 on the woman's physician's recommendation for women
59 age eighteen or over. A basic policy issued pursuant to
60 this article may apply to mammograms or pap smears
61 the same deductibles or copayments as apply to other
62 covered services.

63 (d) Notwithstanding any other provision of this code
64 to the contrary, any basic policy issued pursuant to this
65 section shall be exempt from all statutorily and
66 regulatorily mandated benefits and coverages except for
67 the minimum benefits and coverages as established by
68 the commissioner pursuant to subsection (a) of this
69 section.

70 (e) Nothing in this section shall preclude an insurer
71 from offering any other benefit or coverage under a
72 basic policy issued pursuant to this article, for an
73 appropriate additional premium.

74 (f) A basic policy issued pursuant to this section may
75 include deductibles, copayments and maximum benefits.

76 (g) The insurance commissioner shall promulgate
77 legislative rules pursuant to chapter twenty-nine-a of
78 this code to implement the provisions of this section,
79 including, but not limited to, rules regarding bids,
80 forms and rates.

81 (h) The premiums paid for insurance provided
82 pursuant to this article shall be exempt from the
83 premium tax required to be paid pursuant to sections
84 fourteen and fourteen-a, article three of this chapter.

ARTICLE 16C. EMPLOYER GROUP ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-16C-1. Findings and purpose.

§33-16C-2. Definitions.

§33-16C-3. Exemption from mandatory benefits and coverages; optional
benefits and coverages; deductibles and copayments.

§33-16C-4. Insurance commissioner to establish minimum benefits and
coverages; basic policy benefits.

- §33-16C-5. Required policy provisions.
§33-16C-6. Prohibitions against discrimination in establishing rates, terms or conditions.
§33-16C-7. Disclosures to eligible employees.
§33-16C-8. Certification by employer.
§33-16C-9. Promulgation of rules.
§33-16C-10. Exemption from insurance premiums tax.

§33-16C-1. Findings and purpose.

1 (a) The Legislature finds that the cost of group
2 accident and sickness insurance is becoming unafford-
3 able to many employers and their employees. Further,
4 because of the unaffordability of this type of insurance,
5 in some cases due to the cost of mandated benefits, a
6 significant segment of the state's working population is
7 unable to pay for many health care services.

8 (b) It is the purpose and intent of this article to
9 authorize a program whereby employers may obtain
10 affordable group accident and sickness insurance for
11 currently uninsured employees that will increase access
12 to health care, assist in the reduction of the amount of
13 uncompensated care, and reduce the number of unin-
14 sured persons in this state.

§33-16C-2. Definitions.

1 As used in this article:

2 (a) "Basic policy" means a group accident and sickness
3 insurance contract for medical, surgical or hospital care
4 that is required to contain only those minimum benefits
5 and coverages mandated by this article, but which may
6 contain other benefits and coverages.

7 (b) "Commissioner" means the insurance commis-
8 sioner of West Virginia.

9 (c) "Department" means the department of insurance.

10 (d) "Eligible employee" means an employee who is
11 employed by the employer for an average of at least
12 twenty hours per week; includes individuals who are
13 sole proprietors, general partners and limited partners;
14 and includes individuals who either work or reside in
15 this state.

16 (e) "Eligible employer" means a corporation, partner-
17 ship or proprietorship which has done business in this
18 state for at least one year.

19 (f) "Family member" means an eligible employee's
20 spouse and any dependent child or stepchild under the
21 age of eighteen or under age twenty-three if a full-time
22 student at an accredited school: *Provided*, That the
23 spouse, child or stepchild is not eligible for medicare,
24 medicaid or state medical assistance.

25 (g) "Insurer" means any of the following entities that
26 holds a valid certificate of authority from the commis-
27 sioner: An insurance company authorized to transact
28 accident and sickness insurance; a hospital service
29 corporation, medical service corporation or health
30 service corporation organized pursuant to article
31 twenty-four of this chapter; a health care corporation
32 organized pursuant to article twenty-five of this chapter;
33 or a health maintenance organization organized pursu-
34 ant to article twenty-five-a of this chapter.

35 (h) "Premium" means the consideration for insurance,
36 by whatever name called.

§33-16C-3. Exemption from mandatory benefits and coverages; optional benefits and coverages; deductibles and copayments.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, any basic policy issued pursuant to this
3 article shall be exempt from all statutorily and regula-
4 torily mandated benefits and coverages except for the
5 minimum benefits and coverages provided for in section
6 four of this article.

7 (b) Nothing in this article shall preclude an insurer
8 from offering any other benefit or coverage under a
9 basic policy issued pursuant to this article, for an
10 appropriate additional premium.

11 (c) A basic policy issued pursuant to this article may
12 include deductibles, copayments and maximum benefits.

§33-16C-4. Insurance commissioner to establish minimum benefits and coverages; basic policy benefits.

1 (a) The insurance commissioner shall establish
2 minimum benefits which shall be included in every
3 insurance policy issued pursuant to this article. The
4 commissioner may accept bids on designs for such
5 minimum plans and shall compile a final basic benefit
6 plan for use by insurers within six months after the
7 effective date of this article.

8 (b) The basic policy plan established by the insurance
9 commissioner may include coverage for the services of
10 medical physicians or surgeons, podiatrists, physician
11 assistants, osteopathic physicians or surgeons, chiro-
12 practors, midwives, advanced nurse practitioners, or
13 any other professional health care provider as deemed
14 appropriate by the insurance commissioner.

15 (c) The following shall serve as a guide to the
16 commissioner in the design of a basic policy issued
17 pursuant to this article:

18 (1) Inpatient hospital care up to twenty days per year;

19 (2) Outpatient hospital care including, but not limited
20 to, surgery and anesthesia, pre-admission testing,
21 radiation therapy and chemotherapy;

22 (3) Accident or emergency care through emergency
23 room care and emergency admissions to a hospital;

24 (4) Physician office visits for primary, preventive,
25 well, acute or sick care, up to four visits per year, and
26 laboratory fees, surgery and anesthesia, diagnostic X
27 rays, physician care in a hospital inpatient or outpatient
28 setting;

29 (5) Prenatal care, including a minimum of one
30 prenatal office visit per month during the first two
31 trimesters of pregnancy, two office visits per month
32 during the seventh and eighth months of pregnancy, and
33 one office visit per week during the ninth month and
34 until term. Coverage for each such visit shall include
35 necessary appropriate screening, including history,
36 physical examination, and such laboratory and diagnos-
37 tic procedures as may be deemed appropriate by the
38 physician based upon recognized medical criteria for the
39 risk group of which the patient is a member. Coverage

40 for each office visit shall also include such prenatal
41 counseling as the physician deems appropriate;

42 (6) Obstetrical care, including physician's services,
43 delivery room and other medically necessary hospital
44 services; and

45 (7) X-ray and laboratory services in connection with
46 mammograms or pap smears when performed for
47 cancer screening or diagnostic purposes, at the direction
48 of a physician, including, but not limited to, the
49 following:

50 (A) Baseline or other recommended mammograms for
51 women age thirty-five to thirty-nine, inclusive;

52 (B) Mammograms recommended or required for
53 women age forty to forty-nine, inclusive, every two years
54 or as needed;

55 (C) A mammogram every year for women age fifty
56 and over; or

57 (D) A pap smear annually or more frequently based
58 on the woman's physician's recommendation for women
59 age eighteen or over. A basic policy issued pursuant to
60 this article may apply to mammograms or pap smears
61 the same deductibles or copayments as apply to other
62 covered services.

§33-16C-5. Required policy provisions.

1 (a) Each basic policy issued pursuant to this article
2 shall contain in substance the following:

3 (1) A provision that the entire contract between the
4 parties shall consist of the policy; the application of an
5 eligible employer for such a policy, a copy of which shall
6 be attached to such policy; and the individual applica-
7 tions, if any, submitted in connection with such policy
8 by eligible employees or family members; and further
9 that all statements made by any applicant shall be
10 deemed representations and not warranties, and that no
11 such statements shall void the insurance or reduce
12 benefits thereunder unless contained in a written
13 application;

14 (2) A provision that the insurer will furnish to the
15 eligible employer, for delivery to each eligible employee
16 of the insured group, an individual certificate setting
17 forth in substance the essential features of the insurance
18 coverage of such eligible employee and, if applicable, his
19 or her family members, and to whom benefits there-
20 under are payable. If family members are included in
21 the coverage, only one certificate need be issued for each
22 family; and

23 (3) A provision that all new eligible employees in the
24 groups or classes eligible for insurance shall from time
25 to time be added to such groups or classes eligible to
26 obtain such insurance in accordance with the terms of
27 the policy.

28 (b) No provision relative to notice, proof of loss, the
29 time for paying benefits, or the time within which suit
30 may be brought upon a basic policy issued pursuant to
31 this article shall be less favorable to an eligible
32 employee than would be permitted in the case of an
33 individual policy by the provisions set forth in article
34 fifteen of this chapter.

**§33-16C-6. Prohibitions against discrimination in estab-
lishing rates, terms or conditions.**

1 Discrimination between individuals of the same class
2 of risk in the issuance of basic policies, in the amount
3 of premiums or rates charged for any insurance covered
4 by this article, in benefits payable thereon, in any of the
5 terms or conditions of the basic policy issued pursuant
6 to this article, or in any other manner whatsoever, is
7 prohibited. Nothing in this section shall prohibit an
8 insurer from providing incentives for eligible employees
9 or family members to utilize the services of a particular
10 hospital or other health care provider.

§33-16C-7. Disclosures to eligible employees.

1 (a) Upon offering coverage under a basic policy issued
2 pursuant to this article, the insurer shall provide the
3 eligible employee with a written disclosure statement
4 containing at least the following:

5 (1) An explanation of benefits otherwise mandated by

6 state law and not covered by the basic policy;

7 (2) An explanation of cost control features of the basic
8 policy, along with all appropriate mailing addresses and
9 telephone numbers to be utilized by eligible employee
10 or family members in seeking information or authori-
11 zation; and

12 (3) An explanation that, if applicable, the insurance
13 policy is a minimum benefit policy.

14 (b) This disclosure statement shall be presented in
15 clear and understandable form and format and shall be
16 separate from the basic policy or certificate or evidence
17 of coverage provided to an eligible employee or family
18 member.

19 (c) Before any insurer issues a basic policy pursuant
20 to this article, it shall obtain from the eligible employer
21 applying for such policy a signed written statement in
22 which each eligible employee:

23 (1) Certifies as to eligibility for coverage under the
24 basic policy; and

25 (2) Acknowledges the limited nature of the coverage
26 provided under the basic policy.

27 (d) All marketing communication intended to be
28 utilized in the marketing of a basic policy issued
29 pursuant to this article shall be filed with and approved
30 by the commissioner prior to use and shall contain the
31 disclosures required by this section.

§33-16C-8. Certification by employer.

1 Every employer applying for insurance coverage
2 pursuant to this article shall certify to the insurer, on
3 a form prescribed by the insurance commissioner, that
4 the employer has not had health insurance benefits for
5 the twelve months preceding application.

§33-16C-9. Promulgation of rules.

1 The insurance commissioner shall promulgate rules
2 and regulations, pursuant to chapter twenty-nine-a of
3 this code, establishing procedures for implementing the
4 provisions of this article.

§33-16C-10. Exemption from insurance premiums tax.

- 1 The premiums paid for insurance provided pursuant
- 2 to this article shall be exempt from the premium tax
- 3 required to be paid pursuant to sections fourteen and
- 4 fourteen-a, article three of this chapter.

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

- §33-16D-1. Purpose of article.
- §33-16D-2. Definitions.
- §33-16D-3. Health insurance plans subject to this article.
- §33-16D-4. Discrimination in marketing prohibited; annual filing with commissioner, violations and penalties.
- §33-16D-5. Premium rates for small employers; classes; maximum rates; eligibility for rate increases.
- §33-16D-6. Insurance commissioner to promulgate rules.
- §33-16D-7. Renewability of coverage; exceptions.
- §33-16D-8. Disclosure of rating practices and renewability provisions.
- §33-16D-9. Maintenance of records.
- §33-16D-10. Suspension of requirements.
- §33-16D-11. Effective date.
- §33-16D-12. Equality of terms; pre-existing conditions; continuous coverage restrictions.
- §33-16D-13. Obligations of employer; discrimination as to benefits paid.

§33-16D-1. Purpose of article.

- 1 The purpose of this article is to promote the availa-
- 2 bility of health insurance coverage to small employers,
- 3 to prevent abusive rating practices, to require disclosure
- 4 of rating practices to purchasers, to establish rules for
- 5 continuity of coverage for employers and covered
- 6 individuals, and to improve the efficiency and fairness
- 7 of the small group health insurance marketplace.

§33-16D-2. Definitions.

- 1 As used in this article:
- 2 (a) "Actuarial certification" means a written state-
- 3 ment by an actuary, or other individual acceptable to
- 4 the commissioner, that a small employer insurer is in
- 5 compliance with the provisions of this article, based
- 6 upon that person's examination, including a review of
- 7 the appropriate records and of the actuarial assump-
- 8 tions and methods utilized by the insurer in establishing

9 premium rates for applicable health benefit plans.

10 (b) "Base premium rate" means, for each class of
11 business as to a rating period, the lowest premium rate
12 charged or which could have been charged under a
13 rating system for that class of business, by the small
14 employer insurer to small employers with similar case
15 characteristics for health benefit plans within the same
16 or similar coverage.

17 (c) "Case characteristics" mean demographic or other
18 relevant characteristics of a small employer, as deter-
19 mined by a small employer insurer, which are consid-
20 ered by the insurer in the determination of premium
21 rates for the small employer. Claim experience, health
22 status and duration of coverage since issue shall not be
23 case characteristics for the purposes of this article.

24 (d) "Class of business" means all or any distinct
25 grouping of small employers as shown on the records of
26 the small employer insurer.

27 (e) "Commissioner" means the insurance commissioner
28 of West Virginia.

29 (f) "Department" means the department of insurance.

30 (g) "Duration rating" means the practice of rating a
31 policy or a group of policies by the length of time they
32 have been in force.

33 (h) "Health benefit plan" means any hospital or
34 medical expense incurred policy; health, hospital or
35 medical service corporation contract; plan provided by
36 a multiple-employer trust or a multiple-employer
37 welfare arrangement; health maintenance organization
38 contract offered by an employer; or any other policy or
39 plan issued by an insurer which provides health related
40 benefits to small employers: *Provided*, That for purposes
41 of this article, a health benefit plan shall not include
42 accident only, credit, dental, disability income insur-
43 ance; coverage issued as a supplement to liability insur-
44 ance; insurance arising out of a workers' compensation
45 or similar law; automobile medical-payment insurance,
46 or insurance under which benefits are payable with or
47 without regard to fault and which is statutorily required

48 to be contained in any liability insurance policy or
49 equivalent self-insurance.

50 (i) "Index rate" means for each class of business for
51 small employers with similar case characteristics the
52 arithmetic average of the applicable base premium rate
53 and the corresponding highest premium rate.

54 (j) "Insurer" or "carrier" means any entity which holds
55 a valid certificate of authority from the commissioner
56 and which offers or sells health benefit plans to small
57 employers situate in the state of West Virginia, regard-
58 less of where the policy or plan is drafted, issued or
59 mailed, including, but not limited to, any insurance
60 company authorized to transact accident and sickness
61 insurance; a hospital service corporation, medical
62 service corporation or health service corporation
63 organized pursuant to article twenty-four of this
64 chapter; a health care corporation organized pursuant
65 to article twenty-five of this chapter; a health mainte-
66 nance organization organized pursuant to article
67 twenty-five-a of this chapter; or any multiple-employer
68 trust or multiple-employer welfare arrangement.

69 (k) "Multiple-employer trust" means an insured health
70 benefit plan organized as a trust which offers benefits
71 to small employers and is partially or fully insured by
72 an insurer, which such underwriting insurer shall be
73 deemed to be transacting insurance as defined in section
74 four, article one of this chapter, and is subject to this
75 article regardless of where the policy or plan is
76 delivered, issued for delivery, renewed or continued.

77 (l) "Multiple-employer welfare arrangement" means
78 an employee welfare benefit plan, or any other arrange-
79 ment which is not fully insured and which is established
80 or maintained for the purpose of offering or providing
81 any insurance or other benefit to employees of two or
82 more employers, and may include multiple employer
83 trusts as defined in subsection (k) herein: *Provided*, That
84 such term does not include any such plan or other
85 arrangement which is established or maintained under
86 or pursuant to one or more agreements found, under
87 federal law, to be collective bargaining agreements, or

88 by a rural electric cooperative, and is subject to this
89 article regardless of where the policy or plan is
90 delivered, issued for delivery, renewed or continued.

91 (m) "New business premium rate" means, for each
92 class of business as to a rating period, the premium rate
93 charged or offered by the small employer insurer to
94 small employers with similar case characteristics for
95 newly issued health benefit plans with the same or
96 similar coverage.

97 (n) "Rating period" means the calendar period of at
98 least twelve months for which premium rates estab-
99 lished by a small employer insurer are assumed to be
100 in effect, as determined by the small employer insurer.

101 (o) "Small employer" means any person, firm, corpo-
102 ration, partnership or association actively engaged in
103 business in the state of West Virginia for at least one
104 year who, on at least fifty percent of its working days
105 during the preceding year, employed no more than
106 forty-nine or not less than two eligible employees:
107 *Provided*, That companies which are affiliated compa-
108 nies or which are eligible to file a combined tax return
109 for state tax purposes shall be considered one employer.

110 (p) "Small employer insurer" means any insurer
111 which offers health benefit plans covering the employees
112 of a small employer situate within the state of West
113 Virginia.

114 (q) "Tier rating" means the division of insureds to
115 reflect risk and the subsequent selection by the insurer
116 of only those groups which are financially attractive.

§33-16D-3. Health insurance plans subject to this article.

1 The provisions of this article apply to any health
2 benefit plan which provides coverage to two or more
3 eligible employees of a small employer situate in the
4 state of West Virginia: *Provided*, That the provisions of
5 this article shall not apply to individual health insurance
6 policies which are subject to policy form and premium
7 rate approval as required by article sixteen-b of this
8 chapter.

§33-16D-4. Discrimination in marketing prohibited; annual filing with commissioner; violations and penalties.

1 (a) All insurers subject to this article are strictly
2 prohibited from marketing their product to a specific
3 group, legal occupation, locale, zip code, neighborhood,
4 race, religion, or any discriminatory group.

5 (b) All insurers subject to this article shall file any
6 marketing information upon request of the commis-
7 sioner. The commissioner shall review said information
8 and shall have the authority to take appropriate action
9 to eliminate discriminatory marketing practices, includ-
10 ing imposing fines on violators of this section of not more
11 than ten thousand dollars. Upon a second violation of
12 this section, the commissioner shall have the authority
13 to revoke the violator's license to transact insurance.

§33-16D-5. Premium rates for small employers; classes; maximum rates; eligibility for rate increases.

1 (a) Premium rates for health benefit plans subject to
2 this article shall be subject to the following provisions:

3 (1) The index rate for a rating period for any class
4 of business shall not exceed the index rate for any other
5 class of business by more than twenty percent: *Provided,*
6 That this subdivision shall not apply to a class of
7 business if all of the following apply:

8 (A) The class of business is one for which the carrier
9 does not reject, and never has rejected, small employers
10 included within the definition of employers eligible for
11 the class of business or otherwise eligible employees and
12 dependents who enroll on a timely basis, based upon
13 their claim experience or health status;

14 (B) The carrier does not involuntarily transfer, and
15 never has involuntarily transferred, a health benefits
16 plan into or out of the class of business; and

17 (C) The class of business is currently available for
18 purchase.

19 (2) For a class of business, the premium rates charged

20 during a rating period to small employers with similar
21 case characteristics for the same or similar coverage, or
22 the rates which could be charged to such employers
23 under the rating system for that class of business, shall
24 not vary from the index rate by more than twenty-five
25 percent of the index rate.

26 (3) The percentage increase, in the premium rate
27 charged to a small employer for a new rating period
28 may not exceed the sum of the following:

29 (A) The percentage change in the new business
30 premium rate measured from the first day of the prior
31 rating period to the first day of the new rating period.
32 In the case of a class of business for which the small
33 employer carrier is not issuing new policies, the carrier
34 shall use the percentage change in the base premium
35 rate;

36 (B) An adjustment, not to exceed fifteen percent
37 annually and adjusted pro rata for rating periods of less
38 than one year, due to the claim experience, health status
39 or duration of coverage of the employees or dependents
40 of the small employer as determined from the carrier's
41 rate manual for the class of business; and

42 (C) Any adjustment due to change in coverage or
43 change in the case characteristics of the small employer
44 as determined from the carrier's rate manual for the
45 class of business.

46 (4) In the case of health benefit plans issued prior to
47 the effective date of this article, a premium rate for a
48 rating period may exceed the ranges described in
49 subdivision (1) or (2), subsection (a) of this section for
50 a period of five years following the effective date of this
51 article. In that case, the percentage increase in the
52 premium rate charged to a small employer in such a
53 class of business for a new rating period may not exceed
54 the sum of the following:

55 (A) The percentage change in the new business
56 premium rate measured from the first day of the prior
57 rating period to the first day of the new rating period.
58 In the case of a class of business for which the small

59 employer carrier is not issuing new policies, the carrier
60 shall use the percentage change in the base premium
61 rate; and

62 (B) Any adjustment due to change in coverage or
63 change in the case characteristics of the small employer
64 as determined from the carrier's rate manual for the
65 class of business.

66 (b) Nothing in this section is intended to affect the use
67 by a small employer carrier of legitimate rating factors
68 other than claim experience, health status or duration
69 of coverage in the determination of premium rates.
70 Small employer carriers shall apply rating factors,
71 including case characteristics, consistently with respect
72 to all small employers in a class of business.

73 (c) A small employer carrier shall not involuntarily
74 transfer a small employer into or out of a class of
75 business. A small employer carrier shall not offer to
76 transfer a small employer into or out of a class of
77 business unless such offer is made to transfer all small
78 employers in the class of business without regard to case
79 characteristics, claim experience, health status or
80 duration since issue.

81 (d) To be eligible to make a rate increase request after
82 the first day of July, one thousand nine hundred ninety-
83 one, an insurer must have a minimum anticipated loss
84 ratio of sixty-five percent.

85 (e) All insurers subject to this article, effective the
86 first day of July, one thousand nine hundred ninety-
87 three, shall be prohibited from distinguishing more than
88 four classes of businesses within its small group
89 insurance coverage.

90 (f) Prior to any increase of the anticipated loss ratio,
91 the insurance commissioner must conduct a public
92 hearing as required by section thirteen, article two of
93 this chapter.

94 (g) If any health benefit plan is provided by an insurer
95 through an association of small employers not in the
96 business of selling insurance and with not less than two
97 hundred cumulative employees, and if such association

98 is rated on the basis of the number of employees and
99 not on the basis of the individual small employers, such
100 association or group is exempt from the provisions of
101 this article.

§33-16D-6. Insurance commissioner to promulgate rules.

1 (a) Pursuant to chapter twenty-nine-a of this code, the
2 insurance commissioner shall promulgate rules and
3 regulations necessary to implement the provisions of this
4 article.

5 (b) The rules and regulations promulgated by the
6 commissioner shall include, but not be limited to, the
7 following:

8 (1) Rules and regulations regarding the regulation of
9 administrative costs incurred by the insurers;

10 (2) Rules and regulations regarding the commission-
11 er's authority to increase the anticipated loss ratio and
12 for the collection of data on which to base said increase,
13 including, but not limited to, information obtained from
14 the health care cost review authority and the national
15 insurance commissioners association;

16 (3) Rules and regulations setting forth the procedures
17 for filing rate applications; and

18 (4) Rules and regulations eliminating tier and dura-
19 tion ratings of small group insurers which are used to
20 create artificial rates or unfair trade practices.

§33-16D-7. Renewability of coverage; exceptions.

1 (a) A health benefit plan subject to this article shall
2 be renewable to all eligible employees at the option of
3 the small employer: *Provided*, That an insurer may
4 refuse to renew a health benefit plan for any of the
5 following reasons:

6 (1) Nonpayment of required premiums;

7 (2) Fraud or misrepresentation by the small employer
8 or by the insured individual;

9 (3) Noncompliance with plan provisions;

10 (4) The number of individuals covered under the plan

11 is less than the number or percentage of eligible
12 individuals necessary pursuant to the percentage
13 requirements under the plan; or

14 (5) The small employer is no longer actively engaged
15 in the business in which it was engaged on the effective
16 date of the plan.

17 (b) A small employer insurer may cease to renew all
18 plans under a class of business. Upon the small
19 employer's election of nonrenewal, the insurer shall
20 provide notice of such election not to renew to all
21 affected health benefit plans and to the commissioner in
22 each state in which an affected insured individual is
23 known to reside at least ninety days prior to termination
24 of coverage.

25 (c) An insurer which exercises its right to cease to
26 renew all plans in a class of business shall not:

27 (1) Establish a new class of business for a period of
28 five years after the nonrenewal of the plans without
29 prior approval of the commissioner; or

30 (2) Transfer or otherwise provide coverage to any of
31 the employers from the nonrenewed class of business
32 unless the insurer offers to transfer or provide coverage
33 to all affected employers and eligible employees without
34 regard to case characteristics, claim experience, health
35 status or duration of coverage.

§33-16D-8. Disclosure of rating practices and renewability provisions.

1 (a) Each small employer insurer shall make reasonable
2 disclosure in solicitation and sales materials
3 provided to small employers of the following:

4 (1) The extent to which premium rates for a specific
5 small employer are established or adjusted due to the
6 claim experience, health status or duration of coverage
7 of the employees of the small employer;

8 (2) The provisions concerning the insurer's right to
9 change premium rates and the factors, including case
10 characteristics, which affect changes in premium rates;

11 (3) A description of the class of business in which the
12 small employer is or will be included, including the
13 applicable grouping of plans;

14 (4) The provisions relating to renewability of coverage;
15 and

16 (5) An explanation, if applicable, that the small
17 employer is purchasing a minimum benefits plan.

18 (b) All disclosure statements shall be presented in
19 clear and understandable form and format and shall be
20 separate from any policy, certificate or evidence of
21 coverage otherwise provided.

§33-16D-9. Maintenance of records.

1 (a) Each small employer insurer shall maintain at its
2 principal place of business a complete and detailed
3 description of its rating practices and renewal under-
4 writing practices, including information and documenta-
5 tion which demonstrate that its rating methods and
6 practices are based upon commonly accepted actuarial
7 principles.

8 (b) Each small employer insurer shall file each first
9 day of March with the commissioner an actuarial
10 certification that the insurer is in compliance with the
11 provisions of this article and that the rating methods of
12 the insurer are actuarially sound. A copy of such
13 certification shall be retained by the insurer at its
14 principal place of business.

15 (c) A small employer insurer shall make the informa-
16 tion and documentation described in subsection (a) of
17 this section available to the commissioner upon request.

§33-16D-10. Suspension of requirements.

1 The insurance commissioner may suspend all or part
2 of the requirements of this article applicable to one or
3 more health benefit plans for one or more rating periods
4 upon a filing by the small employer insurer and a
5 finding by the commissioner that either the suspension
6 is reasonable in light of the financial condition of the
7 insurer or that the suspension would enhance the
8 efficiency and fairness of the marketplace for small

9 employer health insurance.

§33-16D-11. Effective date.

1 The provisions of this article shall apply to each health
2 benefit plan for a small employer situate in the state of
3 West Virginia that is delivered, issued for delivery,
4 renewed or continued after the effective date of this
5 article. For purposes of this section, the date a plan is
6 continued is the first rating period which commences
7 after the effective date of this article.

**§33-16D-12. Equality of terms; pre-existing conditions;
continuous coverage restrictions.**

1 Health benefit plans and, to the extent permitted by
2 ERISA, other benefit arrangements covering small
3 employers shall be subject to the following provisions:

4 (a) Pre-existing conditions provisions shall not exclude
5 coverage for a period beyond twelve months following
6 an individual's effective date of coverage and may only
7 relate to conditions which had, during the twelve
8 months immediately preceding the effective date of
9 coverage, manifested themselves in such a manner as
10 would cause an ordinarily prudent person to seek
11 medical advice, diagnosis, care or treatment or for
12 which medical advice, diagnosis, care or treatment was
13 recommended or received, or as to a pregnancy existing
14 on the effective date of coverage.

15 (b) In determining whether a pre-existing condition
16 limitation provision applies to an eligible employee or
17 dependent, all health benefit plans shall credit the time
18 such person was covered under a previous employer-
19 based health benefit plan, a comparable individual
20 health benefit plan, or a self-insured plan if the previous
21 coverage was continuous to a date not more than thirty
22 days prior to the effective date of the new coverage,
23 exclusive of any applicable waiting period under such
24 plan.

25 (c) Subject to subsections (a) and (b) of this section,
26 when a small group employer converts its health
27 insurance plan from one health insurance plan to
28 another health insurance plan or from one insurer to
29 another insurer, all eligible employees who at the time

30 of conversion are covered by the health benefit plan
31 must be offered health benefits coverage under the
32 subsequent plan, and no employee who at the time of
33 conversion is covered by a health benefit plan offered
34 by said employer may be treated any differently relative
35 to other covered employees under the new health benefit
36 plan than he is treated under the current health benefit
37 plan.

§33-16D-13. Obligations of employer; discrimination as to benefits paid.

1 Any employer subscribing to a health care benefit
2 plan for or on behalf of its employees pursuant to this
3 chapter shall not discriminate against any eligible
4 employee on the basis of such employee's status with the
5 employer by paying for all or part of the health care
6 benefit plan premiums in a manner different from that
7 provided any other eligible employee: *Provided*, That
8 any participating small employer must pay at least
9 twenty-five percent of each eligible employee's health
10 care benefit plan premiums.

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

***§33-24-4. Exemptions; applicability of insurance laws.**

1 Every such corporation is hereby declared to be a
2 scientific, nonprofit institution and as such exempt from
3 the payment of all property and other taxes. Every such
4 corporation, to the same extent such provisions are
5 applicable to insurers transacting similar kinds of
6 insurance and not inconsistent with the provisions of this
7 article, shall be governed by and be subject to the
8 provisions as hereinbelow indicated, of the following
9 articles of this chapter: Article two (insurance commis-
10 sioner), article four (general provisions), except that
11 section sixteen of article four shall not be applicable
12 thereto; article six, section thirty-four (fee for form and
13 rate filing), article six-c (guaranteed loss ratio), article
14 seven (assets and liabilities), article ten (rehabilitation
15 and liquidation), article eleven (unfair practices and

*Clerk's Note: This section was also amended by H. B. 2462 (Chapter 89), which passed subsequent to this act.

16 frauds), article twelve (agents, brokers and solicitors),
17 section fourteen, article fifteen (individual policies),
18 article fifteen-a (long-term care insurance), section
19 three-a, article sixteen (mental illness), section three-c,
20 article sixteen (group accident and sickness insurance),
21 section three-d, article sixteen (medicare supplement),
22 section three-f, article sixteen (treatment of temporo-
23 mandibular joint disorder and craniomandibular dis-
24 order), article sixteen-c (small employer group policies),
25 article sixteen-d (marketing and rate practices for small
26 employers), article twenty-seven (insurance holding
27 company systems), article twenty-eight (individual
28 accident and sickness insurance minimum standards),
29 article thirty-three (annual audited financial report),
30 article thirty-four (administrative supervision), article
31 thirty-four-a (standards and commissioner's authority
32 for companies deemed to be in hazardous financial
33 condition) and article thirty-five (criminal sanctions for
34 failure to report impairment); and no other provision of
35 this chapter shall apply to such corporations unless
36 specifically made applicable by the provisions of this
37 article. If, however, any such corporation shall be
38 converted into a corporation organized for a pecuniary
39 profit, or if it shall transact business without having
40 obtained a license as required by section five of this
41 article, it shall thereupon forfeit its right to these
42 exemptions.

ARTICLE 25. HEALTH CARE CORPORATIONS.

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

1 Corporations organized under this article shall be
2 subject to supervision and regulation by the insurance
3 commissioner. Any provisions of this chapter or of any
4 other law to the contrary notwithstanding, such corpo-
5 ration shall not be subject to the insurance laws of this
6 state now in force nor to any law hereafter enacted
7 relating to insurance and corporations engaged in the
8 business of insurance unless otherwise provided in this
9 article or unless such other law specifically and in exact
10 terms applies to such voluntary, nonprofit health care
11 corporations as are organized under this article. Such

*Clerk's Note: This section was also amended by H. B. 2462 (Chapter 89), which passed subsequent to this act.

12 corporations organized under this article, to the same
13 extent such provisions are applicable to insurers
14 transacting similar kinds of insurance and not inconsis-
15 tent with the provisions of this article, shall be governed
16 by and be subject to the provisions as hereinbelow
17 indicated, of the following articles of this chapter:
18 Article six-c (guaranteed loss ratio), article seven (assets
19 and liabilities), article eight (investments), article ten
20 (rehabilitation and liquidation), section fourteen, article
21 fifteen (individual policies), article sixteen-c (small
22 employer group policies), article sixteen-d (marketing
23 and rate practices for small employers), article twenty-
24 seven (insurance holding company systems), article
25 thirty-four-a (standards and commissioner's authority
26 for companies deemed to be in hazardous financial
27 condition) and article thirty-five (criminal sanctions for
28 failure to report impairment); and no other provision of
29 this chapter shall apply to such corporations unless
30 specifically made applicable by the provisions of this
31 article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

***§33-25A-24. Statutory construction and relationship to other laws.**

1 (1) Except as otherwise provided in this article,
2 provisions of the insurance law and provisions of
3 hospital or medical service corporation laws shall not be
4 applicable to any health maintenance organization
5 granted a certificate of authority under this article. This
6 provision shall not apply to an insurer or hospital or
7 medical service corporation licensed and regulated
8 pursuant to the insurance laws or the hospital or
9 medical service corporation laws of this state except
10 with respect to its health maintenance corporation
11 activities authorized and regulated pursuant to this
12 article.

13 (2) Factually accurate advertising or solicitation
14 regarding the range of services provided, the premiums
15 and copayments charged, the sites of services and hours
16 of operation, and any other quantifiable, nonprofessional

*Clerk's Note: This section was also amended by H. B. 2462 (Chapter 89), which passed subsequent to this act.

17 aspects of its operation by a health maintenance
18 organization granted a certificate of authority, or its
19 representative shall not be construed to violate any
20 provision of law relating to solicitation or advertising by
21 health professions: *Provided*, That nothing contained
22 herein shall be construed as authorizing any solicitation
23 or advertising which identifies or refers to any individ-
24 ual provider, or makes any qualitative judgment
25 concerning any provider.

26 (3) Any health maintenance organization authorized
27 under this article shall not be deemed to be practicing
28 medicine and shall be exempt from the provision of
29 chapter thirty of this code, relating to the practice of
30 medicine.

31 (4) The provisions of article article six-c (guaranteed
32 loss ratio), article seven (assets and liabilities), article
33 eight (investments), section fourteen, article fifteen
34 (individual policies), section three-f, article sixteen
35 (concerning treatment of temporomandibular disorder
36 and craniomandibular disorder), article sixteen-c (small
37 employer group policies), article sixteen-d (marketing
38 and rate practices for small employers), article twenty-
39 seven (insurance holding company systems), article
40 thirty-four-a (standards and commissioner's authority
41 for companies deemed to be in hazardous financial
42 condition) and article thirty-five (criminal sanctions for
43 failure to report impairment) shall be applicable to any
44 health maintenance organization granted a certificate of
45 authority under this article.

46 (5) Any long-term care insurance policy delivered or
47 issued for delivery in this state by a health maintenance
48 organization shall comply with the provisions of article
49 fifteen-a of this chapter.

CHAPTER 94

(H. B. 2901—By Delegates Gallagher and Beane)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four-d and fourteen, article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three-h and ten, article sixteen of said chapter; to amend and reenact sections seven-c and forty-three, article twenty-four of said chapter; to amend and reenact sections eight-b and twenty, article twenty-five of said chapter; and to amend and reenact sections eight-b and thirty-one, article twenty-five-a of said chapter, all relating to accident and sickness insurance; third party reimbursement for rehabilitation services; policies discriminating among health care providers; group accident and sickness insurance; third party reimbursement for rehabilitation services; policies discriminating among health care providers; hospital service corporations, medical service corporations, dental service corporations and health service corporations; third party reimbursement for rehabilitation services; policies discriminating among health care providers; health care corporations; third party reimbursement for rehabilitation services; policies discriminating among health care providers; health maintenance organization act; third party reimbursement for rehabilitation services; and policies discriminating among health care providers.

Be it enacted by the Legislature of West Virginia:

That sections four-d and fourteen, article fifteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections three-h and ten, article sixteen of said chapter be amended and reenacted; that sections seven-c and forty-three, article twenty-four of said chapter be amended and reenacted; that sections eight-b and twenty, article twenty-five of said chapter be amended and reenacted; and that sections eight-b and thirty-one, article twenty-five-a of said chapter be amended and reenacted, all to read as follows:

Article

15. **Accident and Sickness Insurance.**
16. **Group Accident and Sickness Insurance.**
24. **Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.**

- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4d. Third party reimbursement for rehabilitation services.

§33-15-14. Policies discriminating among health care providers.

§33-15-4d. Third party reimbursement for rehabilitation services.

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this
3 article applies, any entity regulated by this article shall,
4 on or after the first day of July, one thousand nine
5 hundred ninety-one, provide as benefits to all subscri-
6 ers and members coverage for rehabilitation services as
7 hereinafter set forth, unless rejected by the insured.

8 (b) For purposes of this article and section, "rehabil-
9 itation services" includes those services which are
10 designed to remediate patient's condition or restore
11 patients to their optimal physical, medical, psychologi-
12 cal, social, emotional, vocational and economic status.
13 Rehabilitative services include by illustration and not
14 limitation diagnostic testing, assessment, monitoring or
15 treatment of the following conditions individually or in
16 a combination:

- 17 (1) Stroke;
- 18 (2) Spinal cord injury;
- 19 (3) Congenital deformity;
- 20 (4) Amputation;
- 21 (5) Major multiple trauma;
- 22 (6) Fracture of femur;
- 23 (7) Brain injury;
- 24 (8) Polyarthritis, including rheumatoid arthritis;
- 25 (9) Neurological disorders, including, but not limited
26 to, multiple sclerosis, motor neuron diseases, polyneuro-
27 pathy, muscular dystrophy and Parkinson's disease;
- 28 (10) Cardiac disorders, including, but not limited to,

29 acute myocardial infarction, angina pectoris, coronary
30 arterial insufficiency, angioplasty, heart transplanta-
31 tion, chronic arrhythmias, congestive heart failure,
32 valvular heart disease;

33 (11) Burns.

34 (c) Rehabilitation services includes care rendered by
35 any of the following:

36 (1) A hospital duly licensed by the state of West
37 Virginia that meets the requirements for rehabilitation
38 hospitals as described in Section 2803.2 of the Medicare
39 Provider Reimbursement Manual, Part 1, as published
40 by the U. S. Health Care Financing Administration;

41 (2) A distinct part rehabilitation unit in a hospital
42 duly licensed by the state of West Virginia. The distinct
43 part unit must meet the requirements of Section 2803.61
44 of the Medicare Provider Reimbursement Manual, Part
45 1, as published by the U. S. Health Care Financing
46 Administration;

47 (3) A hospital duly licensed by the state of West
48 Virginia which meets the requirements for cardiac
49 rehabilitation as described in Section 35-25, Transmittal
50 41, dated August, 1989, as promulgated by the U. S.
51 Health Care Financing Administration.

52 (d) Rehabilitation services do not include services for
53 mental health, chemical dependency, vocational rehabil-
54 itation, long-term maintenance or custodial services.

55 (e) A policy, provision, contract, plan or agreement
56 may apply to rehabilitation services the same deducti-
57 bles, coinsurance and other limitations as apply to other
58 covered services.

§33-15-14. Policies discriminating among health care providers.

1 Notwithstanding any other provisions of law, when
2 any health insurance policy, health care services plan or
3 other contract provides for the payment of medical
4 expenses, benefits or procedures, such policy, plan or
5 contract shall be construed to include payment to all
6 health care providers including medical physicians,

7 osteopathic physicians, podiatric physicians, chiroprac-
8 tic physicians, midwives and nurse practitioners who
9 provide medical services, benefits or procedures which
10 are within the scope of each respective provider's
11 license. Any limitation or condition placed upon serv-
12 ices, diagnoses or treatment by, or payment to any
13 particular type of licensed provider shall apply equally
14 to all types of licensed providers without unfair
15 discrimination as to the usual and customary treatment
16 procedures of any of the aforesaid providers.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3h. Third party reimbursement for rehabilitation services.

§33-16-10. Policies discriminating among health care providers.

§33-16-3h. Third party reimbursement for rehabilitation services.

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this
3 article applies, any entity regulated by this article shall,
4 on or after the first day of July, one thousand nine
5 hundred ninety-one, provide as benefits to all subscrib-
6 ers and members coverage for rehabilitation services as
7 hereinafter set forth, unless rejected by the insured.

8 (b) For purposes of this article and section, "rehabil-
9 itation services" includes those services which are
10 designed to remediate patient's condition or restore
11 patients to their optimal physical, medical, psychologi-
12 cal, social, emotional, vocational and economic status.
13 Rehabilitative services include by illustration and not
14 limitation diagnostic testing, assessment, monitoring or
15 treatment of the following conditions individually or in
16 a combination:

- 17 (1) Stroke;
- 18 (2) Spinal cord injury;
- 19 (3) Congenital deformity;
- 20 (4) Amputation;
- 21 (5) Major multiple trauma;
- 22 (6) Fracture of femur;

23 (7) Brain injury;

24 (8) Polyarthritis, including rheumatoid arthritis;

25 (9) Neurological disorders, including, but not limited
26 to, multiple sclerosis, motor neuron diseases, polyneuro-
27 pathy, muscular dystrophy and Parkinson's disease;

28 (10) Cardiac disorders, including, but not limited to,
29 acute myocardial infarction, angina pectoris, coronary
30 arterial insufficiency, angioplasty, heart transplanta-
31 tion, chronic arrhythmias, congestive heart failure,
32 valvular heart disease;

33 (11) Burns.

34 (c) Rehabilitative services includes care rendered by
35 any of the following:

36 (1) A hospital duly licensed by the state of West
37 Virginia that meets the requirements for rehabilitation
38 hospitals as described in Section 2803.2 of the Medicare
39 Provider Reimbursement Manual, Part 1, as published
40 by the U. S. Health Care Financing Administration;

41 (2) A distinct part rehabilitation unit in a hospital
42 duly licensed by the state of West Virginia. The distinct
43 part unit must meet the requirements of Section 2803.61
44 of the Medicare Provider Reimbursement Manual, Part
45 1, as published by the U. S. Health Care Financing
46 Administration;

47 (3) A hospital duly licensed by the state of West
48 Virginia which meets the requirements for cardiac
49 rehabilitation as described in Section 35-25, Transmittal
50 41, dated August, 1989, as promulgated by the U. S.
51 Health Care Financing Administration.

52 (d) Rehabilitation services do not include services for
53 mental health, chemical dependency, vocational rehabil-
54 itation, long-term maintenance or custodial services.

55 (e) A policy, provision, contract, plan or agreement
56 may apply to rehabilitation services the same deducti-
57 bles, coinsurance and other limitations as apply to other
58 covered services.

§33-16-10. Policies discriminating among health care providers.

1 Notwithstanding any other provisions of law, when
2 any health insurance policy, health care services plan or
3 other contract provides for the payment of medical
4 expenses, benefits or procedures, such policy, plan or
5 contract shall be construed to include payment to all
6 health care providers including medical physicians,
7 osteopathic physicians, podiatric physicians, chiropractic
8 physicians, midwives and nurse practitioners who
9 provide medical services, benefits or procedures which
10 are within the scope of each respective provider's
11 license. Any limitation or condition placed upon serv-
12 ices, diagnoses or treatment by, or payment to any
13 particular type of licensed provider shall apply equally
14 to all types of licensed providers without unfair
15 discrimination as to the usual and customary treatment
16 procedures of any of the aforesaid providers.

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

§33-24-7c. Third party reimbursement for rehabilitation services.

§33-24-43. Policies discriminating among health care providers.

**§33-24-7c. Third party reimbursement for rehabilitation
services.**

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this
3 article applies, any entity regulated by this article shall,
4 on or after the first day of July, one thousand nine
5 hundred ninety-one, provide as benefits to all subscrib-
6 ers and members coverage for rehabilitation services as
7 hereinafter set forth, unless rejected by the insured.

8 (b) For purposes of this article and section, "rehabil-
9 itation services" includes those services which are
10 designed to remediate patient's condition or restore
11 patients to their optimal physical, medical, psychologi-
12 cal, social, emotional, vocational and economic status.
13 Rehabilitative services include by illustration and not
14 limitation diagnostic testing, assessment, monitoring or
15 treatment of the following conditions individually or in
16 a combination:

- 17 (1) Stroke;
 - 18 (2) Spinal cord injury;
 - 19 (3) Congenital deformity;
 - 20 (4) Amputation;
 - 21 (5) Major multiple trauma;
 - 22 (6) Fracture of femur;
 - 23 (7) Brain injury;
 - 24 (8) Polyarthritis, including rheumatoid arthritis;
 - 25 (9) Neurological disorders, including, but not limited
26 to, multiple sclerosis, motor neuron diseases, polyneuro-
27 pathy, muscular dystrophy and Parkinson's disease;
 - 28 (10) Cardiac disorders, including, but not limited to,
29 acute myocardial infarction, angina pectoris, coronary
30 arterial insufficiency, angioplasty, heart transplanta-
31 tion, chronic arrhythmias, congestive heart failure,
32 valvular heart disease;
 - 33 (11) Burns.
- 34 (c) Rehabilitative services includes care rendered by
35 any of the following:
- 36 (1) A hospital duly licensed by the state of West
37 Virginia that meets the requirements for rehabilitation
38 hospitals as described in Section 2803.2 of the Medicare
39 Provider Reimbursement Manual, Part 1, as published
40 by the U. S. Health Care Financing Administration;
 - 41 (2) A distinct part rehabilitation unit in a hospital
42 duly licensed by the state of West Virginia. The distinct
43 part unit must meet the requirements of Section 2803.61
44 of the Medicare Provider Reimbursement Manual, Part
45 1, as published by the U. S. Health Care Financing
46 Administration;
 - 47 (3) A hospital duly licensed by the state of West
48 Virginia which meets the requirements for cardiac
49 rehabilitation as described in Section 35-25, Transmittal
50 41, dated August, 1989, as promulgated by the U. S.
51 Health Care Financing Administration.

52 (d) Rehabilitation services do not include services for
53 mental health, chemical dependency, vocational rehabil-
54 itation, long-term maintenance or custodial services.

55 (e) A policy, provision, contract, plan or agreement
56 may apply to rehabilitation services the same deducti-
57 bles, coinsurance and other limitations as apply to other
58 covered services.

§33-24-43. Policies discriminating among health care providers.

1 Notwithstanding any other provisions of law, when
2 any health insurance policy, health care services plan or
3 other contract provides for the payment of medical
4 expenses, benefits or procedures, such policy, plan or
5 contract shall be construed to include payment to all
6 health care providers including medical physicians,
7 osteopathic physicians, podiatric physicians, chiroprac-
8 tic physicians, midwives and nurse practitioners who
9 provide medical services, benefits or procedures which
10 are within the scope of each respective provider's
11 license. Any limitation or condition placed upon serv-
12 ices, diagnoses or treatment by, or payment to any
13 particular type of licensed provider shall apply equally
14 to all types of licensed providers without unfair
15 discrimination as to the usual and customary treatment
16 procedures of any of the aforesaid providers.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8b. Third party reimbursement for rehabilitation services.

§33-25-20. Policies discriminating among health care providers.

§33-25-8b. Third party reimbursement for rehabilitation services.

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this
3 article applies, any entity regulated by this article shall
4 on or after the first day of July, one thousand nine
5 hundred ninety-one, provide as benefits to all subscrib-
6 ers and members coverage for rehabilitation services as
7 hereinafter set forth, unless rejected by the insured.

8 (b) For purposes of this article and section, "rehabilita-
9 tion services" includes those services which are
10 designed to remediate patient's condition or restore
11 patients to their optimal physical, medical, psychologi-
12 cal, social, emotional, vocational and economic status.
13 Rehabilitative services include by illustration and not
14 limitation diagnostic testing, assessment, monitoring or
15 treatment of the following conditions individually or in
16 a combination:

17 (1) Stroke;

18 (2) Spinal cord injury;

19 (3) Congenital deformity;

20 (4) Amputation;

21 (5) Major multiple trauma;

22 (6) Fracture of femur;

23 (7) Brain injury;

24 (8) Polyarthritis, including rheumatoid arthritis;

25 (9) Neurological disorders, including, but not limited
26 to, multiple sclerosis, motor neuron diseases, polyneuro-
27 pathology, muscular dystrophy and Parkinson's disease;

28 (10) Cardiac disorders, including, but not limited to,
29 acute myocardial infarction, angina pectoris, coronary
30 arterial insufficiency, angioplasty, heart transplanta-
31 tion, chronic arrhythmias, congestive heart failure,
32 valvular heart disease;

33 (11) Burns.

34 (c) Rehabilitative services includes care rendered by
35 any of the following:

36 (1) A hospital duly licensed by the state of West
37 Virginia that meets the requirements for rehabilitation
38 hospitals as described in Section 2803.2 of the Medicare
39 Provider Reimbursement Manual, Part 1, as published
40 by the U. S. Health Care Financing Administration;

41 (2) A distinct part rehabilitation unit in a hospital
42 duly licensed by the state of West Virginia. The distinct

43 part unit must meet the requirements of Section 2803.61
44 of the Medicare Provider Reimbursement Manual, Part
45 1, as published by the U. S. Health Care Financing
46 Administration;

47 (3) A hospital duly licensed by the state of West
48 Virginia which meets the requirements for cardiac
49 rehabilitation as described in Section 35-25, Transmittal
50 41, dated August, 1989, as promulgated by the U. S.
51 Health Care Financing Administration.

52 (d) Rehabilitation services do not include services for
53 mental health, chemical dependency, vocational rehabil-
54 itation, long-term maintenance or custodial services.

55 (e) A policy, provision, contract, plan or agreement
56 may apply to rehabilitation services the same deducti-
57 bles, coinsurance and other limitations as apply to other
58 covered services.

**§33-25-20. Policies discriminating among health care
providers.**

1 Notwithstanding any other provisions of law, when
2 any health insurance policy, health care services plan or
3 other contract provides for the payment of medical
4 expenses, benefits or procedures, such policy, plan or
5 contract shall be construed to include payment to all
6 health care providers including medical physicians,
7 osteopathic physicians, podiatric physicians, chiroprac-
8 tic physicians, midwives and nurse practitioners who
9 provide medical services, benefits or procedures which
10 are within the scope of each respective provider's
11 license. Any limitation or condition placed upon serv-
12 ices, diagnoses or treatment by, or payment to any
13 particular type of licensed provider shall apply equally
14 to all types of licensed providers without unfair
15 discrimination as to the usual and customary treatment
16 procedures of any of the aforesaid providers.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8b. Third party reimbursement for rehabilitation services.

§33-25A-31. Policies discriminating among health care providers.

**§33-25A-8b. Third party reimbursement for rehabilita-
tion services.**

1 (a) Notwithstanding any provision of any policy,
2 provision, contract, plan or agreement to which this
3 article applies, any entity regulated by this article shall,
4 on or after the first day of July, one thousand nine
5 hundred ninety-one, provide as benefits to all subscrib-
6 ers and members coverage for rehabilitation services as
7 hereinafter set forth, unless rejected by the insured.

8 (b) For purposes of this article and section, "rehabil-
9 itation services" includes those services which are
10 designed to remediate patient's condition or restore
11 patients to their optimal physical, medical, psychologi-
12 cal, social, emotional, vocational and economic status.
13 Rehabilitative services include by illustration and not
14 limitation diagnostic testing, assessment, monitoring or
15 treatment of the following conditions individually or in
16 a combination:

17 (1) Stroke;

18 (2) Spinal cord injury;

19 (3) Congenital deformity;

20 (4) Amputation;

21 (5) Major multiple trauma;

22 (6) Fracture of femur;

23 (7) Brain injury;

24 (8) Polyarthritis, including rheumatoid arthritis;

25 (9) Neurological disorders, including, but not limited
26 to, multiple sclerosis, motor neuron diseases, polyneuro-
27 pathy, muscular dystrophy and Parkinson's disease;

28 (10) Cardiac disorders, including, but not limited to,
29 acute myocardial infarction, angina pectoris, coronary
30 arterial insufficiency, angioplasty, heart transplanta-
31 tion, chronic arrhythmias, congestive heart failure,
32 valvular heart disease;

33 (11) Burns.

34 (c) Rehabilitative services includes care rendered by
35 any of the following:

36 (1) A hospital duly licensed by the state of West
37 Virginia that meets the requirements for rehabilitation
38 hospitals as described in Section 2803.2 of the Medicare
39 Provider Reimbursement Manual, Part 1, as published
40 by the U. S. Health Care Financing Administration;

41 (2) A distinct part rehabilitation unit in a hospital
42 duly licensed by the state of West Virginia. The distinct
43 part unit must meet the requirements of Section 2803.61
44 of the Medicare Provider Reimbursement Manual, Part
45 1, as published by the U. S. Health Care Financing
46 Administration;

47 (3) A hospital duly licensed by the state of West
48 Virginia which meets the requirements for cardiac
49 rehabilitation as described in Section 35-25, Transmittal
50 41, dated August, 1989, as promulgated by the U. S.
51 Health Care Financing Administration.

52 (d) Rehabilitation services do not include services for
53 mental health, chemical dependency, vocational rehabil-
54 itation, long-term maintenance or custodial services.

55 (e) A policy, provision, contract, plan or agreement
56 may apply to rehabilitation services the same deducti-
57 bles, coinsurance and other limitations as apply to other
58 covered services.

§33-25A-31. Policies discriminating among health care providers.

1 Notwithstanding any other provisions of law, when
2 any health insurance policy, health care services plan or
3 other contract provides for the payment of medical
4 expenses, benefits or procedures, such policy, plan or
5 contract shall be construed to include payment to all
6 health care providers including medical physicians,
7 osteopathic physicians, podiatric physicians, chiroprac-
8 tic physicians, midwives and nurse practitioners who
9 provide medical services, benefits or procedures which
10 are within the scope of each respective provider's
11 license. Any limitation or condition placed upon serv-
12 ices, diagnoses or treatment by, or payment to any
13 particular type of licensed provider shall apply equally
14 to all types of licensed providers without unfair
15 discrimination as to the usual and customary treatment
16 procedures of any of the aforesaid providers.

CHAPTER 95**(H. B. 2789—By Delegates Susman and Gallagher)**

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight; and to amend chapter thirty-three of said code by adding thereto a new article, designated article twenty-d, all relating to professional insurance coverage; reporting to the insurance commissioner; and providing tail coverage.

Be it enacted by the Legislature of West Virginia:

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

Article

- 20B. Rates and Malpractice Insurance Policies.
- 20D. Tail Insurance.

ARTICLE 20B. RATES AND MALPRACTICE INSURANCE POLICIES.**§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 providing professional liability
- 2 insurance to a physician, osteopathic physician or
- 3 surgeon, podiatrist, or chiropractor in this state shall
- 4 submit to the commissioner, within thirty days from any
- 5 judgment, dismissal, or settlement of a civil action or
- 6 any claim involving the insured, the following
- 7 information:
- 8 (1) The date of any judgment, dismissal, or settlement;
- 9 (2) Whether any appeal has been taken on the
- 10 judgment and, if so, by which party;

11 (3) The amount of any settlement or judgment against
12 the insured; and

13 (4) Any such other information as the commissioner
14 may require.

15 (b) Any insurer that fails to report information on a
16 payment required to be reported under this section shall
17 be subject to a civil money penalty to be imposed by the
18 insurance commissioner. Upon a determination of the
19 commissioner that there is probable cause to believe that
20 any person, partnership, corporation, association,
21 insurance company, professional society or other
22 organization has failed or refused to make a report
23 required by this section, the commissioner shall provide
24 written notice to the alleged violator stating the nature
25 of the alleged violation and the time and place at which
26 the alleged violator shall appear to show good cause why
27 a civil penalty should not be imposed. The hearing shall
28 be conducted in accordance with the provisions of article
29 five, chapter twenty-nine-a of this code.

30 (c) If, after notice and hearing as provided in
31 subsection (b) herein, the commissioner determines that
32 a violation of this section has occurred, the commissioner
33 shall assess a civil penalty of not less than one thousand
34 dollars nor more than ten thousand dollars against such
35 violator. Anyone so assessed shall be notified of the
36 assessment in writing and the notice shall specify the
37 reasons for the assessment.

38 (d) If an insurer who has been found to have violated
39 the provisions of this section fails to pay the amount of
40 the penalty assessment to the commissioner within
41 thirty days after issuance of notice of the same, the
42 attorney general may institute a civil action in the
43 circuit court of Kanawha County to recover the amount
44 of the assessment. In any such civil action, the court's
45 review of the commissioner's action shall be conducted
46 in accordance with the provisions of section four, article
47 five, chapter twenty-nine-a of this code.

48 (e) No person or entity shall be held liable in any civil
49 action with respect to any report made pursuant to this
50 section if such report was made without knowledge of

51 any falsity of the information contained therein.

ARTICLE 20D. TAIL INSURANCE.

§33-20D-1. Scope of article.

§33-20D-2. Definitions.

§33-20D-3. Tail insurance to be offered upon cancellation; availability of amortization; minimum premium rates; penalties for noncompliance.

§33-20D-4. Insurance commissioner to promulgate rules; establish amortization rates.

§33-20D-1. Scope of article.

1 This article applies to malpractice insurance as
2 defined in subdivision (9), subsection (e), section ten,
3 article one of this chapter insuring a medical physician,
4 osteopathic physician, podiatric physician, chiropractic
5 physician, dentist, midwife or nurse practitioner which
6 has been in effect for at least sixty days.

§33-20D-2. Definitions.

1 As used in this article:

2 (a) "Tail insurance" means insurance which covers a
3 professional insured once a claims made malpractice
4 insurance policy is cancelled, not renewed or terminated
5 and covers claims made after such cancellation or
6 termination for acts occurring during the period the
7 prior malpractice insurance was in effect.

8 (b) "Claims made malpractice insurance policy"
9 means a policy which covers claims which are reported
10 during the policy period, meet the provisions specified
11 by the policy, and are for an incident which occurred
12 during the policy period, or occurred prior to the policy
13 period, as is specified by the policy.

§33-20D-3. Tail insurance to be offered upon cancellation; availability of amortization; minimum premium rates; penalties for noncompliance.

1 (a) Upon cancellation, nonrenewal or termination of
2 any claims made professional malpractice insurance
3 policy, the insurer shall offer to the insured tail
4 insurance coverage.

5 (b) Upon cancellation, nonrenewal or termination of
6 any claims made professional malpractice insurance
7 policy, the insurer shall offer to any professional
8 licensed and practicing in the state of West Virginia, or
9 who, upon retirement, last practiced in the state of West
10 Virginia, the opportunity to amortize the payment of
11 premiums for tail insurance over a period of not more
12 than thirty-six months, in quarterly payments, at a rate
13 to be established by the insurance commissioner:
14 *Provided*, That quarterly premiums paid pursuant to
15 this subsection shall not be less than seven hundred fifty
16 dollars.

17 (c) The first quarterly payment shall be payable
18 contemporaneous with the issuance of the tail coverage
19 policy. Subsequent payments shall be due and payable
20 quarterly thereafter. Upon default in making a payment
21 when due, tail coverage shall terminate, and the unpaid
22 portion of the amortized premium shall be immediately
23 due and payable in full.

24 (d) Any insurer who fails to offer tail insurance or in
25 any other way violates the provisions of this article shall
26 be assessed a penalty equal to the amount of the
27 premium due.

28 (e) The offer of tail insurance coverage required by
29 this section shall expire forty-five days after the
30 cancellation, termination or other expiration of the
31 claims made professional malpractice insurance policy,
32 unless sooner accepted, in writing, by the insured.

**§33-20D-4. Insurance commissioner to promulgate rules;
establish amortization rates.**

1 (a) Pursuant to article three, chapter twenty-nine-a of
2 this code, the insurance commissioner shall promulgate
3 legislative rules establishing procedures necessary to
4 effectuate the provisions of this article. The first set of
5 rules shall be promulgated as emergency rules within
6 forty-five days of the effective date of this article.

7 (b) The insurance commissioner shall promulgate
8 rules and regulations providing for the amortization of
9 premium payments for tail insurance, which rules shall
10 include, but not be limited to:

- 11 (1) Amortization schedules for various periods, but not
12 to exceed a period of thirty-six months;
- 13 (2) Reasonable annual amortization rates;
- 14 (3) Reasonable annual interest rates;
- 15 (4) Such other schedules and rates as the commis-
16 sioner deems necessary to effect the provisions of this
17 article.

CHAPTER 96

(H. B. 2953—By Delegates Roop and Ashley)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter fifty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to compensation and mileage of grand jurors; permitting payment to grand jurors for the number of days served.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. GRAND JURIES.

§52-2-13. Compensation and mileage of grand jurors.

1 Any person who serves upon a grand jury shall be
2 compensated for the number of days served. Grand
3 jurors shall be paid mileage, at the rate set by the
4 commissioner of finance and administration for state
5 employees, for travel expenses incurred in traveling
6 from the grand juror's residence to the place of the
7 holding of the grand jury and return, and shall be
8 compensated at a rate of between fifteen and forty
9 dollars, set at the discretion of the circuit court or the
10 chief judge thereof, for each day of required attendance
11 at sessions of the court.

CHAPTER 97

(Com. Sub. for H. B. 2656—By Delegate Meadows)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the minimum wage to three dollars and eighty cents after the thirty-first day of March, one thousand nine hundred ninety-one, and to four dollars and twenty-five cents after the thirty-first day of March, one thousand nine hundred ninety-two, and establishing a training wage.

Be it enacted by the Legislature of West Virginia:

That section two, article five-c, 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 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-2. Minimum wages.

1 (a) Minimum wage.

2 (1) After the thirty-first day of December, one
3 thousand nine hundred eighty-six, every employer shall
4 pay to each of his employees wages at a rate not less
5 than three dollars and thirty-five cents per hour.

6 (2) After the thirty-first day of March, one thousand
7 nine hundred ninety-one, every employer shall pay to
8 each of his employees wages at a rate not less than three
9 dollars and eighty cents per hour.

10 (3) After the thirty-first day of March, one thousand
11 nine hundred ninety-two, every employer shall pay to
12 each of his employees wages at a rate not less than four
13 dollars and twenty-five cents per hour.

14 (b) Training wage.

15 (1) Notwithstanding the provisions set forth in
16 paragraph (a) of this section, after the thirty-first day

17 of March, one thousand nine hundred ninety-one, any
18 employer may pay an employee a subminimum training
19 wage not less than the wage set forth in paragraph (a)
20 (2) of section 6 of the Fair Labor Standards Amend-
21 ments of 1989, as amended, as in effect on the effective
22 date of this section.

23 (2) An employer shall not pay the subminimum
24 training wage set forth in paragraph (b) (1) of this
25 section to any individual:

26 (i) Who has attained nineteen years of age; or

27 (ii) For a cumulative period of not more than ninety
28 days per employee: *Provided*, That if any business has
29 not been in operation for more than ninety days at the
30 time the employer hired the employee, the employer
31 may pay the employee the subminimum training wage
32 set forth in paragraph (b) (1) of this section for an
33 additional period not to exceed ninety days.

CHAPTER 98

(H. B. 2205—By Delegates Cerra and Proudfoot)

[Passed March 6, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter two 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 requiring the governor to declare a Native American Indian Heritage Week.

Be it enacted by the Legislature of West Virginia:

That article two, chapter 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 one-a, to read as follows:

**ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS;
CONSTRUCTION OF STATUTES; DEFINITIONS.**

§2-2-1a. Special memorial days.

1 The governor shall, by proclamation, declare the week
2 beginning with the Sunday before Thanksgiving as a
3 special memorial week to be known as Native American
4 Indian Heritage Week.

CHAPTER 99

(S. B. 637—By Senator Wooton)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article two, chapter sixty-four 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 seven; to amend and reenact sections one, four, eight and ten, article three of said chapter; to further amend said article by adding thereto two new sections, designated sections twelve and thirteen; to amend article four of said chapter by adding thereto a new section, designated section three; to amend and reenact sections two, three and four, article five of said chapter; to further amend said article by adding thereto two new sections, designated sections seven and eight; to amend and reenact sections two and four, article six of said chapter; to further amend said article by adding thereto a new section, designated section five; to amend and reenact sections one, two, four, five and six, article seven of said chapter; to further amend said article by adding thereto a new section, designated section seven; to amend and reenact section one, article eight of said chapter; to amend and reenact sections one, three, five, ten, twelve, fifteen, sixteen, eighteen, twenty, twenty-four and twenty-six, article nine of said chapter; and to further amend said article adding thereto a new section, designated section twenty-eight, all relating generally to the promulgation of administrative rules and regulations by the various executive or administrative agencies and the procedures relating thereto; the legislative mandate or authorization for the promulgation of certain legislative rules by various executive and administrative agencies of the state; authorizing certain of such agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of such agencies to promulgate legislative rules as amended by the Legislature; authorizing certain of such agencies to promulgate certain legislative rules with various

modifications presented to and recommended by the legislative rule-making review committee; directing certain of such agencies to promulgate certain legislative rules filed in the office of the secretary of state during the regular session of the Legislature held in the year one thousand nine hundred ninety-one; authorizing the division of purchasing to promulgate legislative rules relating to the availability of state surplus buildings and equipment to charity food banks, as modified; authorizing the division of purchasing to promulgate legislative rules relating to purchasing, as modified; authorizing the division of personnel to promulgate legislative rules relating to the civil service system, as modified; authorizing the secretary of the department of administration to promulgate legislative rules relating to a plan of operation for the information and communication services division, as modified; authorizing the secretary of the department of administration to promulgate legislative rules relating to parking, as modified; authorizing the secretary of the department of administration to promulgate legislative rules relating to leasing space on behalf of state spending units, as modified; authorizing the air pollution control commission to promulgate legislative rules relating to the prevention and control of air pollution from the emission of volatile organic compounds from bulk gasoline terminals; authorizing the air pollution control commission to promulgate legislative rules relating to the air quality management fee program, as modified; authorizing the air pollution control commission to promulgate legislative rules relating to the prevention and control of air pollution from the emission of volatile organic compounds from the storage of petroleum liquids in fixed roof tanks; authorizing the air pollution control commission to promulgate legislative rules relating to the prevention and control of air pollution from the emission of volatile organic compounds from petroleum refinery sources; authorizing the division of energy to promulgate legislative rules relating to miscellaneous water pollution control, as modified; authorizing the division of energy to promulgate legislative rules relating to West Virginia surface

mining and reclamation regulations, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to the assessment of civil administrative penalties, as modified; authorizing the division of natural resources to promulgate legislative rules relating to water pollution control permit fee schedules; authorizing the division of natural resources to promulgate legislative rules relating to the underground storage tank insurance trust fund, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to underground storage tanks, as modified and amended; authorizing the division of natural resources to promulgate legislative rules relating to dam safety; authorizing the division of natural resources to promulgate legislative rules relating to hazardous waste management, as modified; authorizing the water resources board to promulgate legislative rules relating to requirements governing water quality standards; authorizing the solid waste management board to promulgate legislative rules relating to the development of comprehensive litter and solid waste control plans, as modified; authorizing the solid waste management board to promulgate legislative rules relating to the disbursement of loans and grants to governmental agencies for the acquisition or construction of solid waste disposal projects, as modified; authorizing the solid waste management board to promulgate legislative rules relating to the establishment of a fee schedule and cost allocation applicable to the issuance of bonds by the board, as modified; authorizing the solid waste management board to promulgate legislative rules relating to the development of commercial solid waste facility siting plans, as modified; authorizing the board of manufactured housing construction and safety to promulgate legislative rules relating to licensing, fees, standards, complaint handling, sanctions, the recovery fund and designation of the board as the state administrative agency under the national manufactured housing construction and safety standards act of 1974, as modified; authorizing the division of culture and history to promulgate legislative rules relating to the

standards and procedures for granting permits to excavate archaeological sites and unmarked graves, as modified; authorizing the board of health to promulgate legislative rules relating to fees for permits, as modified and amended; authorizing the board of health to promulgate legislative rules relating to public water systems, bottled water and laboratory certification, as modified; authorizing the board of health to promulgate legislative rules relating to vital statistics, as modified; authorizing the division of health to promulgate legislative rules relating to fees for services, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the exemption for shared services, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to health services offered by health professionals, as modified; authorizing the health care cost review authority to promulgate legislative rules relating to the conversion of acute care beds to one hundred skilled nursing care beds, as modified; authorizing the West Virginia hospital finance authority to promulgate legislative rules relating to the establishment of a fee schedule and cost allocations applicable to the issuance of bonds by the authority, as modified; authorizing the division of employment security to promulgate legislative rules relating to regulations of the commissioner of the division of employment security, as modified; authorizing the human rights commission to promulgate legislative rules relating to discrimination against the handicapped, as modified; authorizing the state fire commission to promulgate legislative rules relating to the state building code, as modified and amended; authorizing the state fire commission to promulgate legislative rules relating to the state fire code, as modified; authorizing the division of public safety to promulgate legislative rules relating to the West Virginia state police career progression system, as modified; authorizing and directing the division of public safety to promulgate legislative rules relating to the requirements and qualifications for official inspection stations and the issuance of permits for the stations; authorizing the

regional jail and correctional facility authority to promulgate legislative rules relating to public hearings and site selection for private prisons, as modified; authorizing the alcohol beverage control commissioner to promulgate legislative rules relating to retail licensee operations, as modified and amended; authorizing the alcohol beverage control commissioner to promulgate legislative rules relating to licensing of retail liquor stores, as modified; authorizing the alcohol beverage control commissioner to promulgate legislative rules relating to private club licenses, as modified; authorizing the alcohol beverage control commissioner to promulgate legislative rules relating to bailment policies and procedures, as modified; authorizing the alcohol beverage control commissioner to promulgate legislative rules relating to farm wineries, as modified; authorizing the alcohol beverage control commissioner to promulgate legislative rules relating to the retail sale of wine in grocery stores, wine specialty shops and private wine restaurants, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to accident and sickness rate filing, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to the group coordination of benefits, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to AIDS, as modified; authorizing the insurance commissioner to promulgate legislative rules relating to health insurance benefits for temporomandibular and craniomandibular disorders; authorizing the state lottery commission to promulgate legislative rules relating to the state lottery, as modified; authorizing the racing commission to promulgate legislative rules relating to thoroughbred racing, as modified; authorizing the racing commission to promulgate legislative rules relating to greyhound racing, as modified and amended; authorizing the state tax commissioner to promulgate legislative rules relating to the business investment and jobs expansion tax credit, corporations headquarters relocation tax credit, and small business tax credit; authorizing the nonintoxicating beer commissioner to promulgate legislative rules relating to nonintoxicating beer

licensing and operations procedures, as modified and as amended; authorizing the division of highways to promulgate legislative rules relating to traffic and safety, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to meat inspection, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to agricultural liming materials, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to public markets, as modified; authorizing the commissioner of agriculture to promulgate legislative rules relating to animal disease control, as modified; authorizing the attorney general to promulgate legislative rules relating to requiring persons upon whom subpoenas are served to answer written questions under oath; authorizing the attorney general to promulgate legislative rules relating to obtaining the assistance of public officials in investigations and the commencement of proceedings to compel compliance; authorizing the attorney general to promulgate legislative rules relating to the limitation of action and the recovery of investigative costs and a reasonable attorney's fee by the attorney general in an enforcement action, as modified; authorizing the attorney general to promulgate legislative rules relating to the regulated business exemption under the West Virginia antitrust act, as modified; authorizing the attorney general to promulgate legislative rules relating to defining the term "federal antitrust laws" and prohibiting tying and reciprocity, as modified; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the licensing of schools of barbering and beauty culture, as modified and amended; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the qualifications, training, examination and registration of instructors in barbering and beauty culture, as modified and amended; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the minimum curriculum for schools of barbering, as modified and amended; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the curriculum

and minimum requirements, subjects and hour schedule for schools of beauty culture operation in West Virginia and a joint barbers and beauticians license, as modified and amended; authorizing the board of barbers and beauticians to promulgate legislative rules relating to the operation of barber and beauty shops and schools of barbering and beauty culture, as modified and amended; authorizing the West Virginia board of dental examiners to promulgate legislative rules relating to the board, as modified; authorizing the West Virginia board of registration for registered professional engineers to promulgate legislative rules relating to the board, as modified; authorizing the state board of examiners of land surveyors to promulgate legislative rules relating to the practice of land surveying in West Virginia, as modified; authorizing the board of medicine to promulgate legislative rules relating to fees for services rendered by the board, as modified; authorizing the board of medicine to promulgate legislative rules relating to licensing and disciplinary and complaint procedures for physicians and podiatrists, as modified; authorizing the board of medicine to promulgate legislative rules relating to certification and disciplinary and complaint procedures for physician assistants, as modified; authorizing the board of examiners for registered professional nurses to promulgate legislative rules relating to the announcement of advanced nursing practice, as modified; authorizing the board of pharmacy to promulgate legislative rules relating to continuing education for the licensure of pharmacists, as modified; authorizing the secretary of state to promulgate legislative rules relating to the use of nicknames and other designations on the ballot; authorizing the state treasurer to promulgate legislative rules relating to the uniform disposition of unclaimed property act, as modified; authorizing the West Virginia cable television advisory board to promulgate legislative rules relating to franchising procedures, as modified; and authorizing the West Virginia cable television advisory board to promulgate legislative rules relating to implementing the West Virginia cable television systems act, as modified.

Be it enacted by the Legislature of West Virginia:

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

Article

- 2. Authorization for Department of Administration to Promulgate Legislative Rules.**
- 3. Authorization for Department of Commerce, Labor and Environmental Resources to Promulgate Legislative Rules.**
- 4. Authorization for Department of Education and the Arts to Promulgate Legislative Rules.**
- 5. Authorization for Department of Health and Human Resources to Promulgate Legislative Rules.**
- 6. Authorization for Department of Public Safety to Promulgate Legislative Rules.**
- 7. Authorization for Department of Tax and Revenue to Promulgate Legislative Rules.**
- 8. Authorization for Department of Transportation to Promulgate Legislative Rules.**
- 9. Authorization for Miscellaneous Agencies and Boards to Promulgate Legislative Rules.**

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

§64-2-2. Division of purchasing.

§64-2-3. Division of personnel.

§64-2-7. Secretary of the department of administration.

§64-2-2. Division of purchasing.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of November, one thousand nine
3 hundred eighty-eight, modified by the director of the
4 purchasing division of the department of finance and
5 administration to meet the objections of the legislative
6 rule-making review committee and refiled in the state
7 register on the nineteenth day of January, one thousand
8 nine hundred eighty-nine, relating to the director of the
9 purchasing division of the department of finance and
10 administration (purchasing division), are authorized.

11 (b) The legislative rules filed in the state register on
12 the seventh day of August, one thousand nine hundred
13 ninety, modified by the division of purchasing to meet
14 the objections of the legislative rule-making review
15 committee and refiled in the state register on the
16 twentieth day of September, one thousand nine hundred
17 ninety, relating to the division of purchasing (availabil-
18 ity of state surplus buildings and equipment to charity
19 food banks), are authorized.

20 (c) The legislative rules filed in the state register on
21 the twenty-sixth day of September, one thousand nine
22 hundred ninety, modified by the purchasing division to
23 meet the objections of the legislative rule-making review
24 committee and refiled in the state register on the
25 twenty-fourth day of January, one thousand nine
26 hundred ninety-one, relating to the purchasing division
27 (purchasing), are authorized.

§64-2-3. Division of personnel.

1 (a) The legislative rules filed in the state register on
2 the nineteenth day of November, one thousand nine
3 hundred eighty-six, modified by the civil service
4 commission to meet the objection of the legislative rule-
5 making review committee and refiled in the state

6 register on the fifteenth day of December, one thousand
7 nine hundred eighty-six, relating to the civil service
8 commission (civil service system), are authorized.

9 (b) The legislative rules filed in the state register on
10 the first day of November, one thousand nine hundred
11 eighty-eight, modified by the civil service commission to
12 meet the objections of the legislative rule-making review
13 committee and refiled in the state register on the
14 twenty-third day of February, one thousand nine
15 hundred eighty-nine, relating to the civil service
16 commission (civil service system), are authorized with
17 the amendments set forth below:

18 On page fifteen, section 5.05(d), after the words
19 "established in" by striking out the remainder of the
20 sentence and inserting in lieu thereof the words
21 "Chapter 29-6A of the Code of West Virginia, as
22 amended."

23 On page fifteen, section 5.06, after the words "estab-
24 lished in" by striking out the remainder of the sentence
25 and inserting in lieu thereof the words "Chapter 29-6A
26 of the Code of West Virginia, as amended."

27 On pages sixteen and seventeen by deleting all of
28 section 5.07.

29 And,

30 On page 46, section 13(f) line 2 by striking the words
31 "previously held".

32 (c) The legislative rules filed in the state register on
33 the fourteenth day of May, one thousand nine hundred
34 ninety, modified by the division of personnel to meet the
35 objections of the legislative rule-making review commit-
36 tee and refiled in the state register on the twenty-fifth
37 day of September, one thousand nine hundred ninety,
38 relating to the division of personnel (civil service
39 system), are authorized.

§64-2-7. Secretary of the department of administration.

1 (a) The legislative rules filed in the state register on
2 the twenty-sixth day of September, one thousand nine
3 hundred ninety, modified by the secretary of the

4 department of administration to meet the objections of
 5 the legislative rule-making review committee and
 6 refiled in the state register on the twenty-fourth day of
 7 January, one thousand nine hundred ninety-one, relating
 8 to the secretary of the department of administration
 9 (plan of operation for the information and communica-
 10 tion services division), are authorized.

11 (b) The legislative rules filed in the state register on
 12 the twenty-sixth day of September, one thousand nine
 13 hundred ninety, modified by the secretary of the
 14 department of administration to meet the objections of
 15 the legislative rule-making review committee and
 16 refiled in the state register on the twenty-fourth day of
 17 January, one thousand nine hundred ninety-one, relating
 18 to the secretary of the department of administration
 19 (parking), are authorized.

20 (c) The legislative rules filed in the state register on
 21 the twenty-sixth day of September, one thousand nine
 22 hundred ninety, modified by the secretary of the
 23 department of administration to meet the objections of
 24 the legislative rule-making review committee and
 25 refiled in the state register on the twenty-fourth day of
 26 January, one thousand nine hundred ninety-one, relating
 27 to the secretary of the department of administration
 28 (leasing space on behalf of state spending units), are
 authorized.

**ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COM-
 MERCE, LABOR AND ENVIRONMENTAL RE-
 SOURCES TO PROMULGATE LEGISLATIVE
 RULES.**

§64-3-1. Air pollution control commission.

§64-3-4. Division of energy.

§64-3-8. Division of natural resources.

§64-3-10. Water resources board.

§64-3-11. Solid waste management board.

§64-3-12. Board of manufactured housing construction and safety.

§64-3-1. Air pollution control commission.

1 (a) The legislative rules filed in the state register on
 2 the thirteenth day of August, one thousand nine hundred
 3 eighty-two, relating to the air pollution control commis-
 4 sion (series VII), are authorized.

5 (b) The legislative rules filed in the state register on
6 the thirteenth day of August, one thousand nine hundred
7 eighty-two, relating to the air pollution control commis-
8 sion (series XIX), are authorized.

9 (c) The legislative rules filed in the state register on
10 the sixteenth day of November, one thousand nine
11 hundred eighty-three, relating to the air pollution
12 control commission (emission standards for hazardous
13 air pollutants) (series XV), are authorized.

14 (d) The legislative rules filed in the state register on
15 the sixteenth day of November, one thousand nine
16 hundred eighty-three, relating to the air pollution
17 control commission (standards of performance for new
18 stationary sources) (series XVI), are authorized.

19 (e) The legislative rules filed in the state register on
20 the sixth day of January, one thousand nine hundred
21 eighty-four, relating to the air pollution control commis-
22 sion (to prevent and control air pollution from hazardous
23 waste treatment, storage or disposal facilities)(series
24 XXV), are authorized with the amendments set forth
25 below:

26 Page 3, §1.06, change the § title from "Enforcement"
27 to "Procedure"; place an "(a)" in front of the existing
28 paragraph and add the following:

29 "(b) Permit applications filed pursuant to this regu-
30 lation shall be processed in accordance with the
31 permitting procedures as set forth in code §20-5E of this
32 regulation. Permit procedures set forth in code §16-20
33 and any other regulation of this commission are not
34 applicable to any permit application filed pursuant to
35 this regulation."

36 Such rules shall also include a section which shall
37 read as follows:

38 "The commission shall report to the legislative rule-
39 making review committee as required by that commit-
40 tee, but in no event later than the first day of the regular
41 session of the Legislature in the year one thousand nine
42 hundred eighty-five. Such report shall include informa-
43 tion regarding the commission's data gathering efforts,

44 the development of compliance programs, the progress
45 in implementation, and such other matters as the
46 committee may require, pertaining to the regulations
47 hereby authorized.”

48 (f) The legislative rules filed in the state register on
49 the ninth day of January, one thousand nine hundred
50 eighty-four, relating to the air pollution control commis-
51 sion (permits for construction and modification of
52 stationary sources of air pollution for the prevention of
53 significant deterioration) (series XIV), are authorized.

54 (g) The legislative rules filed in the state register on
55 the thirtieth day of December, one thousand nine
56 hundred eighty-eight, modified by the air pollution
57 control commission to meet the objections of the
58 legislative rule-making review committee and refiled in
59 the state register on the twenty-third day of February,
60 one thousand nine hundred eighty-nine, relating to the
61 air pollution control commission (prevention and control
62 of air pollution from hazardous waste treatment, storage
63 or disposal facilities), are authorized.

64 (h) The legislative rules filed in the state register on
65 the thirtieth day of December, one thousand nine
66 hundred eighty-eight, modified by the air pollution
67 control commission to meet the objections of the
68 legislative rule-making review committee and refiled in
69 the state register on the twenty-third day of February,
70 one thousand nine hundred eighty-nine, relating to the
71 air pollution control commission (good engineering
72 practice as applicable to stack heights), are authorized.

73 (i) The legislative rules filed in the state register on
74 the thirtieth day of December, one thousand nine
75 hundred eighty-eight, modified by the air pollution
76 control commission to meet the objections of the
77 legislative rule-making review committee and refiled in
78 the state register on the twenty-third day of February,
79 one thousand nine hundred eighty-nine, relating to the
80 air pollution control commission (TP-2, compliance test
81 procedures for regulation 2 — to prevent and control
82 particulate air pollution from combustion of fuel in
83 indirect heat exchangers), are authorized.

84 (j) The legislative rules filed in the state register on
85 the sixth day of September, one thousand nine hundred
86 eighty-nine, modified by the air pollution control
87 commission to meet the objections of the legislative rule-
88 making review committee and refiled in the state
89 register on the tenth day of January, one thousand nine
90 hundred ninety, relating to the air pollution control
91 commission (ambient air quality standards for sulfur
92 oxides and particulate matter), are authorized.

93 (k) The legislative rules filed in the state register on
94 the sixth day of September, one thousand nine hundred
95 eighty-nine, modified by the air pollution control
96 commission to meet the objections of the legislative rule-
97 making review committee and refiled in the state
98 register on the tenth day of January, one thousand nine
99 hundred ninety, relating to the air pollution control
100 commission (prevention of air pollution emergency
101 episodes), are authorized.

102 (l) The legislative rules filed in the state register on
103 the sixth day of September, one thousand nine hundred
104 eighty-nine, modified by the air pollution control
105 commission to meet the objections of the legislative rule-
106 making review committee and refiled in the state
107 register on the tenth day of January, one thousand nine
108 hundred ninety, relating to the air pollution control
109 commission (permits for construction and major modi-
110 fication of major stationary sources of air pollution for
111 the prevention of significant deterioration), are
112 authorized.

113 (m) The legislative rules filed in the state register on
114 the sixth day of September, one thousand nine hundred
115 eighty-nine, relating to the air pollution control commis-
116 sion (standards of performance for new stationary
117 sources), are authorized.

118 (n) The legislative rules filed in the state register on
119 the sixth day of September, one thousand nine hundred
120 eighty-nine, relating to the air pollution control commis-
121 sion (emission standards for hazardous air pollutants),
122 are authorized.

123 (o) The legislative rules filed in the state register on

124 the sixteenth day of October, one thousand nine hundred
125 eighty-nine, modified by the air pollution control
126 commission to meet the objections of the legislative rule-
127 making review committee and refiled in the state
128 register on the tenth day of January, one thousand nine
129 hundred ninety, relating to the air pollution control
130 commission (prevention and control of emissions of toxic
131 air pollutants), are authorized.

132 (p) The legislative rules filed in the state register on
133 the tenth day of August, one thousand nine hundred
134 ninety, relating to the air pollution control commission
135 (prevention and control of air pollution from the
136 emission of volatile organic compounds from bulk
137 gasoline terminals), are authorized.

138 (q) The legislative rules filed in the state register on
139 the thirteenth day of August, one thousand nine hundred
140 ninety, modified by the air pollution control commission
141 to meet the objections of the legislative rule-making
142 review committee and refiled in the state register on the
143 fifteenth day of November, one thousand nine hundred
144 ninety, relating to the air pollution control commission
145 (air quality management fee program), are authorized.

146 (r) The legislative rules filed in the state register on
147 the tenth day of August, one thousand nine hundred
148 ninety, relating to the air pollution control commission
149 (prevention and control of air pollution from the
150 emission of volatile organic compounds from the storage
151 of petroleum liquids in fixed roof tanks), are authorized.

152 (s) The legislative rules filed in the state register on
153 the tenth day of August, one thousand nine hundred
154 ninety, relating to the air pollution control commission
155 (prevention and control of air pollution from the
156 emission of volatile organic compounds from petroleum
157 refinery sources), are authorized.

§64-3-4. Division of energy.

1 (a) The legislative rules filed in the state register on
2 the thirty-first day of March, one thousand nine hundred
3 eighty-two, relating to the department of mines (energy)
4 (mine safety program), are authorized.

5 (b) The legislative rules filed in the state register on
6 the seventeenth day of August, one thousand nine
7 hundred eighty-three, relating to the department of
8 energy (governing the safety of those employed in and
9 around surface mines), are authorized.

10 (c) The legislative rules filed in the state register on
11 the seventh day of December, one thousand nine
12 hundred eighty-three, relating to the office of oil and
13 gas, department of mines (energy), (oil and gas and
14 other wells), are authorized with the amendment set
15 forth below:

16 Page viii, place an * in front of section 32.02.

17 Page ix, after section 35.04 add the following:

18 “*35.05 Extra Powers of the Administrator64.”

19 Page 1, section 1.03 in the list of additional regula-
20 tions, add 35.05; in the list of revised regulations, add
21 32.02, 32.03 and 33.00.

22 Page 52, section 32.04 and section 32.05 add at the end
23 of (ii) the words “and (iii) definition of proration unit.”

24 Page 53, section 33 after the word “definitions” add
25 the following sentence: “The following definitions are
26 applicable to these regulations used for purposes of
27 implementing the Natural Gas Policy Act of 1978 and
28 are not intended to be used in any other context.”

29 Page 55, section 33.02 (b)(16) after the word “forma-
30 tions” in the third lines of (i) and (ii), add the words “for
31 which a well has been.”

32 Page 64, after section 35.04 add the following section:

33 35.05 Extra Powers of the Administrator.

34 “The administrator may also certify or provide a
35 waiver for a well located within a proration unit as
36 defined in 32.02 (b)(16) or any other well sought to be
37 certified under these regulations after notice and
38 hearing.”

39 (d) The legislative rules filed in the state register on
40 the eleventh day of August, one thousand nine hundred

41 eighty-six, modified by the director of the division of oil
42 and gas of the department of energy to meet the
43 objections of the legislative rule-making review commit-
44 tee and refiled in the state register on the fifteenth day
45 of December, one thousand nine hundred eighty-six,
46 relating to the director of the division of oil and gas of
47 the department of energy (oil and gas wells and other
48 wells), are authorized.

49 (e) The legislative rules filed in the state register on
50 the eleventh day of August, one thousand nine hundred
51 eighty-six, modified by the director of the oil and gas
52 division of the department of energy to meet the
53 objections of the legislative rule-making review commit-
54 tee and refiled in the state register on the fifteenth day
55 of December, one thousand nine hundred eighty-six,
56 relating to the director of the division of oil and gas of
57 the department of energy (certification of gas wells), are
58 authorized.

59 (f) The legislative rules filed in the state register on
60 the eleventh day of August, one thousand nine hundred
61 eighty-six, modified by the director of the division of oil
62 and gas of the department of energy to meet the
63 objections of the legislative rule-making review commit-
64 tee and refiled in the state register on the fifteenth day
65 of December, one thousand nine hundred eighty-six,
66 relating to the director of the division of oil and gas of
67 the department of energy (underground injection
68 control), are authorized.

69 (g) The legislative rules filed in the state register on
70 the eleventh day of August, one thousand nine hundred
71 eighty-six, modified by the director of the division of oil
72 and gas of the department of energy to meet the
73 objections of the legislative rule-making review commit-
74 tee and refiled in the state register on the fifteenth day
75 of December, one thousand nine hundred eighty-six,
76 relating to the director of the division of oil and gas of
77 the department of energy (state national pollutant
78 discharge elimination system (NPDES) program), are
79 authorized.

80 (h) The legislative rules filed in the state register on

81 the fourteenth day of November, one thousand nine
82 hundred eighty-six, modified by the commissioner of the
83 department of energy to meet the objections of the
84 legislative rule-making review committee and refiled in
85 the state register on the sixteenth day of December, one
86 thousand nine hundred eighty-six, relating to the
87 commissioner of the department of energy (standards
88 for certification of coal mine electricians), are autho-
89 rized with the following amendments:

90 "Page one, §2.1, subsection (a), following the second
91 word, 'electrician' by striking the colon and inserting the
92 following: 'under the supervision required by section
93 4.1(d) of these rules'" and a colon.

94 Page one, §2.1, subsection (a), by deleting all of
95 subdivision (6) and renumbering the subsequent
96 subdivisions.

97 Page two, §2.1, subsection (a), by deleting all of
98 subdivision (9).

99 Page two, §2.1, subsection (b), by deleting all of
100 subdivision (14) and inserting in lieu thereof a new
101 subdivision (14) to read as follows: "(14) Replace blown
102 fuses on trolley poles and nips."

103 Page five, §4.1, subsection (d), line three, following the
104 words "certified electrician prior" by inserting the
105 words "to any work being performed and again prior."

106 (i) The legislative rules filed in the state register on
107 the fifteenth day of December, one thousand nine
108 hundred eighty-six, modified by the commissioner of the
109 department of energy to meet the objections of the
110 legislative rule-making review committee and refiled in
111 the state register on the twenty-first day of January, one
112 thousand nine hundred eighty-seven, relating to the
113 commissioner of the department of energy (safety
114 training program for prospective underground coal
115 miners in West Virginia), are authorized.

116 (j) The legislative rules filed in the state register on
117 the eleventh day of August, one thousand nine hundred
118 eighty-six, modified by the commissioner of the depart-
119 ment of energy to meet the objections of the legislative

120 rule-making review committee and refiled in the state
121 register on the fifteenth day of December, one thousand
122 nine hundred eighty-six, relating to the commissioner of
123 the department of energy (miscellaneous water pollution
124 control), are authorized.

125 (k) The legislative rules filed in the state register on
126 the eleventh day of August, one thousand nine hundred
127 eighty-six, modified by the commissioner of the depart-
128 ment of energy to meet the objections of the legislative
129 rule-making review committee and refiled in the state
130 register on the fifteenth day of December, one thousand
131 nine hundred eighty-six, relating to the commissioner of
132 the department of energy (dam control), are authorized.

133 (l) The legislative rules filed in the state register on
134 the eleventh day of August, one thousand nine hundred
135 eighty-six, modified by the commissioner of the depart-
136 ment of energy to meet the objections of the legislative
137 rule-making review committee and refiled in the state
138 register on the fifteenth day of December, one thousand
139 nine hundred eighty-six, relating to the commissioner of
140 the department of energy (solid waste management), are
141 authorized.

142 (m) The legislative rules filed in the state register on
143 the eleventh day of August, one thousand nine hundred
144 eighty-six, modified by the commissioner of the depart-
145 ment of energy to meet the objections of the legislative
146 rule-making review committee and refiled in the state
147 register on the fifteenth day of December, one thousand
148 nine hundred eighty-six, relating to the commissioner of
149 the department of energy (hazardous waste manage-
150 ment), are authorized.

151 (n) The legislative rules filed in the state register on
152 the twentieth day of April, one thousand nine hundred
153 eighty-seven, relating to the commissioner of the
154 department of energy (roof control), are authorized.

155 (o) The legislative rules filed in the state register on
156 the third day of April, one thousand nine hundred
157 eighty-seven, relating to the department of energy
158 (standards for certification of underground belt examin-
159 ers for underground coal mines), are authorized.

160 (p) The legislative rules filed in the state register on
161 the ninth day of April, one thousand nine hundred
162 eighty-seven, relating to the commissioner of the
163 department of energy (performance standards for
164 blasting on surface mines), are authorized.

165 (q) The legislative rules filed in the state register on
166 the twelfth day of January, one thousand nine hundred
167 eighty-seven, modified by the commissioner of the
168 department of energy to meet the objections of the
169 legislative rule-making review committee and refiled in
170 the state register on the twentieth day of February, one
171 thousand nine hundred eighty-seven, relating to the
172 commissioner of the department of energy (state
173 national pollutant discharge elimination system
174 (NPDES) for mines and minerals), are authorized.

175 (r) The Legislature hereby authorizes and directs the
176 department of energy to promulgate the procedural
177 rules filed in the state register on the twenty-first day
178 of October, one thousand nine hundred eighty-seven,
179 relating to the department of energy (requests for
180 information) with the amendments set forth below:

181 On page two, subsection 3.1, by striking subdivision
182 (d) and renumbering the remaining subdivisions.

183 And,

184 On page three, section 6, by striking all of subsection
185 6.1 and inserting in lieu thereof, the following:

186 "6.1 The department shall establish fixed rate fees for
187 reproduction of documents, records, and files on the
188 basis of the actual cost of such reproduction and shall
189 document such costs: *Provided*, That where total costs
190 are less than five dollars, no fee shall be charged."

191 (s) The legislative rules filed in the state register on
192 the twelfth day of May, one thousand nine hundred
193 eighty-seven, modified by the commissioner of the
194 department of energy to meet the objections of the
195 legislative rule-making review committee and refiled in
196 the state register on the fourteenth day of August, one
197 thousand nine hundred eighty-seven, relating to the
198 commissioner of the department of energy (blasters

199 certification for surface coal mines and surface areas of
200 coal mines), are authorized.

201 (t) The legislative rules filed in the state register on
202 the twentieth day of January, one thousand nine
203 hundred eighty-eight, modified by the commissioner of
204 the department of energy to meet the objections of the
205 legislative rule-making review committee and refiled in
206 the state register on the twenty-eighth day of November,
207 one thousand nine hundred eighty-eight, relating to the
208 commissioner of the department of energy (abandoned
209 mine reclamation), are authorized.

210 (u) The legislative rules filed in the state register on
211 the nineteenth day of September, one thousand nine
212 hundred eighty-eight, and modified to meet the objec-
213 tions of the West Virginia Legislature and refiled in the
214 state register on the sixth day of April, one thousand
215 nine hundred eighty-nine, relating to the commissioner
216 of the department of energy (West Virginia surface
217 mining reclamation regulations (repealer)), are
218 authorized.

219 (v) The legislative rules filed in the state register on
220 the sixteenth day of November, one thousand nine
221 hundred eighty-nine, modified by the department of
222 energy to meet the objections of the legislative rule-
223 making review committee and refiled in the state
224 register on the ninth day of January, one thousand nine
225 hundred ninety, relating to the department of energy
226 (submission and approval of a comprehensive mine
227 safety program for coal mining operations in the State
228 of West Virginia), are authorized.

229 (w) The legislative rules filed in the state register on
230 the sixteenth day of November, one thousand nine
231 hundred eighty-nine, modified by the division of energy
232 to meet the objections of the legislative rule-making
233 review committee and refiled in the state register on the
234 twenty-fifth day of January, one thousand nine hundred
235 ninety, relating to the division of energy (surface mining
236 reclamation), are authorized with the amendments set
237 forth below:

238 On page 64, section 3.25(a)(2), after the words "section

239 18 of the Act and paragraph” by deleting the “(c)” and
240 inserting in lieu thereof the following: “(a), (b), (c), (d),
241 (i), (j), and (k).”

242 And,

243 On page 148, section 12.4(d)(2), by deleting the current
244 language and inserting in lieu thereof the following:

245 “(2) In the event the Commissioner is unable to collect
246 the costs from the permittee, the Commissioner shall in
247 a timely manner but not later than one hundred eighty
248 days after forfeiture of the site-specific bond utilize
249 moneys in the Special Reclamation Fund created by
250 Subsection (g), Section 11 of the Act, to accomplish the
251 completion of reclamation, including the requirements
252 of Section 23 of the Act and Subsection 14.5 of these
253 regulations governing water quality.”

254 (x) The legislative rules filed in the state register on
255 the twenty-fifth day of May, one thousand nine hundred
256 ninety, modified by the division of energy to meet the
257 objections of the legislative rule-making review commit-
258 tee and refiled in the state register on the seventeenth
259 day of July, one thousand nine hundred ninety, relating
260 to the division of energy (miscellaneous water pollution
261 control), are authorized.

262 (y) The legislative rules filed in the state register on
263 the first day of November, one thousand nine hundred
264 ninety, modified by the division of energy to meet the
265 objections of the legislative rule-making review commit-
266 tee and refiled in the state register on the twenty-second
267 day of January, one thousand nine hundred ninety-one,
268 relating to the division of energy (West Virginia surface
269 mining and reclamation regulations), are authorized
270 with the amendment set forth below:

271 On page one hundred fifty-three, section 12.2(c)(4),
272 after the number “(4)”, by inserting the words “For
273 permits issued after the effective date of these
regulations.”

§64-3-8. Division of natural resources.

1 (a) The legislative rules filed in the state register on

2 the eighth day of December, one thousand nine hundred
3 eighty-three, relating to the department of natural
4 resources (surface mining), are authorized with the
5 amendments set forth below:

6 Page 3-4, §3E.01 by adding after the word “engineer”
7 the words “or licensed land surveyor.”

8 Page 3-5, §3E.02, subsection (a), by adding after the
9 word “mining” the words “or civil.”

10 Page 3-5, §3E.02, subsection (b), by adding after the
11 first sentence — “Those persons who have been approved
12 to date need not make said demonstration.”

13 (b) The legislative rules filed in the state register on
14 the twentieth day of January, one thousand nine
15 hundred eighty-four, relating to the department of
16 natural resources (solid waste management), are
17 authorized with the amendments set forth below:

18 Page 9, section 4.04, line five, add the following
19 paragraph:

20 “Upon request of any applicant, the division shall
21 meet with the applicant for pre-filing review of the
22 application. The division, with the cooperation of the
23 solid waste authority, shall assist the applicant in
24 preparing a complete and proper application which
25 would not be rejected as incomplete.”

26 On page 15, section 6.03 (c)(1) in the first full sentence,
27 after the word “cease”, strike the remainder of the
28 sentence and insert in lieu thereof the words “within
29 fifteen (15) days of receipt of an order of suspension” and
30 in the second sentence strike the word “recommence”
31 and insert the words “continue beyond fifteen (15) days”;
32 (c)(2) in the first full sentence, after the word “cease”
33 by striking out the remainder of the sentence and insert
34 in lieu thereof the words “immediately upon receipt of
35 an order of revocation.”

36 (c) The legislative rules filed in the state register on
37 the twenty-sixth day of September, one thousand nine
38 hundred eighty-four, relating to the department of
39 natural resources (public use of state parks, forests,

40 hunting and fishing areas), are authorized.

41 (d) The legislative rules filed in the state register on
42 the seventh day of November, one thousand nine
43 hundred eighty-four, relating to the department of
44 natural resources (surface mining reclamation), are
45 authorized.

46 (e) The legislative rules filed in the state register on
47 the seventh day of November, one thousand nine
48 hundred eighty-four, relating to the department of
49 natural resources (coal refuse disposal), are authorized.

50 (f) The legislative rules filed in the state register on
51 the ninth day of November, one thousand nine hundred
52 eighty-four, relating to the department of natural
53 resources (transfer of the state national pollutant
54 discharge elimination system program), are authorized
55 with the amendments set forth below:

56 Page 10-5, by striking §10B.19 and inserting in lieu
57 thereof a new §10B.19, to read as follows: "Effluent
58 limitations guidelines' means a regulation published by
59 the Administrator under Section 304(b) or Section
60 301(b)(1)(B) of the CWA to adopt or revise effluent
61 limitations or levels of effluent quality attainable
62 through the application of secondary or equivalent
63 treatment. For the coal industry these regulations are
64 published at 40 C.F.R. Parts 434 and 133. (See:
65 Appendix G and H)."

66 (g) The legislative rules filed in the state register on
67 the twenty-eighth day of August, one thousand nine
68 hundred eighty-four, relating to the department of
69 natural resources (small arms hunting), are authorized.

70 (h) The legislative rules filed in the state register on
71 the sixth day of January, one thousand nine hundred
72 eighty-four, relating to the department of natural
73 resources (hazardous waste management), are
74 authorized.

75 (i) The legislative rules filed in the state register on
76 the third day of December, one thousand nine hundred
77 eighty-four, modified by the department of natural
78 resources to meet the objections of the legislative rule-

79 making review committee and refiled in the state
80 register on the thirteenth day of February, one thousand
81 nine hundred eighty-five, relating to the department of
82 natural resources (hazardous waste management), are
83 authorized.

84 (j) The legislative rules filed in the state register on
85 the tenth day of October, one thousand nine hundred
86 eighty-five, relating to the department of natural
87 resources (hazardous waste management: small quantity
88 generators and waste minimization certification), are
89 authorized with the amendments set forth below:

90 On page 1, §3.1.4b, delete the word "or" in the
91 reference to "paragraph (g) or (j)" and insert in lieu
92 thereof the words "and, if applicable."

93 (k) The legislative rules filed in the state register on
94 the ninth day of September, one thousand nine hundred
95 eighty-five, relating to the department of natural
96 resources (WV/NPDES regulations for the coal mining
97 point source category and related sewage facilities), are
98 authorized.

99 (l) The legislative rules filed in the state register on
100 the eleventh day of December, one thousand nine
101 hundred eighty-five, modified by the department of
102 natural resources to meet the objections of the legislative
103 rule-making review committee and refiled in the state
104 register on the twentieth day of February, one thousand
105 nine hundred eighty-six, relating to the department of
106 natural resources (hazardous waste management), are
107 authorized.

108 (m) The legislative rules filed in the state register on
109 the twenty-sixth day of September, one thousand nine
110 hundred eighty-six, modified by the department of
111 natural resources to meet the objections of the legislative
112 rule-making review committee and refiled in the state
113 register on the ninth day of December, one thousand
114 nine hundred eighty-six, relating to the department of
115 natural resources (hazardous waste management regu-
116 lations), are authorized.

117 (n) The legislative rules filed in the state register on

118 the seventh day of August, one thousand nine hundred
119 eighty-six, relating to the director of the department of
120 natural resources (procedures for transporting and
121 dealing in fur-bearing animals), are authorized.

122 (o) The legislative rules filed in the state register on
123 the thirtieth day of December, one thousand nine
124 hundred eighty-six, relating to the department of
125 natural resources (WV/NPDES program for coal mines
126 and preparation plants, and the refuse and waste
127 therefrom), are authorized with the amendments set
128 forth below:

129 On page four, §1.9.1.a by inserting the words "five
130 thousand dollars or" after the words "significant portion
131 of income' means."

132 And,

133 On page four, §1.9.1.a by inserting the words "whi-
134 chever is less," after the words "ten percent or more of
135 gross personal income for a calendar year."

136 (p) The legislative rules filed in the state register on
137 the fifth day of March, one thousand nine hundred
138 eighty-six, relating to the department of natural
139 resources (hazardous waste management), are
140 authorized.

141 (q) The legislative rules filed in the state register on
142 the twelfth day of August, one thousand nine hundred
143 eighty-seven, relating to the department of natural
144 resources (WV/NPDES regulations for coal mining
145 facilities), are authorized.

146 (r) The legislative rules filed in the state register on
147 the tenth day of June, one thousand nine hundred
148 eighty-seven, relating to the director of the department
149 of natural resources (outfitters and guides), are
150 authorized.

151 (s) The legislative rules filed in the state register on
152 the ninth day of January, one thousand nine hundred
153 eighty-seven, relating to the department of natural
154 resources (hazardous waste management regulations),
155 are authorized.

156 (t) The legislative rules filed in the state register on
157 the fifth day of March, one thousand nine hundred
158 eighty-seven, relating to the department of natural
159 resources (hazardous waste management regulations,
160 series 35), are authorized.

161 (u) The legislative rules filed in the state register on
162 the seventh day of December, one thousand nine
163 hundred eighty-seven, relating to the department of
164 natural resources (hazardous waste management regu-
165 lations, series 35), are authorized.

166 (v) The legislative rules filed in the state register on
167 the sixteenth day of December, one thousand nine
168 hundred eighty-seven, modified by the department of
169 natural resources to meet the objections of the legislative
170 rule-making review committee and refiled in the state
171 register on the fourteenth day of January, one thousand
172 nine hundred eighty-eight, relating to the department of
173 natural resources (solid waste management), are
174 authorized.

175 (w) The legislative rules filed in the state register on
176 the twenty-eighth day of July, one thousand nine
177 hundred eighty-seven, modified by the director of the
178 department of natural resources to meet the objections
179 of the legislative rule-making review committee and
180 refiled in the state register on the seventh day of
181 August, one thousand nine hundred eighty-seven,
182 relating to the director of the department of natural
183 resources (boating regulations), are authorized with the
184 amendment set forth below:

185 On page 16, section 6.2, line 3 by inserting following
186 the period "This regulation does not apply to licensed
187 outfitters and guides." These rules were proposed by the
188 director of the department of natural resources pursu-
189 ant to section seven, article one and section twenty-two,
190 article seven, chapter twenty of this code.

191 (x) The legislative rules filed in the state register on
192 the second day of September, one thousand nine
193 hundred eighty-eight, modified by the department of
194 natural resources to meet the objections of the legislative
195 rule-making review committee and refiled in the state

196 register on the seventeenth day of October, one thousand
197 nine hundred eighty-eight, relating to the department of
198 natural resources (hazardous waste management), are
199 authorized.

200 (y) The legislative rules filed in the state register on
201 the thirty-first day of August, one thousand nine
202 hundred eighty-eight, relating to the director of the
203 department of natural resources (boating), are
204 authorized.

205 (z) The legislative rules filed in the state register on
206 the eighth day of March, one thousand nine hundred
207 eighty-eight, modified by director of the department of
208 natural resources to meet the objections of the legislative
209 rule-making review committee and refiled in the state
210 register on the thirtieth day of August, one thousand
211 nine hundred eighty-eight, relating to the director of the
212 department of natural resources (commercial sale of
213 wildlife), are authorized.

214 (aa) The legislative rules filed in the state register on
215 the twenty-seventh day of January, one thousand nine
216 hundred eighty-eight, relating to the director of the
217 department of natural resources (catching and selling
218 bait fish), are authorized.

219 (bb) The legislative rules filed in the state register on
220 the twenty-fifth day of March, one thousand nine
221 hundred eighty-eight, relating to the director of the
222 department of natural resources (West Virginia public
223 hunting and fishing areas), are authorized with the
224 following amendment:

225 On page three, section 3.8.4, by inserting after the
226 word "vehicle" the following: ", all terrain vehicle
227 (ATV)."

228 (cc) The legislative rules filed in the state register on
229 the seventeenth day of March, one thousand nine
230 hundred eighty-nine, modified by the division of natural
231 resources to meet the objections of the legislative rule-
232 making review committee and refiled in the state
233 register on the sixteenth day of January, one thousand
234 nine hundred ninety, relating to the division of natural

235 resources (solid waste management), are authorized
236 with the amendments set forth below:

237 On page 13, Section 3.2.6, by deleting the current
238 language and inserting in lieu thereof the following:

239 "3.2.6. Within two hundred (200) feet of faults that
240 have had displacement in Holocene time (i.e., during the
241 last eleven thousand years);"

242 On page 64, Section 3.14.25, by deleting the current
243 language and inserting in lieu thereof the following
244 language:

245 "3.14.25. *Environmental Compliance History.* The
246 chief or the director may refuse to grant any permit if
247 he has reasonable cause to believe, as indicated by
248 documented evidence, that the applicant, or any officer,
249 director or manager, thereof, or shareholder owning
250 twenty percent (20%) or more of its capital stock,
251 beneficial or otherwise, or other person conducting or
252 managing the affairs of the applicant or of the proposed
253 permitted premises, in whole or part, has exhibited a
254 pattern of violation of the environmental statutes or
255 regulations of this State, any other state, or the federal
256 government."

257 On page 104, section 4.5.4.a, by inserting after the
258 words "at that landfill" the following:

259 "Nothing within these regulations shall be construed
260 to allow the installations of any liner or system on areas
261 not lined as of November 30, 1989, that is not in
262 conformance with section 4.5.4.a.E or 4.5.4.a.G of these
263 regulations. Landfills that do have an article 5f permit
264 and a liner installed as of November 30, 1989, may
265 install a liner as approved by the chief."

266 And,

267 On pages 147 through 151, sections 4.11.5 and 4.11.6,
268 by deleting the current language and inserting in lieu
269 thereof the following:

270 "4.11.5. *Corrective Action Program.*

271 Whenever a statistically significant increase is found

272 in a Phase II or Phase III monitoring parameter, or
273 when groundwater contamination is otherwise identified
274 by the Chief at sites without monitoring programs,
275 which is determined by the Chief to have resulted in a
276 significant adverse effect on an aquifer, and which is
277 attributable to a solid waste facility, the Chief may
278 require appropriate corrective or remedial action
279 pursuant to West Virginia Code Chapter 20, Article 5A,
280 and Chapter 20, Article 5F to abate, remediate or
281 correct such pollution. Any such corrective or remedial
282 action order shall take into account any applicable
283 groundwater quality protection standards, the existing
284 use of such waters, the reasonable uses of such waters,
285 background water quality, and the protection of human
286 health and the environment.”

287 (dd) The legislative rules filed in the state register on
288 the seventeenth day of February, one thousand nine
289 hundred eighty-nine, relating to the director of the
290 department of natural resources (underground storage
291 tanks), are authorized.

292 (ee) The legislative rules filed in the state register on
293 the twenty-seventh day of January, one thousand nine
294 hundred eighty-nine, relating to the director of the
295 department of natural resources (transporting and
296 selling wildlife pelts), are authorized.

297 (ff) The legislative rules filed in the state register on
298 the seventeenth day of February, one thousand nine
299 hundred eighty-nine, modified by the director of the
300 department of natural resources to meet the objections
301 of the legislative rule-making review committee and
302 refiled in the state register on the ninth day of August,
303 one thousand nine hundred eighty-nine, relating to the
304 director of the department of natural resources (under-
305 ground storage tank fee assessments), are authorized.

306 (gg) The legislative rules filed in the state register on
307 the twenty-fourth day of April, one thousand nine
308 hundred eighty-nine, modified by the director of the
309 department of natural resources to meet the objections
310 of the legislative rule-making review committee and
311 refiled in the state register on the twenty-second day of

312 May, one thousand nine hundred eighty-nine, relating to
313 the director of the department of natural resources
314 (public hunting and fishing areas), are authorized.

315 (hh) The legislative rules filed in the state register on
316 the first day of December, one thousand nine hundred
317 eighty-nine, relating to the department of natural
318 resources (water pollution control permit fee schedules),
319 are authorized with the amendment set forth below:

320 On page five, section 3.3, by deleting the following:
321 "Submitted fees are not refundable."

322 On page two, after section 2.6, by inserting the
323 following:

324 "customer" means any person that purchases waste
325 disposal services from a facility permitted under article
326 five-a, chapter twenty, of the code of West Virginia, one
327 thousand nine hundred thirty-one, as amended. For the
328 purposes of these regulations, commercial and other
329 non-single family dwelling customers shall be translated
330 into customer equivalents by dividing the total daily
331 estimated volume of waste water by three hundred and
332 fifty gallons per day." and renumbering the remaining
333 subsections.

334 On page nine, section 7.2, by striking out the words
335 "seven hundred fifty dollars (\$750)." and inserting in
336 lieu thereof the following:

337 "determined using Table D, but in no case shall be less
338 than two hundred fifty dollars (\$250)."

339 And,

340 On page thirteen, by striking out all of Table D,
341 Schedule of Annual Permit Fees, and inserting in lieu
342 thereof a new Table D, designated "Schedule of Annual
343 Permit Fees", to read as follows:

344	"TABLE D	
345	SCHEDULE OF ANNUAL PERMIT FEES	
346	SEWAGE FACILITIES	
347	Number of Customers	Annual Permit Fee
348	less than 1000	\$ 250

349	1000 to 1499	\$ 500
350	1500 to 1999	\$ 750
351	2000 to 2499	\$ 1000
352	2500 to 2999	\$ 1250
353	3000 to 3499	\$ 1500
354	3500 to 3999	\$ 1750
355	4000 to 4499	\$ 2000
356	4500 to 4999	\$ 2250
357	greater than 5000	\$ 2500

358 INDUSTRIAL OR OTHER WASTE FACILITIES

359	Average Discharge Volume	Annual Permit Fee
360	(gallons per day)	
361	less than 1,000	\$ 50
362	1,001 to 10,000	\$ 500
363	10,001 to 50,000	\$ 1000
364	greater than 50,000	\$ 2500"

365 (ii) The legislative rules filed in the state register on
 366 the twenty-fifth day of July, one thousand nine hundred
 367 eighty-nine, modified by the director of the department
 368 of natural resources to meet the objections of the
 369 legislative rule-making review committee and refiled in
 370 the state register on the fifteenth day of September, one
 371 thousand nine hundred eighty-nine, relating to the
 372 director of the department of natural resources (revoca-
 373 tion of hunting and fishing licenses), are authorized.

374 (jj) The legislative rules filed in the state register on
 375 the twentieth day of December, one thousand nine
 376 hundred eighty-nine, modified by the division of natural
 377 resources to meet the objections of the legislative rule-
 378 making review committee and refiled in the state
 379 register on the twenty-fourth day of January, one
 380 thousand nine hundred ninety, relating to the division
 381 of natural resources (state water pollution control
 382 revolving fund program), are authorized.

383 (kk) The legislative rules filed in the state register on
 384 the twenty-ninth day of March, one thousand nine
 385 hundred ninety, modified by the division of natural
 386 resources to meet the objections of the legislative rule-
 387 making review committee and refiled in the state

388 register on the thirtieth day of August, one thousand
389 nine hundred ninety, relating to the division of natural
390 resources (assessment of civil administrative penalties),
391 are authorized.

392 (ll) The legislative rules filed in the state register on
393 the sixth day of August, one thousand nine hundred
394 ninety, relating to the division of natural resources
395 (water pollution control permit fee schedules), are
396 authorized.

397 (mm) The legislative rules filed in the state register
398 on the fifteenth day of June, one thousand nine hundred
399 ninety, modified by the division of natural resources to
400 meet the objections of the legislative rule-making review
401 committee and refiled in the state register on the
402 twenty-second day of August, one thousand nine
403 hundred ninety, relating to the division of natural
404 resources (underground storage tank insurance trust
405 fund), are authorized with the amendments set forth
406 below:

407 On page four, after subsection 5.1, by inserting a new
408 subdivision 5.1.1 to read as follows:

409 "5.1.1 The fee shall be one hundred dollars per tank
410 per year (\$100/tank/year) for a period of not less than
411 one (1) year and not more than three (3) years. Second
412 and third year capitalization fees may be levied if there
413 is an inadequate surplus of funds, as determined by the
414 Board of Risk and Insurance Management, the Division
415 of Natural Resources and the Underground Storage
416 Tank Advisory Committee pursuant to W. Va. Code,
417 §20-5H-7."

418 (nn) The legislative rules filed in the state register on
419 the thirteenth day of August, one thousand nine hundred
420 ninety, modified by the division of natural resources to
421 meet the objections of the legislative rule-making review
422 committee and refiled in the state register on the second
423 day of October, one thousand nine hundred ninety,
424 relating to the division of natural resources (under-
425 ground storage tanks), are authorized with the amend-
426 ment set forth below:

427 On page four, section five, subsection 5.1, after the
428 word "requirements" by striking out the remainder of
429 the subsection and inserting in lieu thereof, the
430 following:

431 "of Title 47, Series 37 (Underground Storage Tank
432 Fee Assessments); Title 47, Series 36, Section 4 (Noti-
433 fication Requirements); and Title 47, Series 37A, Section
434 5 (Capitalization Fees) of the Code of State Regulations
435 and the owner or operator presents proof of the
436 certification to the carrier."

437 (oo) The legislative rules filed in the state register on
438 the thirteenth day of August, one thousand nine hundred
439 ninety, relating to the division of natural resources (dam
440 safety), are authorized.

441 (pp) The legislative rules filed in the state register on
442 the thirteenth day of August, one thousand nine hundred
443 ninety, modified by the division of natural resources to
444 meet the objections of the legislative rule-making review
445 committee and refiled in the state register on the
446 twenty-eighth day of November, one thousand nine
447 hundred ninety, relating to the division of natural
448 resources (hazardous waste management), are autho-
449 rized.

§64-3-10. Water resources board.

1 (a) The legislative rules filed in the state register on
2 the sixth day of January, one thousand nine hundred
3 eighty-three, relating to the state water resources board
4 (underground injection control program), are
5 authorized.

6 (b) The legislative rules filed in the state register on
7 the fifteenth day of November, one thousand nine
8 hundred eighty-three, relating to the state water
9 resources board (special regulations), are authorized.

10 (c) The legislative rules filed in the state register on
11 the third day of August, one thousand nine hundred
12 eighty-three, relating to the state water resources board
13 (groundwater protection standards), are authorized.

14 (d) The legislative rules filed in the state register on

15 the fifteenth day of November, one thousand nine
16 hundred eighty-three, relating to the state water
17 resources board (state national pollutant discharge
18 elimination system (NPDES) program), are authorized.

19 (e) The Legislature hereby authorizes and directs the
20 state water resources board to promulgate rules relating
21 to water quality standards in exact conformity with the
22 rules relating to water quality standards tendered to the
23 secretary of state on the seventh day of March, one
24 thousand nine hundred eighty-four, by the executive
25 secretary of the state water resources board, to be
26 received and filed for inclusion in the state register by
27 the secretary of state.

28 (f) The legislative rules filed in the state register on
29 the seventeenth day of October, one thousand nine
30 hundred eighty-five, and modified by the state water
31 resources board to meet the objections of the legislative
32 rule-making review committee and refiled in the state
33 register on the twenty-fourth day of February, one
34 thousand nine hundred eighty-seven, relating to the
35 state water resources board (special regulations), are
36 authorized.

37 (g) The legislative rules filed in the state register on
38 the seventh day of January, one thousand nine hundred
39 eighty-five, modified by the water resources board to
40 meet the objections of the legislative rule-making review
41 committee and refiled in the state register on the
42 thirteenth day of February, one thousand nine hundred
43 eighty-five, relating to the water resources board (water
44 quality standards), are authorized.

45 (h) The legislative rules filed in the state register on
46 the seventeenth day of October, one thousand nine
47 hundred eighty-five, modified by the state water
48 resources board to meet the objections of the legislative
49 rule-making review committee and refiled in the state
50 register on the eighth day of January, one thousand nine
51 hundred eighty-seven, and further modified by the state
52 water resources board to meet the objections of the
53 legislative rule-making review committee and refiled in
54 the state register on the twenty-fourth day of February,

55 one thousand nine hundred eighty-seven, relating to the
56 state water resources board (water quality standards),
57 are authorized.

58 (i) The legislative rules filed in the state register on
59 the seventeenth day of October, one thousand nine
60 hundred eighty-five, modified by the state water
61 resources board to meet the objections of the legislative
62 rule-making review committee and refiled in the state
63 register on the eighth day of January, one thousand nine
64 hundred eighty-seven, and further modified by the state
65 water resources board to meet the objections of the
66 legislative rule-making review committee and refiled in
67 the state register on the twenty-fourth day of February,
68 one thousand nine hundred eighty-seven, relating to the
69 state water resources board (state national pollutant
70 discharge elimination system (NPDES) program), are
71 authorized.

72 (j) The legislative rules filed in the state register on
73 the seventeenth day of October, one thousand nine
74 hundred eighty-five, and modified by the state water
75 resources board to meet the objections of the legislative
76 rule-making review committee and refiled in the state
77 register on the twenty-fourth day of February, one
78 thousand nine hundred eighty-seven, relating to the
79 state water resources board (underground injection
80 control program), are authorized.

81 (k) The legislative rules filed in the state register on
82 the seventeenth day of October, one thousand nine
83 hundred eighty-five, and modified by the state water
84 resources board to meet the objections of the legislative
85 rule-making review committee and refiled in the state
86 register on the twenty-fourth day of February, one
87 thousand nine hundred eighty-seven, relating to the
88 state water resources board (special regulations), are
89 authorized.

90 (l) The legislative rules filed in the state register on
91 the thirtieth day of June, one thousand nine hundred
92 eighty-seven, relating to the water resources board
93 (water quality standards), are authorized.

94 (m) The legislative rules filed in the state register on

95 the fourteenth day of October, one thousand nine
96 hundred eighty-eight, relating to the water resources
97 board (water quality standards), are authorized.

98 (n) The legislative rules filed in the state register on
99 the twenty-seventh day of August, one thousand nine
100 hundred ninety, relating to the water resources board
101 (requirements governing water quality standards), are
102 authorized.

§64-3-12. Solid waste management board.

1 (a) The legislative rules filed in the state register on
2 the twenty-third day of October, one thousand nine
3 hundred ninety, modified by the solid waste manage-
4 ment board to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the eighteenth day of January, one thousand
7 nine hundred ninety-one, relating to the solid waste
8 management board (development of comprehensive
9 litter and solid waste control plans), are authorized.

10 (b) The legislative rules filed in the state register on
11 the twenty-third day of October, one thousand nine
12 hundred ninety, modified by the solid waste manage-
13 ment board to meet the objections of the legislative rule-
14 making review committee and refiled in the state
15 register on the eighteenth day of January, one thousand
16 nine hundred ninety-one, relating to the solid waste
17 management board (disbursement of loans and grants
18 to governmental agencies for the acquisition or construc-
19 tion of solid waste disposal projects), are authorized.

20 (c) The legislative rules filed in the state register on
21 the twenty-third day of October, one thousand nine
22 hundred ninety, modified by the solid waste manage-
23 ment board to meet the objections of the legislative rule-
24 making review committee and refiled in the state
25 register on the eighteenth day of January, one thousand
26 nine hundred ninety-one, relating to the solid waste
27 management board (establishment of fee schedule and
28 cost allocation applicable to the issuance of bonds by the
29 board), are authorized.

30 (d) The legislative rules filed in the state register on

31 the twenty-third day of October, one thousand nine
32 hundred ninety, modified by the solid waste manage-
33 ment board to meet the objections of the legislative rule-
34 making review committee and refiled in the state
35 register on the eighteenth day of January, one thousand
36 nine hundred ninety-one, relating to the solid waste
37 management board (development of commercial solid
38 waste facility siting plans), are authorized.

§64-3-13. Board of manufactured housing construction and safety.

1 The legislative rules filed in the state register on the
2 twenty-third day of May, one thousand nine hundred
3 ninety, modified by the board of manufactured housing
4 construction and safety to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the twenty-fourth day of Sep-
7 tember, one thousand nine hundred ninety, relating to
8 the board of manufactured housing construction and
9 safety (licensing, fees, standards, complaint handling,
10 sanctions, recovery fund, designation of board as state
11 administrative agency under the national manufactured
12 housing construction and safety standards act of 1974),
13 are authorized.

ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION AND THE ARTS TO PROMULGATE LEGISLATIVE RULES.

§64-4-3. Division of culture and history.

1 The legislative rules filed in the state register on the
2 eighth day of August, one thousand nine hundred ninety,
3 modified by the division of culture and history to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the
6 sixteenth day of January, one thousand nine hundred
7 ninety-one, relating to the division of culture and history
8 (standards and procedures for granting permits to
9 excavate archaeological sites and unmarked graves), are
10 authorized.

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

- §64-5-2. State board of health; division of health.
- §64-5-3. Health care cost review authority.
- §64-5-4. West Virginia hospital finance authority.
- §64-5-7. Division of employment security.
- §64-5-8. Human rights commission.

§64-5-2. State board of health; division of health.

1 (a) The legislative rules filed in the state register on
2 the second day of June, one thousand nine hundred
3 eighty-two, relating to the state board of health (waste
4 water treatment works operations), are authorized.

5 (b) The legislative rules filed in the state register on
6 the second day of June, one thousand nine hundred
7 eighty-two, relating to the state board of health
8 (laboratory reporting of syphilis and gonorrhea), are
9 authorized.

10 (c) The legislative rules filed in the state register on
11 the second day of June, one thousand nine hundred
12 eighty-two, relating to the state board of health (public
13 water supply operators) with the modification of §11.02
14 as presented to the legislative rule-making review
15 committee on the ninth day of November, one thousand
16 nine hundred eighty-two, are authorized.

17 (d) The legislative rules filed in the state register on
18 the twenty-second day of October, one thousand nine
19 hundred eighty-two, relating to the state board of health
20 (sewage systems) with the modification presented to the
21 legislative rule-making review committee on the sixth
22 day of December, one thousand nine hundred eighty-
23 two, are authorized except lines ten through seventeen,
24 page eight of the rules shall be stricken in their entirety
25 and the remaining paragraphs renumbered.

26 (e) The legislative rules filed in the state register on
27 the second day of June, one thousand nine hundred
28 eighty-two, relating to the state board of health
29 (approval of laboratories), are authorized.

30 (f) The legislative rules filed in the state register on
31 the twenty-fourth day of November, one thousand nine
32 hundred eighty-two, relating to the state board of health
33 (permit fees), are authorized.

34 (g) The legislative rules filed in the state register on
35 the third day of June, one thousand nine hundred eighty-
36 two, relating to the state board of health (certificate of
37 need), are authorized.

38 (h) The legislative rules filed in the state register on
39 the sixteenth day of August, one thousand nine hundred
40 eighty-two, relating to the state board of health (eyes of
41 newborn children), are authorized.

42 (i) The legislative rules filed in the state register on
43 the thirteenth day of August, one thousand nine hundred
44 eighty-two, and filed with amendments on the eleventh
45 day of January, one thousand nine hundred eighty-three,
46 relating to the state board of health (nursing home
47 licensure), are authorized with the amendment of
48 §5.15.02 of those rules as set forth below:

49 By striking the word "and" at the end of subdivision
50 (f), by changing the period at the end of subdivision (g)
51 to a semicolon, and by adding the following after
52 subdivision (g): "(h) one (1) member who represents
53 social work services."

54 (j) The legislative rules filed in the state register on
55 the twenty-fourth day of November, one thousand nine
56 hundred eighty-two, relating to the state board of health
57 (guardianship service), are authorized with the excep-
58 tion of section 9.3 of those rules which may not be
59 promulgated.

60 (k) The legislative rules filed in the state register on
61 the third day of June, one thousand nine hundred eighty-
62 two, relating to the state board of health (controlled
63 substances research program and certification), are
64 authorized.

65 (l) The legislative rules filed in the state register on
66 the fifth day of November, one thousand nine hundred
67 eighty-two, relating to the state board of health
68 (chemical test for intoxication), are authorized.

69 (m) The legislative rules filed in the state register on
70 the nineteenth day of December, one thousand nine
71 hundred eighty-three, relating to the state board of
72 health (birthing center licensure), are authorized.

73 (n) The legislative rules filed in the state register on
74 the fourteenth day of November, one thousand nine
75 hundred eighty-three, relating to the state board of
76 health (licensure of behavioral health centers), are
77 authorized with the amendments set forth below:

78 Page 45, §12.8.2. In the first sentence delete the words
79 “without delay” and insert in lieu thereof the words
80 “within twenty-four hours after receiving a report of a
81 complaint.”

82 (o) The legislative rules filed in the state register on
83 the nineteenth day of December, one thousand nine
84 hundred eighty-three, relating to the state board of
85 health (procedures for recovery of corneal tissue for
86 transplant), are authorized.

87 (p) The legislative rules filed in the state register on
88 the seventh day of September, one thousand nine
89 hundred eighty-three, relating to the state board of
90 health (well water regulations), are authorized with the
91 amendments set forth below:

92 §4.1. In the first sentence delete the word “obtaining”
93 and insert in lieu thereof the words “applying for”. In
94 the second sentence after “4.3” add “and 4.5.”

95 §4.2. At the end of the second sentence, strike the
96 period and add the words “unless emergency conditions
97 prevail as noted under §4.3.”

98 With the balance of §4.2 and create a new §4.3 with
99 the following changes: In the first sentence delete the
100 word “deadline” and insert in lieu thereof the word
101 “requirements.” Add after the first sentence the
102 sentence, “Emergency conditions and unavoidable
103 circumstances are those conditions involving acts of God,
104 water outages or disruption of water service, unsatisfac-
105 tory water quality or quantity or public health threats.”
106 In the third sentence delete the word “exceed” and insert
107 in lieu thereof the words “be made in excess of.”

108 Renumber §4.3 as §4.4 and add the following two
109 sentences at the end of the section: “Such standards shall
110 constitute the minimum standards for the installation,
111 the alteration or the deepening of water wells. Any plans

112 approved by the director pursuant to these regulations
113 shall be in substantial compliance with the heretofore
114 mentioned standards.”

115 Renumber §4.4 as §4.5, §4.5 as §4.6, §4.6 as §4.7, §4.7
116 as §4.8 and §4.8 as §4.9.

117 §5.2. Delete the words “four (4)” and insert in lieu
118 thereof the words “two (2)” and delete the words “active,
119 continuous.”

120 (q) The legislative rules filed in the state register on
121 the third day of October, one thousand nine hundred
122 eighty-four, relating to the state board of health (trauma
123 center or facility designation), are authorized.

124 (r) The legislative rules filed in the state register on
125 the twenty-first day of December, one thousand nine
126 hundred eighty-four, relating to the state board of
127 health (reportable diseases), are authorized.

128 (s) The legislative rules filed in the state register on
129 the twenty-first day of December, one thousand nine
130 hundred eighty-four, relating to the state board of
131 health (licensure of medical adult day care centers), are
132 authorized.

133 (t) The legislative rules filed in the state register on
134 the third day of October, one thousand nine hundred
135 eighty-four, relating to the state board of health (retail
136 food store sanitation), are authorized.

137 (u) The legislative rules filed in the state register on
138 the seventeenth day of December, one thousand nine
139 hundred eighty-five, modified by the director of health
140 to meet the objections of the legislative rule-making
141 review committee and refiled in the state register on the
142 fifteenth day of January, one thousand nine hundred
143 eighty-six, relating to the director of health (adult group
144 home licensure), are authorized.

145 (v) The legislative rules filed in the state register on
146 the twenty-ninth day of October, one thousand nine
147 hundred eighty-five, modified by the state board of
148 health to meet the objections of the legislative rule-
149 making review committee and refiled in the state

150 register on the twenty-seventh day of December, one
151 thousand nine hundred eighty-five, relating to the state
152 board of health (licensure of hospice care programs), are
153 authorized.

154 (w) The legislative rules filed in the state register on
155 the thirty-first day of October, one thousand nine
156 hundred eighty-five, modified by the director of health
157 to meet the objections of the legislative rule-making
158 review committee and refiled in the state register on the
159 twenty-seventh day of December, one thousand nine
160 hundred eighty-five, relating to the director of health
161 (rules governing emergency medical services), are
162 authorized with the amendments set forth below:

163 On page 3, §3.9 shall read as follows:

164 “3.9 Quorum — When applied to the EMSAC, a
165 majority of the members thereof, except in the instance
166 when at any meeting of the EMSAC, where a quorum
167 is not present and the director causes to be deposited in
168 the United States mail, postage prepaid, return receipt
169 requested, to each member of the EMSAC within three
170 days, a notice calling a meeting of the EMSAC at some
171 convenient place in the state of West Virginia two weeks
172 after the meeting at which no quorum was present.
173 Quorum means any number of members of the EMSAC
174 who attend such subsequent meeting. Any member
175 missing two consecutive meetings shall be removed from
176 the EMSAC.”

177 On page 6, §4.7.1 shall be deleted in its entirety;

178 And,

179 On page 7, §4.10.1 shall read as follows:

180 “4.10.1 every applicant for certification as an EMSP
181 prior to such certification, shall demonstrate his or her
182 knowledge and ability by undergoing a written exam-
183 ination and a demonstration of skills, and by attaining
184 a passing score on the same. Passing score shall be the
185 same for all testing programs.”

186 (x) The legislative rules filed in the state register on
187 the fifth day of September, one thousand nine hundred

188 eighty-five, relating to the state department of health
189 (revising the list of hazardous substances), are
190 authorized.

191 (y) The legislative rules filed in the state register on
192 the thirteenth day of August, one thousand nine hundred
193 eighty-six, modified by the director of the department
194 of health to meet the objections of the legislative rule-
195 making review committee and refiled in the state
196 register on the sixteenth day of October, one thousand
197 nine hundred eighty-six, relating to the director of the
198 department of health (hazardous material treatment
199 information repository), are authorized.

200 (z) The legislative rules filed in the state register on
201 the seventeenth day of July, one thousand nine hundred
202 eighty-six, modified by the state board of health to meet
203 the objections of the legislative rule-making review
204 committee and refiled in the state register on the
205 sixteenth day of October, one thousand nine hundred
206 eighty-six, relating to the state board of health (methods
207 and standards for chemical tests for intoxication), are
208 authorized.

209 (aa) The legislative rules filed in the state register on
210 the twenty-first day of November, one thousand nine
211 hundred eighty-six, modified by the state board of
212 health to meet the objections of the legislative rule-
213 making review committee and refiled in the state
214 register on the twenty-third day of December, one
215 thousand nine hundred eighty-six, relating to the state
216 board of health (licensure of behavioral health centers),
217 are authorized.

218 (bb) The legislative rules filed in the state register on
219 the eighteenth day of April, one thousand nine hundred
220 eighty-six, modified by the state board of health to meet
221 the objections of the legislative rule-making review
222 committee and refiled in the state register on the
223 seventeenth day of October, one thousand nine hundred
224 eighty-six, relating to the state board of health (hospital
225 licensure), are authorized.

226 (cc) The legislative rules filed in the state register on
227 the ninth day of December, one thousand nine hundred

228 eighty-six, modified by the state board of health to meet
229 the objections of the legislative rule-making review
230 committee and refiled in the state register on the
231 twenty-third day of December, one thousand nine
232 hundred eighty-six, relating to the state board of health
233 (hospital licensure and allowing hospitals to have
234 licensed hospital professionals, other than licensed
235 physicians, on their medical staff), are authorized.

236 (dd) The legislative rules filed in the state register on
237 the ninth day of December, one thousand nine hundred
238 eighty-six, modified by the state board of health to meet
239 the objections of the legislative rule-making review
240 committee and refiled in the state register on the
241 twenty-third day of December, one thousand nine
242 hundred eighty-six, relating to the state board of health
243 (vital statistics), are authorized.

244 (ee) The legislative rules filed in the state register on
245 the eleventh day of September, one thousand nine
246 hundred eighty-seven, relating to the director of the
247 department of health (immunization criteria for
248 transfer students), are authorized.

249 (ff) The legislative rules filed in the state register on
250 the sixteenth day of November, one thousand nine
251 hundred eighty-seven, relating to the director of the
252 department of health (hazardous substances), are
253 authorized with the amendment set forth below:

254 Page 33, section 8, line 8 (unnumbered), by adding at
255 the end of section 8 the following proviso: "*Provided,*
256 That the owner's or operator's submissions are based on
257 the threshold reporting requirements contained in
258 section 5, article 31, chapter 16."

259 (gg) The legislative rules filed in the state register on
260 the eighteenth day of November, one thousand nine
261 hundred eighty-seven, relating to the director of the
262 department of health (trauma center or facility desig-
263 nation), are authorized.

264 (hh) The legislative rules filed in the state register on
265 the twenty-second day of June, one thousand nine
266 hundred eighty-eight, modified by the state board of

267 health to meet the objections of the legislative rule-
268 making review committee and refiled in the state
269 register on the fifteenth day of September, one thousand
270 nine hundred eighty-eight, relating to the state board of
271 health (licensure of hospice care programs), are
272 authorized.

273 (ii) The legislative rules filed in the state register on
274 the fifteenth day of September, one thousand nine
275 hundred eighty-eight, modified by the state board of
276 health to meet the objections of the legislative rule-
277 making review committee and refiled in the state
278 register on the third day of November, one thousand
279 nine hundred eighty-eight, relating to the state board of
280 health (water wells), are authorized with the amend-
281 ment set forth below:

282 On page 2, §3.8, shall read as follows:

283 3.8 Water Well — Any excavation or penetration in
284 the ground, whether drilled, bored, cored, driven or
285 jettted that enters or passes through an aquifer for
286 purposes that may include, but are not limited to: A
287 water supply, exploration for water, dewatering or heat
288 pump wells, except that this definition shall not include
289 ground water monitoring activities and all activities for
290 the exploration, development, production, storage and
291 recovery of coal, oil and gas and other mineral resources
292 which are regulated under chapter 22, 22a or 22b of the
293 code.

294 (jj) The legislative rules filed in the state register on
295 the twenty-second day of June, one thousand nine
296 hundred eighty-eight, modified by the state board of
297 health to meet the objections of the legislative rule-
298 making review committee and refiled in the state
299 register on the fifteenth day of September, one thousand
300 nine hundred eighty-eight, relating to the state board of
301 health (plumbing requirements), are authorized.

302 (kk) The legislative rules filed in the state register on
303 the twenty-second day of June, one thousand nine
304 hundred eighty-eight, modified by the state board of
305 health to meet the objections of the legislative rule-
306 making review committee and refiled in the state

307 register on the fifteenth day of September, one thousand
308 nine hundred eighty-eight, relating to the state board of
309 health (public water supply operators), are authorized.

310 (ll) The legislative rules filed in the state register on
311 the nineteenth day of October, one thousand nine
312 hundred eighty-eight, modified by the state board of
313 health to meet the objections of the legislative rule-
314 making review committee and refiled in the state
315 register on the twentieth day of December, one thousand
316 nine hundred eighty-eight, relating to the state board of
317 health (volatile synthetic organic chemicals), are
318 authorized.

319 (mm) The legislative rules filed in the state register
320 on the second day of January, one thousand nine
321 hundred ninety, modified by the division of health to
322 meet the objections of the legislative rule-making review
323 committee and refiled in the state register on the
324 seventeenth day of January, one thousand nine hundred
325 ninety, relating to the division of health (asbestos
326 abatement licensing), are authorized.

327 (nn) The legislative rules filed in the state register on
328 the thirtieth day of August, one thousand nine hundred
329 eighty-nine, modified by the division of health to meet
330 the objections of the legislative rule-making review
331 committee and refiled in the state register on the
332 seventeenth day of November, one thousand nine
333 hundred eighty-nine, relating to the division of public
334 health (AIDS-related medical testing and confidential-
335 ity), are authorized.

336 (oo) The legislative rules filed in the state register on
337 the nineteenth day of December, one thousand nine
338 hundred eighty-nine, modified by the state board of
339 health to meet the objections of the legislative rule-
340 making review committee and refiled in the state
341 register on the twenty-fourth day of January, one
342 thousand nine hundred ninety, relating to the state
343 board of health (nursing home licensure), are
344 authorized.

345 (pp) The legislative rules filed in the state register on
346 the nineteenth day of December, one thousand nine

347 hundred eighty-nine, relating to the state board of
 348 health (licensure of behavioral health centers), are
 349 authorized.

350 (qq) The legislative rules filed in the state register on
 351 the twenty-eighth day of December, one thousand nine
 352 hundred eighty-nine, relating to the state board of
 353 health (methods and standards for chemical test for
 354 intoxication), are authorized.

355 (rr) The legislative rules filed in the state register on
 356 the twenty-third day of July, one thousand nine hundred
 357 ninety, modified by the board of health to meet the
 358 objections of the legislative rule-making review commit-
 359 tee and refiled in the state register on the fifth day of
 360 September, one thousand nine hundred ninety, relating
 361 to the board of health (fees for permits), are authorized
 362 with the amendments set forth below:

363 On page two, subsection 3.6, by striking out all of the
 364 subsection and renumbering the subsequent subsections.

365 On page four, subsection 5.4, by striking out all of the
 366 subsection and renumbering the subsequent subsections.

367 And,

368 On page six, Table 64-30c, by striking out Table 64-
 369 30c and inserting in lieu thereof a new table, to read
 370 as follows:

371

TABLE 64-30C.

372

Individual On-Site and Innovative Alternative

373

Type Sewage System Permit Fees

374

Type of System

Fees for Permit

375

Class I (New or Modified)

\$100

376

Class II (New or Modified)

\$100

377

Home Aeration Unit

\$100

378 (ss) The legislative rules filed in the state register on
 379 the seventh day of December, one thousand nine
 380 hundred ninety, modified by the board of health to meet
 381 the objections of the legislative rule-making review
 382 committee and refiled in the state register on the
 383 twenty-second day of January, one thousand nine

384 hundred ninety-one, relating to the board of health
385 (public water systems, bottled water and laboratory
386 certification), are authorized.

387 (tt) The legislative rules filed in the state register on
388 the thirteenth day of December, one thousand nine
389 hundred ninety, modified by the board of health to meet
390 the objections of the legislative rule-making review
391 committee and refiled in the state register on the
392 twenty-second day of January, one thousand nine
393 hundred ninety-one, relating to the board of health (vital
394 statistics), are authorized.

395 (uu) The legislative rules filed in the state register on
396 the seventh day of January, one thousand nine hundred
397 ninety-one, modified by the division of health to meet the
398 objections of the legislative rule-making review commit-
399 tee and refiled in the state register on the twenty-second
400 day of January, one thousand nine hundred ninety-one,
401 relating to the division of health (fees for services), are
402 authorized.

§64-5-3. Health care cost review authority.

1 (a) The legislative rules filed in the state register on
2 the twenty-first day of October, one thousand nine
3 hundred eighty-three, relating to the health care cost
4 review authority (limitation on hospital gross patient
5 revenue), are authorized.

6 (b) The legislative rules filed in the state register on
7 the nineteenth day of December, one thousand nine
8 hundred eighty-three, relating to the health care cost
9 review authority (freeze on hospital rates and granting
10 temporary rate increases), are authorized.

11 (c) The legislative rules filed in the state register on
12 the twenty-first day of December, one thousand nine
13 hundred eighty-four, relating to the health care cost
14 review authority (implementation of the utilization
15 review and quality assurance program), are authorized.

16 (d) The legislative rules filed in the state register on
17 the fifteenth day of August, one thousand nine hundred
18 eighty-four, relating to the health care cost review
19 authority (hospital cost containment methodology), are
20 authorized.

21 (e) The legislative rules filed in the state register on
22 the twenty-fifth day of November, one thousand nine
23 hundred eighty-five, modified by the West Virginia
24 health care cost review authority to meet the objections
25 of the legislative rule-making review committee and
26 refiled in the state register on the twenty-eighth day of
27 January, one thousand nine hundred eighty-six, relating
28 to the West Virginia health care cost review authority
29 (interim standards for lithotripsy services), are
30 authorized.

31 (f) The legislative rules filed in the state register on
32 the third day of September, one thousand nine hundred
33 eighty-seven, modified by the West Virginia health care
34 cost review authority to meet the objections of the
35 legislative rule-making review committee and refiled in
36 the state register on the twenty-seventh day of January,
37 one thousand nine hundred eighty-eight, relating to the
38 West Virginia health care cost review authority (exemp-
39 tions from certificate of need review), are authorized.

40 (g) The legislative rules filed in the state register on
41 the nineteenth day of September, one thousand nine
42 hundred eighty-eight, modified by the health care cost
43 review authority to meet the objections of the legislative
44 rule-making review committee and refiled in the state
45 register on the twenty-first day of February, one
46 thousand nine hundred eighty-nine, relating to the
47 health care cost review authority (financial disclosure),
48 are authorized.

49 (h) The legislative rules filed in the state register on
50 the fourteenth day of August, one thousand nine
51 hundred eighty-nine, modified by the West Virginia
52 health care cost review authority to meet the objections
53 of the legislative rule-making review committee and
54 refiled in the state register on the fifth day of December,
55 one thousand nine hundred eighty-nine, relating to the
56 West Virginia health care cost review authority (expe-
57 dited review for rate changes), are authorized with the
58 amendments set forth below:

59 On page 5, Section 4.1, after the words: "affected by
60 the increase." by inserting the following language: "The

61 hospital shall also reconcile any excesses in gross
62 revenue, gross patient revenue, gross inpatient revenue
63 or charges per discharge. Within fifteen days of
64 submission the Authority shall inform the hospital if it
65 accepts the justification for excesses provided by the
66 hospital.”

67 And,

68 On page 6, section 4.2, after the words “the excess in
69 gross outpatient revenue” by striking the period and
70 inserting the following:

71 “or if any excesses in the above categories (1 through
72 4) have been sufficiently justified to the Authority as
73 required in Section 4.1 of this rule.”

74 (i) The legislative rules filed in the state register on
75 the eleventh day of September, one thousand nine
76 hundred eighty-nine, modified by the West Virginia
77 health care cost review authority to meet the objections
78 of the legislative rule-making review committee and
79 refiled in the state register on the fifth day of December,
80 one thousand nine hundred eighty-nine, relating to the
81 West Virginia health care cost review authority (exemp-
82 tion for conversion of acute care beds to skilled nursing
83 care beds), are authorized.

84 (j) The legislative rules filed in the state register on
85 the thirtieth day of July, one thousand nine hundred
86 ninety, modified by the health care cost review authority
87 to meet the objections of the legislative rule-making
88 review committee and refiled in the state register on the
89 twenty-fifth day of September, one thousand nine
90 hundred ninety, relating to the health care cost review
91 authority (exemption for shared services), are
92 authorized.

93 (k) The legislative rules filed in the state register on
94 the thirty-first day of July, one thousand nine hundred
95 ninety, modified by the health care cost review authority
96 to meet the objections of the legislative rule-making
97 review committee and refiled in the state register on the
98 twenty-fifth day of September, one thousand nine
99 hundred ninety, relating to the health care cost review

100 authority (health services offered by health profession-
101 als), are authorized.

102 (l) The legislative rules filed in the state register on
103 the eleventh day of September, one thousand nine
104 hundred ninety, modified by the West Virginia health
105 care cost review authority to meet the objections of the
106 legislative rule-making review committee and refiled in
107 the state register on the twenty-fourth day of January,
108 one thousand nine hundred ninety-one, relating to the
109 West Virginia health care cost review authority (conver-
110 sion of acute care beds to one hundred skilled nursing
111 care beds), are authorized.

§64-5-4. West Virginia hospital finance authority.

1 (a) The legislative rules filed in the state register on
2 the tenth day of June, one thousand nine hundred
3 eighty-six, modified by the West Virginia hospital
4 finance authority to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the ninth day of January, one thousand nine
7 hundred eighty-seven, relating to the West Virginia
8 hospital finance authority (establishment of fee schedule
9 and cost allocation applicable to issuance of bonds), are
10 authorized.

11 (b) The legislative rules filed in the state register on
12 the thirtieth day of August, one thousand nine hundred
13 ninety, modified by the West Virginia hospital finance
14 authority to meet the objections of the legislative rule-
15 making review committee and refiled in the state
16 register on the seventeenth day of January, one thousand
17 nine hundred ninety-one, relating to the West Virginia
18 hospital finance authority (establishment of fee schedule
19 and cost allocations applicable to the issuance of bonds
20 by the West Virginia hospital finance authority), are
21 authorized.

§64-5-7. Division of employment security.

1 The legislative rules filed in the state register on the
2 sixth day of October, one thousand nine hundred eighty-
3 nine, modified by the commissioner of the division of
4 employment security to meet the objections of the

5 legislative rule-making review committee and refiled in
6 the state register on the thirteenth day of June, one
7 thousand nine hundred ninety, relating to the commis-
8 sioner of the division of employment security (regula-
9 tions of the commissioner of the division of employment
10 security), are authorized.

§64-5-8. Human rights commission.

1 The legislative rules filed in the state register on the
2 tenth day of August, one thousand nine hundred ninety,
3 modified by the human rights commission to meet the
4 objections of the legislative rule-making review commit-
5 tee and refiled in the state register on the twelfth day
6 of December, one thousand nine hundred ninety,
7 relating to the human rights commission (discrimination
8 against the handicapped), are authorized.

**ARTICLE 6. AUTHORIZATION FOR DEPARTMENT OF PUBLIC
SAFETY TO PROMULGATE LEGISLATIVE
RULES.**

§64-6-2. Fire commission.

§64-6-4. Division of public safety.

§64-6-5. Regional jail and correctional facility authority.

§64-6-2. Fire commission.

1 (a) The legislative rules filed in the state register on
2 the third day of January, one thousand nine hundred
3 eighty-four, relating to the state fire commission (state
4 fire code), are authorized with the amendments set forth
5 below:

6 On page 1, section 106, line 1, after the word "to" add
7 the words "personal care homes caring for five or less
8 patients or";

9 And,

10 On page 26, section 11.06 (3) A. (3), strike the period
11 at the end of the sentence and add the words "except
12 for existing sleeping rooms owned by the state and
13 located in dormitories or state parks."

14 (b) The legislative rules filed in the state register on
15 the first day of August, one thousand nine hundred
16 eighty-six, modified by the state fire commission to meet

17 the objection of the legislative rule-making review
18 committee and refiled in the state register on the
19 twenty-eighth day of October, one thousand nine
20 hundred eighty-six, relating to the state fire commission
21 (hazardous substance emergency response training
22 program), are authorized.

23 (c) The legislative rules filed in the state register on
24 the sixth day of September, one thousand nine hundred
25 eighty-eight, modified by the state fire commission to
26 meet the objections of the legislative rule-making review
27 committee and refiled in the state register on the eighth
28 day of December, one thousand nine hundred eighty-
29 eight, relating to the state fire commission (state
30 building code), are authorized.

31 (d) The legislative rules filed in the state register on
32 the fourteenth day of August, one thousand nine
33 hundred eighty-nine, modified by the state fire commis-
34 sion to meet the objections of the legislative rule-making
35 review committee and refiled in the state register on the
36 fifteenth day of January, one thousand nine hundred
37 ninety, relating to the state fire commission (electrician
38 licensing), are authorized with the following
39 amendment:

40 On page 6, section 3.03, by deleting all of subsection
41 (A) and inserting in lieu thereof the following:

42 "(A) Any person who performs electrical work with
43 respect to any property owned or leased by such person.
44 For purposes of this subparagraph: (1) 'property owner'
45 includes the property owner, lessee, and his or her
46 maintenance personnel; and, (2) 'performs electrical
47 work' includes routine maintenance, repairs, and
48 improvements to existing structures; or."

49 (e) The legislative rules filed in the state register on
50 the fourteenth day of August, one thousand nine
51 hundred eighty-nine, modified by the state fire commis-
52 sion to meet the objections of the legislative rule-making
53 review committee and refiled in the state register on the
54 twenty-fifth day of October, one thousand nine hundred
55 eighty-nine, relating to the state fire commission (fees
56 for services rendered), are authorized with the amend-

57 ment set forth below:

58 On page 1, section 2.1(G), by striking out the word
59 "underground."

60 (f) The legislative rules filed in the state register on
61 the eleventh day of August, one thousand nine hundred
62 eighty-nine, modified by the state fire commission to
63 meet the objections of the legislative rule-making review
64 committee and refiled in the state register on the
65 twenty-sixth day of October, one thousand nine hundred
66 eighty-nine, relating to the state fire commission (fire
67 code), are authorized.

68 (g) The legislative rules filed in the state register on
69 the sixteenth day of July, one thousand nine hundred
70 ninety, modified by the state fire commission to meet the
71 objections of the legislative rule-making review commit-
72 tee and refiled in the state register on the fifteenth day
73 of November, one thousand nine hundred ninety,
74 relating to the state fire commission (state building
75 code), are authorized with the amendments set forth
76 below:

77 On page two, subsection 4.1 after the words "The
78 BOCA National Property Maintenance Code, Third
79 Edition, 1990" insert the following: "": *Provided*, That
80 section PM-104.4 Right of Entry may be adopted or
81 rejected at the option of the local jurisdiction."

82 And,

83 On page two, subsection 4.1 by adding thereto a new
84 subdivision, designated subdivision 4.1.1 to read as
85 follows:

86 "4.1.1 The following structures shall not be subject to
87 inspection by local jurisdictions:

88 4.1.1.a Group U utility structures and storage sheds
89 comprising an area of not more than 150 square feet
90 which have no plumbing or electrical connections and
91 are utilized only for residential storage purposes.
92 (Examples include storage sheds that are for the
93 residential storage of lawnmowers, tools, bicycles or
94 furniture) Group U utility structures do not include

95 those utility structures and storage sheds which have
96 plumbing or electrical connections or are used for the
97 storage of explosives or other hazardous or explosive-
98 type materials.”

99 (h) The legislative rules filed in the state register on
100 the thirteenth day of August, one thousand nine hundred
101 ninety, modified by the state fire commission to meet the
102 objections of the legislative rule-making review commit-
103 tee and refiled in the state register on the fifteenth day
104 of January, one thousand nine hundred ninety-one,
105 relating to the state fire commission (state fire code), are
106 authorized.

§64-6-4. Division of public safety.

1 (a) The legislative rules filed in the state register on
2 the twenty-third day of September, one thousand nine
3 hundred eighty-three, relating to the department of
4 public safety (general orders), are authorized with the
5 amendment set forth below:

6 Page 23, §9.10, remove the period at the end of the
7 sentence and add the words “or municipalities.”

8 (b) The legislative rules filed in the state register on
9 the twenty-second day of June, one thousand nine
10 hundred eighty-four, modified by the department of
11 public safety to meet the objections of the legislative
12 rule-making review committee and refiled in the state
13 register on the fifth day of December, one thousand nine
14 hundred eighty-four, relating to the department of
15 public safety (commission on drunk driving), are
16 authorized.

17 (c) The legislative rules filed in the state register on
18 the ninth day of August, one thousand nine hundred
19 ninety, modified by the division of public safety to meet
20 the objections of the legislative rule-making review
21 committee and refiled in the state register on the
22 twentieth day of December, one thousand nine hundred
23 ninety, relating to the division of public safety (West
24 Virginia state police career progression system), are
25 authorized.

26 (d) The Legislature hereby authorizes and directs the

27 division of public safety to promulgate legislative rules
 28 relating to the requirements and qualifications for
 29 official inspection stations and the issuance of permits
 30 for the stations. Such legislative rules, in establishing
 31 requirements and qualifications for official inspection
 32 stations shall not require bay doors at such stations to
 33 be greater than eight feet in height.

§64-6-5. Regional jail and correctional facility authority.

1 The legislative rules filed in the state register on the
 2 twentieth day of December, one thousand nine hundred
 3 ninety, modified by the regional jail and correctional
 4 facility authority to meet the objections of the legislative
 5 rule-making review committee and refiled in the state
 6 register on the seventeenth day of January, one thousand
 7 nine hundred ninety-one, relating to the regional jail
 8 and correctional facility authority (public hearings and
 9 site selection for private prisons), are authorized.

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

§64-7-1. Office of alcohol beverage control commissioner.

§64-7-2. Agency of insurance commissioner.

§64-7-4. Lottery commission.

§64-7-5. Racing commission.

§64-7-6. Tax department.

§64-7-7. Office of nonintoxicating beer commissioner.

§64-7-1. Office of alcohol beverage control commissioner.

1 (a) The legislative rules filed in the state register on
 2 the thirtieth day of December, one thousand nine
 3 hundred eighty-two, relating to the alcohol beverage
 4 control commission (transportation of alcoholic bever-
 5 ages), are authorized.

6 (b) The legislative rules filed in the state register on
 7 the thirteenth day of August, one thousand nine hundred
 8 eighty-two, relating to the alcohol beverage control
 9 commissioner (lighting of licensed premises), are
 10 authorized.

11 (c) The legislative rules filed in the state register on
 12 the thirteenth day of August, one thousand nine hundred
 13 eighty-two, relating to the alcohol beverage control

14 commissioner (kitchen and dining facilities), are
15 authorized.

16 (d) The legislative rules filed in the state register on
17 the twenty-fourth day of August, one thousand nine
18 hundred eighty-two, relating to the alcohol beverage
19 control commissioner (refusal to license private clubs),
20 are authorized with the exception of subsection (a) of the
21 rules which shall be promulgated as set forth below in
22 this section as follows:

23 “(a) For purposes of this regulation, the commissioner
24 may refuse to grant any license if he has reasonable
25 cause to believe, as indicated by documented evidence,
26 that the applicant, or any officer, director or manager
27 thereof, or shareholder owning twenty percent or more
28 of its capital stock, beneficial or otherwise, or other
29 person conducting or managing the affairs of the
30 applicant or of the proposed licensed premises, in whole
31 or part:

32 (1) Is not a person of good moral character or repute;

33 (2) Has maintained a noisy, loud, disorderly or
34 unsanitary establishment;

35 (3) Has demonstrated, either by his police record or
36 by his record as former licensee under chapter sixty or
37 chapter eleven, article sixteen of the West Virginia code,
38 a lack of respect for law and order, generally, or for the
39 laws and rules governing the sale and distribution of
40 alcoholic beverages or nonintoxicating beer;

41 (4) Has the general reputation of drinking alcoholic
42 beverages to excess, or is addicted to the use of
43 narcotics; or

44 (5) Has misrepresented a material fact in applying to
45 the commissioner for a license.

46 (b) For purposes of this regulation, the commissioner
47 shall refuse to grant any license if he has reasonable
48 cause to believe, as indicated by documented evidence
49 that the applicant, or any officer, director or manager
50 thereof, or shareholder owning twenty percent or more
51 of its capital stock, beneficial or otherwise, or other

52 person conducting or managing the affairs of the
53 applicant or of the proposed licensed premises, in whole
54 or part:

55 (1) Is not eighteen years of age or older;

56 (2) Has been convicted of a felony or other crime
57 involving moral turpitude, and, upon such conviction,
58 the applicant shall not be eligible for licensure within
59 five years next preceding successful completion of all
60 conditions of probation, discharge from parole supervi-
61 sion or expiration of sentence;

62 (3) Has been convicted of violating the liquor laws of
63 any state or the United States, and, upon such convic-
64 tion, the applicant shall not be eligible for licensure
65 within five years next preceding successful completion
66 of all conditions of probation, discharge from parole
67 supervision or expiration of sentence;

68 (4) Has had any license revoked under the liquor laws
69 of any state or the United States within five years next
70 preceding the filing date of the application;

71 (5) Is not the legitimate owner of the business
72 proposed to be licensed, or other persons have ownership
73 interests in the business which have not been disclosed;

74 (6) Is a person to whom alcoholic beverages may not
75 be sold under the provisions of chapter sixty of the West
76 Virginia code;

77 (7) Has been adjudicated an incompetent;

78 (8) Is an officer or employee of the alcohol beverage
79 control commissioner of West Virginia; or

80 (9) Is violating or allowing the violation of any
81 provision of chapter sixty, chapter sixty-one or chapter
82 eleven, article sixteen of the code in its establishment
83 at the time its application for a license is pending."

84 (e) The legislative rules filed in the state register on
85 the first day of August, one thousand nine hundred
86 ninety, modified by the alcohol beverage control
87 commissioner to meet the objections of the legislative
88 rule-making review committee and refiled in the state

89 register on the eighteenth day of October, one thousand
90 nine hundred ninety, relating to the alcohol beverage
91 control commissioner (retail licensee operations), are
92 authorized with the amendment set forth below:

93 "On page twelve, section four, subsection 4.8.1, after
94 the word 'stored' by changing the period to a colon and
95 adding '*Provided*, that the commissioner may, for good
96 cause shown, permit a retail licensee holding three or
97 more private club licenses to receive and store alcoholic
98 liquors at warehouses or sites off premises.'"

99 (f) The legislative rules filed in the state register on
100 the first day of August, one thousand nine hundred
101 ninety, modified by the alcohol beverage control
102 commission to meet the objections of the legislative rule-
103 making review committee and refiled in the state
104 register on the twentieth day of November, one thousand
105 nine hundred ninety, relating to the alcohol beverage
106 control commissioner (licensing of retail liquor stores),
107 are authorized.

108 (g) The legislative rules filed in the state register on
109 the first day of August, one thousand nine hundred
110 ninety, modified by the alcohol beverage control
111 commissioner to meet the objections of the legislative
112 rule-making review committee and refiled in the state
113 register on the eighteenth day of October, one thousand
114 nine hundred ninety, relating to the alcohol beverage
115 control commissioner (private club licenses), are
116 authorized.

117 (h) The legislative rules filed in the state register on
118 the first day of August, one thousand nine hundred
119 ninety, modified by the alcohol beverage control
120 commissioner to meet the objections of the legislative
121 rule-making review committee and refiled in the state
122 register on the eighteenth day of October, one thousand
123 nine hundred ninety, relating to the alcohol beverage
124 control commissioner (bailment policies and proce-
125 dures), are authorized.

126 (i) The legislative rules filed in the state register on
127 the tenth day of August, one thousand nine hundred
128 ninety, modified by the alcohol beverage control

129 commissioner to meet the objections of the legislative
130 rule-making review committee and refiled in the state
131 register on the eighteenth day of October, one thousand
132 nine hundred ninety, relating to the alcohol beverage
133 control commissioner (farm wineries), are authorized.

134 (j) The legislative rules filed in the state register on
135 the tenth day of August, one thousand nine hundred
136 ninety, modified by the alcohol beverage control
137 commissioner to meet the objections of the legislative
138 rule-making review committee and refiled in the state
139 register on the twenty-third day of October, one
140 thousand nine hundred ninety, relating to the alcohol
141 beverage control commissioner (retail sale of wine in
142 grocery stores, wine specialty shops and private wine
143 restaurants), are authorized.

§64-7-2. Agency of insurance commissioner.

1 (a) The legislative rules filed in the state register on
2 the eighteenth day of October, one thousand nine
3 hundred eighty-three, relating to the insurance commis-
4 sioner (excess line brokers), are authorized.

5 (b) The legislative rules filed in the state register on
6 the eighteenth day of August, one thousand nine
7 hundred eighty-six, modified by the insurance commis-
8 sioner to meet the objections of the legislative rule-
9 making review committee and refiled in the state
10 register on the twelfth day of December, one thousand
11 nine hundred eighty-six, relating to the insurance
12 commissioner (examiners' compensation, qualification
13 and classification), are authorized.

14 (c) The legislative rules filed in the state register on
15 the twentieth day of February, one thousand nine
16 hundred eighty-seven, relating to the insurance commis-
17 sioner (West Virginia essential property insurance
18 association), are authorized.

19 (d) The legislative rules filed in the state register on
20 the twenty-ninth day of May, one thousand nine hundred
21 eighty-seven, relating to the insurance commissioner
22 (medical malpractice annual reporting requirements),
23 are authorized.

24 (e) The legislative rules filed in the state register on
25 the thirty-first day of July, one thousand nine hundred
26 eighty-seven, modified by the insurance commissioner to
27 meet the objections of the legislative rule-making review
28 committee and refiled in the state register on the
29 seventh day of November, one thousand nine hundred
30 eighty-seven, relating to the insurance commissioner
31 (medical malpractice loss experience and loss expense
32 reporting requirements), are authorized.

33 (f) The legislative rules filed in the state register on
34 the thirtieth day of November, one thousand nine
35 hundred eighty-eight, modified by the insurance com-
36 missioner to meet the objections of the legislative rule-
37 making review committee and refiled in the state
38 register on the twenty-first day of February, one
39 thousand nine hundred eighty-nine, relating to the
40 insurance commissioner (transitional requirements for
41 the conversion of Medicare supplement insurance
42 benefits and premiums to conform to medicare program
43 revisions), are authorized.

44 (g) The legislative rules filed in the state register on
45 the twenty-sixth day of May, one thousand nine hundred
46 eighty-nine, modified by the insurance commissioner to
47 meet the objections of the legislative rule-making review
48 committee and refiled in the state register on the
49 twenty-eighth day of September, one thousand nine
50 hundred eighty-nine, relating to the insurance commis-
51 sioner (insurance adjusters), are authorized.

52 (h) The legislative rules filed in the state register on
53 the second day of February, one thousand nine hundred
54 ninety, modified by the insurance commissioner to meet
55 the objections of the legislative rule-making review
56 committee and refiled in the state register on the
57 twenty-ninth day of May, one thousand nine hundred
58 ninety, relating to the insurance commissioner (accident
59 and sickness rate filing), are authorized.

60 (i) The legislative rules filed in the state register on
61 the tenth day of August, one thousand nine hundred
62 ninety, modified by the insurance commissioner to meet
63 the objections of the legislative rule-making review

64 committee and refiled in the state register on the ninth
65 day of October, one thousand nine hundred ninety,
66 relating to the insurance commissioner (group coordina-
67 tion of benefits), are authorized.

68 (j) The legislative rules filed in the state register on
69 the tenth day of August, one thousand nine hundred
70 ninety, modified by the insurance commissioner to meet
71 the objections of the legislative rule-making review
72 committee and refiled in the state register on the
73 seventeenth day of January, one thousand nine hundred
74 ninety-one, relating to the insurance commissioner
75 (AIDS regulations), are authorized.

76 (k) The legislative rules filed in the state register on
77 the third day of December, one thousand nine hundred
78 ninety, relating to the insurance commissioner (health
79 insurance benefits for temporomandibular and cranio-
80 mandibular disorders), are authorized.

§64-7-4. Lottery commission.

1 (a) The legislative rules filed in the state register on
2 the twenty-first day of April, one thousand nine hundred
3 eighty-seven, modified by the state lottery commission
4 to meet the objections of the legislative rule-making
5 review committee and refiled in the state register on the
6 fourteenth day of August, one thousand nine hundred
7 eighty-seven, relating to the state lottery commission
8 (state lottery), are authorized.

9 (b) The legislative rules filed in the state register on
10 the twenty-seventh day of June, one thousand nine
11 hundred ninety, modified by the state lottery commis-
12 sion to meet the objections of the legislative rule-making
13 review committee and refiled in the state register on the
14 fifth day of September, one thousand nine hundred
15 ninety, relating to the state lottery commission (state
16 lottery), are authorized.

§64-7-5. Racing commission.

1 (a) The legislative rules filed in the state register on
2 the twenty-third day of April, one thousand nine
3 hundred eighty-two, relating to the West Virginia
4 racing commission (Rule 795), are authorized.

5 (b) The legislative rules filed in the state register on
6 the twenty-third day of April, one thousand nine
7 hundred eighty-two, relating to the West Virginia
8 racing commission (Rule 819), are authorized.

9 (c) The legislative rules filed in the state register on
10 the twenty-third day of April, one thousand nine
11 hundred eighty-two, relating to the West Virginia
12 racing commission (Rule 107), are authorized.

13 (d) The legislative rules filed with the legislative rule-
14 making review committee on the tenth day of January,
15 one thousand nine hundred eighty-three, relating to the
16 West Virginia racing commission (Rule 471), are
17 authorized.

18 (e) The legislative rules filed in the state register on
19 the tenth day of January, one thousand nine hundred
20 eighty-three, relating to the West Virginia racing
21 commission (Rule 526), are authorized.

22 (f) The legislative rules filed in the state register on
23 the twentieth day of September, one thousand nine
24 hundred eighty-three, relating to the West Virginia
25 racing commission (Rule 107) greyhound racing, are
26 authorized.

27 (g) The legislative rules filed in the state register on
28 the twentieth day of September, one thousand nine
29 hundred eighty-three, relating to the West Virginia
30 racing commission (Rule 108) greyhound racing, are
31 authorized with the amendment set forth below:

32 Following the word "Association" insert a period and
33 strike the remainder of the sentence.

34 (h) The legislative rules filed in the state register on
35 the twentieth day of September, one thousand nine
36 hundred eighty-three, relating to the West Virginia
37 racing commission (Rule 108) thoroughbred racing, are
38 authorized with the amendment set forth below:

39 Following the word "Association" insert a period and
40 strike the remainder of the sentence.

41 (i) The legislative rules filed in the state register on
42 the twentieth day of September, one thousand nine

43 hundred eighty-three, relating to the West Virginia
44 racing commission (Rule 392) greyhound racing, are
45 authorized.

46 (j) The legislative rules filed in the state register on
47 the twentieth day of September, one thousand nine
48 hundred eighty-three, relating to the West Virginia
49 racing commission (Rule 455) greyhound racing, are
50 authorized.

51 (k) The legislative rules filed in the state register on
52 the twentieth day of September, one thousand nine
53 hundred eighty-three, relating to the West Virginia
54 racing commission (Rule 609A) greyhound racing, are
55 authorized.

56 (l) The legislative rules filed in the state register on
57 the twentieth day of September, one thousand nine
58 hundred eighty-three, relating to the West Virginia
59 racing commission (Rule 627) greyhound racing, are
60 authorized.

61 (m) The legislative rules filed in the state register on
62 the twentieth day of September, one thousand nine
63 hundred eighty-three, relating to the West Virginia
64 racing commission (Rule 845) thoroughbred racing, are
65 authorized.

66 (n) The legislative rules filed in the state register on
67 the ninth day of November, one thousand nine hundred
68 eighty-four, relating to the West Virginia racing
69 commission (greyhound racing — Rule 628), are
70 authorized.

71 (o) The legislative rules filed in the state register on
72 the twenty-fifth day of September, one thousand nine
73 hundred eighty-four, relating to the West Virginia
74 racing commission (greyhound racing — Rule 672), are
75 authorized.

76 (p) The legislative rules filed in the state register on
77 the ninth day of November, one thousand nine hundred
78 eighty-four, relating to the West Virginia racing
79 commission (thoroughbred racing — Rule 808), are
80 authorized.

81 (q) The legislative rules filed in the state register on
82 the twenty-fifth day of September, one thousand nine
83 hundred eighty-four, relating to the West Virginia
84 racing commission (thoroughbred racing — Rule 843),
85 are authorized.

86 (r) The legislative rules filed in the state register on
87 the sixth day of August, one thousand nine hundred
88 eighty-four, relating to the West Virginia racing
89 commission (greyhound racing — Rule 845-I), are
90 authorized.

91 (s) The legislative rules filed in the state register on
92 the third day of September, one thousand nine hundred
93 eighty-seven, modified by the West Virginia racing
94 commission to meet the objections of the legislative rule-
95 making review committee and refiled in the state
96 register on the twenty-first day of December, one
97 thousand nine hundred eighty-seven, relating to the
98 West Virginia racing commission (greyhound racing),
99 are authorized.

100 (t) The legislative rules filed in the state register on
101 the thirty-first day of July, one thousand nine hundred
102 eighty-seven, modified by the West Virginia racing
103 commission to meet the objections of the legislative rule-
104 making review committee and refiled in the state
105 register on the eighteenth day of December, one
106 thousand nine hundred eighty-seven, relating to the
107 West Virginia racing commission (thoroughbred rac-
108 ing), are authorized with the amendments set forth
109 below:

110 On page fifty-five, Section 61.3(f), by striking all of
111 subsection (f) and inserting in lieu thereof the existing
112 provisions of subsection (f) as contained in 178 CSR 1,
113 which reads as follows:

114 “All moneys held by any licensee for the payment of
115 outstanding and unredeemed pari-mutuel tickets, if not
116 claimed within ninety (90) days after the close of the
117 horse race meeting in connection with which the tickets
118 were issued, shall be turned over by the licensee to the
119 Racing Commission within fifteen (15) days after the
120 expiration of such ninety (90) day period and the

121 licensee shall give such information as the Racing
122 Commission may require concerning such outstanding
123 and unredeemed tickets; viz. The outs ledger enumer-
124 ating all outstanding tickets at the close of each meeting,
125 to contain a record of all tickets redeemed in the ninety
126 (90) day following period, together with all redeemed
127 tickets which shall bear the stamp of the cashier(s)
128 making redemption: A stamp indicating "Outs Ticket."
129 In addition, a statement to accompany said ledger and
130 tickets, setting forth the quantity and amount of each
131 denomination redeemed in the ninety (90) day period,
132 with a grand total indicating the sum paid in "Outs."
133 This sum subtracted from the outs on the closing day
134 to equal the remittance of the Association in settlement
135 of the "Out" account for the meeting."

136 (u) The legislative rules filed in the state register on
137 the ninth day of September, one thousand nine hundred
138 eighty-eight, relating to the West Virginia racing
139 commission (thoroughbred racing), are authorized.

140 (v) The legislative rules filed in the state register on
141 the eighteenth day of January, one thousand nine
142 hundred eighty-nine, modified by the West Virginia
143 racing commission to meet the objections of the legis-
144 lative rule-making review committee and refiled in the
145 state register on the twentieth day of February, one
146 thousand nine hundred eighty-nine, relating to the West
147 Virginia racing commission (greyhound racing), are
148 authorized.

149 (w) The legislative rules filed in the state register on
150 the fourth day of March, one thousand nine hundred
151 eighty-nine, modified by the West Virginia racing
152 commission to meet the objections of the legislative rule-
153 making review committee and refiled in the state
154 register on the first day of June, one thousand nine
155 hundred eighty-nine, relating to the West Virginia
156 racing commission (thoroughbred racing), are
157 authorized.

158 (x) The legislative rules filed in the state register on
159 the twenty-second day of June, one thousand nine
160 hundred eighty-nine, relating to the West Virginia

161 racing commission (greyhound racing), are authorized.

162 (y) The legislative rules filed in the state register on
163 the tenth day of August, one thousand nine hundred
164 ninety, modified by the West Virginia racing commis-
165 sion to meet the objections of the legislative rule-making
166 review committee and refiled in the state register on the
167 fourteenth day of January, one thousand nine hundred
168 ninety-one, relating to the West Virginia racing commis-
169 sion (thoroughbred racing), are authorized.

170 (z) The legislative rules filed in the state register on
171 the twenty-ninth day of October, one thousand nine
172 hundred ninety, modified by the West Virginia racing
173 commission to meet the objections of the legislative rule-
174 making review committee and refiled in the state
175 register on the fourteenth day of January, one thousand
176 nine hundred ninety-one, relating to the West Virginia
177 racing commission (greyhound racing), are authorized
178 with the amendment set forth below:

179 On pages seventy-four-a through seventy-eight, section
180 forty-five, by striking out all of subsection 45.38.

§64-7-6. Tax department.

1 (a) The legislative rules filed in the state register on
2 the fifth day of January, one thousand nine hundred
3 eighty-four, relating to the state tax commissioner
4 (appraisal of property for periodic statewide reapprai-
5 sals for ad valorem property tax purposes), are autho-
6 rized with the amendments set forth below:

7 On page 8, section 11.04 (b)(2), definition of "Active
8 Mining Property," at the end of the first paragraph
9 following the period, by adding the following: "In the
10 application of the herein provided valuation formula on
11 'active mining property,' the appropriate formula
12 calculation will be based upon the actual market to
13 which the coal from that tract and seam is currently
14 being sold, whether it is 'metallurgical' or 'steam'."

15 On page 9, section 11.04 (b)(3), definition of "Active
16 Reserves," at the end of the subsection, following the
17 period, by adding the following: "In the application of
18 the herein provided valuation formula on 'active

19 reserves,' the appropriate formula calculation will be
20 based upon the actual market to which the coal from
21 that tract and seam is currently being sold, whether it
22 is 'metallurgical' or 'steam'."

23 On page 11, section 11.04 (b)(11), definition of
24 "Mineable Coal," by striking the subsection and substi-
25 tuting in lieu thereof the following: "(11) Mineable Coal.
26 Coal which can be mined under present day mining
27 technology and economics."

28 On page 25, section 11.04 (c)(2)(C), entitled "Property
29 Tax Component," by striking the subsection and
30 inserting in lieu thereof the following: "(C) Property Tax
31 Component — This component will be derived by
32 multiplying the assessment rate by the statewide
33 average of tax rates on Class III property."

34 On page 30, section 11.04 (c)(4), entitled "Valuation of
35 Mined-Out/Unmineable/Barren Coal Properties," by
36 striking the numbers "\$5.00" and inserting in lieu
37 thereof the following: "\$1.00."

38 On page 31, section 11.04 (c)(5)(B), by striking the
39 words and numbers "Five Dollars (\$5.00)" and inserting
40 in lieu thereof the following: "One Dollar (\$1.00)."

41 On page 53, section 11.05 (h) by striking the symbol
42 and figures "\$5.00" and inserting in lieu the following:
43 "\$1.00)."

44 On page 73, section 11.06 (h) by striking the symbol
45 and figures "\$5.00" and inserting in lieu the following:
46 "\$1.00."

47 On page 81, section 11.07 (e)(15)(B)(4) at the end of the
48 second sentence remove the period after the word
49 "property" and insert the words "unless the land is used
50 for some other purpose in which case it will be taxed
51 according to its actual use."

52 On page 86, section 11.07 (k) delete all of subsection
53 (k).

54 On page 110, section 11.08 (c)(4) by striking the
55 symbol and figures "\$5.00" and inserting in lieu thereof
56 the following: "\$1.00."

57 On page 111, section 11.08 (c)(5)(B) by striking the
58 symbol and figures "\$5.00" and inserting in lieu thereof
59 the following: "\$1.00."

60 On page 115, section 11.09 (a)(3) in the first sentence,
61 insert after the word "land" the words "excluding
62 farmland."

63 (b) The legislative rules filed in the state register on
64 the twenty-eighth day of September, one thousand nine
65 hundred eighty-four, relating to the state tax commis-
66 sioner (estimated personal income tax), are authorized
67 with the amendments set forth below:

68 55.02(a)(2)(on page 182.2) line 18, after the word
69 "profession" strike the words "on his own account" and
70 the comma(,).

71 55.12(b)(1)(page 182.35) at the end of the section,
72 change the period to a comma, and add the following
73 language: "and in the case of a court appointed agent,
74 a copy of the court order of appointment is sufficient."

75 55.12(c)(page 182.36) after the word "for," strike the
76 word "erroneous."

77 (c) The legislative rules filed in the state register on
78 the twenty-eighth day of September, one thousand nine
79 hundred eighty-four, modified by the state tax commis-
80 sioner to meet the objections of the legislative rule-
81 making review committee and refiled in the state
82 register on the fourteenth day of November, one
83 thousand nine hundred eighty-four, and on the twenty-
84 first day of March, one thousand nine hundred eighty-
85 five, relating to the state tax commissioner (estimated
86 corporation net income tax), are authorized.

87 (d) The legislative rules filed in the state register on
88 the twelfth day of March, one thousand nine hundred
89 eighty-five, relating to the state tax commissioner
90 (identification and appraisal of farmland subsequent to
91 the base year of statewide reappraisal), are authorized
92 and directed to be promulgated with the following
93 amendments:

94 Title page, Subject; following the word "Farmland,"

95 insert the words “and of Structures Situated Thereon.”

96 Page i, Subject; following the word “Farmland,”
97 insert the words “and of Structures Situated Thereon.”

98 Page i, TABLE OF CONTENTS, Section 10; follow-
99 ing the words “Valuation of Farmland” add the words
100 “and of Structures Situated Thereon.”

101 Page 10.1, Title; following the word “FARMLAND”
102 insert the words “AND STRUCTURES SITUATED
103 THEREON.”

104 Page 10.1, Section 10, Title; following the word
105 “Farmland” add the words “and Structures Situated
106 Thereon.”

107 Page 10.1, Section 10.01(b); following the word
108 “farmland” insert the words “and structures situated
109 thereon.”

110 Page 10.2, Section 10.02(a), first sentence; following
111 the word “farmland” insert the words “and structures
112 situated thereon.”

113 Page 10.3, Section 10.02(b), first sentence; following
114 the word “farmland” insert the words “and structures
115 situated thereon.” Delete the words “for purposes of the
116 statewide reappraisal.”

117 Page 10.3, Section 10.02(b), last sentence; following
118 the word “farmland” insert the words “and structures
119 situated thereon.”

120 Page 10.8, Section 10.04(5)(B), last sentence; delete the
121 period and add “or the incapability to be adapted to
122 alternative uses.”

123 Page 10.9, Section 10.04(6), first sentence; following
124 the words “land currently being used” insert the words
125 “as part of a farming operation.”

126 Page 10.9, Section 10.04(6), following the last sen-
127 ence; add the sentence “For the purposes of this
128 definition, ‘contiguous tracts’ are farmlands which are
129 in close proximity, but not necessarily adjacent:
130 *Provided*, That all such contiguous tracts are operated
131 as part of the same farm management plan.”

132 Page 10.10, Section 10.04(8), is amended to read in its
133 entirety as follows:

134 “(8) Farm buildings. — The term ‘farm buildings’
135 shall mean structures which directly contribute to the
136 operation of the farm, and shall include tenant houses
137 and quarters furnished farm employees without rent as
138 a part of the terms of their employment.”

139 Page 10.11, Section 10.04; delete the word “No-
140 vember” and insert in lieu thereof the word “Sep-
141 tember.” Delete the period following the word “valua-
142 tion” and add the words, “for the assessment year
143 beginning July first of each year.”

144 Page 10.11, Section 10.04, insert the following
145 subdivision; “(12) Application Form: The application
146 form required to be filed with the assessor on or before
147 September first of each year shall require certification
148 that the farm complies with criteria set forth in Section
149 10.05(c) of these regulations, and renewal applications
150 from year to year shall be sufficient upon statement
151 certifying that no change has been made in the use of
152 farm property which would disqualify ‘farm use’
153 classification for assessment purposes.” Renumber the
154 subdivisions of Section 10.04 following the new
155 10.04(12); formerly 10.04(12) through 10.04(28), to
156 10.04(13) through 10.04(29), respectively.

157 Page 10.14, Section 10.04(28) (formerly 10.04(27));
158 following the words “woodland products” insert a
159 comma and the words “such as nuts or fruits harvested”
160 and add a comma following the words “human consump-
161 tion” on Page 10.15.

162 Page 10.16, Section 10.05, subsection (a), following the
163 words “land is used for farm purposes” by striking the
164 period and inserting in lieu thereof a colon and the
165 following: “*Provided*, That the true and actual value of
166 all farm used, occupied and cultivated by their owners
167 or bona fide tenants shall be arrived at according to the
168 fair and reasonable value of the property for the purpose
169 for which it is actually used regardless of what the value
170 of the property would be if used for some other purpose;
171 and that the true and actual value shall be arrived at

172 by giving consideration to the fair and reasonable
173 income which the same might be expected to earn under
174 normal conditions in the locality wherein situated, if
175 rented: *Provided, however,* That nothing herein shall
176 alter the method of assessment of lands or minerals
177 owned by domestic or foreign corporations.”

178 Page 10.16, Section 10.05(b), first clause; following the
179 words “following factors shall be” insert the words
180 “indicative of but not conclusive” and delete the word
181 “considered.”

182 Page 10.16, Section 10.05(b)(2); delete the period and
183 add the words “such as soil conservation, farmland
184 preservation or federal farm lending agencies.”

185 Page 10.17, Section 10.05(b)(7); delete the section and
186 insert in lieu thereof the words “(7) Whether or not the
187 farmer practices ‘custom farming’ on the land in
188 question.”

189 Page 10.17, Section 10.05(b)(9); following the word
190 “type” add a comma and insert the word “utility.”

191 Page 10.17, Section 10.05(b)(11), first sentence;
192 following the word “sales” insert the words “for nonfarm
193 uses.”

194 Page 10.17, Section 10.05(b)(12)(A); following the
195 words “part of” insert the words “or appurtenant to.”

196 Page 10.17, Section 10.05(b)(12)(B); following the
197 words “contiguous to” insert the words “or operated in
198 common with.”

199 Page 10.18, Section 10.05, subsection (c), the first
200 sentence of which is amended in its entirety to read as
201 follows: “Qualifying farmland and the structures
202 situated thereon shall be subject to farm use valuation,
203 with primary consideration being given to the income
204 which the property might be expected to earn, in the
205 locality wherein situate, if rented.”

206 Page 10.18, Section 10.05(b)(12)(B); delete the semicol-
207 ons and the words “it was purchased at the same time
208 as the tract so used.” Delete the period following the

209 word "purposes" and add the words "or any nonfarm
210 use."

211 Page 10.19, Section 10.05(c)(2); following the words
212 "*Provided*, That no" delete the word "reason" and insert
213 in lieu thereof the words "individual event."

214 Page 10.20, Section 10.05(c)(4)(C); following the words
215 "(1,000) minimum production value" insert the words
216 "or the small farm five hundred dollars (\$500) minimum
217 production and sale."

218 Page 10.23, Section 10.05(d)(3)(B), third sentence;
219 following the word "If" insert the words "timber from."
220 Delete the period following the word "purpose" and add
221 the words "or is being converted to farm production
222 uses."

223 Page 10.26, Section 10.05(f)(2) is amended in its
224 entirety to read as follows:

225 "(2) Farm buildings. — Rental value of farm buildings
226 and other improvements on the farmland shall be valued
227 by determining the replacement cost of the building or
228 structure by usual farm construction practices, and
229 farm labor standards and subtracting therefrom
230 depreciation.¹ Both of these determinations shall be
231 made in accordance with the tax department's real
232 property appraisal manual² as filed in the state register
233 in accordance with chapter 29A of the code of West
234 Virginia, 1931, as amended, and as it relates to
235 agricultural buildings and structures. One (1) acre of
236 land shall be assigned to all buildings as a unit situate
237 on the property, regardless of the actual acreage
238 occupied by such buildings and shall be appraised at its
239 farm-use valuation based on the highest class of
240 farmland present on the farm."

241 Page 10.28, Section 10.05(f)(3)(B)(1); following the
242 words "or more of the" insert the word "usual."

243 Page 10.28, Section 10.05(f)(3)(B)(2); following the
244 words "(50%) of the" insert the word "usual."

245 Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the
246 words "(50%) or more of the" insert the word "usual."

247 Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the
248 words "(50% of the" insert the word "usual."

249 Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the
250 last sentence insert the sentence "An individual em-
251 ployed other than in farming is not an unincorporated
252 business."

253 Page 10.35, Section 10.07, Title; following the word
254 "Farmland" insert the words "and Structures Situated
255 Thereon."

256 Page 10.35, Section 10.07(a), first sentence; following
257 the word "farmland" insert the words "and structures
258 situated thereon."

259 Page 10.46, Subject; following the word "Farmland"
260 insert the words "and Structures Situated Thereon."

261 (e) The legislative rules filed in the state register on
262 the twenty-second day of May, one thousand nine
263 hundred eighty-five, relating to the state tax commis-
264 sioner (rules governing the operation of a statewide
265 electronic data processing system network, to facilitate
266 administration of the ad valorem property tax on real
267 and personal property), are authorized.

268 (f) The legislative rules filed in the state register on
269 the twenty-sixth day of March, one thousand nine
270 hundred eighty-six, relating to the state tax commis-
271 sioner (listing of interests in natural resources for the
272 first statewide reappraisal; provision for penalties), are
273 authorized.

274 (g) The legislative rules filed in the state register on
275 the twenty-sixth day of March, one thousand nine
276 hundred eighty-six, modified by the state tax commis-
277 sioner to meet the objections of the legislative rule-
278 making review committee and refiled in the state
279 register on the twelfth day of February, one thousand
280 nine hundred eighty-seven, relating to the state tax
281 commissioner (review of appraisals by county commis-
282 sions sitting as administrative appraisal review boards),
283 are authorized.

284 (h) The legislative rules filed in the state register on

285 the twenty-sixth day of March, one thousand nine
286 hundred eighty-six, modified by the state tax commis-
287 sioner to meet the objections of the legislative rule-
288 making review committee and refiled in the state
289 register on the twelfth day of February, one thousand
290 nine hundred eighty-seven, relating to the state tax
291 commissioner (review of appraisals by a circuit court on
292 certiorari), are authorized with the following
293 amendment:

294 On page 3, §18.3.1 is stricken in its entirety and a new
295 §18.3.1 is inserted in lieu thereof to read as follows:

296 "18.3.1 Who May Request Review. — The property
297 owner, Tax Commissioner, protestor or intervenor may
298 request the county commission to certify the evidence
299 and remove and return the record to the circuit court
300 of the county on a writ of certiorari. Parties to the
301 proceeding wherein review by the circuit court is sought
302 shall pay costs and fees as they are incurred: *Provided,*
303 That the circuit court upon rendering judgment or
304 making any order may award costs to any party in
305 accordance with the provisions of W. Va. Code §53-3-5."

306 (i) The legislative rules filed in the state register on
307 the twenty-sixth day of March, one thousand nine
308 hundred eighty-six, modified by the state tax commis-
309 sioner to meet the objections of the legislative rule-
310 making review committee and refiled in the state
311 register on the twelfth day of February, one thousand
312 nine hundred eighty-seven, relating to the state tax
313 commissioner (administrative review of appraisals by
314 the state tax commissioner), are authorized.

315 (j) The legislative rules filed in the state register on
316 the eighteenth day of August, one thousand nine
317 hundred eighty-six, modified by the state tax commis-
318 sioner to meet the objections of the legislative rule-
319 making review committee and refiled in the state
320 register on the twelfth day of February, one thousand
321 nine hundred eighty-seven, relating to the state tax
322 commissioner (additional review and implementation of
323 property appraisals), are authorized.

324 (k) The legislative rules filed in the state register on

325 the eleventh day of August, one thousand nine hundred
326 eighty-six, relating to the state tax commissioner
327 (guidelines for assessors to assure fair and uniform
328 personal property values), are authorized.

329 (l) The legislative rules filed in the state register on
330 the eighteenth day of August, one thousand nine
331 hundred eighty-six, modified by the state tax commis-
332 sioner to meet the objections of the legislative rule-
333 making review committee and refiled in the state
334 register on the tenth day of December, one thousand
335 nine hundred eighty-six, relating to the state tax
336 commissioner (registration of transient vendors), are
337 authorized.

338 (m) The legislative rules filed in the state register on
339 the fourth day of February, one thousand nine hundred
340 eighty-six, modified by the state tax commissioner to
341 meet the objections of the legislative rule-making review
342 committee and refiled in the state register on the
343 fourteenth day of January, one thousand nine hundred
344 eighty-seven, relating to the state tax commissioner
345 (business and occupation tax), are authorized.

346 (n) The legislative rules filed in the state register on
347 the fourteenth day of August, one thousand nine
348 hundred eighty-seven, modified by the state tax commis-
349 sioner to meet the objections of the legislative rule-
350 making review committee and refiled in the state
351 register on the fourth day of November, one thousand
352 nine hundred eighty-seven, relating to the state tax
353 commissioner (telecommunications tax), are authorized.

354 (o) The legislative rules filed in the state register on
355 the fourteenth day of August, one thousand nine
356 hundred eighty-seven, relating to the state tax commis-
357 sioner (business franchise tax), are authorized.

358 (p) The legislative rules filed in the state register on
359 the seventeenth day of August, one thousand nine
360 hundred eighty-seven, modified by the state tax commis-
361 sioner to meet the objections of the legislative rule-
362 making review committee and refiled in the state
363 register on the twenty-second day of January, one
364 thousand nine hundred eighty-eight, relating to the state

365 tax commissioner (consumers sales and service tax and
366 use tax), are authorized.

367 (q) The legislative rules filed in the state register on
368 the fourteenth day of August, one thousand nine
369 hundred eighty-seven, modified by the state tax commis-
370 sioner to meet the objections of the legislative rule-
371 making review committee and refiled in the state
372 register on the thirteenth day of January, one thousand
373 nine hundred eighty-eight, relating to the state tax
374 commissioner (appraisal of property for periodic
375 statewide reappraisals for ad valorem property tax
376 purposes), are authorized.

377 (r) The legislative rules filed in the state register on
378 the fourteenth day of August, one thousand nine
379 hundred eighty-seven, modified by the state tax commis-
380 sioner to meet the objections of the legislative rule-
381 making review committee and refiled in the state
382 register on the twelfth day of January, one thousand
383 nine hundred eighty-eight, relating to the state tax
384 commissioner (severance tax), are authorized.

385 (s) The legislative rules filed in the state register on
386 the second day of September, one thousand nine
387 hundred eighty-eight, modified by the state tax commis-
388 sioner to meet the objections of the legislative rule-
389 making review committee and refiled in the state
390 register on the twenty-fourth day of February, one
391 thousand nine hundred eighty-nine, relating to the state
392 tax commissioner (solid waste assessment fee), are
393 authorized.

394 (t) The legislative rules filed in the state register on
395 the twelfth day of August, one thousand nine hundred
396 eighty-eight, modified by the state tax commissioner to
397 meet the objections of the legislative rule-making review
398 committee and refiled in the state register on the
399 twenty-first day of September, one thousand nine
400 hundred eighty-eight, relating to the state tax commis-
401 sioner (electronic data processing system network for
402 property tax administration), are authorized.

403 (u) The legislative rules filed in the state register on
404 the nineteenth day of September, one thousand nine

405 hundred eighty-eight, modified by the state tax commis-
406 sioner to meet the objections of the legislative rule-
407 making review committee and refiled in the state
408 register on the twenty-fourth day of February, one
409 thousand nine hundred eighty-nine, relating to the state
410 tax commissioner (exemption of property from ad
411 valorem property taxation), are authorized.

412 (v) The legislative rules filed in the state register on
413 the sixteenth day of September, one thousand nine
414 hundred eighty-eight, modified by the state tax commis-
415 sioner to meet the objections of the legislative rule-
416 making review committee and refiled in the state
417 register on the thirteenth day of January, one thousand
418 nine hundred eighty-nine, relating to the state tax
419 commissioner (consumers sales and service tax and use
420 tax), are authorized.

421 (w) The legislative rules filed in the state register on
422 the twenty-third day of June, one thousand nine hundred
423 eighty-nine, relating to the state tax department
424 (personal income tax), are authorized.

425 (x) The legislative rules filed in the state register on
426 the twenty-ninth day of June, one thousand nine
427 hundred eighty-nine, relating to the state tax depart-
428 ment (severance tax), are authorized.

429 (y) The legislative rules filed in the state register on
430 the fourth day of August, one thousand nine hundred
431 eighty-nine, modified by the state tax department to
432 meet the objections of the legislative rule-making review
433 committee and refiled in the state register on the
434 eleventh day of December, one thousand nine hundred
435 eighty-nine, relating to the state tax department (solid
436 waste assessment fee), are authorized.

437 (z) The legislative rules filed in the state register on
438 the fourteenth day of August, one thousand nine
439 hundred eighty-nine, modified by the department of tax
440 and revenue to meet the objections of the legislative
441 rule-making review committee and refiled in the state
442 register on the twelfth day of December, one thousand
443 nine hundred eighty-nine, relating to the department of
444 tax and revenue (business franchise tax), are authorized.

445 (aa) The legislative rules filed in the state register on
446 the eleventh day of August, one thousand nine hundred
447 eighty-nine, modified by the department of tax and
448 revenue to meet the objections of the legislative rule-
449 making review committee and refiled in the state
450 register on the eleventh day of December, one thousand
451 nine hundred eighty-nine, relating to the department of
452 tax and revenue (business and occupation tax), are
453 authorized.

454 (bb) The legislative rules filed in the state register on
455 the fourteenth day of August, one thousand nine
456 hundred eighty-nine, modified by the department of tax
457 and revenue to meet the objections of the legislative
458 rule-making review committee and refiled in the state
459 register on the nineteenth day of January, one thousand
460 nine hundred ninety, relating to the department of tax
461 and revenue (consumers sales and service tax and use
462 tax), are authorized with the amendments set forth
463 below:

464 On page eight, Section 2.28, after the word "as" by
465 inserting the words "art, science,,"

466 On pages eight and nine, Section 2.28.1, after the word
467 "intellectual" by deleting the word "or" and inserting in
468 lieu thereof the words "physical and."

469 On page nine, Section 2.28.2, by deleting the words "or
470 instruction."

471 On page nine, Section 2.28.2, after the word "training"
472 by adding the word "or."

473 On page nine, Section 2.28.2, by deleting the words "or
474 any portion of a school curriculum classified as physical
475 education."

476 On page nine, by deleting all of Section 2.28.2.1.

477 On page nine, Section 2.28.2.2, by deleting the section
478 number.

479 On page nine, Section 2.28.2.2, by deleting the words
480 "or instruction."

481 On page nine, Section 2.28.2.2, after the word

482 "training" by adding the word "or."

483 On page nine, Section 2.28.2.2, after the word
484 "conditioning" by inserting a period and striking the
485 remainder of the sentence.

486 On page one hundred twelve, Section 59.2, after the
487 words "sales of the service of cremation" by adding the
488 words "sales on perpetual care trust fund deposits."

489 And,

490 On page one hundred twenty-eight, Section 91.2, after
491 the words "include food" by inserting the following: "
492 as defined in section 2.30 of this rule."

493 (cc) The legislative rules filed in the state register on
494 the eleventh day of August, one thousand nine hundred
495 eighty-nine, modified by the department of tax and
496 revenue to meet the objections of the legislative rule-
497 making review committee and refiled in the state
498 register on the eleventh day of December, one thousand
499 nine hundred eighty-nine, relating to the department of
500 tax and revenue (motor carrier road tax), are
501 authorized.

502 (dd) The legislative rules filed in the state register on
503 the eleventh day of August, one thousand nine hundred
504 eighty-nine, modified by the department of tax and
505 revenue to meet the objections of the legislative rule-
506 making review committee and refiled in the state
507 register on the eleventh day of December, one thousand
508 nine hundred eighty-nine, relating to the department of
509 tax and revenue (gasoline and special fuel excise tax),
510 are authorized.

511 (ee) The legislative rules filed in the state register on
512 the eleventh day of August, one thousand nine hundred
513 eighty-nine, modified by the department of tax and
514 revenue to meet the objections of the legislative rule-
515 making review committee and refiled in the state
516 register on the eleventh day of December, one thousand
517 nine hundred eighty-nine, relating to the department of
518 tax and revenue (corporation net income tax), are
519 authorized.

520 (ff) The legislative rules filed in the state register on
521 the eleventh day of August, one thousand nine hundred
522 eighty-nine, modified by the department of tax and
523 revenue to meet the objections of the legislative rule-
524 making review committee and refiled in the state
525 register on the eleventh day of December, one thousand
526 nine hundred eighty-nine, relating to the department of
527 tax and revenue (soft drinks tax), are authorized.

528 (gg) The legislative rules filed in the state register on
529 the twenty-first day of February, one thousand nine
530 hundred ninety-one, relating to the state tax commis-
531 sioner (business investment and jobs expansion tax
532 credit, corporations headquarters relocation tax credit,
533 and small business tax credit), are authorized.

§64-7-7. Office of nonintoxicating beer commissioner.

1 The legislative rules filed in the state register on the
2 tenth day of August, one thousand nine hundred ninety,
3 modified by the office of nonintoxicating beer commis-
4 sioner to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the eighteenth day of October, one thousand
7 nine hundred ninety, relating to the office of nonintox-
8 icating beer commissioner (nonintoxicating beer licens-
9 ing and operations procedures), are authorized with the
10 amendment set forth below:

11 On page fifteen, section 6.2.3.1, by striking the words
12 "at least fifty percent of the members of the team are
13 employees of such brewer or distributor and".

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

§64-8-1. Division of highways.

1 (a) The legislative rules filed in the state register on
2 the twenty-first day of October, one thousand nine
3 hundred eighty-three, relating to the commissioner of
4 highways (transportation of hazardous waste by high-
5 way transporters), are authorized with the amendments
6 set forth below:

7 Pages 3 and 7, after "40 CFR part 262" add the words

8 “as amended through March 8, 1986,.”

9 Page 7, after “49 CFR parts 171-179” add the words
10 “as amended through March 8, 1986,” and,

11 Page 11, after “49 CFR part 171.16” add the words
12 “as amended through March 8, 1986.”

13 (b) The legislative rules filed in the state register on
14 the tenth day of August, one thousand nine hundred
15 eighty-four, relating to the commissioner of highways
16 (construction and reconstruction of state roads), are
17 authorized with the amendments set forth below:

18 Page 16, Sec. 8.08, line 21, (unnumbered), by inserting
19 after the word “all” the following language: “reasonable
20 and necessary” and after the word “project” inserting
21 the following language: “by the Railroad.”

22 Page 16, Sec. 8.08, line 22, (unnumbered), after the
23 word “the” by striking the words “Railroad’s Chief.”

24 Page 19, Sec. 8.08, line 25, (unnumbered), by striking
25 “Railroad’s Chief” and adding the following new
26 language:

27 “Any approval by the Department of any activity by
28 the Contractor upon the right-of-way or premises of any
29 Railroad which is provided for in this Section (8.08)
30 (including, but not limited to, approval of work,
31 methods, or procedures of work to be done, and the
32 condition of premises after completion of work by the
33 Contractor) shall in no way create any liability by the
34 Department to the Railroad except to the extent
35 provided otherwise by law and the Contractor shall,
36 during all periods of construction and thereafter,
37 indemnify and save harmless the department from any
38 and all liability to the Railroad or any third parties for
39 any damages as a result of the work of the Contractor,
40 the methods and procedures for performing work, the
41 failure of the Contractor to properly remove equipment,
42 surplus material and other debris upon the Railroad
43 premises, or the condition of the premises of the
44 Railroad during construction or after completion of
45 construction by the Contractor as approved by the
46 Department or otherwise.”

47 Page 18, Sec. 8.08, subdivision (a), line 22, (unnum-
48 bered), by striking the words "single limit" and
49 inserting in lieu thereof the following language: "per
50 occurrence."

51 Page 19, Sec. 8.08, subdivision (b), line 8, (unnum-
52 bered), by striking the words "single limit" and
53 inserting in lieu thereof the following language: "per
54 occurrence."

55 Page 19, Sec. 8.08, subdivision (c), line 18, (unnum-
56 bered), by inserting after the word "occurrence" the
57 following language: "of"; and after the word "injury"
58 insert a comma and strike the word "or."

59 (c) The legislative rules filed in the state register on
60 the seventh day of September, one thousand nine
61 hundred eighty-four, modified by the commissioner of
62 highways to meet the objections of the legislative rule-
63 making review committee and refiled in the state
64 register on the fifth day of October, one thousand nine
65 hundred eighty-four, relating to the commissioner of
66 highways (transportation of hazardous waste), are
67 authorized with the amendment set forth below:

68 Page 5, amend §3.01 by adding thereto a new
69 subsection, designated subsection (4), to read as follows:
70 "(4) Before accepting hazardous waste from a rail
71 transporter, a highway transporter must sign and date
72 the manifest and provide a copy to the rail transporter."

73 (d) The legislative rules filed in the state register on
74 the fourteenth day of August, one thousand nine
75 hundred eighty-four, modified by the commissioner of
76 highways to meet the objections of the legislative rule-
77 making review committee and refiled in the state
78 register on the fifth day of October, one thousand nine
79 hundred eighty-four, relating to the commissioner of
80 highways (disqualification and suspension of prequali-
81 fied contractors), are authorized.

82 (e) The legislative rules filed in the state register on
83 the twelfth day of December, one thousand nine hundred
84 eighty-five, relating to the commissioner of highways
85 (transportation of hazardous wastes by vehicle upon the

86 roads and highways of this state), are authorized with
87 the amendments set forth below:

88 On page 18, the first line of §3.03 shall read as follows:

89 "3.03. Transporters who only accept Hazardous Waste
90 from."

91 (f) The legislative rules filed in the state register on
92 the first day of December, one thousand nine hundred
93 eighty-seven, modified by the commissioner of highways
94 to meet the objections of the legislative rule-making
95 review committee and refiled in the state register on the
96 fourteenth day of January, one thousand nine hundred
97 eighty-eight, relating to the commissioner of highways
98 (traffic and safety rules and regulations), are authorized
99 with the amendment set forth below:

100 On page 8, section 7.2, line 9, (unnumbered), by
101 striking everything after the word "structures."

102 (g) The legislative rules filed in the state register on
103 the first day of December, one thousand nine hundred
104 eighty-seven, relating to the commissioner of highways
105 (construction and reconstruction of state roads), are
106 authorized.

107 (h) The legislative rules filed in the state register on
108 the twenty-fifth day of February, one thousand nine
109 hundred eighty-seven, modified by the commissioner of
110 highways to meet the objections of the legislative rule-
111 making review committee and refiled in the state
112 register on the twenty-third day of November, one
113 thousand nine hundred eighty-seven, relating to the
114 commissioner of highways (transportation of hazardous
115 wastes upon the roads and highways), are authorized.

116 (i) The legislative rules filed in the state register on
117 the fourteenth day of August, one thousand nine
118 hundred eighty-nine, modified by the division of
119 highways to meet the objections of the legislative rule-
120 making review committee and refiled in the state
121 register on the seventh day of December, one thousand
122 nine hundred eighty-nine, relating to the division of
123 highways (use of state road rights-of-way and areas
124 adjacent thereto), are authorized with the amendments

125 set forth below:

126 On Pages 14 and 15, Section 7.5, by deleting the
127 following language:

128 "Upon receipt of a permit application an application
129 number shall be assigned by the Division of Highways.
130 The applicant shall be notified of the temporary
131 application number and shall then be required to
132 publish a Class II legal advertisement in the newspaper(s)
133 serving the area where the proposed outdoor
134 advertising sign, display or device is proposed to be
135 located. A copy of the certificate of publication shall be
136 provided to the Department within ten (10) days of the
137 final publication date.

138 "As a minimum the advertisement shall include the
139 application number, the location (including ownership of
140 the property upon which the sign is to be placed) and
141 shall notify the public that comments will be received
142 by the Division of Highways, Highway Services Section,
143 until 10 days after the final publication. The advertise-
144 ment shall also state that all comments must include the
145 specific application number to which they refer.

146 "Any person who claims to be affected by the proposed
147 sign may submit written comments to the Division of
148 Highways, Highway Services Section, and may request
149 a public hearing within ten days of the final publication.
150 Within ten working days of the close of the comment
151 period the Division shall determine whether to approve,
152 deny, or hold a public hearing for said permit.

153 "When the Division determines that a public hearing
154 is required it shall notify the person(s) who requested
155 the hearing and the permit applicant. The Division shall
156 cause notice to be published and hold the hearing in
157 accordance with Administrative Regulations, Commis-
158 sioner of Highways, Chapter 17-2A, Series I (1982),
159 Section 3, Hearing Procedures (hereinafter WV Adm.
160 Reg. 17-2A).

161 "The Division Administrator shall assess the Div-
162 ision's costs of the hearing against the permit applicant
163 or against the party requesting the hearing if he finds

164 that either the application for the permit or the request
165 for hearing was filed in bad faith.

166 "Any party adversely affected by the final decision of
167 the Division Administrator may apply for judicial
168 review through application for a writ of certiorari to the
169 Circuit Court of Kanawha County in accordance with W.
170 Va. Code §53-3-1 and W. Va. Code §14-2-2.

171 "The regulations in the preceding six paragraphs
172 relating to publication of notice of an application,
173 comments on a pending application, notice of hearing,
174 hearing on permit, assessment of costs and judicial
175 review shall not apply to an application for a permit for
176 an advertising sign, display or device to be located
177 within the boundaries of an incorporated municipality
178 or of a county-zoned commercial or industrial area."

179 (j) The legislative rules filed in the state register on
180 the tenth day of August, one thousand nine hundred
181 eighty-nine, modified by the division of highways to
182 meet the objections of the legislative rule-making review
183 committee and refiled in the state register on the
184 seventh day of November, one thousand nine hundred
185 eighty-nine, relating to the division of highways
186 (construction and reconstruction of state roads), are
187 authorized.

188 (k) The legislative rules filed in the state register on
189 the fourteenth day of August, one thousand nine
190 hundred eighty-nine, modified by the division of
191 highways to meet the objections of the legislative rule-
192 making review committee and refiled in the state
193 register on the seventh day of December, one thousand
194 nine hundred eighty-nine, relating to the division of
195 highways (acquisition, disposal, lease and management
196 of real property and appurtenant structures and
197 relocation assistance), are authorized.

198 (l) The legislative rules filed in the state register on
199 the seventh day of September, one thousand nine
200 hundred ninety, modified by the division of highways to
201 meet the objections of the legislative rule-making review
202 committee and refiled in the state register on the
203 eighteenth day of January, one thousand nine hundred

204 ninety-one, relating to the division of highways (traffic
205 and safety rules and regulations), are authorized.

**ARTICLE 9. AUTHORIZATION FOR MISCELLANEOUS AGEN-
CIES AND BOARDS TO PROMULGATE LEGISLA-
TIVE RULES.**

- §64-9-1. Commissioner of agriculture.
- §64-9-3. Attorney general.
- §64-9-5. Board of barbers and beauticians.
- §64-9-10. West Virginia board of dental examiners.
- §64-9-12. West Virginia state board of registration for professional engineers.
- §64-9-15. State board of examiners of land surveyors.
- §64-9-16. Board of medicine.
- §64-9-18. Board of examiners for registered professional nurses.
- §64-9-20. Board of pharmacy.
- §64-9-24. Secretary of state.
- §64-9-26. State treasurer.
- §64-9-28. West Virginia cable television advisory board.

§64-9-1. Commissioner of agriculture.

- 1 (a) The legislative rules filed in the state register on
2 the sixth day of April, one thousand nine hundred
3 eighty-three, relating to the commissioner of agriculture
4 (schedule of charges for inspection services: fruit), are
5 authorized.
- 6 (b) The legislative rules filed in the state register on
7 the third day of August, one thousand nine hundred
8 eighty-three, relating to the commissioner of agriculture
9 (licensing of auctioneers), are authorized.
- 10 (c) The legislative rules filed in the state register on
11 the eighth day of February, one thousand nine hundred
12 eighty-four, relating to the commissioner of agriculture
13 (conduct of beef industry self-improvement assessment
14 program referendum), are authorized.
- 15 (d) The legislative rules filed in the state register on
16 the fourth day of June, one thousand nine hundred
17 eighty-four, relating to the commissioner of agriculture
18 (feeding untreated garbage to swine), are authorized.
- 19 (e) The legislative rules filed in the state register on
20 the fourth day of June, one thousand nine hundred
21 eighty-four, relating to the commissioner of agriculture
22 (registration, taxation and control of dogs), are

23 authorized.

24 (f) The legislative rules filed in the state register on
25 the first day of November, one thousand nine hundred
26 eighty-four, relating to the commissioner of agriculture
27 (public markets), are authorized.

28 (g) The legislative rules filed in the state register on
29 the tenth day of September, one thousand nine hundred
30 eighty-four, relating to the commissioner of agriculture
31 (noxious weed rules), are authorized.

32 (h) The legislative rules filed in the state register on
33 the fourth day of June, one thousand nine hundred
34 eighty-four, relating to the commissioner of agriculture
35 (animal disease control), are authorized.

36 (i) The legislative rules filed in the state register on
37 the fifth day of January, one thousand nine hundred
38 eighty-four, relating to the commissioner of agriculture
39 (use of certain picloram products), are authorized.

40 (j) The legislative rules filed in the state register on
41 the eighth day of March, one thousand nine hundred
42 eighty-five, relating to the commissioner of agriculture
43 (increasing certain fees by rules and regulations), are
44 authorized.

45 (k) The legislative rules filed in the state register on
46 the thirteenth day of January, one thousand nine
47 hundred eighty-six, modified by the commissioner of
48 agriculture to meet the objections of the legislative rule-
49 making review committee and refiled in the state
50 register on the thirty-first day of January, one thousand
51 nine hundred eighty-six, relating to the commissioner of
52 agriculture (licensing of livestock dealers), are
53 authorized.

54 (l) The legislative rules filed in the state register on
55 the eighteenth day of June, one thousand nine hundred
56 eighty-six, modified by the commissioner of agriculture
57 to meet the objections of the legislative rule-making
58 review committee and refiled in the state register on the
59 fifth day of January, one thousand nine hundred eighty-
60 seven, relating to the commissioner of agriculture (West
61 Virginia pesticide use and application act), are

62 authorized.

63 (m) The legislative rules filed in the state register on
64 the eighteenth day of August, one thousand nine
65 hundred eighty-six, modified by the director of the
66 division of forestry of the department of agriculture to
67 meet the objections of the legislative rule-making review
68 committee and refiled in the state register on the fifth
69 day of January, one thousand nine hundred eighty-
70 seven, relating to the director of the division of forestry
71 of the department of agriculture (ginseng), are
72 authorized.

73 (n) The legislative rules filed in the state register on
74 the tenth day of April, one thousand nine hundred
75 eighty-seven, relating to the commissioner of agriculture
76 (schedule of charges for inspection services: fruit), are
77 authorized.

78 (o) The legislative rules filed in the state register on
79 the thirteenth day of August, one thousand nine hundred
80 eighty-seven, modified by the commissioner of agricul-
81 ture to meet the objections of the legislative rule-making
82 review committee and refiled in the state register on the
83 eighth day of September, one thousand nine hundred
84 eighty-seven, relating to the commissioner of agriculture
85 (animal disease control), are authorized.

86 (p) The legislative rules filed in the state register on
87 the fifteenth day of September, one thousand nine
88 hundred eighty-eight, relating to the commissioner of
89 agriculture (sale and distribution of commercial fertil-
90 izer), are authorized.

91 (q) The legislative rules filed in the state register on
92 the fifteenth day of September, one thousand nine
93 hundred eighty-eight, modified by the commissioner of
94 agriculture to meet the objections of the legislative rule-
95 making review committee and refiled in the state
96 register on the twenty-sixth day of October, one
97 thousand nine hundred eighty-eight, relating to the
98 commissioner of agriculture (animal disease control),
99 are authorized.

100 (r) The legislative rules filed in the state register on

101 the fifteenth day of May, one thousand nine hundred
102 eighty-nine, modified by the commissioner of agricul-
103 ture to meet the objections of the legislative rule-making
104 review committee and refiled in the state register on the
105 twenty-first day of August, one thousand nine hundred
106 eighty-nine, relating to the commissioner of agriculture
107 (production of milk and cream for manufacturing
108 purposes), are authorized.

109 (s) The legislative rules filed in the state register on
110 the seventh day of August, one thousand nine hundred
111 eighty-nine, modified by the commissioner of agricul-
112 ture to meet the objections of the legislative rule-making
113 review committee and refiled in the state register on the
114 twenty-third day of October, one thousand nine hundred
115 eighty-nine, relating to the commissioner of agriculture
116 (animal disease control), are authorized.

117 (t) The legislative rules filed in the state register on
118 the tenth day of August, one thousand nine hundred
119 ninety, modified by the commissioner of agriculture to
120 meet the objections of the legislative rule-making review
121 committee and refiled in the state register on the fifth
122 day of October, one thousand nine hundred ninety,
123 relating to the commissioner of agriculture (meat
124 inspection), are authorized.

125 (u) The legislative rules filed in the state register on
126 the tenth day of August, one thousand nine hundred
127 ninety, modified by the commissioner of agriculture to
128 meet the objections of the legislative rule-making review
129 committee and refiled in the state register on the third
130 day of October, one thousand nine hundred ninety,
131 relating to the commissioner of agriculture (agricultural
132 liming materials), are authorized.

133 (v) The legislative rules filed in the state register on
134 the tenth day of August, one thousand nine hundred
135 ninety, modified by the commissioner of agriculture to
136 meet the objections of the legislative rule-making review
137 committee and refiled in the state register on the third
138 day of October, one thousand nine hundred ninety,
139 relating to the commissioner of agriculture (public
140 markets), are authorized.

141 (w) The legislative rules filed in the state register on
142 the nineteenth day of September, one thousand nine
143 hundred ninety, modified by the commissioner of
144 agriculture to meet the objections of the legislative rule-
145 making review committee and refiled in the state
146 register on the ninth day of November, one thousand
147 nine hundred ninety, relating to the commissioner of
148 agriculture (animal disease control), are authorized.

§64-9-3. Attorney general.

1 (a) The legislative rules filed in the state register on
2 the sixth day of December, one thousand nine hundred
3 eighty-four, relating to the attorney general (third party
4 dispute mechanisms), are authorized.

5 (b) The legislative rules filed in the state register on
6 the ninth day of January, one thousand nine hundred
7 eighty-five, relating to the attorney general (fair
8 treatment of crime victims and witnesses), are
9 authorized.

10 (c) The legislative rules filed in the state register on
11 the nineteenth day of September, one thousand nine
12 hundred eighty-six, modified by the attorney general to
13 meet the objections of the legislative rule-making review
14 committee and refiled in the state register on the first
15 day of December, one thousand nine hundred eighty-six,
16 relating to the attorney general (prevention of unfair or
17 deceptive acts or practices in home improvement and
18 home construction transactions), are authorized. These
19 rules were proposed by the attorney general pursuant
20 to section one hundred three, article six and section one
21 hundred two, article seven of chapter forty-six-a of this
22 code with the following amendments:

23 "Amending the title to the proposed legislative rule
24 wherever said title may appear, on lines three and four
25 thereof, by striking the words 'and home construction'.

26 On the index page following '3.' by striking the
27 words 'and home construction'.

28 On page 1, §1.2, line three, after the first word
29 "transactions" on line three, by striking the comma and
30 the words "and home construction transactions" and on

31 line five, by striking the period and inserting the words
32 “but shall not cover new construction of single-family
33 dwellings or rebuilding all or substantially all of an
34 existing or preexisting single-family dwelling.”

35 Page 2, section 2.2 by striking all of lines seven and
36 eight and inserting in lieu thereof the following:

37 ‘unless: (a) it appears in printed or typed face larger
38 than the largest type used in the written contract,
39 apart’.

40 On page 2, section 2.4, by striking all of section 2.4
41 and inserting in lieu thereof a new section 2.4, to read
42 as follows:

43 “2.4 ‘Home Construction’ means, for the purpose of
44 this Rule, the repair, remodeling or the building of
45 additions to existing single-family dwelling units,
46 including single-family homes, condominium units or
47 any other dwelling unit to be used by any person
48 primarily for personal or family use, but shall not
49 include new single-family home construction or the
50 rebuilding of all or substantially all of an existing or
51 preexisting single-family dwelling.”

52 Page 3, section 2.6, on line two thereof, after the
53 second comma by inserting the word “replacement.”

54 Page 3, section 3, by striking the words “and home
55 construction” from the section heading.

56 Page 3, section 3.1, lines one and two, by striking the
57 words “or home construction.”

58 Page 4, section 3.1.4, on lines one and two thereof, by
59 striking the words “or home construction.”

60 Page 4, section 3.1.8, on line two thereof, by striking
61 the words “or home construction.”

62 Page 4, section 3.1.9, on lines two and three thereof,
63 by striking the words “or home construction.”

64 Page 5, section 3.1.12, on lines one and two thereof,
65 by striking the words “or home construction.”

66 Page 6, section 3.1.26, by striking all of section 3.1.26

67 and renumbering the subsequent subsections.

68 Page 7, section 3.1.29, on lines one and two thereof,
69 by striking the words "or home construction."

70 Page 7, section 3.1.29, on line six thereof, following the
71 word "contract" by inserting a period and striking the
72 remainder of the section.

73 Page 7, following section 3.1.29 by adding a new
74 section to be designated section 3.1.29, to read as follows:

75 "failed to file a certificate in the office of the Clerk
76 of the County Commission in the county in which the
77 principal place of business of the seller is located, setting
78 forth the assumed name in or by which the business is
79 being conducted in conformity with the provisions of
80 Chapter 47, Article 8, Section 2 of the Code of West
81 Virginia, 1931, as amended."

82 Page 7, section 3.2, on lines two and three thereof, by
83 striking the words, "or home solicitation sale of home
84 construction" and the comma on line three.

85 Page 9, section 4.1, on line eight thereof, by deleting
86 the period and inserting the following:

87 'to the extent permitted by statute'.

88 Page 10, section 4.2, on line 9 thereof, by striking the
89 period and inserting the following:

90 'to the extent permitted by statute'.

91 (d) The legislative rules filed in the state register on
92 the twenty-third day of September, one thousand nine
93 hundred eighty-six, modified by the attorney general to
94 meet the objections of the legislative rule-making review
95 committee and refiled in the state register on the first
96 day of December, one thousand nine hundred eighty-six,
97 relating to the attorney general (prevention of unfair or
98 deceptive acts or practices in the sale of damaged goods
99 or products), are authorized.

100 (e) The legislative rules filed in the state register on
101 the twenty-third day of September, one thousand nine
102 hundred eighty-seven, modified by the attorney general
103 to meet the objections of the legislative rule-making

104 review committee and refiled in the state register on the
105 twenty-fifth day of November, one thousand nine
106 hundred eighty-seven, relating to the attorney general
107 (administration of preneed burial contracts), are
108 authorized with the following amendments set forth
109 below:

110 On page 9, section 8.2, by striking the words “within
111 thirty days after the death of a contract beneficiary,”
112 and inserting in lieu thereof the following: “On or before
113 the first day of January and the first day of July of each
114 year,” and after the word “provided” by striking the
115 comma and inserting in lieu thereof “after the death of
116 any contract beneficiary during the previous six-month
117 period,”;

118 On page 12, section 9.7, by striking all of 9.7;

119 Beginning on page 15, by striking the entirety of
120 section 15;

121 And,

122 Beginning on page 18, by striking the entirety of
123 section 16, and by renumbering the remaining sections.

124 (f) The legislative rules filed in the state register on
125 the eleventh day of August, one thousand nine hundred
126 eighty-nine, modified by the attorney general to meet
127 the objections of the legislative rule-making review
128 committee and refiled in the state register on the
129 twenty-sixth day of October, one thousand nine hundred
130 eighty-nine, relating to the attorney general (allowing
131 persons who are indirectly injured by violations of the
132 West Virginia antitrust act to recover damages), are
133 authorized.

134 (g) The legislative rules filed in the state register on
135 the fourteenth day of August, one thousand nine
136 hundred eighty-nine, modified by the attorney general
137 to meet the objections of the legislative rule-making
138 review committee and refiled in the state register on the
139 fifteenth day of December, one thousand nine hundred
140 eighty-nine, relating to the attorney general (health
141 spas), are authorized.

142 (h) The legislative rules filed in the state register on
143 the tenth day of August, one thousand nine hundred
144 ninety, relating to the attorney general (authorizing the
145 attorney general to require persons upon whom subpo-
146 enas are served to answer written questions under oath),
147 are authorized.

148 (i) The legislative rules filed in the state register on
149 the tenth day of August, one thousand nine hundred
150 ninety, relating to the attorney general (obtaining
151 assistance of public officials in investigations and the
152 commencement of proceedings to compel compliance),
153 are authorized.

154 (j) The legislative rules filed in the state register on
155 the tenth day of August, one thousand nine hundred
156 ninety, modified by the attorney general to meet the
157 objections of the legislative rule-making review commit-
158 tee and refiled in the state register on the twentieth day
159 of November, one thousand nine hundred ninety,
160 relating to the attorney general (limitation of action and
161 recovery of investigative costs and a reasonable attor-
162 ney's fee by the attorney general in an enforcement
163 action), are authorized.

164 (k) The legislative rules filed in the state register on
165 the tenth day of August, one thousand nine hundred
166 ninety, modified by the attorney general to meet the
167 objections of the legislative rule-making review commit-
168 tee and refiled in the state register on the twenty-third
169 day of January, one thousand nine hundred ninety-one,
170 relating to the attorney general (regulated business
171 exemption under the West Virginia antitrust act), are
172 authorized.

173 (l) The legislative rules filed in the state register on
174 the tenth day of August, one thousand nine hundred
175 ninety, modified by the attorney general to meet the
176 objections of the legislative rule-making review commit-
177 tee and refiled in the state register on the twenty-second
178 day of January, one thousand nine hundred ninety-one,
179 relating to the attorney general (defining the term
180 "federal antitrust laws" and prohibiting tying and
181 reciprocity), are authorized.

§64-9-5. Board of barbers and beauticians.

1 (a) The legislative rules filed in the state register on
2 the tenth day of June, one thousand nine hundred
3 eighty-eight, modified by the board of barbers and
4 beauticians to meet the objections of the legislative rule-
5 making review committee and refiled in the state
6 register on the eighth day of December, one thousand
7 nine hundred eighty-eight, relating to the board of
8 barbers and beauticians (minimum curriculum for
9 schools of barbering), are authorized with the amend-
10 ment set forth below:

11 On page 9, by inserting a new section, designated
12 section 3-6-14, to read as follows:

13 “§3-6-14. **Repeal of rule** — This rule will automat-
14 ically be repealed on July 1, 1991, unless extended prior
15 to that date by an act of the Legislature.”

16 (b) The legislative rules filed in the state register on
17 the tenth day of June, one thousand nine hundred
18 eighty-eight, modified by the board of barbers and
19 beauticians to meet the objections of the legislative rule-
20 making review committee and refiled in the state
21 register on the eighth day of December, one thousand
22 nine hundred eighty-eight, relating to the board of
23 barbers and beauticians (qualifications, training,
24 examination and registration of instructors in barbering
25 and beauty culture), are authorized with the amendment
26 set forth below:

27 On page 6, by inserting a new section, designated
28 section 3-2-9, to read as follows:

29 “§3-2-9. **Repeal of rule** — This rule will automat-
30 ically be repealed on July 1, 1991, unless extended prior
31 to that date by an act of the Legislature.”

32 (c) The legislative rules filed in the state register on
33 the tenth day of June, one thousand nine hundred
34 eighty-eight, modified by the board of barbers and
35 beauticians to meet the objections of the legislative rule-
36 making review committee and refiled in the state
37 register on the eighth day of December, one thousand
38 nine hundred eighty-eight, relating to the board of

39 barbers and beauticians (operation of barber shops and
40 schools of barbering), are authorized with the amend-
41 ment set forth below:

42 On page 5, by inserting a new section, designated
43 section 3-3-6, to read as follows:

44 “§3-3-6. **Repeal of rule** — This rule will automat-
45 ically be repealed on July 1, 1991, unless extended prior
46 to that date by an act of the Legislature.”

47 (d) The legislative rules filed in the state register on
48 the tenth day of June, one thousand nine hundred
49 eighty-eight, modified by the board of barbers and
50 beauticians to meet the objections of the legislative rule-
51 making review committee and refiled in the state
52 register on the eighth day of December, one thousand
53 nine hundred eighty-eight, relating to the board of
54 barbers and beauticians (curriculum and minimum
55 requirements, subjects and hour schedule, rules and
56 regulations for schools of beauty culture operation in
57 West Virginia: joint barbers and beauticians license),
58 are authorized with the amendments set forth below:

59 On page 7, by inserting a new section, designated
60 section 3-1-11, to read as follows:

61 “§3-1-11. **Repeal of rule** — This rule will automat-
62 ically be repealed on July 1, 1991, unless extended prior
63 to that date by an act of the Legislature.”

64 (e) The legislative rules filed in the state register on
65 the tenth day of June, one thousand nine hundred
66 eighty-eight, modified by the board of barbers and
67 beauticians to meet the objections of the legislative rule-
68 making review committee and refiled in the state
69 register on the eighth day of December, one thousand
70 nine hundred eighty-eight, relating to the board of
71 barbers and beauticians (operation of beauty shops and
72 schools of beauty culture), are authorized with the
73 amendments set forth below:

74 On page 4, by inserting a new section, designated
75 section 3-4-6, to read as follows:

76 “§3-4-6. **Repeal of rule** — This rule will automat-

77 ically be repealed on July 1, 1991, unless extended prior
78 to that date by an act of the Legislature.”

79 On page 4, by inserting a new subsection, designated
80 subsection 3.25, to read as follows:

81 “3.25 Notwithstanding any law to the contrary or
82 interpretation of law to the contrary, any licensed
83 beautician may trim beards or mustaches.”

84 (f) The legislative rules filed in the state register on
85 the tenth day of June, one thousand nine hundred
86 eighty-eight, modified by the board of barbers and
87 beauticians to meet the objections of the legislative rule-
88 making review committee and refiled in the state
89 register on the eighth day of December, one thousand
90 nine hundred eighty-eight, relating to the board of
91 barbers and beauticians (licensing schools of barbering
92 or beauty culture), are authorized with the amendments
93 set forth below:

94 On page 2, subsection 4.1, by deleting subdivision (b)
95 and relettering the remaining subdivisions.

96 And,

97 On page 6, by inserting a new section, designated
98 section 3-5-8, to read as follows:

99 “§3-5-8. **Repeal of rule** — This rule will automat-
100 ically be repealed on July 1, 1991, unless extended prior
101 to that date by an act of the Legislature.”

102 (g) The legislative rules filed in the state register on
103 the tenth day of August, one thousand nine hundred
104 ninety, modified by the board of barbers and beauticians
105 to meet the objections of the legislative rule-making
106 review committee and refiled in the state register on the
107 seventh day of December, one thousand nine hundred
108 ninety, relating to the board of barbers and beauticians
109 (licensing of schools of barbering and beauty culture),
110 are authorized with the amendment set forth below:

111 On page 6, by inserting a new section, designated
112 section 3-5-8, to read as follows:

113 “§3-5-8. **Repeal of rule** — This rule will automat-

114 ically be repealed on July 1, 1992, unless extended prior
115 to that date by an act of the Legislature.”

116 (h) The legislative rules filed in the state register on
117 the tenth day of August, one thousand nine hundred
118 ninety, modified by the board of barbers and beauticians
119 to meet the objections of the legislative rule-making
120 review committee and refiled in the state register on the
121 seventh day of December, one thousand nine hundred
122 ninety, relating to the board of barbers and beauticians
123 (qualifications, training, examination and registration of
124 instructors in barbering and beauty culture), are
125 authorized with the amendment set forth below:

126 On page 6, by inserting a new section, designated
127 section 3-2-9, to read as follows:

128 “§3-2-9. **Repeal of rule** — This rule will automat-
129 ically be repealed on July 1, 1992, unless extended prior
130 to that date by an act of the Legislature.”

131 (i) The legislative rules filed in the state register on
132 the tenth day of August, one thousand nine hundred
133 ninety, modified by the board of barbers and beauticians
134 to meet the objections of the legislative rule-making
135 review committee and refiled in the state register on the
136 seventh day of December, one thousand nine hundred
137 ninety, relating to the board of barbers and beauticians
138 (minimum curriculum for schools of barbering), are
139 authorized with the amendment set forth below:

140 On page 7, by inserting a new section, designated
141 section 3-6-14, to read as follows:

142 “§3-6-14. **Repeal of rule** — This rule will automat-
143 ically be repealed on July 1, 1992, unless extended prior
144 to that date by an act of the Legislature.”

145 (j) The legislative rules filed in the state register on
146 the tenth day of August, one thousand nine hundred
147 ninety, modified by the board of barbers and beauticians
148 to meet the objections of the legislative rule-making
149 review committee and refiled in the state register on the
150 seventh day of December, one thousand nine hundred
151 ninety, relating to the board of barbers and beauticians
152 (curriculum and minimum requirements, subjects and

153 hour schedule, rules and regulations for schools of
154 beauty culture operation in West Virginia; joint barbers
155 and beauticians license), are authorized with the
156 amendment set forth below:

157 On page 7, by inserting a new section, designated
158 section 3-1-11, to read as follows:

159 “§3-1-11. **Repeal of rule** — This rule will automat-
160 ically be repealed on July 1, 1992, unless extended prior
161 to that date by an act of the Legislature.”

162 (k) The legislative rules filed in the state register on
163 the tenth day of August, one thousand nine hundred
164 ninety, modified by the board of barbers and beauticians
165 to meet the objections of the legislative rule-making
166 review committee and refiled in the state register on the
167 seventh day of December, one thousand nine hundred
168 ninety, relating to the board of barbers and beauticians
169 (operation of barber and beauty shops and schools of
170 barbering and beauty culture), are authorized with the
171 amendment set forth below:

172 On page 4, by inserting a new section, designated
173 section 3-3-6, to read as follows:

174 §3-3-6. **Repeal of rule** — This rule will automatically
175 be repealed on July 1, 1992, unless extended prior to
176 that date by an act of the Legislature.”

§64-9-10. West Virginia board of dental examiners.

1 (a) The legislative rules filed in the state register on
2 the eighth day of August, one thousand nine hundred
3 eighty-nine, modified by the West Virginia board of
4 dental examiners to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the twenty-third day of October, one
7 thousand nine hundred eighty-nine, relating to the West
8 Virginia board of dental examiners (rules and regula-
9 tions of the West Virginia board of dental examiners),
10 are authorized.

11 (b) The legislative rules filed in the state register on
12 the twenty-seventh day of July, one thousand nine
13 hundred ninety, modified by the West Virginia board of

14 dental examiners to meet the objections of the legislative
15 rule-making review committee and refiled in the state
16 register on the twenty-seventh day of August, one
17 thousand nine hundred ninety, relating to the West
18 Virginia board of dental examiners (rules and regula-
19 tions of the West Virginia board of dental examiners),
20 are authorized.

§64-9-12. West Virginia state board of registration for professional engineers.

1 (a) The legislative rules filed in the state register on
2 the twenty-ninth day of November, one thousand nine
3 hundred eighty-five, modified by the West Virginia
4 state board of registration for professional engineers to
5 meet the objections of the legislative rule-making review
6 committee and refiled in the state register on the
7 twenty-eighth day of January, one thousand nine
8 hundred eighty-six, relating to the West Virginia state
9 board of registration for professional engineers (legisla-
10 tive rules governing the West Virginia state board of
11 registration for professional engineers), are authorized.

12 (b) The legislative rules filed in the state register on
13 the twenty-third day of December, one thousand nine
14 hundred eighty-seven, modified by the West Virginia
15 state board of registration for professional engineers to
16 meet the objections of the legislative rule-making review
17 committee and refiled in the state register on the
18 twenty-ninth day of January, one thousand nine hundred
19 eighty-eight, relating to the West Virginia state board
20 of registration for professional engineers (rules of the
21 West Virginia state board of registration for profes-
22 sional engineers), are authorized.

23 (c) The legislative rules filed in the state register on
24 the first day of October, one thousand nine hundred
25 ninety, modified by the West Virginia board of regis-
26 tered professional engineers to meet the objections of the
27 legislative rule-making review committee and refiled in
28 the state register on the seventeenth day of January, one
29 thousand nine hundred ninety-one, relating to the West
30 Virginia board of registered professional engineers
31 (regulations governing the board of registration for

32 registered professional engineers), are authorized.

§64-9-15. State board of examiners of land surveyors.

1 (a) The legislative rules filed in the state register on
2 the thirty-first day of July, one thousand nine hundred
3 eighty-seven, modified by the state board of examiners
4 of land surveyors to meet the objections of the legislative
5 rule-making review committee and refiled in the state
6 register on the twenty-eighth day of January, one
7 thousand nine hundred eighty-eight, relating to the state
8 board of examiners of land surveyors (practice of land
9 surveying in West Virginia), are authorized.

10 (b) The legislative rules filed in the state register on
11 the third day of May, one thousand nine hundred ninety,
12 modified by the state board of examiners of land
13 surveyors to meet the objections of the legislative rule-
14 making review committee and refiled in the state
15 register on the first day of August, one thousand nine
16 hundred ninety, relating to the state board of examiners
17 of land surveyors (practice of land surveying in West
18 Virginia), are authorized.

§64-9-16. Board of medicine.

1 (a) The legislative rules filed in the state register on
2 the twelfth day of May, one thousand nine hundred
3 eighty-three, relating to the board of medicine (licens-
4 ing, disciplinary and complaint procedures; podiatry;
5 physicians assistants), are authorized with the modifica-
6 tions set forth below:

7 "§24.12.

8 (b) It shall be the responsibility of the supervising
9 physician to obtain consent in writing from the patient
10 before Type A physician assistants employed in a
11 satellite clinic may render general medical or surgical
12 services, except in emergencies.

13 §24.16.

14 (c) No physician assistant shall render nonemergency
15 outpatient medical services until the patient has been
16 informed that the individual providing care is a
17 physician assistant."

18 (b) The legislative rules filed in the state register on
19 the twenty-sixth day of November, one thousand nine
20 hundred eighty-five, modified by the board of medicine
21 to meet the objections of the legislative rule-making
22 review committee and refiled in the state register on the
23 seventeenth day of January, one thousand nine hundred
24 eighty-six, relating to the board of medicine (licensing,
25 disciplinary and complaint procedures; podiatry; physi-
26 cians assistants), are authorized.

27 (c) The legislative rules filed in the state register on
28 the eighth day of March, one thousand nine hundred
29 eighty-five, modified by the West Virginia board of
30 medicine to meet the objections of the legislative rule-
31 making review committee and refiled in the state
32 register on the eighteenth day of December, one
33 thousand nine hundred eighty-five, relating to the West
34 Virginia board of medicine (rules governing the
35 approval of medical schools not accredited by the liaison
36 committee on medical education), are authorized.

37 (d) The legislative rules filed in the state register on
38 the third day of June, one thousand nine hundred eighty-
39 seven, relating to the board of medicine (fees for services
40 rendered by the board of medicine), are authorized.

41 (e) The legislative rules filed in the state register on
42 the sixteenth day of September, one thousand nine
43 hundred eighty-eight, modified by the board of medicine
44 to meet the objections of the legislative rule-making
45 review committee and refiled in the state register on the
46 twenty-fourth day of February, one thousand nine
47 hundred eighty-nine, relating to the board of medicine
48 (dispensing of legend drugs by physicians and podia-
49 trists), are authorized with the following amendments:

50 Section 2.6 to read as follows: "Dispense means to
51 deliver a legend drug to an ultimate user or research
52 subject by or pursuant to the lawful order of a physician
53 or podiatrist, including the prescribing, packaging,
54 labeling, administering or compounding necessary to
55 prepare the drug for that delivery."

56 Section 3.3 to read as follows: "Physicians or podia-
57 trists who are not registered with the Board as dispens-

58 ing physicians may not dispense legend drugs. However,
59 the following activities by a physician or podiatrist shall
60 be exempt from the requirements of sections 3 through
61 8 applicable to dispensing physicians:

62 a. Legend drugs administered to the patient, which
63 are not controlled substance when an appropriate record
64 is made in the patient's chart;

65 b. Professional samples distributed free of charge by
66 a physician or podiatrist or certified physician assistant
67 under his or her supervision to the patient when an
68 appropriate record is made in the patient's chart; or

69 c. Legend drugs which are not controlled substances
70 provided by free clinics or under West Virginia state
71 authorized programs, including the Medicaid, family
72 planning, maternal and child health, and early and
73 periodic screening and diagnosis and treatment pro-
74 grams: *Provided*, That all labeling provisions of section
75 8 shall be applicable except the requirements of section
76 8.3 (a)."

77 (f) The legislative rules filed in the state register on
78 the tenth day of August, one thousand nine hundred
79 ninety, modified by the board of medicine to meet the
80 objections of the legislative rule-making review commit-
81 tee and refiled in the state register on the first day of
82 October, one thousand nine hundred ninety, relating to
83 the board of medicine (fees for services rendered by the
84 board of medicine), are authorized.

85 (g) The legislative rules filed in the state register on
86 the tenth day of August, one thousand nine hundred
87 ninety, modified by the board of medicine to meet the
88 objections of the legislative rule-making review commit-
89 tee and refiled in the state register on the eleventh day
90 of January, one thousand nine hundred ninety-one,
91 relating to the board of medicine (licensing, and
92 disciplinary and complaint procedures: physicians;
93 podiatrists), are authorized.

94 (h) The legislative rules filed in the state register on
95 the tenth day of August, one thousand nine hundred
96 ninety, modified by the board of medicine to meet the

97 objections of the legislative rule-making review commit-
98 tee and refiled in the state register on the eleventh day
99 of January, one thousand nine hundred ninety-one,
100 relating to the board of medicine (certification, discipli-
101 nary and complaint procedures: physician assistants),
102 are authorized.

§64-9-18. Board of examiners for registered professional nurses.

1 (a) The legislative rules filed in the state register on
2 the thirteenth day of September, one thousand nine
3 hundred eighty-three, relating to the board of examiners
4 for registered professional nurses (qualifications of
5 graduates of foreign nursing schools for admission to the
6 professional nurse licensing examination), are
7 authorized.

8 (b) The legislative rules filed in the state register on
9 the third day of August, one thousand nine hundred
10 ninety, modified by the board of examiners for regis-
11 tered professional nurses to meet the objections of the
12 legislative rule-making review committee and refiled in
13 the state register on the twenty-eighth day of Sep-
14 tember, one thousand nine hundred ninety, relating to
15 the board of examiners for registered professional
16 nurses (announcement of advanced nursing practice),
17 are authorized.

§64-9-20. Board of pharmacy.

1 (a) The legislative rules filed in the state register on
2 the second day of October, one thousand nine hundred
3 eighty-four, modified by the board of pharmacy to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the ninth
6 day of January, one thousand nine hundred eighty-five,
7 relating to the board of pharmacy (parenteral/enteral
8 compounding), are authorized.

9 (b) The legislative rules filed in the state register on
10 the twelfth day of September, one thousand nine
11 hundred eighty-nine, modified by the board of phar-
12 macy to meet the objections of the legislative rule-
13 making review committee and refiled in the state

14 register on the fifteenth day of November, one thousand
15 nine hundred eighty-nine, relating to the board of
16 pharmacy (board of pharmacy), are authorized.

17 (c) The legislative rules filed in the state register on
18 the sixth day of May, one thousand nine hundred ninety,
19 modified by the board of pharmacy to meet the objec-
20 tions of the legislative rule-making review committee
21 and refiled in the state register on the fifth day of June,
22 one thousand nine hundred ninety, relating to the board
23 of pharmacy (continuing education for the licensure of
24 pharmacists), are authorized.

§64-9-24. Secretary of state.

1 (a) The legislative rules filed in the state register on
2 the fifteenth day of April, one thousand nine hundred
3 eighty-five, modified by the secretary of state to meet
4 the objections of the legislative rule-making review
5 committee and refiled in the state register on the eighth
6 day of October, one thousand nine hundred eighty-five,
7 relating to the secretary of state (standard size and
8 format for rules and related documents filed in the
9 secretary of state's office), are authorized.

10 (b) The legislative rules filed in the state register on
11 the seventeenth day of August, one thousand nine
12 hundred eighty-seven, modified by the secretary of state
13 to meet the objections of the legislative rule-making
14 review committee and refiled in the state register on the
15 twenty-third day of September, one thousand nine
16 hundred eighty-seven, relating to the secretary of state
17 (standard size and format for rules and procedures for
18 publication of the state register or parts of the state
19 register), are authorized.

20 (c) The legislative rules filed in the state register on
21 the first day of September, one thousand nine hundred
22 eighty-nine, modified by the secretary of state to meet
23 the objections of the legislative rule-making review
24 committee and refiled in the state register on the
25 twentieth day of November, one thousand nine hundred
26 eighty-nine, relating to the secretary of state (West
27 Virginia farm product lien central filing system), are
28 authorized.

29 (d) The legislative rules filed in the state register on
30 the thirteenth day of August, one thousand nine hundred
31 ninety, relating to the secretary of state (guidelines for
32 the use of nicknames and other designations on the
33 ballot), are authorized.

§64-9-26. State treasurer.

1 (a) The legislative rules filed in the state register on
2 the third day of January, one thousand nine hundred
3 eighty-four, relating to the state treasurer (establish-
4 ment of imprest funds), are authorized.

5 (b) The legislative rules filed in the state register on
6 the tenth day of August, one thousand nine hundred
7 ninety, modified by the state treasurer to meet the
8 objections of the legislative rule-making review commit-
9 tee and refiled in the state register on the tenth day of
10 December, one thousand nine hundred ninety, relating
11 to the state treasurer (enforcement of the uniform
12 disposition of unclaimed property act), are authorized.

§64-9-28. West Virginia cable television advisory board.

1 (a) The legislative rules filed in the state register on
2 the twenty-eighth day of September, one thousand nine
3 hundred ninety, modified by the West Virginia cable
4 television advisory board to meet the objections of the
5 legislative rule-making review committee and refiled in
6 the state register on the twenty-second day of January,
7 one thousand nine hundred ninety-one, relating to the
8 West Virginia cable television advisory board (franchis-
9 ing procedures), are authorized.

10 (b) The legislative rules filed in the state register on
11 the twenty-eighth day of September, one thousand nine
12 hundred ninety, modified by the West Virginia cable
13 television advisory board to meet the objections of the
14 legislative rule-making review committee and refiled in
15 the state register on the twenty-second day of January,
16 one thousand nine hundred ninety-one, relating to the
17 West Virginia cable television advisory board (imple-
18 menting regulations), are authorized.

CHAPTER 100

(Com. Sub. for H. B. 2674—By Delegates Roop and Blake)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, five, six and sixteen, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article two by adding thereto a new section, designated section six-a, relating to adding architects, engineers and landscape architects to those persons entitled to a mechanics' lien for services performed.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MECHANICS' LIENS.

§38-2-1. Lien of contractor.

§38-2-2. Lien of subcontractor.

§38-2-5. Lien of mechanic or laborer working for owner.

§38-2-6. Lien of mechanic or laborer working for contractor or subcontractor.

§38-2-6a. Lien of architect, engineer or landscape architect.

§38-2-16 What deemed included in one contract.

§38-2-1. Lien of contractor.

1 Every person, firm or corporation who erects, builds,
2 constructs, alters, removes or repairs any building or
3 other structure, or other improvement appurtenant to
4 any such building or other structure, or who alters or
5 improves the real property whereon the same stands, or
6 to which it may have been removed, or who provides
7 services for any of the foregoing, under and by virtue
8 of a contract with the owner for such erection, building,
9 construction, alteration, removal or repair, either for an
10 agreed lump sum or upon any other basis of settlement
11 and payment, shall have a lien upon such building or
12 other structure or improvement appurtenant thereto,

13 and upon the interest of the owner thereof in the real
14 property whereon the same stands, or to which it may
15 have been removed, to secure the payment of such
16 contract price or other compensation therefor.

§38-2-2. Lien of subcontractor.

1 Every person, firm or corporation who, under and by
2 virtue of a contract with such general contractor as is
3 mentioned in section one of this article, or with a
4 subcontractor for a part of such work, either for an
5 agreed contract price or by day or by piece, or other
6 basis of payment, shall furnish any part of the materials,
7 machinery or other necessary supplies or equipment, or
8 shall perform any labor, do any work or provide any
9 services necessary to the completion of any general
10 contract, such as is mentioned in section one of this
11 article, shall have such a lien for his or her compensa-
12 tion, as is provided for in section one of this article.

§38-2-5. Lien of mechanic or laborer working for owner.

1 Every workman, artisan, mechanic, laborer or other
2 person who performs any work or labor or provides any
3 service in the erection, construction, repair or removal
4 of any building or other structure or improvement
5 appurtenant thereto, or who alters or improves the real
6 property whereon the same stands, or to which it may
7 have been removed, by virtue of a contract for such
8 work and labor directly with the owner thereof, shall
9 have such a lien for his or her compensation as is
10 mentioned in section one of this article.

§38-2-6. Lien of mechanic or laborer working for contractor or subcontractor.

1 Every workman, artisan, mechanic, laborer or other
2 person who performs any work or labor or provides any
3 service under the employment of any general contractor
4 or of any subcontractor in the erection, construction,
5 repair or removal of any building or other structure, or
6 improvement appurtenant thereto, or who alters or
7 improves the real property whereon the same stands, or
8 to which it may have been removed, necessary to the
9 completion of such general contract, shall have such a
10 lien for his or her compensation as is mentioned in
11 section one of this article.

§38-2-6a. Lien of architect, engineer or landscape architect.

1 An architect, engineer or landscape architect shall
2 have a lien for his or her compensation as provided for
3 in sections one through six, inclusive, of this article for
4 all materials furnished and all work done, or all services
5 provided by such architect, engineer and landscape
6 architect as a contractor, subcontractor, materialman,
7 mechanic or laborer, as the case may be.

§38-2-16. What deemed included in one contract.

1 For the purposes of this article, all materials fur-
2 nished, all work done, and all services provided by any
3 one person, firm or corporation, upon any one building
4 or the improvements appurtenant thereto, or upon the
5 real property whereon the same stands, or to which it
6 may have been removed, shall be deemed and consid-
7 ered one contract, whether or not all of such material
8 was bought at one time, or under one general agreement
9 or otherwise, and whether or not all of such work, labor
10 or services provided, was contracted for at one time or
11 otherwise.

CHAPTER 101

(Com. Sub. for H. B. 2251—By Delegates P. White and Gallagher)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating to establishing within the state treasury a new revolving fund entitled the medicaid uncompensated care fund to receive money from all sources both public and private; setting forth legislative findings; allowing such moneys to be used as a portion of state revenue in order to receive federal financial participation for the medicaid program so that eligible disproportionate share hospitals receive reimbursement for services

rendered to medicaid beneficiaries; restricting uses of such funds; administration of the fund; establishing criteria for disproportionate share hospitals; and requiring certain reports to the Legislature.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.

§9-4A-1. Legislative findings.

§9-4A-2. Creation of medicaid uncompensated care fund.

§9-4A-3. Disproportionate share hospitals.

§9-4A-4. Legislative reports.

§9-4A-1. Legislative findings.

1 The Legislature finds and declares the following:

2 (a) Federal medicaid laws encourage special recogni-
3 tion of disproportionate share hospitals for medicaid
4 reimbursement purposes.

5 (b) These same federal laws permit and encourage the
6 state to fund the medicaid program through flexible
7 means, including public and private contributions to
8 serve as the state share for purposes of federal financial
9 participation.

10 (c) Because of state budget constraints, moneys paid
11 to disproportionate share hospitals under the medicaid
12 program have not been sufficient to allow the hospitals
13 to recover adequate reimbursement for the costs
14 associated with providing appropriate services to
15 medicaid clients of this state.

16 (d) The policy of this state is to encourage dispropor-
17 tionate share hospitals to continue providing health care
18 services to the needy citizens of West Virginia; such
19 encouragement and support are increasingly important
20 when combined with federal financial participation.

21 (e) Cost shifting is a serious problem and it is the
22 intent of the Legislature to reduce cost shifting.

§9-4A-2. Creation of medicaid uncompensated care fund.

1 (a) There is hereby created in the state treasury a
2 special revolving fund known as the medicaid uncom-
3 pensated care fund. All moneys deposited or accrued in
4 this fund shall be used exclusively:

5 (1) To provide the state's share of the federal medicaid
6 program funds in order to improve inpatient payments
7 to disproportionate share hospitals; and

8 (2) To cover administrative cost incurred by the
9 department of health and human services and associated
10 with the medicaid program and this fund: *Provided,*
11 That no expenditures may be made to cover said
12 administrative costs for any fiscal year after one
13 thousand nine hundred ninety-two, except as appro-
14 priated by the Legislature.

15 (b) Moneys from the following sources may be placed
16 into the fund:

17 (1) All public funds transferred by any public agency
18 to the department of health and human resources
19 medicaid program for deposit in the fund as contem-
20 plated or permitted by applicable federal medicaid
21 laws;

22 (2) All private funds contributed, donated or be-
23 queathed by corporations, individuals or other entities
24 to the fund as contemplated and permitted by applicable
25 federal medicaid laws;

26 (3) Interest which accrued on amounts in the fund
27 from sources identified in subdivisions (1) and (2) of this
28 subsection; and

29 (4) Federal financial participation matching the
30 amounts referred to in subdivisions (1), (2) and (3) of this
31 subsection, in accordance with section 1902 (a) (2) of the
32 Social Security Act.

33 (c) Any balance remaining in the medicaid uncompen-
34 sated care fund at the end of any state fiscal year shall
35 not revert to the state treasury but shall remain in this
36 fund and shall be used only in a manner consistent with
37 this article.

38 (d) Moneys received into the fund shall not be counted
39 or credited as part of the legislative general appropri-
40 ation to the state medicaid program.

41 (e) The fund shall be administered by the department
42 of health and human resources. Moneys shall be
43 disbursed from the fund on a quarterly basis. The
44 secretary of the department shall implement the
45 provisions of this article prior to the receipt of any
46 transfer, contribution, donation or bequest from any
47 public or private source.

48 (f) All moneys expended from the fund after receipt
49 of federal financial participation shall be allocated to
50 reimbursement of inpatient charges and fees of eligible
51 disproportionate share hospitals. Except for the pay-
52 ment of administrative costs as provided for in section
53 two of this article, appropriation from this fund for any
54 other purposes is void.

55 (g) In the event that the fund does not contain a
56 balance, after receiving federal financial participation,
57 in amounts which are sufficient to reimburse each
58 hospital the maximum amount of moneys to which it
59 would otherwise be entitled, the secretary of the
60 department may cause all eligible disproportionate
61 share hospitals to be reimbursed for past services
62 rendered on a pro rata basis.

§9-4A-3. Disproportionate share hospitals.

1 (a) Unless otherwise noted, all disproportionate share
2 hospitals must meet the following criteria:

3 (1) The hospital must be licensed by the department
4 of health and human resources and participate in the
5 medicaid program; and

6 (2) The hospital must have at least two obstetricians
7 with staff privileges at the hospital who have agreed to
8 provide obstetric services to individuals entitled to such
9 services by the approved state medicaid plan. In the case
10 of a hospital located in a rural area, the term "obste-
11 trician" includes any physician with staff privileges at
12 the hospital who performs nonemergency obstetric

13 procedures. The requirements of this subsection do not
14 apply to hospitals who did not offer routine obstetrical
15 services to the general public as of the twenty-first day
16 of December, one thousand nine hundred eighty-seven.
17 Notwithstanding the provisions of this section, should
18 federal requirements outlined in this subsection change,
19 the department is to comply with federal law.

20 (b) Additionally, all disproportionate share hospitals
21 must meet one of the following criteria:

22 (1) The hospital provided in excess of three thousand
23 medicaid inpatient days of service during the most
24 recent fiscal year of the hospital; or

25 (2) For the same time period, the sum of the following
26 factors must exceed fifteen percent:

27 (i) Total medicaid inpatient days divided by total
28 inpatient days; and

29 (ii) Total medicare supplemental security insurance
30 inpatient days divided by total medicare inpatient days;
31 and

32 (iii) Total days of care provided to eligible medicaid
33 patients whose care was not paid by West Virginia
34 medicaid divided by total inpatient medicaid days.

35 (c) The dollar value of contributions, bequests or
36 donations made by any hospital to the fund shall not be
37 included as a reimbursable cost in the medicaid cost
38 report of that hospital.

§9-4A-4. Legislative reports.

1 (a) The secretary of the department of health and
2 human resources shall make an annual report to the
3 Legislature on the use of the medicaid uncompensated
4 care fund.

5 (b) The health care cost review authority shall make
6 an annual report to the Legislature on the impact of
7 improved medicaid inpatient payments resulting from
8 the fund on nongovernmental payor health care costs.

CHAPTER 102

(H. B. 2906—By Delegates Reid and Staton)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifty-five, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the protective equipment and clothing required to be worn by miners.

Be it enacted by the Legislature of West Virginia:

That section fifty-five, article two, 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 2. UNDERGROUND MINES.

§22A-2-55. Protective equipment and clothing.

- 1 (a) Welders and helpers shall use proper shields and
2 goggles to protect their eyes. All employees shall have
3 approved goggles or shields and use the same where
4 there is a hazard from flying particles, or other eye
5 hazards.
- 6 (b) Employees engaged in haulage operations and all
7 other persons employed around moving equipment on
8 the surface and underground shall wear snug-fitting
9 clothing.
- 10 (c) Protective gloves shall be worn when material
11 which may injure hands is handled, but gloves with
12 gauntleted cuffs shall not be worn around moving
13 equipment.
- 14 (d) Safety hats and safety-toed shoes shall be worn by
15 all persons while in or around a mine: *Provided*, That
16 metatarsal guards shall not be required to be worn by
17 persons when working in those areas of underground
18 mine workings which average less than forty-eight
19 inches in height as measured from the floor to the roof
20 of the underground mine workings.

21 (e) Approved eye protection shall be worn by all
22 persons while being transported in open-type man trips.

23 (f) A self-rescue device approved by the director shall
24 be worn by each person underground or kept within his
25 immediate reach, and such device shall be provided by
26 the operator. The self-rescue device shall be adequate to
27 protect such miner for one hour or longer. Each
28 operator shall train each miner in the use of such device,
29 and refresher training courses for all underground
30 employees shall be held during each calendar year.

CHAPTER 103

(S. B. 329—By Senators Burdette, Mr. President, and Boley)
[By Request of The Executive]

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and three, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to supervision and regulation of the transportation of persons and property for hire by motor vehicles upon or over the public highways of this state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-2. Definitions.

§24A-1-3. Exemptions from chapter.

§24A-1-2. Definitions.

1 As used in this chapter:

2 (1) "Commission" means the public service commis-
3 sion of West Virginia;

- 4 (2) "Common carrier by motor vehicle" means any
5 person who undertakes, whether directly or by lease or
6 any other arrangement, to transport passengers or
7 property, or any class or classes of property, for the
8 general public over the highways of this state by motor
9 vehicles for hire, whether over regular or irregular
10 routes, including such motor vehicle operations of
11 carriers by rail, water or air and of express or
12 forwarding agencies, and leased or rented motor
13 vehicles, with or without drivers;
- 14 (3) "Contract carrier by motor vehicle" means any
15 person not included in subdivision (2) of this section, who
16 under special and individual contracts or agreements,
17 and whether directly or by lease or any other arrange-
18 ment, transports passengers or property over the
19 highways in this state by motor vehicles for hire;
- 20 (4) "Driveaway operation" means an operation in
21 which any vehicle or vehicles, operated singly or in
22 lawful combinations, new or used, not owned by the
23 transporting motor carrier, constitute the commodity
24 being transported;
- 25 (5) "Exempt carrier" means any person operating a
26 motor vehicle exempt from the provisions of this chapter
27 under section three thereof;
- 28 (6) "I.C.C." means the interstate commerce
29 commission;
- 30 (7) "Motor carrier" includes both a common carrier by
31 motor vehicle and a contract carrier by motor vehicle;
- 32 (8) "Motor vehicle" means, and includes, any automo-
33 bile, truck, tractor, truck-tractor, trailer, semitrailer,
34 motorbus, taxicab, any self-propelling motor-driven
35 motor vehicle or any combination thereof, used upon any
36 public highway in this state for the purpose of transport-
37 ing persons or property;
- 38 (9) "NARUC" means the national association of
39 regulatory utility commissioners;

40 (10) "Operations within the borders of this state"
41 means interstate or foreign operations to, from, within
42 or traversing this state;

43 (11) "Person" means and includes any individual,
44 firm, copartnership, corporation, company, association
45 or joint-stock association, and includes any trustee,
46 receiver, assignee or personal representative thereof;

47 (12) "Private commercial carrier" means and includes
48 any person who undertakes, whether directly or by lease
49 or other arrangement, to transport property, including
50 hazardous materials as defined in rules and regulations
51 promulgated by the commission, for himself over the
52 public highways of this state, in interstate or intrastate
53 commerce, for any commercial purpose, by motor
54 vehicle with a gross vehicle weight rating of ten
55 thousand one pounds or more, by motor vehicle designed
56 to transport more than fifteen passengers, including the
57 driver; or by any motor vehicle used to transport
58 hazardous materials in a quantity requiring placarding
59 under federal hazardous material regulations as
60 adopted by the commission.

61 (13) "Power unit" means any vehicle which contains
62 within itself the engine, motor or other source of power
63 by which said vehicle is propelled; and

64 (14) "Public highway" means any public street, alley,
65 road or highway, or thoroughfare of any kind in this
66 state used by the public.

§24A-1-3. Exemptions from chapter.

1 The provisions of this chapter, except where specifi-
2 cally otherwise provided, shall not apply to:

3 (1) Motor vehicles operated exclusively in the trans-
4 portation of United States mail or in the transportation
5 of newspapers: *Provided*, That such vehicles and their
6 operators shall be subject to the safety rules promul-
7 gated by the commission;

8 (2) Motor vehicles owned and operated by the United

9 States of America, the state of West Virginia, or any
10 county, municipality or county board of education,
11 urban mass transportation authority established and
12 maintained pursuant to article twenty-seven, chapter
13 eight of this code, or by any department thereof, and any
14 motor vehicles operated under a contract with a county
15 board of education exclusively for the transportation of
16 children to and from school or such other legitimate
17 transportation for the schools as the commission may
18 specifically authorize;

19 (3) Motor vehicles used exclusively in the transporta-
20 tion of agricultural or horticultural products, livestock,
21 poultry and dairy products from the farm or orchard on
22 which they are raised or produced to markets, process-
23 ing plants, packing houses, canneries, railway shipping
24 points and cold storage plants, and in the transportation
25 of agricultural or horticultural supplies to such farms
26 or orchards to be used thereon;

27 (4) Motor vehicles used exclusively in the transporta-
28 tion of human or animal excreta;

29 (5) Motor vehicles used exclusively in ambulance
30 service, or duly chartered rescue squad service;

31 (6) Motor vehicles used exclusively for volunteer fire
32 department service;

33 (7) Motor vehicles used exclusively in the transporta-
34 tion of coal from mining operations to loading facilities
35 for further shipment by rail or water carriers: *Provided*,
36 That such vehicles and their operators shall be subject
37 to the safety rules promulgated by the commission; and

38 (8) Motor vehicles used by petroleum commission
39 agents and oil distributors solely for the transportation
40 of petroleum products and related automotive products
41 when such transportation is incidental to the business
42 of selling said products: *Provided*, That such vehicles
43 and their operators shall be subject to the safety rules
44 promulgated by the commission.

CHAPTER 104

(H. B. 2600—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, relating to motor vehicles, registration of vehicles of new residents.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

§17A-3-1a. Registration of vehicles of new residents.

1 (a) Every owner of a motor vehicle, trailer or other
2 vehicle, shall, within thirty days after taking up
3 residence in the state, apply to the division and obtain
4 registration and title for the vehicle.

5 (b) For the purposes of this chapter there is a
6 rebuttable presumption that a natural person is a
7 resident of this state if any of the following elements
8 exist including, but not limited to:

9 (1) The person is registered to vote in this state.

10 (2) The person enrolls the person's child to be edu-
11 cated in a public elementary or secondary school in this
12 state.

13 (3) The person is receiving public assistance from this
14 state.

15 (4) The person resides or has continuously remained
16 in this state for a period exceeding thirty days except
17 for infrequent or brief absences.

18 (5) The person has accepted employment or engages
19 in any trade, profession, or occupation within this state,
20 except that this does not include a person who is
21 commuting from the person's residence in another state
22 or whose employment is seasonal or temporary, not
23 exceeding ninety days.

24 (6) The person has filed for a homestead tax exemp-
25 tion on property in this state.

26 "Resident" does not include a person who is attending
27 a college, university or other educational institution in
28 this state, if the person has a domicile in another state
29 and has a valid operator's license and vehicle registra-
30 tion issued by the state of domicile. "Resident" also does
31 not include members of the armed forces who are
32 stationed in West Virginia, providing that their vehicles
33 are properly registered in their state of residence, or a
34 member of the armed forces stationed in another state
35 or country providing that their vehicles are properly
36 registered in that state or country.

37 A corporation, association, partnership, company or
38 firm whose principal place of business is located within
39 this state is a resident of this state.

40 The provisions of this section shall not apply to
41 vehicles registered under proportional registration
42 agreement.

CHAPTER 105

(Com. Sub. for S. B. 129—By Senators Spears and Brackenrich)

[Passed February 18, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to recreating the driver's licensing advisory board pursuant to review by the joint committee on government operations and increase of the per diem of board members.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-7a. Driver's licensing advisory board.

1 The driver's licensing advisory board which was
2 terminated pursuant to the provisions of article ten,
3 chapter four of this code, is hereby recreated following
4 a review of its functions by the joint committee on
5 government operations. The board shall consist of five
6 members to be appointed by the governor, by and with
7 the advice and consent of the Senate, for terms of three
8 years, except that as to the members first appointed, two
9 shall be appointed for a term of three years, two shall
10 be appointed for a term of two years, and one shall be
11 appointed for a term of one year, all from the first day
12 of July, one thousand nine hundred seventy-four. All
13 vacancies occurring on the board shall be filled by the
14 governor, by and with the advice and consent of the
15 Senate. One member of the board shall be an optome-
16 trist duly registered to practice optometry in this state
17 and the other four members of the board shall be
18 physicians or surgeons duly licensed to practice medi-
19 cine or surgery in this state. The governor shall appoint
20 persons qualified to serve on the board who, in his
21 opinion, will best serve the work and function of the
22 board.

23 The board shall advise the commissioner of motor
24 vehicles as to vision standards and all other medical
25 criteria of whatever kind or nature relevant to the
26 licensing of persons to operate motor vehicles under the
27 provisions of this chapter. The board shall, upon request,
28 advise the commissioner of motor vehicles as to the
29 mental or physical fitness of an applicant for, or the
30 holder of, a license to operate a motor vehicle. The board
31 shall furnish the commissioner with all such medical
32 standards, statistics, data, professional information and
33 advice as he may reasonably request.

34 The members of the board shall receive a per diem
35 of fifty dollars for each day actually devoted to the
36 business of the board, and shall be reimbursed for all
37 reasonable and necessary expenses actually incurred by
38 them in the discharge of their official duties.

39 After having conducted a performance and fiscal
40 audit through its joint committee on government
41 operations, pursuant to section nine, article ten, chapter
42 four of this code, the Legislature hereby finds and
43 declares that the driver's licensing advisory board
44 should be continued and reestablished. Accordingly,
45 notwithstanding the provisions of section four, article
46 ten, chapter four of this code, the drivers' licensing
47 advisory board shall continue to exist until the first day
48 of July, one thousand nine hundred ninety-seven.

CHAPTER 106

(H. B. 2864—By Delegate J. Martin)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six, article fifteen of said chapter, all relating to emergency vehicles, authorization for emergency vehicle permits; transferring authority from division of motor vehicles to certain agencies including county sheriffs.

Be it enacted by the Legislature of West Virginia:

That section six, article one, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-six, article fifteen of said chapter be amended and reenacted, all to read as follows:

Article

1. Words and Phrases Defined.
15. Equipment.

ARTICLE 1. WORDS AND PHRASES DEFINED.**§17C-1-6. Authorized emergency vehicle.**

1 “Authorized emergency vehicle” means vehicles of a
2 fire department, duly chartered rescue squad, police,
3 department, ambulance service, state, county or munic-
4 ipal agency and such privately owned ambulances, tow
5 trucks, wreckers, flag car services, vehicles providing
6 road service to disabled vehicles, service vehicles of a
7 public service corporation, postal service vehicles, snow
8 removal equipment, Class A vehicles of firefighters,
9 Class A vehicles of members of ambulance services, and
10 Class A vehicles of members of duly chartered rescue
11 squads, and all other emergency vehicles as are
12 designated by the agency responsible for the operation
13 and control of these persons or organizations. Class A
14 vehicles are as defined by section one, article ten,
15 chapter seventeen-a of this code. Agency authorization
16 and emergency equipment are defined in section twenty-
17 six, article fifteen, chapter seventeen-c of this code.
18 Agencies responsible for issuing authorization for
19 emergency vehicle permits may promulgate such
20 regulations that are necessary for the issuance of
21 permits for emergency vehicles.

ARTICLE 15. EQUIPMENT.**§17C-15-26. Special restrictions on lamps.**

1 (a) Any lighted lamp or illuminating device upon a
2 motor vehicle other than head lamps, spot lamps,
3 auxiliary lamps or flashing front-direction signals
4 which projects a beam of light of an intensity greater
5 than three hundred candlepower shall be so directed
6 that no part of the beam will strike the level of the
7 roadway on which the vehicle stands at a distance of
8 more than seventy-five feet from the vehicle.

9 (b) No person shall drive or move any vehicle or
10 equipment upon any highway with any lamp or device
11 thereon displaying other than a white or amber light
12 visible from directly in front of the center thereof except
13 as authorized by subsection (d) of this section.

14 (c) Except as authorized in section nineteen, flashing
15 lights are prohibited on motor vehicles, except on an

16 authorized emergency vehicle, school bus, snow removal
17 equipment or on any vehicle as a means for indicating
18 right or left turn, or on any vehicle as a means of
19 indicating the same is disabled or otherwise stopped for
20 an emergency.

21 (d) Notwithstanding any other provisions of this
22 chapter, the following colors of flashing warning lights
23 are restricted for the use of the type of vehicle
24 designated:

25 (1) Blue flashing warning lights are restricted to
26 police vehicles. Authorization for police vehicles shall be
27 designated by the chief administrative official of each
28 police department.

29 (2) Except for standard vehicle equipment authorized
30 by section nineteen of this article, red flashing warning
31 lights are restricted to ambulances, fire-fighting
32 vehicles, school buses, Class A vehicles, as defined by
33 section one, article ten, chapter seventeen-a of this code,
34 of those firefighters who are authorized by their fire
35 chiefs to have such lights and to Class A vehicles of
36 members of ambulance services or duly chartered
37 rescue squads who are authorized by their respective
38 chiefs to have such lights: *Provided*, That red flashing
39 warning lights attached to such Class A vehicles may
40 be operated only when responding to or engaged in
41 handling an emergency requiring the attention of such
42 firefighters or members of such ambulance services or
43 chartered rescue squads.

44 Authorization for all ambulances shall be designated
45 by the department of health and human services and the
46 sheriff of the county of residence.

47 Authorization for all fire-fighting vehicles shall be
48 designated by the fire chief and the state fire marshal's
49 office.

50 Authorization for all rescue squad vehicles shall be
51 designated by the squad chief, the sheriff of the county
52 of residence and the department of health and human
53 services.

54 Authorization for school buses shall be designated by
55 the sheriff of the county of residence.

56 Authorization for firefighters to operate Class A
57 vehicles shall be designated by their fire chiefs and the
58 state fire marshal's office.

59 Authorization for members of ambulance services or
60 any other emergency medical service personnel to
61 operate Class A vehicles shall be designated by their
62 chief official, the department of health and human
63 services and the sheriff of the county of residence.

64 Authorization for members of duly chartered rescue
65 squads to operate Class A vehicles shall be designated
66 by their squad chiefs, the sheriff of the county of
67 residence and the department of health and human
68 services.

69 (3) All other emergency vehicles, including tow trucks
70 and wreckers, authorized by this chapter and by section
71 twenty-seven of this article shall be restricted to amber
72 or yellow flashing warning lights.

73 Authorization for tow trucks, wreckers, flag car
74 services, vehicles providing road service to disabled
75 vehicles, service vehicles of a public service corporation,
76 postal service vehicles and snow removal equipment
77 shall be designated by the sheriff of the county of
78 residence.

79 (e) Notwithstanding the foregoing provisions of this
80 section, any vehicle belonging to a county board of
81 education may be equipped with a white flashing
82 strobotron warning light. This strobe light may be
83 installed on the roof of a school bus not to exceed one-
84 third the body length forward from the rear of the roof
85 edge. The light shall have a single clear lens emitting
86 light three hundred sixty degrees around its vertical
87 axis and may not extend above the roof more than six
88 and one-half inches. A manual switch and a pilot light
89 must be included to indicate the light is in operation.

90 It shall be unlawful for flashing warning lights of an
91 unauthorized color to be installed or used on a vehicle
92 other than as specified in this section, except that a
93 police vehicle may be equipped with either or both blue
94 or red warning lights.

CHAPTER 107

(Com. Sub. for H. B. 2349—By Delegate Louisos)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five-a, 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 one-a, relating to the revocation of licenses to operate a motor vehicle for driving under the influence of alcohol, controlled substances or drugs; providing that a person who is convicted of driving a motor vehicle while under the influence of alcohol, controlled substances or drugs shall have his or her operator's license revoked; and eliminating the administrative hearing for persons so convicted who do not act to appeal such convictions.

Be it enacted by the Legislature of West Virginia:

That article five-a, 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 one-a, to read as follows:

ARTICLE 5A. ADMINISTRATIVE PROCEDURES FOR SUSPENSION AND REVOCATION OF LICENSES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL, CONTROLLED SUBSTANCES OR DRUGS.

§17C-5A-1a. Revocation upon conviction for driving under the influence of alcohol, controlled substances or drugs.

- 1 (a) If a person is convicted for an offense defined in
- 2 section two, article five of this chapter or for an offense
- 3 described in a municipal ordinance which has the same
- 4 elements as an offense described in said section two of
- 5 article five, because such person did drive a motor
- 6 vehicle while under the influence of alcohol, controlled
- 7 substances or drugs, or the combined influence of
- 8 alcohol or controlled substances or drugs, or did drive
- 9 a motor vehicle while having an alcoholic concentration
- 10 in his blood of ten hundredths of one percent or more,

11 by weight, and if such person does not act to appeal such
12 conviction within the time periods described in subsection
13 (b) of this section, such person's license to operate
14 a motor vehicle in this state shall be revoked in
15 accordance with the provisions of this section.

16 (b) The clerk of the court in which a person is
17 convicted for an offense described in section two, article
18 five of this chapter or for an offense described in a
19 municipal ordinance which has the same elements as an
20 offense described in said section two of article five, shall
21 forward to the commissioner a transcript of the
22 judgment of conviction. If the conviction is the judgment
23 of a magistrate court, the magistrate court clerk shall
24 forward such transcript when the person convicted has
25 not requested an appeal within twenty days of the
26 sentencing for such conviction. If the conviction is the
27 judgment of a mayor or police court judge or municipal
28 court judge, the clerk or recorder shall forward such
29 transcript when the person convicted has not perfected
30 an appeal within ten days from and after the date upon
31 which the sentence is imposed. If the conviction is the
32 judgment of a circuit court, the circuit clerk shall
33 forward such transcript when the person convicted has
34 not filed a notice of intent to file a petition for appeal
35 or writ of error within thirty days after the judgment
36 was entered.

37 (c) If, upon examination of the transcript of the
38 judgment of conviction, the commissioner shall determine
39 that the person was convicted for an offense
40 described in section two, article five of this chapter or
41 for an offense described in a municipal ordinance which
42 has the same elements as an offense described in said
43 section two of article five, because such person did drive
44 a motor vehicle while under the influence of alcohol,
45 controlled substances or drugs, or the combined influence
46 of alcohol or controlled substances or drugs, or did
47 drive a motor vehicle while having an alcoholic concentration
48 in his blood of ten hundredths of one percent or
49 more, by weight, the commissioner shall make and enter
50 an order revoking such person's license to operate a
51 motor vehicle in this state. The order shall contain the

52 reasons for the revocation and the revocation periods
53 provided for in section two of this article. Further, the
54 order shall give the procedures for requesting a hearing
55 which is to be held in accordance with the provisions of
56 section two of this article. The person shall be advised
57 in the order that because of the receipt of a transcript
58 of the judgment of conviction by the commissioner a
59 presumption exists that the person named in the
60 transcript of the judgment of conviction is the person
61 named in the commissioner's order and such constitutes
62 sufficient evidence to support revocation and that the
63 sole purpose for the hearing held under this section is
64 for the person requesting the hearing to present
65 evidence that he or she is not the person named in the
66 transcript of the judgment of conviction. A copy of such
67 order shall be forwarded to such person by registered
68 or certified mail, return receipt requested. No revoca-
69 tion shall become effective until ten days after receipt
70 of a copy of such order.

71 (d) The provisions of this section shall not apply if an
72 order reinstating the operator's license of the person has
73 been entered by the commissioner prior to the receipt
74 of the transcript of the judgment of conviction.

75 (e) For the purposes of this section, a person is
76 convicted when such person enters a plea of guilty or
77 is found guilty by a court or jury.

CHAPTER 108

(Com. Sub. for S. B. 90—By Senators Brackenrich, Dittmar, Whitlow and Felton)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-six-a, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sun screening devices; definitions; specifications; exceptions; and penalties.

Be it enacted by the Legislature of West Virginia:

That section thirty-six-a, article fifteen, 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 15. EQUIPMENT.

§17C-15-36a. Sun screening devices; penalties.

1 (a) No person may operate a motor vehicle that is
2 registered or required to be registered in the state on
3 any public highway, road or street that has a sun
4 screening device on the windshield, the front side wings
5 and side windows adjacent to the right and left of the
6 driver and windows adjacent to the rear of the driver
7 that do not meet the requirements of this section.

8 (b) A sun screening device when used in conjunction
9 with the windshield must be nonreflective and may not
10 be red, yellow or amber in color. A sun screening device
11 may be used only along the top of the windshield and
12 may not extend downward beyond the ASI line or more
13 than five inches from the top of the windshield whi-
14 chever is closer to the top of the windshield.

15 (c) A sun screening device when used in conjunction
16 with the automotive safety glazing materials of the side
17 wings or side windows located at the immediate right
18 and left of the driver shall be a nonreflective type with
19 reflectivity of not more than twenty percent and have
20 a light transmission of not less than thirty-five percent.
21 The side windows behind the driver and the rear most
22 windows may have a sun screening device that is
23 designed to be used on automotive safety glazing
24 materials that has a light transmission of not less than
25 thirty-five percent and a reflectivity of not more than
26 twenty percent. If a sun screening device is used on
27 glazing behind the driver, one right and one left outside
28 rear view mirror is required.

29 (d) Each manufacturer shall:

30 (1) Certify to the division of public safety and division
31 of motor vehicles that a sun screening device used by

32 it is in compliance with the reflectivity and transmit-
33 tance requirements of this section;

34 (2) Provide a label not to exceed one and one-half
35 square inches in size, with a means for the permanent
36 and legible installations between the sun screening
37 material and each glazing surface to which it is applied
38 that contains the manufacturer's name and its percen-
39 tage of light transmission; and

40 (3) Include instructions with the product or material
41 for proper installation, including the affixing of the
42 label specified in this section. The labeling or marking
43 must be placed in the left lower corner of each glazing
44 surface when facing the vehicle from the outside.

45 (e) No person may:

46 (1) Offer for sale or for use any sun screening product
47 or material for motor vehicle use not in compliance with
48 this section; or

49 (2) Install any sun screening product or material on
50 vehicles intended for use on public roads without
51 permanently affixing the label specified in this section.

52 (f) The provisions of this section do not apply to a
53 motor vehicle registered in this state in the name of a
54 person, or the person's legal guardian, who has an
55 affidavit signed by a physician or an optometrist
56 licensed to practice in this state that states that the
57 person has a physical condition that makes it necessary
58 to equip the motor vehicle with sun screening material
59 which would be of a light transmittance or luminous
60 reflectance in violation of this section. The affidavit
61 must be in the possession of the person so afflicted, or
62 the person's legal guardian, at all times while being
63 transported in the motor vehicle.

64 (g) The light transmittance requirement of this
65 section does not apply to windows behind the driver on
66 trucks, buses, trailers, mobile homes and multipurpose
67 passenger vehicles.

68 (h) As used in this section:

69 (1) "Bus" means a motor vehicle with motive power,

70 except a trailer, designed for carrying more than ten
71 persons.

72 (2) "Light transmission" means the ratio of the
73 amount of total light to pass through a product or
74 material to the amount of the total light falling on the
75 product or material.

76 (3) "Luminous reflectants" means the ratio of the
77 amount of total light that is reflected outward by the
78 product or material to the amount of the total light
79 falling on the product or materials.

80 (4) "Manufacturer" means any person engaged in the
81 manufacturing or assembling of sun screening products
82 or materials designed to be used in conjunction with
83 vehicle glazing materials for the purpose of reducing the
84 effects of the sun.

85 (5) "Motor homes" means vehicular units designed to
86 provide temporary living quarters built into and an
87 integral part of or permanently attached to a self-
88 propelled motor vehicle chassis.

89 (6) "Multipurpose passenger vehicle" means a motor
90 vehicle with motive power, except a trailer, designed to
91 carry ten persons or less which is constructed either on
92 a truck chassis or with special features for occasional
93 off-road operation.

94 (7) "Nonreflective" means a product or material
95 designed to absorb light rather than to reflect it.

96 (8) "Passenger car" means a motor vehicle with
97 motive power, except a multipurpose passenger vehicle,
98 motorcycle or trailer, designed for carrying ten persons
99 or less.

100 (9) "Sun screening device" means film material or
101 device that is designed to be used in conjunction with
102 motor vehicle safety glazing materials for reducing the
103 effects of the sun.

104 (10) "Truck" means a motor vehicle with motive
105 power, except a trailer, designed primarily for the
106 transportation of property or special purpose equip-
107 ment.

108 (i) Any person violating the provisions of this section
109 is guilty of a misdemeanor, and, upon conviction thereof,
110 may be fined not more than two hundred dollars or be
111 imprisoned for not more than thirty days.

CHAPTER 109

(H. B. 2869—By Delegates Faircloth and Douglas)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article sixteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing motor vehicle dealers to operate certain motor vehicles without an inspection sticker.

Be it enacted by the Legislature of West Virginia:

That section nine, article sixteen, 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 16. INSPECTION OF VEHICLES.

§17C-16-9. Operation without certificate or failure to produce certificate; penalty for misdemeanor.

1 It is a misdemeanor for any owner or operator, or both
2 owner and operator, of any vehicle required to be
3 inspected under subsection (a), section four of this
4 article, to operate or permit to be operated such vehicle
5 without having displayed thereon a current and valid
6 certificate of inspection and approval or fail to produce
7 same upon demand of any authorized person as desig-
8 nated under subsection (a), section four of this article:
9 *Provided*, That a dealer licensed to sell new vehicles
10 under the provision of article six, chapter seventeen-a
11 of this code shall not be required to display a certificate
12 of inspection and approval upon any new vehicle if the
13 vehicle is driven for an operational purpose including all
14 activities associated with dealer preparation for sale of
15 a motor vehicle belonging to such dealer when such

16 vehicle has not been titled or delivered to a purchaser,
 17 and when such car is not to be used in the demonstrator
 18 fleet or otherwise routinely driven on the highways or
 19 roads of this state.

20 Unless another penalty is by the laws of this state
 21 provided, every person convicted of a misdemeanor for
 22 operating a vehicle without having displayed thereon a
 23 current and valid certificate of inspection and approval
 24 or for failure to produce such certificate upon demand
 25 of an authorized person shall be punished by a fine of
 26 not more than one hundred dollars.

CHAPTER 110

(H. B. 2824—By Delegates Burk and Roop)

[Passed March 8, 1991: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article twelve, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, extending the term of years any municipality is empowered and authorized to lease as lessor any of its real or personal property or any interest therein or any part thereof from thirty to fifty years.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

PART VI. SALE, LEASE OR DISPOSITION OF OTHER MUNICIPAL PROPERTY.

§8-12-18. Sale, lease or disposition of other municipal property.

1 (a) Every municipality may sell, lease as lessor or
2 dispose of any of its real or personal property or any
3 interest therein or any part thereof (other than a public
4 utility which shall be sold or leased in accordance with
5 the provisions of section seventeen of this article), as
6 authorized in article five, chapter one of this code, or
7 to the United States of America or any agency or
8 instrumentality thereof for a public purpose for an
9 adequate consideration, without considering alone the
10 present commercial or market value of such property.

11 (b) In all other cases involving a sale, any municipality
12 is hereby empowered and authorized to sell any of its
13 real or personal property or any interest therein or any
14 part thereof for a fair and adequate consideration, such
15 property to be sold at public auction at a place
16 designated by the governing body, but before making
17 any such sale, notice of the time, terms and place of sale,
18 together with a brief description of the property to be
19 sold, shall be published as a Class II legal advertisement
20 in compliance with the provisions of article three,
21 chapter fifty-nine of this code, and the publication area
22 for such publication shall be the municipality. The
23 requirements of notice and public auction shall not
24 apply to the sale of any one item or piece of property
25 of less value than one thousand dollars, and under no
26 circumstances shall the provisions of this section be
27 construed as being applicable to any transaction
28 involving the trading in of municipally owned property
29 on the purchase of new or other property for the
30 municipality, and every municipality shall have plenary
31 power and authority to enter into and consummate any
32 such trade-in transaction.

33 (c) In all other cases involving a lease, any municipal-
34 ity is hereby empowered and authorized to lease as
35 lessor any of its real or personal property or any interest
36 therein or any part thereof for a fair and adequate
37 consideration and for a term not exceeding fifty years.
38 Every such lease shall be authorized by resolution of the
39 governing body of such municipality, which resolution
40 may specify terms and conditions which must be
41 contained in such lease: *Provided*, That before any such

42 proposed lease is authorized by resolution of the
43 governing body, a public hearing on such proposed lease
44 shall be held by such governing body after notice of the
45 date, time, place and purpose of such public hearing has
46 been published as a Class I legal advertisement in
47 compliance with the provisions of article three, chapter
48 fifty-nine of this code, and the publication area for such
49 publication shall be the municipality. The power and
50 authority granted in this subsection shall be in addition
51 to and not in derogation of any power and authority
52 vested in any municipality under any constitutional or
53 other statutory provision now or hereafter in effect.

CHAPTER 111

(H. B. 2700—By Delegates Damron and Williams)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article fourteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-two, article fifteen of said chapter, relating to basing paid police and paid fire department promotions on experience and written competitive examinations.

Be it enacted by the Legislature of West Virginia:

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

Article

14. Law and Order; Police Force or Departments; Powers, Authority and Duties of Law-Enforcement Officials and Policemen; Police Matrons; Special School Zone and Parking Lot or Parking Building Police Officers; Civil Service for Certain Police Departments.
15. Fire Fighting; Fire Companies and Departments; Civil Service for Paid Fire Departments.

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-17. Vacancies filled by promotions; eligibility for promotion; rights of chief.

1 Vacancies in positions in a paid police department of
2 a Class I or Class II city shall be filled, so far as
3 practicable, by promotions from among individuals
4 holding positions in the next lower grade in the
5 department. Promotions shall be based upon experience
6 and by written competitive examinations to be provided
7 by the policemen's civil service commission: *Provided*,
8 That except for the chief of police, no individual shall
9 be eligible for promotion from the lower grade to the
10 next higher grade until such individual shall have
11 completed at least two years of continuous service in the
12 next lower grade in the department immediately prior
13 to said examination: *Provided, however*, That notwith-
14 standing the provisions of section six of this article, any
15 member of a paid police department of Class I or Class
16 II city now occupying the office of chief of such paid
17 police department, or hereafter appointed to such office,
18 shall, except as hereinafter provided in this section, be
19 and shall continue to be entitled to all of the rights and
20 benefits of the civil service provisions of this article,
21 except that he may be removed from such office of chief
22 of police without cause, and the time spent by such
23 member in the office of such chief of police shall be
24 added to the time served by such member during the
25 entire time he was a member of said paid police
26 department prior to his appointment as chief, and shall
27 in all cases of removal, except for removal for good
28 cause, retain the regular rank within said paid police
29 department which he held at the time of his appoint-
30 ment to the office of chief of police or which he has
31 attained during his term of service as chief of police.
32 The provisions of this section shall be construed to apply
33 and to inure to the benefit of all individuals who have

34 ever been subject to the provisions of this article. The
 35 commission shall have the power to determine in each
 36 instance whether an increase in salary constitutes a
 37 promotion.

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-22. Vacancies filled by promotions; eligibility for promotion.

1 Vacancies in positions in a paid fire department shall
 2 be filled, so far as practicable, by promotions from
 3 among individuals holding positions in the next lower
 4 grade in the department. Promotions shall be based
 5 upon experience and by competitive examinations to be
 6 provided by the firemen's civil service commission:
 7 *Provided*, That no individual shall be eligible for
 8 promotion from the lower grade to the next higher
 9 grade until such individual shall have completed at least
 10 two years of continuous service in the next lower grade
 11 in the department immediately prior to said examina-
 12 tion. The commission shall have the power to determine
 13 in each instance whether an increase in salary consti-
 14 tutes a promotion.

CHAPTER 112

(Com. Sub. for H. B. 2625—By Delegates Browning and Kiss)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty, twenty-four, twenty-six and twenty-six-a, article twenty-two, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section sixteen-a, all relating to providing legislative findings; amending the amortization period for municipal pension funds; providing a base for death benefit calculations; providing disability benefit for nonservice related disability; creating a maximum supplemental

pension benefit; providing supplemental disability benefit; creating a waiting period for eligibility for supplemental pension benefits and supplemental disability benefits; providing for actuarial certification of supplemental benefit amounts and providing for increased member contribution when required by actuary.

Be it enacted by the Legislature of West Virginia:

That sections twenty, twenty-four, twenty-six and twenty-six-a, article twenty-two, chapter 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 sixteen-a, all 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.

§8-22-16a. Legislative findings.

§8-22-20. Minimum standards for actuarial soundness.

§8-22-24. Disability pensions.

§8-22-26. Death benefits.

§8-22-26a. Supplemental pension benefits entitlement; benefit payable; application of section; construction.

§8-22-16a. Legislative findings.

1 The Legislature finds that prudence often dictates a
2 review of well meaning actions previously taken. The
3 Legislature further finds that implementation of the
4 cost of living benefit enacted during the one thousand
5 nine hundred ninety regular legislative session would be
6 disadvantageous to members of the municipal policemen
7 and firemen pension funds and municipal budgets due
8 to the large cost associated with that benefit and that
9 this fact was unknown at the time of enactment of the
10 cost of living benefit. The Legislature further finds that
11 the fiscal integrity of the various municipal policemen
12 and firemen pension funds will be in extreme jeopardy
13 if an alternative benefit is not enacted. The Legislature
14 further finds that maintenance of an actuarially sound
15 pension system is incumbent upon the administrators of

16 the various funds and is also incumbent upon the
17 Legislature when it enacts changes to the benefit
18 structure. The Legislature further finds that the
19 implementation of the cost of living benefit enacted in
20 the one thousand nine hundred ninety regular legislative
21 session would prevent the maintenance of an actuarially
22 sound pension system and would jeopardize the interests
23 of the members of the retirement funds, therefore, it is
24 necessary to amend the cost of living benefit as
25 previously enacted.

§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
3 reports prepared by a qualified actuary. All of the
4 following standards must be met:

5 (a) An actuarial valuation report shall be prepared at
6 least once every three years commencing with the later
7 of (1) the first day of July, one thousand nine hundred
8 eighty-three, or (2) three years following the most
9 recently prepared actuarial valuation report: *Provided,*
10 That this most recently prepared actuarial valuation
11 report meets all of the standards of this section.

12 (b) The actuarial valuation report shall consist of, but
13 is not limited to, the following disclosures: (1) The
14 financial objective of the fund and how the objective is
15 to be attained, (2) the progress being made toward
16 realization of the financial objective, (3) recent changes
17 in the nature of the fund, benefits provided, or actuarial
18 assumptions or methods, (4) the frequency of actuarial
19 valuation reports and the date of the most recent
20 actuarial valuation report, (5) the method used to value
21 fund assets, (6) the extent to which the qualified actuary
22 relies on the data provided and whether the data was
23 certified by the fund's auditor or examined by the
24 qualified actuary for reasonableness, (7) a description
25 and explanation of the actuarial assumptions and
26 methods, and (8) any other information the qualified
27 actuary feels is necessary or would be useful in fully and
28 fairly disclosing the actuarial condition of the fund.

29 (c) After the thirtieth day of June, one thousand nine

30 hundred ninety-one, and thereafter, the financial
31 objective of each municipality shall not be less than to
32 contribute to the fund annually an amount which,
33 together with the contributions from the members and
34 the allocable portion of the state premium tax fund for
35 municipal pension and relief funds established under
36 section fourteen-d, article three, chapter thirty-three of
37 this code and other income sources as authorized by law,
38 will be sufficient to meet the normal cost of the fund
39 and amortize any actuarial deficiency over a period of
40 not more than forty years: *Provided*, That in the fiscal
41 year ending the thirtieth of June, one thousand nine
42 hundred ninety-one, the municipality may elect to make
43 its annual contribution to the fund utilizing an alterna-
44 tive contribution in an amount not less than (i) one
45 hundred seven percent of the amount contributed for the
46 fiscal year ending the thirtieth day of June, one
47 thousand nine hundred ninety, or (ii) an amount equal
48 to the average of the contribution payments made in the
49 five highest fiscal years beginning with the 1984 fiscal
50 year whichever is greater: *Provided, however*, That
51 contribution payments in subsequent fiscal years under
52 this alternative contribution method shall not be less
53 than one hundred seven percent of the amount contrib-
54 uted in the prior fiscal year: *Provided further*, That prior
55 to utilizing this alternative contribution methodology
56 the actuary of the fund shall certify in writing that the
57 fund is projected to be solvent under the alternative
58 contribution method for the next consecutive fifteen-
59 year period. For purposes of determining this minimum
60 financial objective, (1) the value of the fund's assets shall
61 be determined on the basis of any reasonable actuarial
62 method of valuation which takes into account fair
63 market value, and (2) all costs, deficiencies, rate of
64 interest, and other factors under the fund shall be
65 determined on the basis of actuarial assumptions and
66 methods which, in aggregate, are reasonable (taking
67 into account the experience of the fund and reasonable
68 expectations) and which, in combination, offer the
69 qualified actuary's best estimate of anticipated expe-
70 rience under the fund.

71 Notwithstanding any other provision of this section or

72 article to the contrary, each municipality shall contrib-
73 ute annually to the fund an amount which may not be
74 less than the normal cost, as determined by the actuarial
75 report.

76 (d) For purposes of this section the term "qualified
77 actuary" means only an actuary who is a member of the
78 society of actuaries or the American academy of
79 actuaries. The qualified actuary shall be designated a
80 fiduciary and shall discharge his duties with respect to
81 a fund solely in the interest of the members and
82 member's beneficiaries of that fund. In order for the
83 standards of this section to be met, the qualified actuary
84 shall certify that the actuarial valuation report is
85 complete and accurate and that in his opinion the
86 technique and assumptions used are reasonable and
87 meet the requirements of this section of this article.

88 (e) The cost of the preparation of the actuarial
89 valuation report shall be paid by the fund.

90 (f) Notwithstanding any other provision of this section,
91 for the fiscal year ending the thirtieth day of June, one
92 thousand nine hundred ninety-one, the municipality may
93 calculate its annual contribution based upon the
94 provisions of the supplemental benefit provided for in
95 this article enacted during the one thousand nine
96 hundred ninety-one regular session of the Legislature.

§8-22-24. Disability pensions.

1 (a) The monthly sum to be paid to each member
2 eligible for disability received as a proximate result of
3 service rendered in the performance of his or her duties
4 under the provisions of section twenty-three-a of this
5 article shall be equal to sixty percent of the monthly
6 salary being received by such member, at the time he
7 is so disabled, or the sum of five hundred dollars per
8 month, whichever shall be greater: *Provided*, That the
9 limitation provided in subsection (b) of this section is not
10 exceeded.

11 (b) Effective for any member who becomes eligible for
12 disability benefits on or after the first day of July, one
13 thousand nine hundred eighty-one, under the provisions

14 of section twenty-three-a of this article, as a proximate
15 result of service rendered in the performance of his
16 duties within such departments, his monthly disability
17 payment as provided in subsection (a) of this section
18 shall not, when aggregated with the monthly amount of
19 state workers' compensation, result in such disabled
20 member receiving a total monthly income from such
21 sources in excess of one hundred percent of the basic
22 compensation which is paid to members holding the
23 same position which such member held within such
24 department at the time of his disability. Lump sum
25 payments of state workers' compensation benefits shall
26 not be considered for purposes of this subsection unless
27 such lump sum payments represent commuted values of
28 monthly state workers' compensation benefits.

29 (c) Any member who has served on active duty with
30 the armed forces of the United States as described in
31 section twenty-seven of this article, whether prior or
32 subsequent to becoming a member of a paid police or
33 fire department covered by the provisions of this article,
34 and who, on the first day of July, one thousand nine
35 hundred eighty-six, is receiving or thereafter receives a
36 disability pension, shall receive in addition to the sixty
37 percent or minimum five hundred dollars authorized in
38 subsection (a) of this section, one additional percent for
39 each year served in active military duty, up to a
40 maximum of four additional percent.

41 (d) Beginning on and after the first day of April, one
42 thousand nine hundred ninety-one, the monthly sum to
43 be paid to a member who becomes eligible for total
44 disability incurred not in the line of duty shall be the
45 monthly benefit provided in subsection (a) of this
46 section: *Provided*, That the limitation in subsection (b)
47 of this section is not exceeded: *Provided, however*, That
48 for any person receiving benefits under this subsection
49 who is self-employed or employed by another, there shall
50 be offset against said benefits the amount of one dollar
51 for each three dollars of income derived from self-
52 employment or employment by another: *Provided*
53 *further*, That a person receiving disability benefits must
54 file a certified copy of his or her tax return on or before

55 the fifteenth day of April of each year to demonstrate
56 either unemployment or income earned from self-
57 employment or employment by another: *And provided*
58 *further*, That there shall be no offset of benefit for any
59 income derived from self-employment or employment by
60 another when the annual total amount of such income
61 is seven thousand five hundred dollars or less.

§8-22-26. Death benefits.

1 (a) In case:

2 (1) Any member of a paid police or fire department
3 who has been in continuous service for more than five
4 years dies from any cause other than as specified in
5 subsection (b) of this section before retirement on a
6 disability pension under the provisions of, prior to the
7 first day of July, one thousand nine hundred eighty-one,
8 section twenty-four of this article, or after the thirtieth
9 day of June, one thousand nine hundred eighty-one,
10 sections twenty-three-a and twenty-four of this article or
11 a retirement pension under the provisions of subsection
12 (a) or both subsections (a) and (b), section twenty-five of
13 this article, leaving in either case surviving a spouse, or
14 any dependent child or children under the age of
15 eighteen years, or dependent father or mother or both,
16 or any dependent brothers or sisters or both under the
17 age of eighteen years, or any dependent child over the
18 age of eighteen years of age who is totally physically or
19 mentally disabled so long as such condition exists; or

20 (2) Any former member of any such department who
21 is on a disability pension prior to the first day of July,
22 one thousand nine hundred eighty-one, under section
23 twenty-four of this article, or after the thirtieth day of
24 June, one thousand nine hundred eighty-one, under
25 sections twenty-three-a and twenty-four of this article,
26 or is receiving or is entitled to receive retirement
27 pension benefits under the provisions of subsection (a)
28 or both subsections (a) and (b), section twenty-five of this
29 article, dies from any cause other than as specified in
30 subsection (b) of this section leaving in either case
31 surviving a spouse or any dependent child or children
32 under the age of eighteen years or dependent father or

33 mother or both, or any dependent brothers or sisters or
34 both under the age of eighteen years, or any dependent
35 child over the age of eighteen years of age who is totally
36 physically or mentally disabled so long as such condition
37 exists; then in any of the cases set forth above in (1) and
38 (2) the board of trustees of such pension and relief fund
39 shall, immediately following the death of such member,
40 pay to or for each of such entitled surviving dependents
41 the following pension benefits: To such spouse, until
42 death or remarriage, a sum per month equal to sixty
43 percent of such member's pension or, in the event such
44 member was not receiving a pension at the time of his
45 death, a sum per month equal to sixty percent of the
46 monthly retirement pension such member would have
47 been entitled to receive pursuant to section twenty-five
48 of this article on the date of his death if such member
49 had then been eligible for a retirement pension there-
50 under, or the sum of three hundred dollars per month,
51 whichever is greater; to each such dependent child, a
52 sum per month equal to twenty percent of such
53 member's pension or, in the event such member was not
54 receiving a pension on the date of his death, a sum per
55 month equal to twenty percent of the monthly retire-
56 ment pension such member would have been entitled to
57 receive pursuant to section twenty-five of this article on
58 the date of his death if such member had then been
59 eligible for a retirement pension thereunder, or until
60 such child attains the age of eighteen years or marries,
61 whichever first occurs; to each such dependent orphaned
62 child, a sum per month equal to twenty-five percent of
63 such member's pension or, in the event such member
64 was not receiving a pension at the time of his death, a
65 sum per month equal to twenty-five percent of the
66 monthly retirement pension such member would have
67 been entitled to receive pursuant to section twenty-five
68 of this article on the date of his death if such member
69 had then been eligible for a retirement pension there-
70 under, until such child attains the age of eighteen years
71 or marries, whichever first occurs; to each such
72 dependent orphaned child, a sum per month equal to
73 twenty-five percent of such member's pension or, in the
74 event such member was not receiving a pension on the

75 date of his death, a sum per month equal to twenty-five
76 percent of the monthly retirement pension such member
77 would have been entitled to receive pursuant to section
78 twenty-five of this article on the date of his death if such
79 member had then been eligible for a retirement pension
80 thereunder, until such child attains the age of eighteen
81 years or marries, whichever first occurs; to each such
82 dependent father or mother, a sum per month for each
83 equal to ten percent of such member's pension or, in the
84 event such member was not receiving a pension on the
85 date of his death, a sum per month equal to ten percent
86 of the monthly retirement pension such member would
87 have been entitled to receive pursuant to section twenty-
88 five of this article on the date of his death if such
89 member had then been eligible for a retirement pension
90 thereunder; to each such dependent brother or sister, the
91 sum of fifty dollars per month until such individual
92 attains the age of eighteen years or marries, whichever
93 first occurs, but in no event shall the aggregate amount
94 paid to such brothers and sisters exceed one hundred
95 dollars per month. If at any time, because of the number
96 of dependents, all such dependents cannot be paid in full
97 as herein provided, then each dependent shall receive
98 his pro rata share of such payments. In no case shall the
99 payments to the surviving spouse and children be cut
100 below sixty-five percent of the total amount paid to all
101 dependents.

102 (b) The surviving spouse, child or children, or
103 dependent father or mother, or dependent brothers or
104 sisters, of any such member who dies by reason of
105 service rendered in the performance of such member's
106 duties shall, regardless of the length of such member's
107 service and irrespective of whether such member was
108 or was not entitled to receive, or was or was not
109 receiving, disability pension or temporary disability
110 payments at the time of his death, receive the death
111 benefits provided for in subsection (a) of this section. If
112 such member had less than three years' service at the
113 time of his death, the member's pension shall be
114 computed on the basis of the actual number of years of
115 service.

116 (c) If a member dies without leaving a spouse,
117 dependent child or children, or dependent father or
118 mother, or dependent brothers or sisters, his contribu-
119 tions to the fund plus six percent interest shall be
120 refunded to his named beneficiary or, if no beneficiary
121 has been named, to his estate to the extent that such
122 contributions plus interest exceed any disability or
123 retirement benefits that he may have received before his
124 death.

125 (d) The provisions of this section shall not be construed
126 as creating or establishing any contractual or vested
127 rights in favor of any individual who may be or become
128 qualified as a beneficiary of the death benefits herein
129 authorized to be made, all the provisions hereof and
130 benefits provided for hereunder being expressly subject
131 to such subsequent legislative enactments as may
132 provide for any change, modification or elimination of
133 the beneficiaries or benefits specified herein.

134 (e) Notwithstanding the provisions of section twenty-
135 four of this article the benefit provided for in this section
136 shall be calculated as if the member had remained
137 unemployed throughout any period of disability.

**§8-22-26a. Supplemental pension benefits entitlement;
benefit payable; application of section;
construction.**

1 (a) Except as otherwise provided in this section, all
2 retirees, surviving beneficiaries, disability pensioners or
3 future retirees shall receive as a supplemental pension
4 benefit an annualized monthly amount commencing on
5 the first day of July, based on a percentage increase
6 equal to any increase in the consumer price index as
7 calculated by the United States Department of Labor,
8 Bureau of Statistics, for the preceding year: *Provided,*
9 That the supplemental pension benefit specified herein
10 shall not exceed four percent per year: *Provided,*
11 *however,* That no retiree shall be eligible for the
12 supplemental pension benefit specified herein until the
13 first day of July after the expiration of two years from
14 the date of retirement of said retiree: *Provided further,*
15 That persons retiring prior to the effective date of this

16 section shall receive the supplemental benefit provided
17 for in this section immediately upon retirement and
18 shall not be subject to the two year delay: *And provided*
19 *further*, That the supplemental benefit shall only be
20 calculated on the allowable amount, which is the first
21 fifteen thousand dollars of the total annual benefit paid.
22 If at any time, after the supplemental benefit becomes
23 applicable, the total accumulated percentage increase in
24 benefit on the allowable amount becomes less than
25 seventy-five percent of the total accumulated percentage
26 increase in the consumer price index over that same
27 period of time, the four percent limitation shall be
28 inapplicable until such time as the supplemental benefit
29 paid equals seventy-five percent of the accumulated
30 increase in the consumer price index. The supplemental
31 pension benefit payable under the provisions of this
32 section shall be paid in equal monthly installments.

33 (b) Upon commencement of the payment of death
34 benefits pursuant to section twenty-six of this article,
35 there shall be calculated on the allowable amount, which
36 is the first fifteen thousand dollars of the annual
37 allowable benefit under said section twenty-six, the
38 supplemental benefit provided for in subsection (a) of
39 this section using the date that the retirement benefit
40 provided for pursuant to section twenty-five of this
41 article began as the base year. The amount of the death
42 benefit provided pursuant to section twenty-six of this
43 article shall be calculated without regard to any
44 supplemental benefit previously paid under this section.
45 After the initial calculation made pursuant to this
46 subsection the beneficiary of the benefits provided for
47 pursuant to section twenty-six, shall, after reindexation,
48 thereafter receive the supplemental benefit provided for
49 in subsection (a).

50 (c) Persons becoming disabled and eligible for a
51 benefit under subsection (d), section twenty-four of this
52 article after the first day of January, one thousand nine
53 hundred ninety-one, shall receive as an annualized
54 monthly supplemental benefit commencing on each July
55 first an amount based on a percentage increase equal
56 to any increase in the consumer price index as calcu-

57 lated by the United States Department of Labor, Bureau
58 of Statistics, for the preceding year: *Provided*, That the
59 supplemental pension benefit shall not exceed four
60 percent per year: *Provided, however*, That the benefit
61 provided herein shall not commence until the first day
62 of July in the second year after what would have been
63 the earliest service retirement date pursuant to section
64 twenty-five of this article for the person receiving the
65 disability benefit: *Provided further*, That for persons
66 becoming eligible for a benefit under subsection (d),
67 article twenty-four of this section who were not em-
68 ployed in the preceding year and file a copy of his or
69 her income tax return by the fifteenth of April each
70 year, evidencing said lack of employment, the benefit
71 provided herein shall commence on the first day of July
72 in the second year after the date of disablement: *And*
73 *provided further*, That the supplemental benefit shall
74 only be calculated on the allowable amount, which is the
75 first fifteen thousand dollars of the total annual benefit
76 paid. If at any time after the commencement of the
77 payment of the supplemental benefit provided under
78 this subsection the total accumulated percentage
79 increase in benefit on the allowable amount becomes less
80 than seventy-five percent of the total accumulated
81 increase in the consumer price index for that same
82 period of time, the four percent limitation shall be
83 inapplicable until such time as the supplemental benefit
84 paid equals seventy-five percent of the accumulated
85 increase in the consumer price index.

86 (d) Persons receiving a disability pension pursuant to
87 section twenty-four of this article prior to the first day
88 of January, one thousand nine hundred ninety-one, shall
89 receive commencing each July first, as an annualized
90 monthly supplemental benefit an amount based on a
91 percentage increase equal to any increase in the
92 consumer price index as calculated by the United States
93 Department of Labor, Bureau of Statistics, for the
94 preceding year: *Provided*, That the supplemental benefit
95 provided herein shall not exceed two percent per year:
96 *Provided, however*, That beginning the first day of July
97 two years after what would have been the earliest
98 service retirement date pursuant to section twenty-five

99 of this article the supplemental benefit provided herein
100 shall not exceed four percent per year. The amount of
101 supplemental benefit provided in this subsection shall
102 not exceed four percent beginning the first day of July
103 in any twelve month period for any pensioner who files
104 a certified copy of his or her tax return evidencing that
105 said pensioner was unemployed in the preceding year
106 and received no earned income. The tax return shall be
107 filed by the fifteenth of April in any such year. If at any
108 time after the first day of July in the second year from
109 what would have been the earliest service retirement
110 date pursuant to section twenty-five of this article the
111 total accumulated percentage increase in the supple-
112 mental benefit provided pursuant to this subsection on
113 the allowable amount becomes less than the seventy-five
114 percent of the total accumulated percentage increase in
115 the consumer price index over that same period of time,
116 the maximum percentage shall be inapplicable until
117 such time as the percentage increase in the supplemen-
118 tal benefit paid equals seventy-five percent of the
119 accumulated increase in the consumer price index. The
120 supplemental benefit provided in this subsection shall
121 only be calculated on the allowable amount, which is the
122 first fifteen thousand dollars of the annual benefit paid.

123 (e) Any supplemental benefits paid during a period of
124 non-entitlement may be withheld out of subsequent
125 regular monthly pension benefits.

126 (f) During the fiscal year ending on the thirtieth day
127 of June, one thousand nine hundred ninety-six, and each
128 year thereafter, each municipal policemen's and fire-
129 men's pension fund shall be reviewed by a qualified
130 actuary who shall make a determination as to its
131 actuarial soundness. Based upon the actuary's determi-
132 nation of the actuarial soundness of the fund, the
133 actuary shall certify to the board of trustees of the fund
134 the amount of increase in supplemental benefits, if any,
135 which may be paid, and which will preserve the
136 minimum standards for actuarial soundness of the fund,
137 as set forth in section twenty of this article. The board
138 of trustees shall increase supplemental benefits by an
139 amount which is equal to the actuary's certified

140 recommendation, up to the four percent limit contained
141 in this section or the increase in the consumer price
142 index, whichever is less. If the actuary determines that
143 it is necessary to preserve the actuarial soundness of the
144 fund, the board of trustees of the fund shall increase the
145 percentage of the members' contribution from seven
146 percent to the amount certified by the actuary not to
147 exceed eight and one-half percent, but only for so long
148 as is necessary to achieve the minimum standards for
149 actuarial soundness required by section twenty of this
150 article. In any year in which there is no supplemental
151 benefit paid, such year shall not be included in the
152 reindexation calculation provided pursuant to this
153 section.

154 (g) This section shall be construed liberally to
155 effectuate the purpose of establishing minimum pension
156 benefits under this article for members and surviving
157 spouses.

CHAPTER 113

(S. B. 512—By Senator Wooton)

[Passed March 6, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article twenty-nine-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county airport authority; and providing generally therefor.

Be it enacted by the Legislature of West Virginia:

That article twenty-nine-a, 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 29A. COUNTY AIRPORT AUTHORITIES.

- §8-29A-1. County airport authority authorized as public agency.
- §8-29A-2. Appointment of members; powers and duties; compensation; terms; removal or replacement.
- §8-29A-3. Powers generally.
- §8-29A-4. Funds; accounting; reporting.
- §8-29A-5. Full-time employees of the authority to be public employees.

- §8-29A-6. Authority may incur indebtedness; county not liable for indebtedness.
- §8-29A-7. Exemption from taxes; payment for portion used as industrial park.
- §8-29A-8. County commission authorized to convey present airport properties and facilities to the authority.
- §8-29A-9. Disposition of surplus.
- §8-29A-10. Procedure for dissolution of authority.
- §8-29A-11. Purpose of article; liberal construction; article cumulative.

§8-29A-1. County airport authority authorized as public agency.

1 The county commission of a county is hereby autho-
2 rized to create and establish as a public agency a county
3 airport authority to be known as the “_____”
4 County Airport Authority” for the purposes and in the
5 manner hereinafter set forth.

§8-29A-2. Appointment of members; powers and duties; compensation; terms; removal or replacement.

1 (a) The management and control of the county airport
2 authority, its property, operations, business and affairs,
3 shall be lodged in a board of five persons who shall be
4 known as “Members of the Authority”. The board shall
5 constitute and be a public corporation under the name
6 of “_____ County Airport Authority” and as such
7 shall have perpetual succession, may contract and be
8 contracted with, sue and be sued, plead and be im-
9 pleaded, and have and use a common seal.

10 (b) All members shall be appointed by the county
11 commission: *Provided*, That one member of the author-
12 ity shall be a member of the county commission:
13 *Provided, however*, That of the remaining four members
14 of the authority no more than two shall be members of
15 the same political party. Members shall be residents of
16 the county and be appointed for a term of five years,
17 except that as to the first four appointed to the first
18 board appointed, the term of one member shall expire
19 on the first day of July next ensuing and the term of
20 the next member shall expire on the first day of July
21 two years thereafter, the term of another member shall
22 expire on the first day of July three years thereafter and
23 the term of the remaining member shall expire on the

24 first day of July four years thereafter: *Provided further,*
25 That the county commissioner appointed to serve as a
26 member of the authority shall not serve for a term as
27 member of the authority which is longer than the term
28 of office as a member of the county commission.

29 (c) The members of said board shall receive no
30 compensation for their services, but they shall be
31 entitled to reimbursement for all reasonable and
32 necessary expenses actually incurred in the perfor-
33 mance of their duties as members of said board. They
34 shall not be personally interested, directly or indirectly,
35 in any contract entered into by said board, or hold any
36 remunerative position in connection with the establish-
37 ment, construction, improvement, extension, develop-
38 ment, maintenance or operation of any of the property
39 under their control as members of said board.

40 (d) The county commission shall have the power to
41 remove any member of the authority for consistent
42 violations of any provisions of this article, for reasonable
43 cause which shall include, but not be limited to, a
44 continued failure to attend meetings of the authority,
45 failure to diligently pursue the objectives for which the
46 authority was created or failure to perform any other
47 duty prescribed by law, or for any misconduct in office:
48 *Provided,* That if the county commission desires to
49 remove a member of the authority it shall notify said
50 member in writing, stating the reasons for the county
51 commission desiring said removal. Within ten days of
52 the receipt of the written notice of removal by the
53 member of the authority, the member may request a
54 hearing before the county commission, and any such
55 hearing shall be held within ten days of the member's
56 request for said hearing.

57 If any member of the authority shall die, resign or be
58 removed, or for any other reason cease to be a member
59 of the authority, the county commission shall within
60 thirty days appoint another person to fill the unexpired
61 portion of the term of such member.

§8-29A-3. Powers generally.

1 (a) The authority is hereby authorized and empo-

2 wered to acquire, equip, construct, improve, maintain
3 and operate a public airport within the county, with all
4 usual and convenient appurtenances and facilities
5 pertaining thereto, including, but not limited to, an
6 industrial park and a waterworks or sewerage system
7 or a combined waterworks and sewerage system, and
8 said airport shall be for the convenience and accommo-
9 dation of the inhabitants of the county and the public
10 generally.

11 (b) A county airport authority is hereby given power
12 and authority as follows:

13 (1) To make and adopt all necessary bylaws, rules and
14 regulations for its organization and operations not
15 inconsistent with law;

16 (2) To elect its own officers, to appoint committees
17 and to employ and fix the compensation for personnel
18 including attorneys necessary for its operation;

19 (3) To delegate any authority given to it by law to any
20 of its officers, committees, agents or employees;

21 (4) To enter into contracts with any person, govern-
22 mental department, firm or corporation, and generally
23 to do any and all things necessary or convenient for the
24 purpose of acquiring, equipping, constructing, main-
25 taining, improving, extending, financing and operating
26 a public airport, including the development of an
27 industrial park in the same general area;

28 (5) To apply for, receive and use grants-in-aid,
29 donations and contributions from any source or sources,
30 including, but not limited to, the federal government
31 and any agency thereof, and the state of West Virginia,
32 and to accept and use bequests, devises, gifts and
33 donations from any person, firm or corporation;

34 (6) To enter into any agreement with any person,
35 including the federal or state government, or any agency
36 or subdivision thereof, in connection with obtaining
37 funds for its purposes, which agreement may contain
38 such provisions, covenants, terms and conditions as the
39 authority may deem advisable;

40 (7) To accept contributions from time to time by the
41 county commission and by any persons that shall desire
42 so to do;

43 (8) To acquire lands, structures or buildings and hold
44 title thereto in its own name, including, whenever it
45 shall be deemed necessary by the authority, to take or
46 acquire such property either in fee or as easements, to
47 purchase same directly or through its agents from the
48 owner or owners thereof, or to exercise the power of
49 eminent domain in the manner provided for condemna-
50 tion proceedings in chapter fifty-four of this code
51 inasmuch as such purposes are hereby declared to be
52 public uses for which private property may be taken:
53 *Provided*, That such right of eminent domain shall not
54 apply to the development of an industrial park;

55 (9) To sell, lease or otherwise dispose of any real estate
56 which it may own;

57 (10) To purchase, own, hold, sell and dispose of
58 personal property;

59 (11) To borrow money and execute and deliver
60 negotiable notes, mortgage bonds, revenue bonds, other
61 bonds, debentures and other evidences of indebtedness
62 therefor, and give such security therefor as shall be
63 requisite, including giving a mortgage or deed of trust
64 on its airport properties and facilities or assigning or
65 pledging the gross or net revenues therefrom;

66 (12) To raise funds by the issuance and sale of revenue
67 bonds or refunding bonds in the manner provided by the
68 applicable provisions of article sixteen of this chapter,
69 it being hereby expressly provided that, for that
70 purpose, a county airport authority shall be treated as
71 a municipality or board as those terms are used in said
72 article sixteen;

73 (13) To acquire, construct, establish, equip, maintain
74 and operate, within a reasonable distance of the airport,
75 a waterworks, a sewerage system or a combined
76 waterworks and sewerage system for its own use and for
77 the use of any person, and to finance the same by the
78 issuance of revenue bonds as provided in this article:

79 *Provided*, That no existing waterworks or sewerage
80 system, or any part thereof, may be acquired without
81 the prior consent and approval of the public service
82 commission;

83 (14) To establish, charge and collect reasonable fees
84 and charges for services or for the use of any part of
85 its property or facilities, or for both services and such
86 use;

87 (15) To lease its airport and all or any part of the
88 appurtenances and facilities therewith to any available
89 lessee, subject to all constitutional and statutory
90 limitations with respect thereto, at such rental and upon
91 such terms and conditions as the authority shall deem
92 proper: *Provided*, That such lease shall be for some
93 purpose associated with airport activities and subordi-
94 nate to any mortgage or deed of trust executed by the
95 authority; and

96 (16) To expend its funds in the execution of the
97 powers and authority herein given.

§8-29A-4. Funds; accounting; reporting.

1 All funds received by the authority from whatever
2 source shall be deposited in such bank or banks as the
3 authority may direct and shall be withdrawn therefrom
4 in such manner as the authority may direct. The
5 authority shall keep strict account of all its receipts and
6 expenditures and shall each quarter make a quarterly
7 report to the county commission containing an itemized
8 account of its receipts and disbursements during the
9 preceding quarter. Such report shall be made within
10 sixty days after the termination of the quarter.

11 Within sixty days after the end of each fiscal year, the
12 authority shall make an annual report containing an
13 itemized statement of its receipts and disbursements for
14 the preceding year, and such annual report shall be
15 published as a Class II-0 legal advertisement in
16 compliance with the provisions of article three, chapter
17 fifty-nine of this code, and the publication area for such
18 publication shall be the county. The books, records and
19 accounts of the authority shall be subject to audit and

20 examination by the office of the state tax commissioner
21 of West Virginia and by any other proper public official
22 or body in the manner provided by law.

***§8-29A-5. Full-time employees of the authority to be public employees.**

1 Any person who serves regularly as an employee, full
2 time, on a salary basis, whose tenure is not restricted
3 as to temporary or provisional appointment, in the
4 service of, and whose compensation is payable in whole
5 or in part by the authority, shall be deemed to be a
6 public employee and shall be subject to any and all
7 applicable provisions of law relating thereto, including,
8 but not limited to, the workers' compensation act and
9 the West Virginia public employees insurance act.

§8-29A-6. Authority may incur indebtedness; county not liable for indebtedness.

1 The authority may incur any proper indebtedness and
2 issue any obligations and give any security therefor
3 which it may deem necessary or advisable in connection
4 with carrying out its purposes. No statutory limitation
5 with respect to the nature or amount of indebtedness
6 which may be incurred by municipalities or other bodies
7 shall apply to indebtedness of the authority. No in-
8 debtedness of any nature of the authority shall constitute
9 an indebtedness of the county commission, nor of the
10 county, or a charge against any property of the county.
11 No obligation incurred by the authority shall give any
12 right against any member of the county commission or
13 any member of the board of the authority. The rights
14 of creditors of the authority shall be solely against the
15 authority as a corporate body and shall be satisfied only
16 out of property held by it in its corporate capacity.

§8-29A-7. Exemption from taxes; payment for portion used as industrial park.

1 The authority shall be exempt from the payment of
2 any taxes or fees to the state or any subdivisions thereof
3 or any municipalities or to any officer or employee of
4 the state or of any subdivision thereof or of any
5 municipalities. The property of the authority shall be

*Clerk's Note: This section was also amended by S. B. 132 (Chapter 16), which passed subsequent to this act.

6 exempt from all local and municipal taxes. Bonds, notes,
7 debentures and other evidence of indebtedness of the
8 authority are declared to be issued for a public purpose
9 and to be public instrumentalities, and, together with
10 interest thereon, shall be exempt from taxes.

11 It shall be the duty of the county assessor on the first
12 day of July of each year to ascertain what portion of the
13 real and personal property of the authority, if any, is
14 devoted to use as an industrial park and to appraise such
15 property as if taxable. The assessor shall likewise
16 determine the tax which would be levied upon such
17 property if it were taxable. On the first day of August
18 of the year following such determination and the first
19 day of February thereafter, the authority shall pay unto
20 the sheriff of the county a sum of money equal to that
21 which would have been due if the property were taxable,
22 which sums shall be distributed by the sheriff as if such
23 sums were tax receipts.

**§8-29A-8. County commission authorized to convey
present airport properties and facilities to
the authority.**

1 Notwithstanding any other provision of law to the
2 contrary, the county commission of a county is hereby
3 authorized to convey to the authority the present airport
4 property owned by the county, if any, situate in the
5 county, together with all the appurtenances and facil-
6 ities therewith, such conveyance to be without consider-
7 ation or for such price and upon such terms and
8 conditions as the county commission shall deem proper.

§8-29A-9. Disposition of surplus.

1 If the authority should realize a surplus, whether from
2 operating the airport or leasing it for operation, over
3 and above the amount required for the maintenance,
4 improvement and operation of the airport and for
5 meeting all required payments on its obligations, it shall
6 set aside such reserve for future operations, improve-
7 ments and contingencies as it shall deem proper and
8 shall then apply the residue of such surplus, if any, to
9 the payment of any recognized and established obliga-
10 tions not then due; and after all such recognized and
11 established obligations have been paid off and dis-

12 charged in full, the authority shall, at the end of each
13 fiscal year, set aside the reserve for future operations,
14 improvements and contingencies, as aforesaid, and then
15 pay the residue of such surplus, if any, to the county
16 commission, to be used by the county commission for
17 general county purposes.

§8-29A-10. Procedure for dissolution of authority.

1 The authority may at any time pay off and discharge
2 in full all of its indebtedness, obligations and liabilities,
3 convey the airport properties, appurtenances and
4 facilities to the county commission and be dissolved.
5 Before making such conveyance of its properties, the
6 authority shall give notice of its intention to do so and
7 of its intention to be dissolved, and said notice shall be
8 published as a Class I-0 legal advertisement in com-
9 pliance with the provisions of article three, chapter fifty-
10 nine of this code, and the publication area for such
11 publication shall be the county. Affidavits from the
12 publishers of the newspapers showing such publication
13 shall be filed with the county commission before the
14 deed conveying said properties is delivered. Any funds
15 remaining in the hands of the authority at the time of
16 the conveyance of said properties shall be by the
17 authority paid over to the county commission to be used
18 by it for purposes in connection with said airport. Upon
19 the payment of its indebtedness, obligations and
20 liabilities, the publishing of the notices aforesaid, the
21 conveyance of its properties, and the paying over to the
22 county commission of any funds remaining in its hands,
23 the authority shall cause a certificate showing its
24 dissolution to be executed under its name and seal and
25 to be recorded in the office of the clerk of the county
26 commission and thereupon its dissolution shall be
27 complete.

§8-29A-11. Purpose of article; liberal construction; article cumulative.

1 It is the purpose of this article to provide for the
2 acquisition, construction, improvement, extension,
3 maintenance and operation of a public airport and

4 related facilities in a prudent and economical manner,
5 and this article shall be liberally construed as giving to
6 the authority full and complete power reasonably
7 required to give effect to the purposes hereof. The
8 provisions of this article are in addition to and not in
9 derogation of any power existing in the county commis-
10 sion of a county under any constitutional or statutory
11 provisions which it may now have, or may hereafter
12 acquire.

CHAPTER 114

(Com. Sub. for H. B. 2641—By Delegate Compton)

[Passed March 5, 1991: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to possession of wildlife.

Be it enacted by the Legislature of West Virginia:

That section four, 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.

§20-2-4. Possession of wildlife.

1 Except as otherwise provided by law, no person shall
2 have in his/her possession any wildlife during closed
3 seasons. Lawfully taken wildlife may be in a person's
4 possession during the open season therefor, and for sixty
5 days thereafter: *Provided*, That any person, upon
6 application to the director, may be issued a permit
7 authorizing the possession of the flesh and meat of such
8 wildlife for an additional period.

9 Wildlife lawfully taken outside of this state shall be
10 subject to the same laws and rules as that taken within
11 this state.

12 Migratory wild birds shall be possessed only in
13 accordance with the "Migratory Bird Treaty Act" and
14 regulations thereunder.

15 The restrictions in this section do not apply to the
16 director or duly authorized agents, who may, in any
17 manner, take or maintain in captivity, at any time, any
18 wildlife for the purpose of carrying out the provisions
19 of this chapter.

CHAPTER 115

(H. B. 2615—By Delegates Prunty and Mezzatesta)

[Passed March 6, 1991; 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 developmentally disabled residents to fish without a license; defining developmentally disabled.

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
2 required to obtain licenses or permits as indicated:

3 (a) Bona fide resident landowners or their resident
4 children, or resident parents, or bona fide resident
5 tenants of such land, may hunt, trap or fish on their own
6 land during open season in accordance with the laws
7 and regulations applying to such hunting, trapping and
8 fishing without obtaining a license to do so unless such
9 lands have been designated as a wildlife refuge or
10 preserve.

11 (b) Any bona fide resident of this state who is totally

12 blind may fish in this state without obtaining a fishing
13 license to do so. A written statement or certificate from
14 a duly licensed physician of this state showing the said
15 resident to be totally blind shall serve in lieu of a fishing
16 license and shall be carried on the person of said
17 resident at all times while he is fishing in this state.

18 (c) All residents of West Virginia on active duty in the
19 armed forces of the United States of America, while on
20 leave or furlough, shall have the right and privilege to
21 hunt, trap or fish in season in West Virginia without
22 obtaining a license to do so. Leave or furlough papers
23 shall serve in lieu of any such license and shall be
24 carried on the person at all times while trapping,
25 hunting or fishing.

26 (d) In accordance with the provisions of section
27 twenty-seven of this article, any resident sixty-five years
28 of age or older shall not be required to have a license
29 to hunt, trap or fish during the legal seasons in West
30 Virginia, but in lieu of such license any such person
31 shall at all times while hunting, trapping or fishing,
32 carry on his person a card issued by the director stating
33 his name, address and date of birth.

34 (e) Residents of the state of Maryland who carry
35 hunting or fishing licenses valid in that state may hunt
36 or fish from the West Virginia banks of the Potomac
37 River without obtaining licenses to do so, but such
38 hunting or fishing shall be confined to the fish and
39 waterfowl of the river proper and not on its tributaries:
40 *Provided*, That the state of Maryland shall first enter
41 into a reciprocal agreement with the director extending
42 a like privilege of hunting and fishing on the Potomac
43 River from the Maryland banks of said river to licensed
44 residents of West Virginia, without requiring said
45 residents to obtain Maryland hunting and fishing
46 licenses.

47 (f) Residents of the state of Ohio who carry hunting
48 or fishing licenses valid in that state may hunt or fish
49 on the Ohio River or from the West Virginia banks of
50 said river without obtaining licenses to do so, but such
51 hunting or fishing shall be confined to fish and

52 waterfowl of the river proper and not on its tributaries:
53 *Provided*, That the state of Ohio shall first enter into a
54 reciprocal agreement with the director extending a like
55 privilege of hunting and fishing from the Ohio banks of
56 said river to licensed residents of West Virginia without
57 requiring said residents to obtain Ohio hunting and
58 fishing licenses. In the event the state of Ohio accords
59 this privilege to residents of West Virginia, such Ohio
60 residents will not be required to obtain the license
61 provided for by section forty-two of this article.

62 (g) Any resident of West Virginia who was honorably
63 discharged from the armed forces of the United States
64 of America, and who receives a veteran's pension based
65 on total permanent service connected disability as
66 certified to by the veterans administration, shall be
67 permitted to hunt, trap or fish in this state without
68 obtaining a license therefor. The director shall promul-
69 gate rules and regulations setting forth the procedure
70 for the certification of the veteran, manner of applying
71 for and receiving the certification and requirements as
72 to identification while said veteran is hunting, trapping
73 or fishing.

74 (h) Any disabled veteran, who is a resident of West
75 Virginia, and who, as certified to by the commissioner
76 of motor vehicles, is eligible to be exempt from the
77 payment of any fee on account of registration of any
78 motor vehicle owned by such disabled veteran as
79 provided for in section eight, article ten, chapter
80 seventeen-a of this code, shall be permitted to hunt, trap
81 or fish in this state without obtaining a license therefor.
82 The director shall promulgate rules and regulations
83 setting forth the procedure for the certification of the
84 disabled veteran, manner of applying for and receiving
85 the certification, and requirements as to identification
86 while said disabled veteran is hunting, trapping or
87 fishing.

88 (i) Any resident or inpatient in any state mental
89 health, health or benevolent institution or facility may
90 fish in this state, under proper supervision of the
91 institution involved, without obtaining a fishing license
92 to do so. A written statement or certificate signed by the

93 superintendent of the mental health, health or benevo-
94 lent institution or facility in which the resident or
95 inpatient, as the case may be, is institutionalized shall
96 serve in lieu of a fishing license and shall be carried on
97 the person of the resident or inpatient at all times while
98 he is fishing in this state.

99 (j) Any resident who is developmentally disabled, as
100 certified by a physician and the director of the depart-
101 ment of health, may fish in this state without obtaining
102 a fishing license to do so. As used in this section,
103 "developmentally disabled" means a person with a
104 severe, chronic disability which:

105 (1) Is attributable to a mental or physical impair-
106 ment, or a combination of mental and physical
107 impairments;

108 (2) Is manifested before the person attains age
109 twenty-two;

110 (3) Results in substantial functional limitations in
111 three or more of the following areas of major life
112 activity: (A) Self care; (B) receptive and expressive
113 language; (C) learning; (D) mobility; (E) self-direction;
114 (F) capacity for independent living; and (G) economic
115 self-sufficiency; and

116 (4) Reflects the person's need for a combination and
117 sequence of care, treatment or supportive services which
118 are of lifelong or extended duration and are individually
119 planned and coordinated.

CHAPTER 116

(S. B. 204—By Senators Dittmar and J. Manchin)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article five-
h, chapter twenty of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, relating
to clarifying the definition of owner for corrective action
purposes.

Be it enacted by the Legislature of West Virginia:

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

§20-5H-14. Corrective action for underground petroleum storage tanks.

1 (a) Prior to the effective date of regulations promul-
2 gated pursuant to subdivision (9) or (10), subsection (b),
3 section six of this article, the director is authorized to:

4 (1) Require the owner or operator of an underground
5 storage tank to undertake corrective action with respect
6 to any release of petroleum from said tank when the
7 director determines that such corrective action shall be
8 done properly and promptly by the owner or operator
9 if, in the judgment of the director, such action is
10 necessary to protect human health and the environment;
11 or

12 (2) Undertake corrective action with respect to any
13 release of petroleum into the environment from an
14 underground storage tank if, in the judgment of the
15 director, such action is necessary to protect human
16 health and the environment.

17 The corrective action undertaken or required under
18 this subsection shall be such as may be necessary to
19 protect human health and the environment. The director
20 shall use funds in the leaking underground storage tank
21 response fund established pursuant to this article for
22 payment of costs incurred for corrective action taken
23 under subparagraph (2) of this subsection in the manner
24 set forth in subsection (e), section twenty-one of this
25 article. The director shall give priority in undertaking
26 corrective actions under this subsection, and in issuing
27 orders requiring owners or operators to undertake such
28 actions, to releases of petroleum from underground
29 storage tanks which pose the greatest threat to human
30 health and the environment and where the director
31 cannot identify a solvent owner or operator of the tank
32 who will undertake action properly.

33 (b) Following the effective date of regulations promul-

34 gated under subdivision (9) or (10), subsection (b),
35 section six of this article, all actions or orders of the
36 director described in subsection (a) of this section shall
37 be in conformity with such regulations. Following such
38 effective date the director may undertake corrective
39 action with respect to any release of petroleum into the
40 environment from an underground storage tank only if,
41 in the judgment of the director, such action is necessary
42 to protect human health and environment and one or
43 more of the following situations exists:

44 (1) If no person can be found within ninety days, or
45 such shorter period as may be necessary to protect
46 human health and the environment, who is an owner or
47 operator of the tank concerned, subject to such correc-
48 tive action regulations and capable of carrying out such
49 corrective action properly.

50 (2) A situation exists which requires prompt action by
51 the director under this subsection to protect human
52 health and the environment.

53 (3) Corrective action costs at a facility exceed the
54 amount of coverage required pursuant to the provisions
55 of section ten of this article and, considering the class
56 or category of underground storage tank from which the
57 release occurred, expenditures from the leaking under-
58 ground storage tank response fund are necessary to
59 assure an effective corrective action.

60 (4) The owner or operator of the tank has failed or
61 refused to comply with an order of the director under
62 this section or of the board under section eighteen of this
63 article to comply with the corrective action regulations.

64 (c) The director is authorized to draw upon the
65 leaking underground storage tank response fund in
66 order to take action under subdivision (1) or (2),
67 subsection (b) of this section if the director has made
68 diligent good faith efforts to determine the identity of
69 the party or parties responsible for the release or
70 threatened release and:

71 (1) He is unable to determine the identity of the
72 responsible party or parties in a manner consistent with
73 the need to take timely corrective action; or

74 (2) The party or parties determined by the director to
75 be responsible for the release or threatened release have
76 been informed in writing of the director's determination
77 and have been requested by the director to take
78 appropriate corrective action but are unable or unwill-
79 ing to take such action in a timely manner.

80 (d) The written notice to a responsible party must
81 inform the responsible party that if that party is
82 subsequently found liable for releases pursuant to
83 subsection (a) or (b) of this section, he will be required
84 to reimburse the leaking underground storage tank
85 response fund for the costs of the investigation, informa-
86 tion gathering and corrective action taken by the
87 director.

88 (e) If the director determines that immediate response
89 to an imminent threat to public health and welfare or
90 the environment is necessary to avoid substantial injury
91 or damage to persons, property or resources, corrective
92 action may be taken pursuant to subsections (a) and (b)
93 of this section without the prior written notice required
94 by subdivision (2), subsection (c) of this section. In such
95 a case the director must give subsequent written notice
96 to the responsible party within fifteen days after the
97 action is taken describing the circumstances which
98 required the action to be taken without prior notice.

99 (f) As used in this section, the term "owner" shall not
100 include any person who, without participating in the
101 management of an underground storage tank and
102 otherwise not engaged in petroleum production, refining
103 or marketing, holds indicia of ownership primarily to
104 protect the person's security interest in the tank.

CHAPTER 117

(Com. Sub. for H. B. 2377—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West
Virginia, one thousand nine hundred thirty-one, as

amended, by adding thereto a new article, designated article five-m, relating to the West Virginia groundwater protection act; short title; legislative findings, public policy and purposes; definitions; authority and duties of water resources board; standards of purity and quality; promulgation of such standards; effectiveness of current standards; authority and duties of other agencies; rules; action required to protect existing quality of groundwater; deviations from existing quality; inapplicability of certain provisions to certain activities; effectiveness of current rules, permits, policies, directives and orders; designation of lead agency; authority and duties of lead agency; additional authority of agencies; authority and duties of groundwater coordinating committee; authority and duties of director of division of natural resources; groundwater certification; groundwater protection fees; groundwater remediation fees; dedication of fee proceeds; creation of groundwater protection fund; creation of groundwater remediation fund; sources of funding; expenditures from funds; civil and criminal penalties; civil administrative penalties and procedures for review of imposition thereof; dedication of penalty proceeds; injunctive relief; enforcement orders; administrative appeal and judicial review; rule-making petition; existing rights and remedies; exemption from criminal prosecution; conflicting provisions; effective date of provisions subject to federal approval; and severability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5M. WEST VIRGINIA GROUNDWATER PROTECTION ACT.

- §20-5M-1. Short Title.
- §20-5M-2. Legislative findings, public policy and purposes.
- §20-5M-3. Definitions.
- §20-5M-4. Authority of state water resources board; standards of purity and quality.
- §20-5M-5. Authority of other agencies; applicability.
- §20-5M-6. Lead agency designation; additional powers and duties.

- §20-5M-7. Groundwater coordination committee; creation.
§20-5M-8. Groundwater certification.
§20-5M-9. Groundwater protection fees authorized; director to promulgate rules; dedication of fee proceeds; groundwater protection fund established groundwater remediation fund established.
§20-5M-10. Civil and criminal penalties; civil administrative penalties; dedication of penalty proceeds; injunctive relief; enforcement orders; hearing.
§20-5M-11. Appeal and review procedures.
§20-5M-12. Rule-making petition.
§20-5M-13. Existing rights and remedies preserved; effect of compliance.
§20-5M-14. Conflicting provisions.
§20-5M-15. Effective dates of provisions subject to federal approval.
§20-5M-16. Severability.

§20-5M-1. Short title.

- 1 This article may be known and cited as the “Ground-
2 water Protection Act.”

§20-5M-2. Legislative findings, public policy and purposes.

- 1 (a) The Legislature finds that:
2 (1) West Virginia has relatively pure groundwater
3 resources which are abundant and readily available;
4 (2) Over fifty percent of West Virginia’s overall
5 population, and over ninety percent of the state’s rural
6 population, depend on groundwater for drinking water;
7 (3) A rural lifestyle has created a quality of life in
8 many parts of West Virginia which is highly valued.
9 Maintaining this lifestyle depends upon protecting
10 groundwater to avoid increased expenses associated
11 with providing treated drinking water supplies to rural
12 households;
13 (4) West Virginia’s groundwater resources are geologi-
14 cally complex, with the nature and vulnerability of
15 groundwater aquifers and recharge areas not fully
16 known;
17 (5) Contamination of groundwater is generally much
18 more difficult and expensive to clean up than is the case
19 with surface water;
20 (6) Groundwaters and surface waters can be highly
21 interconnected. The quality of any given groundwater

22 can have a significant impact on the quality of ground-
23 waters and surface waters to which it is hydrologically
24 connected;

25 (7) A diverse array of human activities can adversely
26 impact groundwater, making it necessary to develop
27 regulatory programs that utilize a variety of
28 approaches;

29 (8) Various agencies of state government currently
30 exercise regulatory control over activities which may
31 impact on groundwater. Coordination and streamlining
32 of the regulatory activities of these agencies is necessary
33 to assure that the state's groundwater is maintained and
34 protected through an appropriate groundwater protec-
35 tion program;

36 (9) Disruption of existing state regulatory programs
37 should be avoided to the maximum extent practical;

38 (10) The maintenance and protection of the state's
39 groundwater resources can be achieved consistent with
40 the maintenance and expansion of employment oppor-
41 tunities, agriculture, and industrial development; and

42 (11) A state groundwater management program will
43 provide economic, social, and environmental benefits for
44 the citizens of West Virginia now and in the future.

45 (b) Therefore, the Legislature establishes that it is the
46 public policy of the state of West Virginia to maintain
47 and protect the state's groundwater so as to support the
48 present and future beneficial uses and further to
49 maintain and protect groundwater at existing quality
50 where the existing quality is better than that required
51 to maintain and protect the present and future benefi-
52 cial uses. Such existing quality shall be maintained and
53 protected unless it is established that (1) the measures
54 necessary to preserve existing quality are not techni-
55 cally feasible or economically practical and (2) a change
56 in groundwater quality is justified based upon economic
57 or societal objectives. Such a change shall maintain and
58 protect groundwater quality so as to support the present
59 and future beneficial uses of such groundwater.

60 (c) The purposes of this article are to:

- 61 (1) Maintain and protect the state's groundwater
62 resources consistent with this article to protect the
63 present and future beneficial uses of the groundwater;
- 64 (2) Provide for the establishment of a state ground-
65 water management program which will:
- 66 (i) Define the roles of agencies of the state and
67 political subdivisions with respect to the maintenance
68 and protection of groundwater, and designate a lead
69 agency for groundwater management;
- 70 (ii) Designate a state agency responsible for establish-
71 ment of groundwater quality standards;
- 72 (iii) Provide for the establishment of standards of
73 purity and quality for all groundwater;
- 74 (iv) Provide for the establishment of groundwater
75 protection programs consistent with this article;
- 76 (v) Establish groundwater protection and ground-
77 water remediation funds;
- 78 (vi) Provide for the mapping and analysis of the
79 state's groundwater resources and coordination of the
80 agencies involved; and
- 81 (vii) Provide for public education on groundwater
82 resources and methods for preventing contamination.
- 83 (3) Provide such enforcement and compliance mech-
84 anisms as will assure the implementation of the state's
85 groundwater management program.
- 86 (4) Assure that actions taken to implement this article
87 are consistent with the policies set forth in section one,
88 article five-a of this chapter.

§20-5M-3. Definitions.

- 1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:
- 3 (a) "Agency action" means the issuance, renewal or
4 denial of any permit, license or other required agency
5 approval, or any terms or conditions thereof, or any
6 order or other directive issued by the division of natural
7 resources, division of health, division of energy, depart-

8 ment of agriculture or any other agency of the state or
9 a political subdivision to the extent that such action
10 relates directly to the implementation, administration or
11 enforcement of this article.

12 (b) "Beneficial uses" means those uses which are
13 protective of human health and welfare and the
14 environment. Pollution of groundwater shall not be
15 considered a beneficial use.

16 (c) "Board" means the state water resources board.

17 (d) "Constituent" means any chemical or biological
18 substance found in groundwater due to either natural
19 or man-made conditions.

20 (e) "Director" means the director of the division of
21 natural resources of the department of commerce, labor
22 and environmental resources.

23 (f) "Groundwater" means the water occurring in the
24 zone of saturation beneath the seasonal high water table,
25 or any perched water zones.

26 (g) "Groundwater certification" means an assurance
27 issued by the director of the division of natural resources
28 that a permit or other approval issued by a state, county
29 or local government body regarding an activity that
30 affects or is reasonably anticipated to affect ground-
31 water complies with all requirements of this chapter,
32 the legislative rules promulgated pursuant to this
33 chapter in accordance with chapter twenty-nine-a of this
34 code and any other requirements of state law, regula-
35 tions or agreements regarding groundwater.

36 (h) "Person" means any industrial user, public or
37 private corporation, institution, association, firm or
38 company organized or existing under the laws of this or
39 any other state or country; state of West Virginia;
40 governmental agency, including federal facilities;
41 political subdivision; county commission; municipal
42 corporation; industry; sanitary district; public service
43 district; soil conservation district; watershed improve-
44 ment district; partnership; trust; estate; person or
45 individual; group of persons or individuals acting
46 individually or as a group; or any legal entity whatever.

47 (i) "Pollution" shall mean the man-made or man-
48 induced alteration of the chemical, physical, biological
49 or radiological integrity of the groundwater;

50 (j) "Preventative action limit" means a numerical
51 value expressing the concentration of a substance in
52 groundwater that, if exceeded, shall cause action to be
53 taken to assure that standards of purity and quality of
54 groundwater are not violated.

55 (k) "Water" means any and all water on or beneath
56 the surface of the ground, whether percolating, stand-
57 ing, diffused or flowing, wholly or partially within this
58 state, or bordering this state and within its jurisdiction,
59 and shall include, without limiting the generality of the
60 foregoing, natural or artificial lakes, rivers, streams,
61 creeks, branches, brooks, ponds (except farm ponds,
62 industrial settling basins and ponds and water treat-
63 ment facilities), impounding reservoirs, springs, wells,
64 watercourses and wetlands.

**§20-5M-4. Authority of state water resources board;
standards of purity and quality.**

1 (a) The state water resources board shall have the sole
2 and exclusive authority to promulgate standards of
3 purity and quality for groundwater of the state and shall
4 promulgate such standards following a public hearing
5 within one year from the effective date of this article,
6 by legislative rules in accordance with the provisions of
7 chapter twenty-nine-a of this code.

8 (b) Such standards shall establish the maximum
9 contaminant levels permitted for groundwater, but in no
10 event shall such standards allow contaminant levels in
11 groundwater to exceed the maximum contaminant
12 levels adopted by the United States Environmental
13 Protection Agency pursuant to the federal Safe Drink-
14 ing Water Act. The board may set standards more
15 restrictive than the maximum contaminant levels where
16 it finds that such standards are necessary to protect
17 drinking water use where scientifically supportable
18 evidence reflects factors unique to West Virginia or
19 some area thereof, or to protect other beneficial uses of
20 the groundwater. For contaminants not regulated by the

21 federal Safe Drinking Water Act, standards for such
22 contaminants shall be established by the board to be no
23 less stringent than may be reasonable and prudent to
24 protect drinking water or any other beneficial use.
25 Where the concentration of a certain constituent exceeds
26 such standards due to natural conditions, the natural
27 concentration shall be the standard for that constituent.
28 Where the concentration of a certain constituent exceeds
29 such standard due to human-induced contamination, no
30 further contamination by that constituent shall be
31 allowed, and every reasonable effort shall be made to
32 identify, remove or mitigate the source of such contam-
33 ination, and to strive where practical to reduce the level
34 of contamination over time to support drinking water
35 use.

36 (d) The standards of purity and quality for ground-
37 water promulgated by the board shall recognize the
38 degree to which groundwater is hydrologically con-
39 nected with surface water and other groundwater and
40 such standards shall provide protection for such surface
41 water and other groundwater.

42 (e) In the promulgation of such standards the board
43 shall consult with the division of natural resources,
44 department of agriculture, division of energy, and
45 division of health, as appropriate.

46 (f) Any groundwater standard of the board that is in
47 effect on the effective date of this article shall remain
48 in effect until modified by the board. Notwithstanding
49 any other provisions of this code to the contrary, the
50 authority of the board to adopt standards of purity and
51 quality for groundwater granted by the provisions of
52 this article is exclusive, and to the extent that any other
53 provisions of this code grant such authority to any
54 person, body, agency or entity other than the board,
55 those other provisions shall be void.

§20-5M-5. Authority of other agencies; applicability.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, no agency of state government or any
3 political subdivision may regulate any facility or
4 activities for the purpose of maintaining and protecting

5 the groundwater except as expressly authorized pursu-
6 ant to this article.

7 (b) To the extent that such agencies have the author-
8 ity pursuant to any provision of this code, other than this
9 article, to regulate facilities or activities, the division of
10 natural resources, the department of agriculture, the
11 division of energy, the division of health, and such
12 agencies of the state or any political subdivision as may
13 be specifically designated by the director with the
14 concurrence of such designated agencies or political
15 subdivisions, as appropriate, are hereby authorized to be
16 groundwater regulatory agencies for purposes of
17 regulating such facilities or activities to satisfy the
18 requirements of this article. In addition, the department
19 of agriculture is hereby authorized to be the ground-
20 water regulatory agency for purposes of regulating the
21 use or application of pesticides and fertilizers. Where
22 the authority to regulate facilities or activities which
23 may adversely impact groundwater is not otherwise
24 assigned to the division of natural resources, the
25 department of agriculture, the division of energy, the
26 division of health or such other specifically designated
27 agency pursuant to any other provision of this code, the
28 division of natural resources is hereby authorized to be
29 the groundwater regulatory agency with respect to such
30 unassigned facilities or activities. The division of natural
31 resources shall cooperate with the department of
32 agriculture, division of energy, and division of health,
33 as appropriate, in the regulation of such unassigned
34 facilities or activities.

35 (c) Within one year of the effective date of this article,
36 the department of agriculture, division of energy,
37 division of health, and division of natural resources shall
38 promulgate in accordance with the provisions of chapter
39 twenty-nine-a of this code such legislative rules as may
40 be necessary to implement the authority granted them
41 by this article.

42 (d) Groundwater regulatory agencies shall develop
43 groundwater protection practices to prevent ground-
44 water contamination from facilities and activities within
45 their respective jurisdictions consistent with this article.

46 Such practices shall include, but not be limited to,
47 criteria related to facility design, operational manage-
48 ment, closure, remediation and monitoring. Such
49 agencies shall issue such rules, permits, policies,
50 directives or any other appropriate regulatory devices,
51 as necessary, to implement the requirements of this
52 article.

53 (e) Groundwater regulatory agencies shall take such
54 action as may be necessary to assure that facilities or
55 activities within their respective jurisdictions maintain
56 and protect groundwater at existing quality, where the
57 existing quality is better than that required to maintain
58 and protect the standards of purity and quality promul-
59 gated by the board to support the present and future
60 beneficial uses of the state's groundwater.

61 (f) Where a person establishes to the director that (1)
62 the measures necessary to preserve existing quality are
63 not technically feasible or economically practical and (2)
64 a change in groundwater quality is justified based upon
65 economic or societal objectives, the director may allow
66 for a deviation from such existing quality. Upon the
67 director's finding of (1) and (2) above, the director may
68 grant or deny such a deviation for a specific site, activity
69 or facility or for a class of activities or facilities which
70 have impacts which are substantially similar and exist
71 in a defined geographic area. The director's reasons for
72 granting or denying such a deviation shall be set forth
73 in writing and the director shall have the exclusive
74 authority to determine the terms and conditions of such
75 a deviation. To insure that groundwater standards
76 promulgated by the board are not violated and that the
77 present and future beneficial uses of groundwater are
78 maintained and protected, the director shall evaluate
79 the cumulative impacts of all facilities and activities on
80 the groundwater resources in question prior to any
81 granting of such deviation from existing quality. The
82 director shall consult with the department of agricul-
83 ture, division of health and division of energy, as
84 appropriate in the implementation of this subsection.
85 The director or the chief of the water resources section
86 of the division of natural resources shall, upon a written

87 request for such information, provide notice of any
88 deviations from existing quality granted pursuant to
89 this subsection.

90 (g) Should the approval required in subsection (f) of
91 this section be granted allowing for a deviation from
92 existing quality, the groundwater regulatory agencies
93 shall take such alternative action as may be necessary
94 to assure that facilities and activities within their
95 respective jurisdictions maintain and protect the
96 standards of purity and quality promulgated by the
97 board to support the present and future beneficial uses
98 for that groundwater. In maintaining and protecting
99 such standards of the board, such agencies shall
100 establish preventative action limits which, once reached,
101 shall require action to control a source of contamination
102 to assure that such standards are not violated. The
103 director shall provide guidelines to the groundwater
104 regulatory agencies with respect to the establishment of
105 such preventative action limits.

106 (h) Subsections (e), (f) and (g) of this section shall not
107 apply to coal extraction and earth disturbing activities
108 directly involved in coal extraction that are subject to
109 either or both article three, chapter twenty-two-a of this
110 code and article five-a of this chapter. Such activities
111 shall be subject to all other provisions of this article.

112 (i) This article shall not be applicable to groundwater
113 within areas of geologic formations which are site
114 specific to:

115 (1) The production or storage zones of crude oil or
116 natural gas and which are utilized for the exploration,
117 development or production of crude oil or natural gas
118 permitted pursuant to chapter twenty-two-b of this code;
119 and

120 (2) The injection zones of Class II or III wells
121 permitted pursuant to the statutes and regulations
122 governing the underground injection control program.

123 All groundwater outside such areas shall remain
124 subject to the provisions of this article. Groundwater
125 regulatory agencies shall have the right to require the

126 submission of data with respect to the nature of the
127 activities subject to this subsection.

128 (j) Those agencies regulating the activities specified
129 in subsections (h) and (i), of this section shall retain their
130 groundwater regulatory authority as provided for in the
131 relevant statutes and regulations governing such
132 activities, other than this article.

133 (k) The director shall have authority to modify the
134 requirements of subsection (g) of this section with
135 respect to noncoal mining activities subject to article
136 four, chapter twenty-two-a of this code. Such modifica-
137 tion shall assure protection of human health and the
138 environment. Those agencies regulating such noncoal
139 mining activities shall retain their groundwater regu-
140 latory authority as provided for in the relevant statutes
141 and regulations governing such activities other than this
142 article.

143 (l) If the director proposes a need for a variance for
144 classes of activities which by their nature cannot be
145 conducted in compliance with the requirements of
146 subsection (g) of this section, then the director shall
147 promulgate legislative rules in accordance with chapter
148 twenty-nine-a of this code, following public hearing on
149 the record. The rules so promulgated shall set forth the
150 director's findings to substantiate such need and the
151 criteria by which such variances shall be granted or
152 denied. Should any person petition or request the
153 director to undertake such a determination, that person
154 will give contemporaneous notice of such petition or
155 request by Class I advertisement in a newspaper of
156 general circulation in the area to be affected by the
157 request.

158 (m) All rules, permits, policies, directives and orders
159 of the department of agriculture, the division of health,
160 the division of energy and division of natural resources,
161 in effect on the effective date of this article and which
162 are consistent with this article shall remain in full force
163 and effect as if they were issued pursuant to this article
164 unless and until modified pursuant to this article.

§20-5M-6. Lead agency designation; additional powers and duties.

1 (a) The division of natural resources is hereby
2 designated to be the lead agency for groundwater and
3 is authorized and shall perform the following additional
4 powers and duties:

5 (1) To maintain the state groundwater management
6 strategy;

7 (2) To develop, as soon as practical, a central ground-
8 water data management system for the purpose of
9 providing information needed to manage the state's
10 groundwater program;

11 (3) To provide a biannual report to the Legislature on
12 the status of the state's groundwater and groundwater
13 management program, including detailed reports from
14 each groundwater regulatory agency;

15 (4) To coordinate with other agencies to develop a
16 uniform groundwater program;

17 (5) To perform any and all acts necessary to obtain the
18 benefits to the state of any federal program related to
19 groundwater;

20 (6) To receive grants, gifts or contributions for
21 purposes of implementing this article from federal
22 agencies, state agencies or any other persons interested
23 in the management of groundwater resources; and

24 (7) To promulgate legislative rules implementing this
25 subsection in accordance with the provisions of chapter
26 twenty-nine-a of this code, including rules relating to
27 monitoring and analysis of groundwater.

28 (b) The division of natural resources, division of
29 energy, division of health, and department of agricul-
30 ture shall participate in the data management system
31 developed by the division of natural resources pursuant
32 to subsection (a) of this section and shall provide the
33 director with such information as the director shall
34 reasonably request in support of his or her promulgation
35 of rules pursuant to this article.

36 (c) The division of natural resources, division of
37 energy, division of health, and department of agricul-
38 ture are hereby authorized:

39 (1) To engage the voluntary cooperation of all persons
40 in the maintenance and protection of groundwater, and
41 to advise, consult and cooperate with all persons, all
42 agencies of this state, universities and colleges, the
43 federal government or other states, and with interstate
44 agencies in the furtherance of the purposes of this
45 article, and to this end and for the purposes of studies,
46 scientific or other investigations, research, experiments
47 and demonstrations pertaining thereto, receive and
48 spend funds as appropriated by the Legislature, and
49 from such agencies and other officers and persons on
50 behalf of the state;

51 (2) To encourage the formulation and execution of
52 plans to maintain and protect groundwater by cooper-
53 ative groups or associations of municipal corporations,
54 industries, industrial users and other users of ground-
55 waters of the state, who, jointly or severally, are or may
56 be impacting on the maintenance and protection of
57 groundwater;

58 (3) To encourage, participate in, or conduct or cause
59 to be conducted studies, scientific or other investiga-
60 tions, research, experiments and demonstrations relat-
61 ing to the maintenance and protection of groundwater,
62 and to collect data with respect thereto, all as may be
63 deemed advisable and necessary to carry out the
64 purposes of this article, and to make reports and
65 recommendations with respect thereto;

66 (4) To conduct groundwater sampling, data collection,
67 analyses and evaluation with sufficient frequency so as
68 to ascertain the characteristics and quality of ground-
69 water, and the sufficiency of the groundwater protection
70 programs established pursuant to this article;

71 (5) To develop a public education and promotion
72 program to aid and assist in publicizing the need of and
73 securing support for the maintenance and protection of
74 groundwater.

§20-5M-7. Groundwater coordinating committee; creation.

1 (a) There is hereby created a state groundwater
2 coordinating committee which shall consist of the
3 director of the division of health, the commissioner of
4 the division of energy, the commissioner of agriculture,
5 the chairperson of the water resources board, the chief
6 of the water resources section of the division of natural
7 resources and the director of the division of natural
8 resources who shall serve as its chairperson.

9 (b) The groundwater coordinating committee shall
10 consult, review and make recommendations on the
11 implementation of this article by each of the ground-
12 water regulatory agencies. Such committee shall
13 require the periodic submittal to it of the groundwater
14 protection programs of each groundwater regulatory
15 agency including all rules, permits, policies, directives
16 and any other regulatory devices employed to imple-
17 ment this article.

18 (c) Upon a review of such programs, the groundwater
19 coordinating committee shall recommend to the director
20 approval of such programs, in whole or in part, and
21 identify in writing any aspect of such programs that are
22 not sufficient to satisfy the requirements of this article
23 and specify a reasonable time period for correcting those
24 portions of the program that are found not to be
25 sufficient.

26 (d) The director may accept the recommendation of
27 the committee, in whole or in part and identify in
28 writing any additional aspects of such programs that
29 are not sufficient to satisfy the requirements of this
30 article and specify a time period for correcting those
31 portions of the program that are found not to be
32 sufficient.

33 (e) In the biannual report to the Legislature required
34 by this article, the director shall identify all portions of
35 groundwater protection programs which have been
36 determined not to be sufficient to satisfy the require-
37 ments of this article and which have not been adequately

38 addressed within the time period specified by the
39 director.

40 (f) No agency shall modify any aspect of its ground-
41 water protection program as approved by the director
42 without the prior written approval of the director of
43 such modification. This requirement does not relieve
44 such agency of any other requirements of law that may
45 be applicable to such a modification.

46 (g) The groundwater coordinating committee is
47 authorized and empowered to promulgate such legisla-
48 tive rules as may be necessary to implement this section
49 in accordance with the provisions of chapter twenty-
50 nine-a of this code.

§20-5M-8. Groundwater certification.

1 (a) To ensure a comprehensive, consistent and unfrag-
2 mented approach to the management and protection of
3 groundwater, including evaluation of the cumulative
4 effects of all activities that have the potential to impact
5 on groundwater, the director shall oversee and coordi-
6 nate the implementation of this article by each of the
7 groundwater regulatory agencies through a ground-
8 water certification program as hereby established.

9 (b) Every state, county or local government body
10 which reviews or issues permits, licenses, registrations,
11 certificates of other forms of approval, or renewal
12 thereof, for activities or practices which may affect
13 groundwater quality shall first submit to the director of
14 the division of natural resources for review and approval
15 an application for certification. Such application shall
16 include a copy of the approval proposed by such body,
17 including any terms and conditions which have been
18 imposed by it. Upon receipt of this application, the
19 director shall act within thirty days to determine
20 whether to waive or exercise his or her certification
21 powers. If no decision is made or communicated by the
22 director within said thirty day period, groundwater
23 certification shall be deemed approved. If the director
24 decides to exercise his or her certification powers, he or
25 she may utilize additional time, not to exceed an
26 additional sixty days, to further review the materials

27 submitted or to conduct such investigations as he or she
28 deems necessary.

29 (c) The director may waive, grant, grant with condi-
30 tions, or deny groundwater certification. Groundwater
31 certification, and all conditions required under such
32 certification, shall become a condition on any permit,
33 approval, or renewal thereof, issued by any state, county
34 or local government body. Where appropriate, the
35 director may provide general groundwater certification
36 for or may waive certification for classes or categories
37 of activities or approvals.

**§20-5M-9. Groundwater protection fees authorized;
director to promulgate rules; dedication of
fee proceeds; groundwater protection fund
established; groundwater remediation
fund established.**

1 (a) The director of the division of natural resources
2 shall promulgate legislative rules in accordance with the
3 provisions of chapter twenty-nine-a of this code estab-
4 lishing a schedule of groundwater protection fees
5 applicable to persons who own or operate facilities or
6 conduct activities subject to the provisions of this article.
7 The schedule of fees shall be calculated by the director
8 to recover the reasonable and necessary costs of
9 implementing the provisions of this article as it relates
10 to a particular facility or activity. In addition, the fee
11 may include an appropriate assessment of other pro-
12 gram costs not otherwise attributable to any particular
13 facility or activity. Such fees in the aggregate shall not
14 exceed one million dollars per year and shall be
15 deposited into the groundwater protection fund estab-
16 lished pursuant to this article: *Provided*, That any
17 unexpended balance in the groundwater protection fund
18 at the end of each fiscal year may, by an act of the
19 Legislature, be transferred to the groundwater remedi-
20 ation fund created by this article: *Provided, however*,
21 That if no action is taken to transfer the unexpended
22 balance to the remediation fund, such moneys shall not
23 be transferred to the general revenue fund, but shall
24 remain in the groundwater protection fund. Such fees
25 imposed by this section are in addition to all other fees

26 and taxes levied by law. The director shall require such
27 fees to be paid at the time of certification pursuant to
28 section eight of this article, or at such more frequent
29 time as the director may deem to be appropriate. The
30 director may withhold certification pursuant to section
31 eight of this article where such fees have not been timely
32 paid.

33 (b) The director of the division of natural resources
34 shall also promulgate legislative rules in accordance
35 with the provisions of chapter twenty-nine-a of this code
36 establishing a schedule of groundwater remediation fees
37 which in the aggregate shall not exceed two hundred
38 fifty thousand dollars. Such groundwater remediation
39 fees shall be assessed over a time period not to exceed
40 two years from the effective date of such rules and shall
41 be deposited into the groundwater remediation fund
42 established pursuant to this article. Such fees shall be
43 assessed against persons who own or operate facilities
44 or conduct activities subject to the provisions of this
45 article in proportion to the groundwater protection fees
46 assessed pursuant to subsection (a) of this section for the
47 year in which such groundwater remediation fees, or
48 any portion thereof, are assessed.

49 (c) There are hereby created and established in the
50 state treasury two special revenue accounts:

51 (1) The "Groundwater Protection Fund", the moneys
52 of which shall be expended by the director in the
53 administration, certification, enforcement, inspection,
54 monitoring, planning, research, and other activities of
55 the state water resources board, division of natural
56 resources, division of energy, division of health and
57 department of agriculture in accordance with legislative
58 rules promulgated pursuant to the provisions of chapter
59 twenty-nine-a of this code. The moneys, including the
60 interest thereon, in said fund shall be kept and main-
61 tained by the director and expended without appropri-
62 ation by the Legislature for the purpose of implement-
63 ing the provisions of this article. The director may
64 withhold the payment of any such moneys to any agency
65 whose groundwater protection program has been
66 determined by the director, in consultation with the

67 groundwater coordinating committee, not to be suffi-
68 cient to satisfy the requirements of this article and
69 where such agency has failed to adequately address such
70 determination within the time period specified by the
71 director. At the end of each fiscal year, any unexpended
72 balance of said fund may not be transferred to the
73 general revenue fund, but shall remain in the ground-
74 water protection fund.

75 (2) The "Groundwater Remediation Fund", the mo-
76 neys of which, to the extent that moneys are available,
77 shall be expended by the director for the purposes of
78 investigation, clean-up and remedial action intended to
79 identify, minimize or mitigate damage to the environ-
80 ment, natural resources, public and private water
81 supplies, surface waters and groundwaters and the
82 public health, safety and general welfare which may
83 result from contamination of groundwater or the related
84 environment. The director or other authorized agency
85 officials are authorized to recover through civil action
86 or cooperative agreements with responsible persons the
87 full amount of any and all groundwater remediation
88 fund moneys expended pursuant to this article. All
89 moneys expended from such fund which are so reco-
90 vered shall be deposited in such fund. The director may
91 expend moneys from said fund and the interest thereon
92 without necessity of appropriation by the Legislature.
93 All civil penalties and assessments of civil administra-
94 tive penalties collected pursuant to this article shall be
95 deposited into the said fund. In addition, said fund may
96 receive proceeds from any gifts, grants, contributions or
97 other moneys accruing to the state which are specifically
98 designated for inclusion in the fund.

**§20-5M-10. Civil and criminal penalties; civil administra-
tive penalties; dedication of penalty pro-
ceeds; injunctive relief; enforcement
orders; hearings.**

1 (a) Any person who violates any provision of this
2 article, or any permit or agency approval, rule or order
3 issued to implement this article, shall be subject to civil
4 penalties in accordance with the provisions of section
5 seventeen, article five-a of this chapter: *Provided*, That

6 such penalties shall be in lieu of civil penalties which
7 may be imposed under other provisions of this code for
8 the same violation.

9 (b) Any person who willfully or negligently violates
10 any provision of this article, or any provision of a permit
11 or agency approval, rule or order issued to implement
12 this article, shall be subject to criminal penalties in
13 accordance with the provisions of section nineteen,
14 article five-a of this chapter: *Provided*, That such
15 penalties shall be in lieu of other criminal penalties
16 which may be imposed under other provisions of this
17 code for the same violation.

18 (c) Any person who violates any provision of this
19 article, or any permit or rule or order issued to
20 implement this article, shall be subject to a civil
21 administrative penalty to be levied by the director of the
22 division of natural resources, the commissioner of
23 agriculture, the director of the division of health or the
24 commissioner of the division of energy, as appropriate,
25 of not more than five thousand dollars for each day of
26 such violation, not to exceed a maximum of twenty
27 thousand dollars. In assessing any such penalty, any
28 such official shall take into account the seriousness of
29 the violation and any good faith efforts to comply with
30 applicable requirements as well as any other appropriate
31 factors as may be established by such official by
32 legislative rules promulgated pursuant to this article
33 and the provisions of chapter twenty-nine-a of this code.
34 No assessment may be levied pursuant to this subsection
35 until after the alleged violator has been notified by such
36 official by certified mail or personal service. The notice
37 shall include a reference to the section of the statute,
38 rule, order or statement of permit conditions that was
39 allegedly violated, a concise statement of the facts
40 alleged to constitute the violation, a statement of the
41 amount of the administrative penalty to be imposed and
42 a statement of the alleged violator's right to an informal
43 hearing. The alleged violator shall have twenty calendar
44 days from receipt of the notice within which to deliver
45 to such official a written request for an informal
46 hearing. If no hearing is requested, the notice becomes

47 a final order after the expiration of the twenty-day
48 period. If a hearing is requested, such official shall
49 inform the alleged violator of the time and place of the
50 hearing. Such official may appoint an assessment officer
51 to conduct the informal hearing who shall make a
52 written recommendation to such official concerning the
53 assessment of a civil administrative penalty. Within
54 thirty days following the informal hearing, such official
55 shall issue and furnish to the violator a written decision,
56 and the reasons therefor, concerning the assessment of
57 a civil administrative penalty. Within thirty days after
58 notification of such official's decision, the alleged
59 violator may request a formal hearing before the board
60 in accordance with the provisions of section eleven of
61 this article. Any administrative civil penalty assessed
62 pursuant to this section shall be in lieu of any other civil
63 penalty which may be assessed under any provision of
64 this code for the same violation. No combination of
65 assessments against any violator under this section may
66 exceed twenty-five thousand dollars per day of each such
67 violation. All administrative penalties shall be levied in
68 accordance with legislative rules promulgated by such
69 official in accordance with the provisions of chapter
70 twenty-nine-a of this code.

71 (d) The net proceeds of all civil penalties collected
72 pursuant to subsection (a) of this section and all
73 assessments of any civil administrative penalties
74 collected pursuant to subsection (c) of this section shall
75 be deposited into the groundwater remediation fund
76 established pursuant to this article.

77 (e) Any such official may seek an injunction, or may
78 institute a civil action against any person in violation of
79 any provision of this article or any permit, agency
80 approval, rule or order issued to implement this article.
81 In seeking an injunction, it is not necessary for such
82 official to post bond nor to allege or prove at any point
83 in the proceeding that irreparable damage will occur if
84 the injunction is not issued or that the remedy at law
85 is inadequate. An application for injunctive relief or a
86 civil penalty action under this section may be filed and
87 relief granted notwithstanding the fact that all adminis-

88 trative remedies provided for in this article have not
89 been exhausted or invoked against the person or persons
90 against whom such relief is sought.

91 (f) If any such official upon inspection, investigation
92 or through other means observes, discovers or learns of
93 a violation of the provisions of this article, or any permit,
94 order or rules issued to implement the provisions of this
95 article, he or she may issue an order stating with
96 reasonable specificity the nature of the violation and
97 requiring compliance immediately or within a specified
98 time. An order under this section includes, but is not
99 limited to, any or all of the following: Orders implement-
100 ing this article which (1) suspend, revoke or modify
101 permits; (2) require a person to take remedial action; or
102 (3) are cease and desist orders.

103 (g) Any person issued a cease and desist order under
104 subsection (f) of this section may file a notice of request
105 for reconsideration with such official not more than
106 seven days from the issuance of such order and shall
107 have a hearing before such official to contest the terms
108 and conditions of such order within ten days after filing
109 such notice of a request for reconsideration. The filing
110 of a notice of request for reconsideration does not stay
111 or suspend the execution or enforcement of such cease
112 and desist order.

§20-5M-11. Appeal and review procedures.

1 (a) Any person having an interest which is or may be
2 adversely affected, or who is aggrieved by an order of
3 the director or any public official authorized to take or
4 implement an agency action, or by the issuance or denial
5 of a permit issued to implement this article or by such
6 permit's term or conditions, or by the failure or refusal
7 to act within a reasonable time, may appeal to the water
8 resources board in the same manner as appeals are
9 taken under section fifteen, article five-a of this chapter.

10 (b) Any person, the director or any public official
11 adversely affected by an order made and entered by the
12 water resources board may obtain judicial review
13 thereof in the same manner as provided for under
14 section sixteen, article five-a of this chapter.

§20-5M-12. Rule-making petition.

1 Any person may petition the appropriate rule-making
2 agency for rule making on an issue arising under this
3 article. The appropriate rule-making agency, if it
4 believes such issue to merit rule making, may initiate
5 rule making in accordance with the provisions of
6 chapter twenty-nine-a of this code. A decision by the
7 appropriate rule-making agency not to pursue rule
8 making must set forth in writing reasons for refusing
9 to do so. Any person may petition an agency to issue a
10 declaratory ruling pursuant to section one, article four,
11 chapter twenty-nine-a of this code with respect to the
12 applicability to any person, property or state of facts of
13 any rules promulgated by that agency pursuant to this
14 article.

**§20-5M-13. Existing rights and remedies preserved;
effect of compliance.**

1 (a) It is the purpose of this article to provide addi-
2 tional and cumulative remedies to address the quality
3 of the groundwater of the state. This article shall not
4 be interpreted to alter the authority of any agency with
5 respect to water other than groundwater. Except as
6 expressly stated in this article, it is not the intention of
7 the Legislature in enacting this article to repeal any
8 other provision of this code.

9 (b) Nothing contained in this article shall abridge or
10 alter rights of action or remedies now or hereafter
11 existing, nor shall any provisions in this article, or any
12 act done by virtue of this article, be construed as
13 estopping the state, municipalities, public health officers
14 or persons as riparian owners or otherwise, in the
15 exercise of their rights to suppress nuisances or to abate
16 any pollution now or hereafter existing, or to recover
17 damages.

18 (c) Where a person is operating a source or conduct-
19 ing an activity in compliance with the terms and
20 conditions of a permit, rule, order, directive, or other
21 authorization issued by a groundwater regulatory
22 agency pursuant to this article, such person shall not be
23 subject to criminal prosecution for pollution recognized

24 and authorized by such permit, rule, order, directive or
25 other authorization.

§20-5M-14. Conflicting provisions.

1 In the event that any provision of this article is
2 inconsistent or in conflict with any other provisions of
3 this code, making it impossible to comply with both, the
4 provisions of this article shall control.

§20-5M-15. Effective dates of provisions subject to federal approval.

1 To the extent that this article modifies any powers,
2 duties, functions and responsibilities of any state agency
3 that may require approval of one or more federal
4 agencies or officials in order to avoid disruption of the
5 federal-state relationship involved in the implementa-
6 tion of federal regulatory programs by the state, any
7 such modifications shall become effective upon a
8 proclamation by the governor stating either that final
9 approval of such modifications has been given by the
10 appropriate federal agency or official or that final
11 approval of such modification is not necessary to avoid
12 disruption of the federal-state relationship under which
13 such regulatory programs are implemented.

§20-5M-16. Severability.

1 If any provision of this article or the application
2 thereof to any person or circumstance is held invalid,
3 such invalidity shall not affect other provisions or
4 applications of the article, and to this end the provisions
5 of the article are declared severable.

CHAPTER 118

(Com. Sub. for H. B. 2602—By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[By Request of the Executive]

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to repeal sections four, five, six and eight, article two;
sections nine-a, nine-b, nine-c and nineteen-a, article

three; and sections eight, nine, ten, eleven, twelve, thirteen and fifteen, article eight, all of chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article ten, chapter eleven of said code; to amend and reenact sections three, four, thirteen, fourteen, fifteen, twenty-three and twenty-four, article sixteen of said chapter; to amend and reenact sections two and twelve, article two, chapter fifteen of said code; to amend and reenact section twenty-three, article three, chapter seventeen-a of said code; to amend and reenact section six, article one, chapter sixty of said code; to amend and reenact sections seven, nine and twenty-one, article two of said chapter; to amend and reenact section seventeen, article three-a of said chapter; to amend and reenact section nineteen, article four of said chapter; to amend and reenact section seven, article six of said chapter; to amend and reenact sections three, twelve, thirteen and thirteen-a, article seven of said chapter; and to amend and reenact sections four, five, seven, twenty-four, twenty-eight and twenty-nine, article eight of said chapter, all relating to including the barrel tax on nonintoxicating beer and the wine liter tax in the list of taxes covered under the tax procedures act; abolishing the office of nonintoxicating beer commissioner and substituting the alcohol beverage control commissioner therefor; defining the terms commissioner and tax commissioner in the nonintoxicating beer act; transferring administration of the beer barrel tax to the tax commissioner; providing for mandatory revocation of license for conviction of certain offenses; changing the title of chapter sixty to the alcohol beverage control act; increasing the salary of the administrator of the division of public safety; specifying the responsibilities of the superintendent under the alcohol beverage control act; increasing the salary of the alcohol beverage control commissioner; providing for a net annual profit of six and one-half million dollars; prohibiting consumption of alcoholic liquors or nonintoxicating beer by persons under twenty-one years of age when consumption or procurement of such beverages takes place at the premises of a private club licensee; changing provisions

relating to revocation or suspension of licenses, money, penalties and assessment of costs; providing for a special alcohol beverage control enforcement fund, and hearing and appeal procedures to conform to provisions in article sixteen, chapter eleven of the code concerning beer licensees; and transferring administration of the liter tax on wine and wine labels registration to the tax commissioner.

Be it enacted by the Legislature of West Virginia:

That sections four, five, six and eight, article two, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections nine-a, nine-b, nine-c and nineteen-a, article three; and sections eight, nine, ten, eleven, twelve, thirteen and fifteen, article eight of said chapter be repealed; that section three, article ten, chapter eleven be amended and reenacted; that sections three, four, thirteen, fourteen, fifteen, twenty-three and twenty-four, article sixteen of said chapter be amended and reenacted; that sections two and twelve, article two, chapter fifteen of said code be amended and reenacted; that section twenty-three, article three, chapter seventeen-a be amended and reenacted; that section six, article one, chapter sixty be amended and reenacted; that sections seven, nine and twenty-one, article two of said chapter be amended and reenacted; that section seventeen, article three-a of said chapter be amended and reenacted; that section nineteen, article four of said chapter be amended and reenacted; that section seven, article six of said chapter be amended and reenacted; that sections three, twelve, thirteen and thirteen-a, article seven of said chapter be amended and reenacted; and that sections four, five, seven, twenty-four, twenty-eight and twenty-nine, article eight of said chapter be amended and reenacted, all to read as follows:

Chapter

- 11. Taxation.**
- 15. Public Safety.**
- 17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.**
- 60. Alcohol Beverage Control.**

CHAPTER 11. TAXATION.**ARTICLE 10. PROCEDURE AND ADMINISTRATION.****Article****10. Procedure and Administration.****16. Nonintoxicating Beer.****§11-10-3. Application of this article.**

1 (a) The provisions of this article shall apply to the
2 inheritance and transfer taxes, the estate tax, and
3 interstate compromise and arbitration of inheritance
4 and death taxes, the business franchise registration
5 certificate tax, the annual tax on incomes of certain
6 carriers, the business and occupation tax, the consumers
7 sales and service tax, the use tax, the cigarette tax, the
8 soft drinks tax, the personal income tax, the corporation
9 net income tax, the gasoline and special fuel excise tax,
10 the motor carrier road tax and the tax relief for elderly
11 homeowners and renters administered by the state tax
12 commissioner. This article shall not apply to ad valorem
13 taxes on real and personal property, the corporate
14 license tax or any other tax not listed hereinabove,
15 except that in the case of ad valorem taxes on real and
16 personal property, when any return, claim, statement or
17 other document is required to be filed, or any payment
18 is required to be made within a prescribed period or
19 before a prescribed date, and the applicable law
20 requires delivery to the office of the sheriff of a county
21 of this state, the methods prescribed in section five-f of
22 this article for timely filing and payment to the tax
23 commissioner or state tax department shall be the same
24 methods utilized for timely filing and payment with
25 such sheriff.

26 (b) The provisions of this article shall apply to the beer
27 barrel tax levied by article sixteen of this chapter and
28 to the wine liter tax levied by section four, article eight,
29 chapter sixty of this code.

30 (c) The provisions of this article shall also apply to any
31 other article of this chapter when such application is
32 expressly provided for by the Legislature.

ARTICLE 16. NONINTOXICATING BEER.

- §11-16-3. Definitions.
- §11-16-4. Responsibility of alcohol beverage control commissioner; administrators, employees, and agents; administration and enforcement expenses.
- §11-16-13. Barrel tax on nonintoxicating beer; reporting and paying to tax commissioner.
- §11-16-14. Collection of unpaid license tax.
- §11-16-15. Records of brewer, manufacturer or distributor; collection of unpaid tax and penalty.
- §11-16-23. Revocation or suspension of license; monetary penalty; hearing assessment of costs; establishment of enforcement fund.
- §11-16-24. Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee; assessment of costs.

***§11-16-3. Definitions.**

1 For the purpose of this article, except where the
2 context clearly requires differently:

3 (1) "Brewer" or "manufacturer" means any person,
4 firm, association, partnership or corporation manufac-
5 turing, brewing, mixing, concocting, blending, bottling
6 or otherwise producing or importing or transshipping
7 from a foreign country nonintoxicating beer for sale at
8 wholesale to any licensed distributor.

9 (2) "Commissioner" means the West Virginia alcohol
10 beverage control commissioner.

11 (3) "Distributor" means any person jobbing or distri-
12 buting nonintoxicating beer to retailers at wholesale and
13 whose warehouse and chief place of business shall be
14 within this state.

15 (4) "Nonintoxicating beer" means all cereal malt
16 beverages or products of the brewing industry com-
17 monly referred to as beer, lager beer, ale and all other
18 mixtures and preparations produced by the brewing
19 industry, including malt coolers and containing at least
20 one half of one percent alcohol by volume, but not more
21 than four and two-tenths percent of alcohol by weight,
22 or six percent by volume, whichever is greater, all of
23 which are hereby declared to be nonintoxicating, and
24 the word "liquor" as used in chapter sixty of this code
25 shall not be construed to include or embrace nonintox-
26 icating beer nor any of the beverages, products,
27 mixtures or preparations included within this definition.

*Clerk's Note: This section was also amended by H. B. 2764 (Chapter 119), which passed subsequent to this act.

28 (5) "Original container" means the container used by
29 the brewer at the place of manufacturing, bottling, or
30 otherwise producing nonintoxicating beer for sale at
31 wholesale.

32 (6) "Person" means and includes an individual, firm,
33 partnership, limited partnership, association or
34 corporation.

35 (7) "Retailer" means any person selling, serving, or
36 otherwise dispensing nonintoxicating beer and all
37 products regulated by this article, including, but not
38 limited to, any malt cooler, at his established and
39 licensed place of business.

40 (8) "Tax commissioner" means the tax commissioner
41 of the state of West Virginia or the commissioner's
42 designee.

**§11-16-4. Responsibility of alcohol beverage control
commissioner; administrators, employees,
and agents; administration and enforcement
expenses.**

1 (a) The alcohol beverage control commissioner de-
2 scribed under the provisions of article two, chapter sixty
3 of this code shall have sole responsibility for the
4 administration of this article, except for those respon-
5 sibilities expressly vested in the tax commissioner under
6 sections thirteen, fourteen and fifteen of this article.

7 All acts heretofore performed by the nonintoxicating
8 beer commissioner under previous proceedings of this
9 article are hereby again ratified and confirmed, and the
10 commissioner shall succeed to the same position pre-
11 viously maintained by the nonintoxicating beer commis-
12 sioner in all proceedings and official acts instituted and
13 perfected under the provisions of this article prior to the
14 effective date of this section.

15 (b) The commissioner shall appoint an adequate
16 number of competent persons to serve as administrators,
17 employees and agents of the commissioner for the
18 purpose of keeping all necessary accounts and records
19 required under the provisions of this article; investigat-
20 ing the books, accounts, records and other papers of
21 retailers, distributors and brewers; investigating

22 applicants for license and the places of business of
23 retailers, distributors and brewers; procuring evidence
24 with respect to violations of the provisions of this article,
25 and particularly for use at hearings held by the
26 commissioner and on proceedings instituted in court for
27 the purpose of revoking or suspending licenses here-
28 under; and such administrators, employees and agents
29 shall perform such other duties as the commissioner
30 may direct. Such administrators, employees and agents
31 shall have the right to enter any licensed premises in
32 the state in the performance of their duties at any hour
33 of the day or night when beer is being sold or consumed
34 on such licensed premises. Refusal by any licensee or by
35 any employee of a licensee to permit such administra-
36 tors, employees or agents to enter the licensed premises
37 shall be an additional cause for revocation or suspension
38 of the license of such licensee by the commissioner. The
39 compensation of such administrators, employees and
40 agents shall be fixed by the commissioner: *Provided,*
41 That the commissioner may employ up to five special
42 investigators who shall be nonclassified exempt em-
43 ployees of the division.

44 (c) Services rendered the state by clerks, sheriffs,
45 commissioners in chancery and special commissioners,
46 designated by the court, and court reporters and
47 stenographers performing services for said commis-
48 sioner and fees of witnesses summoned on behalf of the
49 state in proceedings to revoke or suspend retailer's
50 licenses shall be treated as part of the expenses of
51 administration and enforcement, and such officers and
52 said other persons shall be paid the same fees and
53 charges as would be chargeable for like services
54 performed for an individual; and the compensation of
55 such clerks, sheriffs and other persons shall be paid out
56 of the amount allocated for the expense of administra-
57 tion enforcement, after the amount of such fees and
58 other charges shall be certified by the court to the
59 auditor.

***§11-16-13. Barrel tax on nonintoxicating beer; reporting
and paying to tax commissioner.**

*Clerk's Note: This section was also amended by H. B. 2764 (Chapter 119), which passed subsequent to this act.

1 (a) There is hereby levied and imposed, in addition to
2 the license taxes provided for in this article, a tax of five
3 dollars and fifty cents on each barrel of thirty-one
4 gallons and in like ratio on each part barrel of nonin-
5 toxicating beer manufactured in this state for sale
6 within this state, whether contained or sold in barrels,
7 bottles or other containers, and a like tax is hereby
8 levied and imposed upon all nonintoxicating beer
9 manufactured outside of this state and brought into this
10 state for sale within this state; but no nonintoxicating
11 beer manufactured, sold or distributed in this state is
12 subject to more than one barrel tax. The brewer
13 manufacturing or producing nonintoxicating beer
14 within this state for sale within this state shall pay the
15 barrel tax on such nonintoxicating beer, and, except as
16 provided otherwise, the distributor who is the original
17 consignee of nonintoxicating beer manufactured or
18 produced outside of this state, or who brings such
19 nonintoxicating beer into this state, shall pay the barrel
20 tax on such nonintoxicating beer manufactured or
21 produced outside of this state.

22 (b) On or before the tenth day of each month during
23 the license period, every brewer who manufactures or
24 produces nonintoxicating beer within this state shall file
25 a report in writing, under oath, to the tax commissioner,
26 in the form prescribed by the tax commissioner, stating
27 its total estimated sales of nonintoxicating beer to
28 distributors within this state during that month, and at
29 the same time shall pay the tax levied by this article
30 on such estimated monthly sales. On or before the tenth
31 day of each month during the license period, every
32 distributor who is the original consignee of nonintoxi-
33 cating beer manufactured or produced outside this state
34 or who brings such beer into this state for sale shall file
35 a report in writing, under oath, to the tax commissioner,
36 in the form prescribed by the tax commissioner, stating
37 its total estimated purchases of such nonintoxicating
38 beer during that month, and at the same time shall pay
39 the tax thereon levied by this article for such estimated
40 monthly purchase: *Provided*, That the tax commissioner
41 may allow, or require, a brewer who manufactures or
42 produces nonintoxicating beer outside this state to file

43 the required report and pay the required tax on behalf
44 of its distributor or distributors. Any brewer or
45 distributor who files a report under this subsection may
46 adjust its monthly estimated sales or purchases report
47 or reports by filing amended reports by the twenty-fifth
48 day of the reporting month.

49 (c) Every brewer or distributor who files a report
50 under subsection (b) of this section shall file a final
51 monthly report of said sales or purchases, in a form and
52 at a time prescribed by the tax commissioner, stating
53 actual nonintoxicating beer sales and purchases and
54 other information which the tax commissioner may
55 require, and shall include a remittance for any barrel
56 tax owed for actual sales or purchases made in excess
57 of the amount estimated for that month.

58 (d) Any brewer or distributor who files a report
59 pursuant to subsection (b) of this section reflecting an
60 underestimation of twenty-five percent or more of actual
61 sales or purchases of nonintoxicating beer as shown by
62 the report filed pursuant to subsection (c) of this section
63 shall be assessed a penalty of one percent of the total
64 taxes due in such prior month.

65 (e) Brewers and distributors shall keep all records
66 which relate to the sale or purchase in this state of
67 nonintoxicating beer for a period of three years unless
68 written approval for earlier disposal is granted by the
69 tax commissioner.

§11-16-14. Collection of unpaid license tax.

1 If any person whose report to the tax commissioner
2 as provided for in section thirteen of this article shows
3 him to be liable for any unpaid taxes, and who shall fail
4 to pay the same as provided herein, the tax commis-
5 sioner shall be authorized to institute collection reme-
6 dies provided for in article ten of this chapter. In
7 addition, the alcohol beverage control commissioner may
8 revoke the license of any such person failing to pay any
9 such tax.

***§11-16-15. Records of brewer, manufacturer or distributor; collection of unpaid tax and penalty.**

*Clerk's Note: This section was also amended by H. B. 2764 (Chapter 119), which passed subsequent to this act.

1 Every brewer, manufacturer or distributor shall
2 maintain, keep and preserve for a period of three years
3 such record or records of nonintoxicating beer manufac-
4 tured, sold or distributed in this state, including, but not
5 limited to, coolers, together with such invoices, records,
6 receipts, bills of lading and other pertinent papers as
7 may be required by the tax commissioner, and the tax
8 commissioner shall have authority to inspect, by himself
9 or through the tax commissioner's duly designated
10 agent, the books, accounts, records and memoranda of
11 any person licensed under the provisions of this article,
12 and to examine, under oath, any officer, agent or
13 employee of any brewer, manufacturer or distributor.
14 The tax commissioner may require the production,
15 within this state at such time and place as the tax
16 commissioner may designate, of any books, accounts,
17 papers or records kept within or without the state, or
18 verified copies in lieu thereof, in order that an exam-
19 ination thereof may be made by the tax commissioner
20 or the tax commissioner's duly designated agents. If, as
21 the result of such examination, it shall be found that any
22 nonintoxicating beer, subject to the payment of a tax,
23 has been manufactured, brewed, sold or distributed by
24 any person, upon which the tax has not been paid, the
25 tax commissioner shall make an assessment of the
26 amount of tax so found to be due, and, in addition
27 thereto and as a part thereof, shall assess a penalty of
28 fifty percent of the amount of such tax and shall notify
29 such person of the total amount due. If the same remains
30 unpaid for a period of thirty days, the tax commissioner
31 shall have the authority to collect the amount found to
32 be due by an appropriate legal proceeding in any of the
33 circuit courts in which an action for the collection of
34 unpaid taxes may be maintained under section fourteen
35 of this article, unless an appeal is taken from the action
36 of the tax commissioner as hereinafter provided. The tax
37 commissioner shall notify the alcohol beverage control
38 commissioner of any such unpaid assessment.

39 Within ten days after receipt of notice of any addi-
40 tional amount claimed to be due from any person as
41 shown by an examination by the tax commissioner, such
42 person, if he or she deems themselves aggrieved thereby,

43 shall so notify the tax commissioner and shall request
44 a hearing thereon and the tax commissioner shall set a
45 hearing into the matters raised by such notice, which
46 hearing shall be held as a contested case pursuant to
47 article ten of this chapter, except that the licensee shall
48 have the right of appeal from the tax commissioner's
49 findings only to the circuit court of Kanawha County,
50 West Virginia. Whether the finding of the tax commis-
51 sioner is affirmed or reversed, such circuit court shall
52 enter an order accordingly and either party shall then
53 have the right of appeal to the supreme court of appeals
54 of the state.

**§11-16-23. Revocation or suspension of license; monetary
penalty; hearing assessment of costs; estab-
lishment of enforcement fund.**

1 (a) Upon a determination by the commissioner that a
2 licensee has (i) violated the provisions of section eighteen
3 of this article or of chapter sixty of this code, (ii) acted
4 in such a way as would have precluded initial or renewal
5 licensure or (iii) violated any rule or order promulgated
6 by the commissioner, the commissioner may:

7 (1) Revoke the licensee's license;

8 (2) Suspend the licensee's license;

9 (3) Place the licensee on probationary status for a
10 period not to exceed twelve months; and

11 (4) Impose a monetary penalty not to exceed one
12 thousand dollars for each violation where revocation is
13 not imposed.

14 (b) Any monetary penalty assessed and collected by
15 the commissioner shall be transmitted to the state
16 treasurer for deposit into the state treasury to the credit
17 of a special revenue fund designated the "Nonintoxicat-
18 ing Beer Enforcement Fund", which is hereby created.
19 All moneys collected, received and deposited in the
20 "Nonintoxicating Beer Enforcement Fund" shall be kept
21 and maintained for expenditures by the commissioner
22 for the purpose of enforcement of the statutes and rules
23 pertaining to nonintoxicating beer, and shall not be
24 treated by the state treasurer or state auditor as any

25 part of the general revenue of the state. At the end of
26 each fiscal year all funds in the nonintoxicating beer
27 enforcement fund in excess of two thousand dollars shall
28 be transferred to the general revenue fund.

29 (c) In addition to the grounds for revocation, suspen-
30 sion or other sanction of a license set forth in subsection
31 (a) of this section, conviction of the licensee of any
32 offense constituting a violation of the laws of this state
33 or of the United States relating to nonintoxicating beer
34 or alcoholic liquor shall be mandatory grounds for such
35 sanctioning of a license. Conviction of the licensee of any
36 violation of the laws of this state or of the United States
37 relating to prostitution or the sale, possession or
38 distribution of narcotics or controlled substances shall
39 be mandatory grounds for revocation of the licensee's
40 license for a period of at least one year.

**§11-16-24. Hearing on sanctioning of license; notice;
review of action of commissioner; clerk of
court to furnish commissioner copy of
order or judgment of conviction of licen-
see; assessment of costs.**

1 The commissioner shall not revoke nor suspend any
2 license issued pursuant to this article or impose any civil
3 penalties authorized thereby unless and until a hearing
4 shall be held after at least ten days' notice to the licensee
5 of the time and place of such hearing, which notice shall
6 contain a statement or specification of the charges,
7 grounds or reasons for such proposed contemplated
8 action, and which shall be served upon the licensee as
9 notices under the West Virginia rules of civil procedure
10 or by certified mail, return receipt requested, to the
11 address for which license was issued; at which time and
12 place, so designated in the notice, the licensee shall have
13 the right to appear and produce evidence in his behalf,
14 and to be represented by counsel.

15 The commissioner shall have authority to summon
16 witnesses in the hearings before him, and fees of
17 witnesses summoned on behalf of the state in proceed-
18 ings to sanction licenses shall be treated as a part of the
19 expenses of administration and enforcement. Such fees

20 shall be the same as those in similar hearings in the
21 circuit courts of this state. The commissioner may, upon
22 a finding of violation, assess a licensee a sum not to
23 exceed one hundred fifty dollars per violation to
24 reimburse the commissioner for expenditures for
25 witness fees, court reporter fees and travel costs
26 incurred in holding the hearing. Any moneys so assessed
27 shall be transferred to the nonintoxicating beer fund
28 created by section twenty-three of this article.

29 If, at the request of the licensee or on his motion, the
30 hearing shall be continued and shall not take place on
31 the day fixed by the commissioner in the notice above
32 provided for, then such licensee's license may be
33 suspended until the hearing and decision of the commis-
34 sioner, and in the event of revocation or suspension of
35 such license, upon hearing before the commissioner, the
36 licensee shall not be permitted to sell beer pending an
37 appeal as provided by this article. Any person contin-
38 uing to sell beer after his license has been suspended or
39 revoked, as hereinbefore provided, is guilty of a
40 misdemeanor and shall be punished as provided in
41 section nineteen of this article.

42 The action of the commissioner in revoking or
43 suspending a license shall be subject to review by the
44 circuit court of Kanawha County, West Virginia, in the
45 manner provided in chapter twenty-nine-a of this code,
46 when such licensee may be aggrieved by such revocation
47 or suspension. Petition for such review must be filed
48 with said circuit court within a period of thirty days
49 from and after the date of revocation or suspension by
50 the commissioner; and any licensee obtaining an order
51 for such review shall be required to pay the costs and
52 fees incident to transcribing, certifying and transmit-
53 ting the records pertaining to such matter to the circuit
54 court. An application to the supreme court of appeals
55 of West Virginia for a writ of error from any final order
56 of the circuit court in any such matter shall be made
57 within thirty days from and after the entry of such final
58 order.

59 All such hearings, upon notice to show cause why
60 license should be revoked or suspended, before the

61 commissioner shall be held in the offices of the commis-
62 sioner in Charleston, Kanawha County, West Virginia,
63 unless otherwise provided in such notice, or agreed upon
64 between the licensee and the commissioner; and when
65 such hearing is held elsewhere than in the commis-
66 sioner's office, the licensee may be required to make deposits
67 of the estimated costs of such hearing.

68 Whenever any licensee has been convicted of any
69 offense constituting a violation of the laws of this state
70 or of the United States relating to nonintoxicating beer,
71 or alcoholic liquor, and such conviction has become final,
72 the clerk of the court in which such licensee has been
73 convicted shall forward to the commissioner a certified
74 copy of the order or judgment of conviction if such clerk
75 has knowledge that the person so convicted is a licensee,
76 together with the certification of such clerk that the
77 conviction is final.

78 In the case of a Class B licensee with multiple licensed
79 locations, the commissioner may, in his or her discretion,
80 revoke, suspend or otherwise sanction, per the provisions
81 of section twenty-three of this article, only the license
82 for the location or locations involved in the unlawful
83 conduct for which licensure is sanctioned, as opposed to
84 all separately licensed locations of such licensee.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-2. Superintendent; departmental headquarters.

§15-2-12. Mission of the division; powers of superintendent, officers and members; patrol of turnpike.

§15-2-2. Superintendent; departmental headquarters.

1 The department of public safety, heretofore estab-
2 lished, shall be continued. The governor shall nominate,
3 and by and with the advice and consent of the Senate,
4 appoint a superintendent to be the executive and
5 administrative head of the department. Notwithstand-
6 ing any provision of this code to the contrary, the
7 superintendent shall be paid an annual salary of sixty
8 thousand dollars. The superintendent shall hold the rank
9 of colonel and is entitled to all rights, benefits and

10 privileges of regularly enlisted members. On the date of
11 his appointment, the superintendent shall be at least
12 thirty years of age. Before entering upon the discharge
13 of the duties of his office, he shall execute a bond in the
14 penalty of ten thousand dollars, payable to the state of
15 West Virginia and conditioned upon the faithful
16 performance of his duties. Such bond both as to form
17 and security shall be approved as to form by the
18 attorney general, and to sufficiency by the governor.

19 Before entering upon the duties of his office the
20 superintendent shall subscribe to the oath hereinafter
21 provided. The headquarters of the department shall be
22 located in Kanawha County.

***§15-2-12. Mission of the division; powers of superintendent, officers and members; patrol of turnpike.**

1 (a) The West Virginia division of public safety shall
2 have the mission of statewide enforcement of criminal
3 and traffic laws with emphasis on providing basic
4 enforcement and citizen protection from criminal
5 depredation throughout the state and maintaining the
6 safety of the state's public streets, roads and highways.

7 (b) The superintendent and each of the officers and
8 members of the division are hereby empowered:

9 (1) To make arrests anywhere within the state of any
10 persons charged with the violation of any law of this
11 state, or of the United States, and when a witness to the
12 perpetration of any offense or crime, or to the violation
13 of any law of this state, or of the United States, may
14 arrest without warrant; to arrest and detain any persons
15 suspected of the commission of any felony or misde-
16 meanor whenever complaint is made and warrant is
17 issued thereon for such arrest, and any person so
18 arrested shall be forthwith brought before the proper
19 tribunal for examination and trial in the county where
20 the offense for which any such arrest has been made was
21 committed;

22 (2) To serve criminal process issued by any court or

*Clerk's Note: This section was also amended by S. B. 383 (Chapter 138), which passed prior to this act.

23 magistrate anywhere within this state (they shall not
24 serve civil process); and

25 (3) To cooperate with local authorities in detecting
26 crime and in apprehending any person or persons
27 engaged in or suspected of the commission of any crime,
28 misdemeanor or offense against the laws of this state,
29 or of the United States, or of any ordinance of any
30 municipality in this state; and to take affidavits in
31 connection with any application to the division of
32 highways, division of motor vehicles and division of
33 public safety of West Virginia for any license, permit
34 or certificate that may be lawfully issued by these
35 divisions of state government.

36 (c) Members of the division of public safety are hereby
37 created forest patrolmen and game and fish wardens
38 throughout the state to do and perform any duties and
39 exercise any powers of such officers, and may appre-
40 hend and bring before any court or magistrate having
41 jurisdiction of such matters anyone violating any of the
42 provisions of chapters twenty, sixty and sixty-one of this
43 code, and the division of public safety shall at any time
44 be subject to the call of the West Virginia alcohol
45 beverage control commissioner to aid in apprehending
46 any person violating any of the provisions of said
47 chapter sixty of this code. They shall serve and execute
48 warrants for the arrest of any person and warrants for
49 the search of any premises issued by any properly
50 constituted authority, and shall exercise all of the
51 powers conferred by law upon a sheriff. They shall not
52 serve any civil process or exercise any of the powers of
53 such officer in civil matters.

54 (d) Any member of the division of public safety
55 knowing or having reason to believe that anyone has
56 violated the law may make complaint in writing before
57 any court or officer having jurisdiction and procure a
58 warrant for such offender, execute the same and bring
59 such person before the proper tribunal having jurisdic-
60 tion. He shall make return on all such warrants to such
61 tribunals and his official title shall be "member of the
62 division of public safety." Members of the division of
63 public safety may execute any summons or process
64 issued by any tribunal having jurisdiction requiring the

65 attendance of any person as a witness before such
66 tribunal and make return thereon as provided by law,
67 and any return by a member of the division of public
68 safety showing the manner of executing such warrant
69 or process shall have the same force and effect as if
70 made by a sheriff.

71 (e) Each member of the division of public safety, when
72 called by the sheriff of any county, or when the governor
73 by proclamation so directs, shall have full power and
74 authority within such county, or within the territory
75 defined by the governor, to direct and command
76 absolutely the assistance of any sheriff, deputy sheriff,
77 chief of police, policeman, game and fish warden, and
78 peace officer of the state, or of any county or municipi-
79 pality therein, or of any able-bodied citizen of the United
80 States, to assist and aid in accomplishing the purposes
81 expressed in this article. When so called, any officer or
82 person shall, during the time his assistance is required,
83 be for all purposes a member of the division of public
84 safety and subject to all the provisions of this article.

85 (f) The superintendent may also assign members of
86 the division to perform police duties on any turnpike or
87 toll road, or any section thereof, operated by the West
88 Virginia parkways, economic development and tourism
89 authority: *Provided*, That such authority shall reim-
90 burse the division of public safety for salaries paid to
91 such members, and shall either pay directly or reim-
92 burse the division for all other expenses of such group
93 of members in accordance with actual or estimated costs
94 determined by the superintendent.

95 (g) The division of public safety may develop proposals
96 for a comprehensive county or multicounty plan on the
97 implementation of an enhanced emergency service
98 telephone system and for causing a public meeting on
99 such proposals, all as set forth in section six-a, article
100 six, chapter twenty-four of this code.

101 (h) The superintendent may also assign members of
102 the division to administer tests for the issuance of
103 commercial drivers' licenses, operator and junior
104 operator licenses as provided for in section seven, article

105 two, chapter seventeen-b of this code: *Provided*, That the
106 division of motor vehicles shall reimburse the division
107 of public safety for salaries and employee benefits paid
108 to such members, and shall either pay directly or
109 reimburse the division for all other expenses of such
110 group of members in accordance with actual costs
111 determined by the superintendent.

112 (i) The superintendent shall be reimbursed by the
113 division of motor vehicles for salaries and employee
114 benefits paid to members of the division of public safety,
115 and shall either be paid directly or reimbursed by the
116 division of motor vehicles for all other expenses of such
117 group of members in accordance with actual costs
118 determined by the superintendent, for services per-
119 formed by such members relating to the duties and
120 obligations of the division of motor vehicles set forth in
121 chapters seventeen, seventeen-a, seventeen-b, seventeen-
122 c and seventeen-d of this code.

123 (j) The superintendent may at his discretion and upon
124 the written request of the West Virginia alcohol
125 beverage control commissioner assist the commissioner
126 in the coordination and enforcement of the alcohol
127 beverage control act and the general law concerning
128 nonintoxicating beer and wine.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION, ISSUANCE OF CERTIFICATES OF TITLES.

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles.

1 Any motor vehicle designed to carry passengers,
2 owned or leased by the state of West Virginia, or any
3 of its departments, bureaus, commissions or institutions,
4 except vehicles used by the governor, treasurer, vehicles
5 operated by the department of public safety, not to
6 exceed six vehicles operated by conservation officers of
7 the division of natural resources, not to exceed ten
8 vehicles operated by the arson investigators of the office
9 of state fire marshal, and not to exceed ten vehicles

10 operated by inspectors of the office of the alcohol
11 beverage control commissioner, shall not be operated or
12 driven by any person unless it shall have displayed and
13 attached to the front thereof, in the same manner as
14 regular motor vehicle registration plates are attached,
15 a plate of the same size as the regular registration plate,
16 with white lettering on a green background bearing the
17 words "West Virginia" in one line and the words "State
18 Car" in another line, and the lettering for the words
19 "State Car" shall be of sufficient size to be plainly
20 readable from a distance of one hundred feet during
21 daylight.

22 Such vehicle shall also have attached to the rear a
23 plate bearing a number and such other words and
24 figures as the commissioner of motor vehicles shall
25 prescribe. The rear plate shall also be green with the
26 number in white.

27 On registration plates issued to vehicles owned by
28 counties, the color shall be white on red with the word
29 "County" on top of the plate and the words "West
30 Virginia" on the bottom. On any registration plates
31 issued to a city or municipality, the color shall be white
32 on blue with the word "City" on top, and the words
33 "West Virginia" on the bottom. The colors may not be
34 reversed and shall be of reflectorized material. The
35 commissioner is hereby authorized to designate the
36 colors and design of any other registration plates that
37 are issued without charge to any other agency in
38 accordance with the motor vehicle laws. The
39 registration plates issued to counties, municipalities and
40 other governmental agencies authorized to receive
41 colored plates hereunder shall be affixed to both the
42 front and rear of such vehicles: *Provided*, That upon
43 application and payment of fees, the commissioner is
44 hereby authorized to issue a maximum of five Class A
45 license plates per applicant to be used by county sheriffs
46 and municipalities on law-enforcement vehicles while
47 engaged in undercover investigations.

48 No other registration plate shall be issued for, or
49 attached to, any such state-owned vehicle.

50 The commissioner of motor vehicles shall have a
51 sufficient number of both front and rear plates produced
52 to attach to all state-owned cars. The numbered
53 registration plates for such vehicles shall start with the
54 number "five hundred" and the commissioner shall issue
55 consecutive numbers for all state-owned cars.

56 It shall be the duty of each office, department, bureau,
57 commission or institution furnished any such vehicle to
58 have such plates affixed thereto prior to the operation
59 of such vehicle by any official or employee.

60 Any person violating the provisions of this section
61 shall be guilty of a misdemeanor, and, upon conviction
62 thereof, shall be fined not less than fifty dollars nor
63 more than one hundred dollars.

64 Magistrates shall have concurrent jurisdiction with
65 circuit and criminal courts for the enforcement of this
66 section.

CHAPTER 60. ALCOHOL BEVERAGE CONTROL.

Article

1. **General Provisions.**
2. **Alcohol Beverage Control Commissioner.**
- 3A. **Sales by Retail Liquor Licensees.**
4. **Licenses.**
6. **Miscellaneous Provisions.**
7. **Licenses to Private Clubs.**
8. **Sale of Wines.**

ARTICLE 1. GENERAL PROVISIONS.

§60-1-6. How chapter cited.

- 1 This chapter may be cited as the "Alcohol Beverage
2 Control Act."

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

- §60-2-7. Oath and bond.
§60-2-9. Salary and expenses.
§60-2-21. Audit.

§60-2-7. Oath and bond.

- 1 Before entering upon the duties of the office, the
2 commissioner shall take and subscribe to the oath
3 prescribed by section 5, article IV, of the constitution

4 of this state, and shall give bond in the penalty of
5 twenty-five thousand dollars, to be approved by the
6 governor and conditioned upon the faithful performance
7 of the duties of the office and the accounting for and
8 payment into the treasury of all moneys coming into the
9 commissioner's custody by virtue of the office. The bond
10 and oath shall be filed with the secretary of state.

§60-2-9. Salary and expenses.

1 The commissioner shall receive an annual salary of
2 sixty thousand dollars, and shall be paid actual and
3 necessary traveling expenses incurred in performance of
4 the official duties of the office.

§60-2-21. Audit.

1 At the close of each fiscal year the legislative auditor
2 shall audit the affairs of the West Virginia alcohol
3 beverage control commissioner and report the results of
4 the audit to the governor. The cost of the audit shall be
5 paid from the operating fund.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

**§60-3A-17. Wholesale prices set by commissioner; retail
licensees to purchase liquor from state;
transportation and storage; method of
payment.**

1 (a) The commissioner shall fix wholesale prices for the
2 sale of liquor, other than wine, to retail licensees. The
3 commissioner shall sell liquor, other than wine, to retail
4 licensees according to a uniform pricing schedule:
5 *Provided*, That the commissioner may also establish
6 discount prices for the sale to retail licensees of liquor
7 in inventory at state liquor stores and agency stores, but
8 such discount prices shall only be available to retail
9 licensees who accept delivery of such liquor at such
10 stores. The commissioner shall obtain if possible, upon
11 request, any liquor requested by a retail licensee.

12 (b) Wholesale prices shall be established in order to
13 yield a net profit for the general fund of not less than
14 six million five hundred thousand dollars annually on an
15 annual volume of business equal to the average for the

16 past three years. The net revenue derived from the sale
17 of alcoholic liquors shall be deposited into the general
18 revenue fund in the manner provided in section
19 seventeen, article three of this chapter.

20 (c) On or before the first day of July, one thousand
21 nine hundred ninety, the commissioner shall specify the
22 maximum wholesale markup percentage which may be
23 applied to the prices paid by the commissioner for all
24 liquor, other than wine, in order to determine the prices
25 at which all liquor, other than wine, will be sold to retail
26 licensees during the succeeding three years.

27 (d) A retail licensee shall purchase all liquor, other
28 than wine, for resale in this state only from the
29 commissioner, and the provisions of sections twelve and
30 thirteen, article six of this chapter shall not apply to the
31 transportation of such liquor: *Provided*, That a retail
32 licensee shall purchase wine from a distributor thereof
33 who is duly licensed under article eight of this chapter.
34 All liquor, other than wine, purchased by retail licensees
35 shall be stored in the state at the retail outlet or outlets
36 operated by the retail licensee: *Provided, however*, That
37 the commissioner, in his or her discretion, may upon
38 written request permit a retail licensee to store liquor
39 at a site other than the retail outlet or outlets.

40 (e) The sale of liquor by the commissioner to retail
41 licensees shall be by money order, certified check or
42 cashier's check only: *Provided*, That if a retail licensee
43 posts with the commissioner an irrevocable letter of
44 credit from a financial institution acceptable to the
45 commissioner guaranteeing payment of checks, then the
46 commissioner may accept the retail licensee's checks in
47 an amount up to the amount of the letter of credit.

ARTICLE 4. LICENSES.

§60-4-19. When license revoked.

1 The commissioner may revoke a license issued under
2 this article upon a finding that:

3 (1) The licensee is not a suitable person;

4 (2) The place occupied by the licensee is not a suitable
5 place;

6 (3) The licensee has violated a provision of this chapter
7 or a regulation made by the commissioner under the
8 authority of this chapter; or

9 (4) The licensee has failed to comply with the spirit
10 and intent of this chapter by encouraging intemperance,
11 the unlawful consumption of alcoholic liquors, or
12 otherwise.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-7. Specific acts forbidden; indictment.

1 A person shall not:

2 (1) Manufacture or sell in this state without a license
3 any alcoholic liquor except as permitted by this article;

4 (2) Aid or abet in the manufacture or sale of alcoholic
5 liquor without a license except as permitted by this
6 article;

7 (3) Sell without a license any alcoholic liquor other
8 than permitted by this article;

9 (4) Adulterate any alcoholic liquor by the addition of
10 any drug, methyl alcohol, crude, unrectified or impure
11 form of ethyl alcohol, or other foreign or deleterious
12 substance or liquid;

13 (5) Refill, with alcoholic liquor, any bottle or other
14 container in which alcoholic liquor has been sold at
15 retail in this state;

16 (6) Advertise any alcoholic liquor in this state except
17 in accordance with the rules and regulations of the
18 commissioner; or

19 (7) Distribute, deal in, process, or use crowns, stamps
20 or seals required under the authority of this chapter,
21 except in accordance with the rules and regulations
22 prescribed by the commission.

23 A person who violates any provision of this section
24 shall be guilty of a misdemeanor and upon conviction
25 shall be fined not less than fifty nor more than five
26 hundred dollars, or confined in jail not less than thirty

27 days nor more than one year or both such fine and
28 imprisonment, for the first offense. Upon conviction of
29 a second or subsequent offense, the court may in its
30 discretion impose a penalty of confinement in the
31 penitentiary for a period not to exceed three years.

32 An indictment for any first violation of subdivisions
33 (1), (2) and (3) of this section, or any of them, shall be
34 sufficient if in form or effect as follows:

35 State of West Virginia

36 County of _____, to wit:

37 The Grand Jurors of the State of West Virginia, in
38 and for the body of the County of _____,
39 upon their oaths present that _____, on
40 the _____ day of _____, 19____, in the
41 said County of _____, did unlawfully,
42 without a State license and without authorization under
43 the Alcohol Beverage Control Act, manufacture and sell,
44 and aid and abet in the manufacture and sale of a
45 quantity of alcoholic liquor, against the peace and
46 dignity of the State.

47 Any indictment under this section shall otherwise be
48 in conformity with section one, article nine, chapter
49 sixty-two of the code.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-3. Sale of alcoholic liquors and nonintoxicating beer by licensee authorized.

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

§60-7-13. Revocation or suspension of license; monetary penalty; hearing; assessment of costs; establishment of enforcement fund.

§60-7-13a. Hearing on sanctioning of license; notice; review of action of commissioner; clerk of court to furnish commissioner copy of order or judgment of conviction of licensee; assessment of costs.

§60-7-3. Sale of alcoholic liquors and nonintoxicating beer by licensee authorized.

1 Notwithstanding any other provisions of this code to
2 the contrary, licensees are hereby authorized to sell
3 alcoholic liquors, other than in sealed packages, for
4 consumption on the premises of the licensees, to their
5 members and their guests in accordance with the

6 provisions of this article. The licensees may keep and
7 maintain on their premises a supply of those alcoholic
8 liquors in such quantities as may be appropriate for the
9 conduct of operations thereof.

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

1 (a) It shall be unlawful for any licensee, or agent,
2 employee or member thereof, on such licensee's premises
3 to:

4 (1) Sell or offer for sale any alcoholic liquors other
5 than from the original package or container;

6 (2) Authorize or permit any disturbance of the peace;
7 obscene, lewd, immoral or improper entertainment,
8 conduct or practice; gambling or any slot machine,
9 multiple coin console machine, multiple coin console slot
10 machine or device in the nature of a slot machine;

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

17 (4) Sell, give away, or permit the sale of, gift to, or
18 the procurement of any alcoholic liquors, for or to any
19 mental incompetent, or for a person who is physically
20 incapacitated due to consumption of alcoholic liquor or
21 the use of drugs;

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

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

30 (7) With the intent to defraud, alter, change or
31 misrepresent the quality, quantity or brand name of any
32 alcoholic liquor;

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

37 (9) Permit any person who is less than eighteen years
38 of age to sell, furnish or give alcoholic liquors to any
39 person; or

40 (10) Violate any reasonable rule or regulation of the
41 commissioner.

42 (b) It shall further be unlawful for any licensee to
43 advertise in any news media or other means, outside of
44 the licensee's premises, the fact that alcoholic liquors
45 may be purchased thereat.

46 (c) Any person who violates any of the foregoing
47 provisions shall be guilty of a misdemeanor, and, upon
48 conviction thereof, shall be punished by a fine of not less
49 than one hundred dollars nor more than five hundred
50 dollars, or by imprisonment in the county jail for a
51 period not to exceed one year, or by both fine and
52 imprisonment.

**§60-7-13. Revocation or suspension of license; monetary
penalty; hearing; assessment of costs;
establishment of enforcement fund.**

1 (a) Upon a determination by the commissioner that a
2 licensee has (i) violated the provisions of article sixteen,
3 chapter eleven or chapter sixty of this code, (ii) acted
4 in such a way as would have precluded initial or renewal
5 licensure or (iii) violated any rule or order promulgated
6 by the commissioner, the commissioner may impose any
7 one or a combination of the following sanctions:

8 (1) Revoke the licensee's license;

9 (2) Suspend the licensee's license;

10 (3) Place the licensee on probationary status for a
11 period not to exceed twelve months; and

12 (4) Impose a monetary penalty not to exceed one
13 thousand dollars for each violation where revocation is
14 not imposed.

15 (b) Any monetary penalty assessed and collected by
16 the commissioner shall be transmitted to the state
17 treasurer for deposit into the state treasury to the credit
18 of a special revenue fund designated "The Alcohol
19 Beverage Control Enforcement Fund", which is hereby
20 created. All moneys collected, received and deposited in
21 the "Alcohol Beverage Control Enforcement Fund" shall
22 be kept and maintained for expenditures by the
23 commissioner for the purpose of enforcement of the
24 statutes and rules pertaining to alcoholic liquor, and
25 shall not be treated by the state treasurer or state
26 auditor as any part of the general revenue of the state.
27 At the end of each fiscal year all funds in the alcohol
28 beverage control enforcement fund in excess of two
29 thousand dollars shall be transferred to the general
30 revenue fund.

31 (c) In addition to the grounds for revocation,
32 suspension or other sanction of a license set forth in
33 subsection (a) of this section, conviction of the licensee
34 of any offense constituting a violation of the laws of this
35 state or of the United States relating to alcoholic liquor,
36 nonintoxicating beer or gambling shall be mandatory
37 grounds for such sanctioning of a license. Conviction of
38 the licensee of any violation of the laws of this state or
39 of the United States relating to prostitution, or the sale,
40 possession or distribution of narcotics or controlled
41 substances shall be mandatory grounds for revocation of
42 the licensee's license for a period of at least one year.

**§60-7-13a. Hearing on sanctioning of license; notice;
review of action of commissioner; clerk of
court to furnish commissioner copy of
order or judgment of conviction of
licensee; assessment of costs.**

1 The commissioner shall not revoke or suspend any
2 license issued pursuant to this article or impose any civil
3 penalties authorized thereby unless and until a hearing
4 shall be held after at least ten days' notice to the licensee
5 of the time and place of such hearing, which notice shall
6 contain a statement or specification of the charges,
7 grounds or reasons for such proposed contemplated
8 action, and which shall be served upon the licensee as

9 notices under the West Virginia rules of civil procedure
10 or by certified mail, return receipt requested, to the
11 address for which license was issued; at which time and
12 place, so designated in the notice, the licensee shall have
13 the right to appear and produce evidence in his behalf,
14 and to be represented by counsel: *Provided*, That the
15 commissioner may forthwith suspend any such license
16 when the commissioner believes the public safety will
17 be adversely affected by the licensee's continued
18 operation.

19 The commissioner shall have authority to summon
20 witnesses in the hearing before him, and fees of
21 witnesses summoned on behalf of the state in
22 proceedings to sanction licenses shall be treated as a
23 part of the expenses of administration and enforcement.
24 Such fees shall be the same as those in similar hearings
25 in the circuit courts of this state. The commissioner may,
26 upon a finding of violation, assess a licensee a sum, not
27 to exceed one hundred fifty dollars per violation, to
28 reimburse the commissioner for expenditures of witness
29 fees, court reporter fees and travel costs incurred in
30 holding the hearing. Any moneys so assessed shall be
31 transferred to the alcohol beverage control enforcement
32 fund created by section thirteen of this article.

33 If, at the request of the licensee or on his motion, the
34 hearing shall be continued and shall not take place on
35 the day fixed by the commissioner in the notice above
36 provided for, then such licensee's license may be
37 suspended until the hearing and decision of the
38 commissioner, and in the event of revocation or
39 suspension of such license, upon hearing before the
40 commissioner, the licensee shall not be permitted to sell
41 alcoholic liquor pending an appeal as provided by this
42 article. Any person continuing to sell alcoholic liquor
43 after his license has been suspended or revoked, as
44 hereinbefore provided, is guilty of a misdemeanor and
45 shall be punished as provided in section twelve of this
46 article.

47 The action of the commissioner in revoking or
48 suspending a license shall be subject to review by the
49 circuit court of Kanawha County, West Virginia, in the

50 manner provided in chapter twenty-nine-a of this code,
51 when such licensee may be aggrieved by such revocation
52 or suspension. Petition for such review must be filed
53 with said circuit court within a period of thirty days
54 from and after the date of revocation or suspension by
55 the commissioner; and any licensee obtaining an order
56 for such review shall be required to pay the costs and
57 fees incident to transcribing, certifying and
58 transmitting the records pertaining to such matter to
59 the circuit court. An application to the supreme court
60 of appeals of West Virginia for a writ of error from any
61 final order of the circuit court in any such matter shall
62 be made within thirty days from and after the entry of
63 such final order.

64 All such hearings, upon notice to show cause why
65 license should be revoked or suspended, before the
66 commissioner shall be held in the offices of the
67 commissioner in Charleston, Kanawha County, West
68 Virginia, unless otherwise provided in such notice, or
69 agreed upon between the licensee and the commissioner;
70 and when such hearing is held elsewhere than in the
71 commissioner's office, the licensee may be required to
72 make deposits of the estimated costs of such hearing.

73 Whenever any licensee has been convicted of any
74 offense constituting a violation of the laws of this state
75 or of the United States relating to alcoholic liquor, or
76 nonintoxicating beer, and such conviction has become
77 final, the clerk of the court in which such licensee has
78 been convicted shall forward to the commissioner a
79 certified copy of the order or judgment of conviction if
80 such clerk has knowledge that the person so convicted
81 is a licensee, together with the certification of such clerk
82 that the conviction is final. The commissioner shall
83 report violations of any of the provisions of section
84 twelve or twelve-a of this article to the prosecuting
85 attorney of the county in which the licensed premises is
86 located.

ARTICLE 8. SALE OF WINES.

- §60-8-4. Liter tax.
- §60-8-5. Refund or credit of taxes.
- §60-8-7. Records; inspection.

§60-8-24. Disposition of revenue.

§60-8-28. Registration of labels.

§60-8-29. Bond required of distributors and suppliers.

§60-8-4. Liter tax.

1 There is hereby levied and imposed on all wine sold
2 after the thirtieth day of April, one thousand nine
3 hundred eighty-three, by suppliers to distributors,
4 except wine sold to the commissioner, a tax of twenty-
5 six and four hundred six-thousandths cents per liter.

6 Before the sixteenth day of each month thereafter,
7 every supplier shall make a written report under oath
8 to the tax commissioner showing the identity of the
9 purchaser, the quantity, label and alcoholic content of
10 wine sold by the supplier to West Virginia distributors
11 during the preceding month, and at the same time shall
12 pay the tax imposed by this article on the wine sold to
13 the distributor during the preceding month.

14 The reports shall contain other information and be in
15 the form the tax commissioner may require. For
16 purposes of this article, the reports required by this
17 section shall be considered tax returns covered by the
18 provisions of article ten, chapter eleven of this code.

19 No wine imported, sold or distributed in this state
20 shall be subject to more than one liter tax.

§60-8-5. Refund or credit of taxes.

1 The tax commissioner shall refund, or credit on a
2 subsequent return, any tax which has been erroneously
3 or illegally collected. In the event that a licensee, while
4 the owner of wine on which the tax imposed by this
5 article has been paid, loses such wine through fire or
6 casualty, other than breakage occurring on the premises
7 of the licensee because such wine has been declared by
8 the alcohol beverage control commissioner to be unfit for
9 sale, and the amount of tax paid exceeds fifty dollars,
10 the tax commissioner shall refund the tax paid. The
11 alcohol beverage control commissioner shall promulgate
12 regulations establishing the procedure and nature of
13 proof required in case of any claim for refund or credit.

§60-8-7. Records; inspection.

1 Every person who sells or ships wine to a distributor,
2 and every distributor, shall maintain records of all sales,
3 shipments and deliveries, including invoices, records,
4 receipts, bills of lading and other pertinent papers
5 required by the commissioner. All such records shall be
6 preserved for at least two years. The tax commissioner
7 may inspect the books, accounts and records of any
8 licensee and examine, under oath, any officer, agent or
9 employee of any licensee or any person engaged in the
10 business of selling, shipping or delivering wine to a
11 distributor. The tax commissioner may require the
12 production, within this state at the time and place the
13 tax commissioner may designate, of any books, accounts,
14 papers or records kept within or without the state, or
15 verified copies in lieu thereof, in order that an
16 examination thereof may be made by the tax
17 commissioner or the tax commissioner's duly designated
18 agents.

§60-8-24. Disposition of revenue.

1 (a) All fees collected by the commissioner under the
2 provisions of this article shall be deposited in the state
3 treasury and credited to a special fund to be known as
4 the "wine license special fund". All moneys in such
5 special fund may be expended only for the
6 administration of the provisions of this article or, to the
7 extent of any excess, for the administration of this
8 chapter or as may be appropriate by law.

9 (b) The liter tax imposed and collected by the tax
10 commissioner under the provisions of this article shall
11 be paid into the state treasury and deposited in the
12 general revenue fund of the state.

13 (c) All moneys collected by the alcohol beverage
14 control commissioner and the tax commissioner under
15 the provisions of this article shall be remitted to the
16 state treasury monthly within fifteen days after the end
17 of each month.

§60-8-28. Registration of labels.

1 Every distributor and farm winery offering wine for
2 sale under this article shall register with the tax

3 commissioner each label offered for sale in the state and
4 shall pay a fee of three dollars for the registration of
5 such label. No wine may be sold under this article unless
6 its label has been registered.

§60-8-29. Bond required of distributors and suppliers.

1 Each applicant for a distributor's license or each
2 company registered as a supplier shall furnish at the
3 time of application a bond with a corporate surety
4 authorized to transact business in this state, payable to
5 the state, and conditioned on the payment of all taxes
6 and fees herein prescribed and on the faithful perfor-
7 mance of and compliance with the provisions of this
8 article.

9 The penal sum of the bond for distributors shall be
10 ten thousand dollars, and the penal sum of the bond for
11 suppliers shall be twenty-five thousand dollars. Each
12 distributor shall be required to furnish separate bond
13 for each location or separate place of business from
14 which wine is distributed, sold, or delivered. Revocation
15 or forfeiture of the bond furnished for any such location
16 may, in the discretion of the tax commissioner, cause the
17 revocation or forfeiture of all such bonds furnished by
18 the distributor suffering such revocation or forfeiture.

CHAPTER 119

(H. B. 2764—By Mr. Speaker, Mr. Chambers, and Delegate Houvouras)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, six, nine, twelve, thirteen, fifteen, seventeen, eighteen, twenty-one and twenty-six, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to regulation of retail sales by resident manufacturers of nonintoxicating beer.

Be it enacted by the Legislature of West Virginia:

That sections three, six, nine, twelve, thirteen, fifteen, seventeen, eighteen, twenty-one and twenty-six, article sixteen,

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 16. NONINTOXICATING BEER.

- §11-16-3. Definitions.
 §11-16-6. License in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed; brewpub.
 §11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.
 §11-16-12. Bond of brewer, distributor, brewpub and Class A retail dealer; action on bond of retail dealer upon revocation of license; duty of prosecuting attorney.
 §11-16-13. Barrel tax on nonintoxicating beer.
 §11-16-15. Records of brewer, manufacturer or distributor or operator of a brewpub; collection of unpaid tax and penalty.
 §11-16-17. Container labeling.
 §11-16-18. Unlawful acts of licensees; criminal penalties.
 §11-16-21. Requirements as to franchise agreements between brewers and distributors; transfer of franchise by distributor; notice thereof to brewer; arbitration of disputes as to such transfer; violations and penalties; limitation of section.
 §11-16-26. Municipal license tax.

***§11-16-3. Definitions.**

1 For the purpose of this article, except where the
 2 context clearly requires differently:

3 (1) "Brewer" or "manufacturer" shall mean any
 4 person, firm, association, partnership or corporation
 5 manufacturing, brewing, mixing, concocting, blending,
 6 bottling or otherwise producing or importing or trans-
 7 shipping from a foreign country nonintoxicating beer
 8 for sale at wholesale to any licensed distributor.

9 (2) "Brewpub" shall mean a place of manufacture of
 10 nonintoxicating beer owned by a resident brewer,
 11 subject to federal regulations and guidelines, a portion
 12 of which premises are designated for retail sales.

13 (3) "Commissioner" shall mean the West Virginia
 14 alcohol beverage control commissioner.

15 (4) "Distributor" shall mean and include any person
 16 jobbing or distributing nonintoxicating beer to retailers
 17 at wholesale and whose warehouse and chief place of
 18 business shall be within this state.

*Clerk's Note: This section was also amended by H. B. 2602 (Chapter 118), which passed prior to this act.

19 (5) "Nonintoxicating beer" shall mean all cereal malt
20 beverages or products of the brewing industry com-
21 monly referred to as beer, lager beer, ale and all other
22 mixtures and preparations produced by the brewing
23 industry, including malt coolers and containing at least
24 one half of one percent alcohol by volume, but not more
25 than four and two-tenths percent of alcohol by weight,
26 or six percent by volume, whichever is greater, all of
27 which are hereby declared to be nonintoxicating and the
28 word "liquor" as used in chapter sixty of this code shall
29 not be construed to include or embrace nonintoxicating
30 beer nor any of the beverages, products, mixtures or
31 preparations included within this definition.

32 (6) "Original container" shall mean the container used
33 by the brewer at the place of manufacturing, bottling
34 or otherwise producing nonintoxicating beer for sale at
35 wholesale.

36 (7) "Person" shall mean and include an individual,
37 firm, partnership, limited partnership, association or
38 corporation.

39 (8) "Resident brewer" shall mean any person, firm,
40 association, partnership, or corporation whose principal
41 place of business is within the state.

42 (9) "Retailer" shall mean any person selling, serving,
43 or otherwise dispensing nonintoxicating beer and all
44 products regulated by this article, including, but not
45 limited to, any malt cooler, at his established and
46 licensed place of business.

**§11-16-6. License in one capacity only; no connection
between different licensees; when brewer
may act as distributor; credit and rebates
proscribed; brewpub.**

1 (a) No person shall be licensed in more than one
2 capacity under the terms of this article, and there shall
3 be no connection whatsoever between any retailer or
4 distributor or brewer, and no person shall be interested
5 directly or indirectly through the ownership of corpo-
6 rate stock, membership in a partnership, or in any other
7 way in the business of a retailer, if such person is at the

8 same time interested in the business of a brewer or
9 distributor. A brewer whose place of brewing or
10 manufacture is located within the state of West Virginia
11 may act as distributor of his own product from such
12 brewery, place of manufacture or bottling, but must
13 have a distributor's license for distribution from a place
14 other than the place of brewing or manufacture. A
15 resident brewer or distributor may sell to a consumer
16 for personal use and not for resale, draught beer in
17 quantities of one-eighth, one-fourth and one-half barrels
18 in the original containers.

19 (b) It shall be unlawful for any brewer, manufacturer
20 or distributor to assist any retailer or for any retailer
21 to accept assistance from any brewer, manufacturer or
22 distributor any gifts or loans or forbearance of money
23 or property of any kind, nature or description, or other
24 thing of value or by the giving of any rebates or
25 discounts of any kind whatsoever except as may be
26 permitted by rule, regulation, or order promulgated by
27 the commissioner in accordance with this article.

28 Notwithstanding paragraphs (a) and (b) above, a
29 brewpub may manufacture and offer for retail sale non-
30 intoxicating beer so long as the sale of the non-
31 intoxicating beer is limited to the brewpub premises.

**§11-16-9. Amount of license tax; Class A and Class B
retail dealers; purchase and sale of nonin-
toxicating beer permitted; distributors;
brewers; brewpubs.**

1 (a) There is hereby levied and imposed an annual
2 license tax upon all dealers in and of nonintoxicating
3 beer as defined by this article, which license period shall
4 begin on the first day of July of each year and end on
5 the thirtieth day of June of the following year, and, if
6 granted for a less period the same shall be computed
7 semiannually in proportion to the remainder of the fiscal
8 year as follows:

9 (1) Retail dealers shall be divided into two classes,
10 Class A and Class B. In the case of a Class A retail
11 dealer the license fee shall be one hundred fifty dollars
12 for each place of business; the license fee for social,

13 fraternal or private clubs not operating for profit, and
14 having been in continuous operation for two years or
15 more immediately preceding the date of application,
16 shall be one hundred fifty dollars: *Provided*, That
17 railroads operating in this state may dispense nonintox-
18 icating beer upon payment of an annual license tax of
19 ten dollars for each dining, club or buffet car in which
20 the same is dispensed.

21 Class A licenses issued for railroad dining, club or
22 buffet cars, as herein provided, shall authorize the
23 licensee to sell nonintoxicating beer at retail for
24 consumption only on the licensed premises where sold.
25 All other Class A licenses shall authorize the licensee to
26 sell nonintoxicating beer at retail for consumption on or
27 off the licensed premises.

28 In the case of a Class B retailer, the fee for a Class
29 B license authorizing the sale of both chilled and
30 unchilled beer shall be one hundred fifty dollars for each
31 place of business. A Class B license shall authorize the
32 licensee to sell nonintoxicating beer at retail in bottles,
33 cans or other sealed containers only, and only for
34 consumption off the licensed premises. Sales under this
35 license to any person at any one time must be in less
36 quantities than five gallons: *Provided*, That a Class B
37 retailer may sell to a consumer, for personal use and not
38 for resale, draught beer in quantities of one-eighth, one-
39 fourth and one-half barrels in the original containers.
40 Such license may be issued only to the proprietor or
41 owner of a grocery store. For the purpose of this article
42 the term "grocery store" means and includes any retail
43 establishment commonly known as a grocery store or
44 delicatessen, where food or food products are sold for
45 consumption off the premises, and shall include and
46 mean a separate and segregated portion of any other
47 retail store which is dedicated solely to the sale of food,
48 food products and supplies for the table for consumption
49 off the premises. The commissioner may promulgate
50 rules and regulations necessary to carry this provision
51 into effect.

52 (2) In the case of distributors, the license fee shall be
53 one thousand dollars for each place of business.

54 (3) In the case of a brewer with its principal place of
55 business located in this state, the license fee shall be one
56 thousand five hundred dollars for each place of
57 manufacture.

58 (4) In the case of a brewpub, the license fee shall be
59 one thousand dollars for each place of manufacture.

**§11-16-12. Bond of brewer, distributor, brewpub and
Class A retail dealer; action on bond of
retail dealer upon revocation of license;
duty of prosecuting attorney.**

1 (a) In addition to furnishing the information required
2 by this article, each brewer or distributor applying for
3 a license under this article shall furnish, as prerequisite
4 to a license, a bond with some solvent surety company
5 as surety, to be approved by the commissioner, payable
6 to the state of West Virginia, conditioned for the
7 payment of any and all additional taxes accruing during
8 the period of such license, and conditioned further for
9 the faithful observance of the provisions of this article,
10 the rules, regulations and orders promulgated pursuant
11 thereto and of any other laws of the state of West
12 Virginia generally relating to the sale, transportation,
13 storage and distribution of nonintoxicating beer, which
14 said bonds shall be forfeited to the state upon the
15 revocation of the license of any such brewer or distrib-
16 utor. The amount of such bond, in the case of a resident
17 brewer or brewpub, shall be not less than five thousand
18 dollars, nor more than ten thousand dollars, and in the
19 case of a distributor, not less than two thousand dollars,
20 nor more than five thousand dollars for each place of
21 business licensed and conducted within the state, the
22 amount of such bond, between the minimum and
23 maximum amounts, to be determined in the discretion
24 of the commissioner. In the case of brewers shipping
25 nonintoxicating beer into the state, any brewer must
26 also furnish a bond in a penalty of not less than five
27 thousand dollars nor more than twenty-five thousand
28 dollars conditioned as hereinabove in this subsection
29 provided and any bond furnished pursuant hereto shall
30 be forfeited to the state in the full amount of said bond
31 upon revocation of license of any such brewer or

32 distributor. Such money received by the state shall be
33 credited to the state fund, general revenue.

34 (b) Each Class A retail dealer, in addition to furnish-
35 ing the information required by this article, shall
36 furnish as prerequisite to obtaining a license, a bond
37 with some solvent surety company as surety, to be
38 approved by the commissioner, payable to the state of
39 West Virginia, in the amount not less than five hundred
40 dollars, nor more than one thousand dollars, within the
41 discretion of the commissioner. All such bonds shall be
42 conditioned for the faithful observance of the provisions
43 of this article, the rules, regulations and orders
44 promulgated pursuant thereto and of any other laws of
45 the state of West Virginia generally relating to the
46 distribution, sale and dispensing of nonintoxicating
47 beer, and shall be forfeited to the state in the full
48 amount of said bond upon the revocation of the license
49 of any such retail dealer. Such money received by the
50 state shall be credited to the state fund, general revenue.

51 (c) Upon the revocation of the license of any Class A
52 retail dealer by the commissioner or by any court of
53 competent jurisdiction, the commissioner or the clerk of
54 said court shall notify the prosecuting attorney of the
55 county wherein such retail dealer's place of business is
56 located, or the prosecuting attorney of the county
57 wherein the licensee resides, of such revocation, and,
58 upon receipt of said notice, it shall be the duty of such
59 prosecuting attorney forthwith to institute appropriate
60 proceedings for the collection of the full amount of said
61 bond. Upon request of such prosecuting attorney, the
62 commissioner shall deliver the bond to him. Willful
63 refusal without just cause therefor by the prosecuting
64 attorney to perform said duty hereby imposed shall
65 subject him to removal from office by the circuit court
66 of the county for which said prosecuting attorney was
67 elected upon proper proceedings and proof in the
68 manner provided by law.

***§11-16-13. Barrel tax on nonintoxicating beer.**

1 (a) There is hereby levied and imposed, in addition to
2 the license taxes provided for in this article, a tax of five

*Clerk's Note: This section was also amended by H. B. 2602 (Chapter 118), which passed prior to this act.

3 dollars and fifty cents on each barrel of thirty-one
4 gallons and in like ratio on each part barrel of nonin-
5 toxicating beer manufactured in this state for sale
6 within this state, whether contained or sold in barrels,
7 bottles or other containers, and a like tax is hereby
8 levied and imposed upon all nonintoxicating beer
9 manufactured outside of this state and brought into this
10 state for sale within this state; but no nonintoxicating
11 beer manufactured, sold or distributed in this state is
12 subject to more than one barrel tax. The brewer
13 manufacturing or producing nonintoxicating beer
14 within this state for sale within this state shall pay the
15 barrel tax on such nonintoxicating beer, and, except as
16 provided otherwise, the distributor who is the original
17 consignee of nonintoxicating beer manufactured or
18 produced outside of this state, or who brings such
19 nonintoxicating beer into this state, shall pay the barrel
20 tax on such nonintoxicating beer manufactured or
21 produced outside of this state.

22 (b) On or before the tenth day of each month during
23 the license period, every brewer or operator of a
24 brewpub who manufactures or produces nonintoxicating
25 beer within this state shall file a report in writing,
26 under oath, to the tax commissioner, in the form
27 prescribed by the tax commissioner, stating its total
28 estimated sales, or in the case of a brewpub, its total
29 estimated production of nonintoxicating beer within this
30 state during that month, and at the same time shall pay
31 the tax levied by this article on such estimated monthly
32 sales or production. On or before the tenth day of each
33 month during the license period, every distributor who
34 is the original consignee of nonintoxicating beer
35 manufactured or produced outside this state or who
36 brings such beer into this state for sale shall file a report
37 in writing, under oath, to the tax commissioner, in the
38 form prescribed by the tax commissioner, stating its
39 total estimated purchases of such nonintoxicating beer
40 during that month, and at the same time shall pay the
41 tax thereon levied by this article for such estimated
42 monthly purchase: *Provided*, That the tax commissioner
43 may allow, or require, a brewer who manufactures or
44 produces nonintoxicating beer outside this state to file

45 the required report and pay the required tax on behalf
46 of its distributor or distributors. Any brewer or
47 distributor or operator of a brewpub who files a report
48 under this subsection may adjust its monthly estimated
49 sales or purchases or production report or reports by
50 filing amended reports by the twenty-fifth day of the
51 reporting month.

52 (c) Every brewer or distributor or operator of a
53 brewpub who files a report under subsection (b) of this
54 section shall file a final monthly report of said sales or
55 purchases or production, in a form and at a time
56 prescribed by the tax commissioner, stating actual
57 nonintoxicating beer sales, purchases, or production and
58 other information which the tax commissioner may
59 require, and shall include a remittance for any barrel
60 tax owed for actual sales or purchases or production
61 made in excess of the amount estimated for that month.

62 (d) Any brewer or distributor or operator of a
63 brewpub who files a report pursuant to subsection (b)
64 of this section reflecting an underestimation of twenty-
65 five percent or more of actual sales or purchases or
66 production of nonintoxicating beer as shown by the
67 report filed pursuant to subsection (c) of this section
68 shall be assessed a penalty of one percent of the total
69 taxes due in such prior month.

70 (e) Brewers and distributors and operators of brew-
71 pubs shall keep all records which relate to the sale or
72 purchase in this state of nonintoxicating beer for a
73 period of three years unless written approval for earlier
74 disposal is granted by the tax commissioner.

***§11-16-15. Records of brewer, manufacturer or distrib-
utor or operator of a brewpub; collection
of unpaid tax and penalty.**

1 Every brewer, manufacturer or distributor or opera-
2 tor of a brewpub shall maintain, keep and preserve for
3 a period of three years such record or records of
4 nonintoxicating beer manufactured, sold or distributed
5 in this state, including, but not limited to, coolers,
6 together with such invoices, records, receipts, bills of
7 lading and other pertinent papers as may be required

*Clerk's Note: This section was also amended by H. B. 2602 (Chapter 118),
which passed prior to this act.

8 by the tax commissioner, and the tax commissioner shall
9 have authority to inspect, by himself or through the
10 commissioner's duly designated agent, the books,
11 accounts, records and memoranda of any person licensed
12 under the provisions of this article, and to examine,
13 under oath, any officer, agent or employee of any
14 brewer, manufacturer or distributor or operator of a
15 brewpub. The tax commissioner may require the
16 production, within this state at such time and place as
17 the commissioner may designate, of any books, accounts,
18 papers or records kept within or without the state, or
19 verified copies in lieu thereof, in order that an exam-
20 ination thereof may be made by the tax commissioner
21 or the commissioner's duly designated agents. If, as the
22 result of such examination, it shall be found that any
23 nonintoxicating beer, subject to the payment of a tax,
24 has been manufactured, brewed, sold or distributed by
25 any person, upon which the tax has not been paid, the
26 tax commissioner shall make an assessment of the
27 amount of tax so found to be due, and, in addition
28 thereto and as a part thereof, shall assess a penalty of
29 fifty percent of the amount of such tax and shall notify
30 such person of the total amount due. If the same remains
31 unpaid for a period of thirty days, the tax commissioner
32 shall have the authority to collect the amount found to
33 be due by an appropriate legal proceeding in any of the
34 circuit courts in which an action for the collection of
35 unpaid taxes may be maintained under section fourteen
36 of this article, unless an appeal is taken from the action
37 of the tax commissioner as hereinafter provided. The tax
38 commissioner shall notify the alcohol beverage control
39 commissioner of any such unpaid assessment.

40 Within ten days after receipt of notice of any addi-
41 tional amount claimed to be due from any person as
42 shown by an examination by the tax commissioner, such
43 person, if he or she deems themselves aggrieved thereby,
44 shall so notify the tax commissioner and shall request
45 a hearing thereon and the tax commissioner shall set a
46 hearing into the matters raised by such notice, which
47 hearing shall be held as a contested case pursuant to
48 article ten of this chapter, except that the licensee shall
49 have the right of appeal from the tax commissioner's

50 findings only to the circuit court of Kanawha County,
51 West Virginia. Whether the finding of the tax commis-
52 sioner is affirmed or reversed, such circuit court shall
53 enter an order accordingly and either party shall then
54 have the right of appeal to the supreme court of appeals
55 of the state.

§11-16-17. Container labeling.

1 It shall be unlawful for any brewer, brewpub,
2 manufacturer, distributor or retailer to have affixed
3 upon any beer, ale or other malt beverage or malt cooler
4 container, sold or for sale in this state, a label bearing
5 any design, picture or wording, indicating that the
6 contents of the container are brewed or manufactured
7 for one particular distributor or retailer or group of
8 retailers, or use any trademark other than that of a
9 licensed brewer or manufacturer.

§11-16-18. Unlawful acts of licensees; criminal penalties.

- 1 (a) It shall be unlawful:
- 2 (1) For any licensee, his, her, its or their servants,
3 agents or employees to sell, give or dispense, or any
4 individual to drink or consume, in or on any licensed
5 premises or in any rooms directly connected therewith,
6 nonintoxicating beer or cooler on weekdays between the
7 hours of two o'clock a.m. and seven o'clock a.m., or
8 between the hours of two o'clock a.m. and one o'clock
9 p.m., on any Sunday, except in private clubs licensed
10 under the provisions of article seven, chapter sixty of
11 this code, where the hours shall conform with the hours
12 of sale of alcoholic liquors;
- 13 (2) For any licensee, his, her, its or their servants,
14 agents or employees, to sell, furnish or give any
15 nonintoxicating beer as defined in this article to any
16 person visibly or noticeably intoxicated, or to any person
17 known to be insane or known to be a habitual drunkard;
- 18 (3) For any licensee, his, her, its or their servants,
19 agents or employees, to sell, furnish or give any
20 nonintoxicating beer as defined in this article to any
21 person who is less than twenty-one years of age;

22 (4) For any distributor to sell or offer to sell, or any
23 retailer to purchase or receive, any nonintoxicating beer
24 as defined in this article, except for cash; and no right
25 of action shall exist to collect any claims for credit
26 extended contrary to the provisions of this subdivision.
27 Nothing herein contained shall prohibit a licensee from
28 crediting to a purchaser the actual price charged for
29 packages or containers returned by the original pur-
30 chaser as a credit on any sale, or from refunding to any
31 purchaser the amount paid or deposited for such
32 containers when title is retained by the vendor;

33 (5) For any brewer or distributor or brewpub or his,
34 her, its or their agents, to transport or deliver nonintox-
35 icating beer as defined in this article to any retail
36 licensee on Sunday;

37 (6) For any brewer or distributor to give, furnish, rent
38 or sell any equipment, fixtures, signs or supplies
39 directly or indirectly or through a subsidiary or affiliate
40 to any licensee engaged in selling products of the
41 brewing industry at retail, or to offer any prize,
42 premium, gift or other similar inducement, except
43 advertising matter of nominal value, to either trade or
44 consumer buyers: *Provided*, That a distributor may
45 offer, for sale or rent, tanks of carbonic gas. Nothing
46 herein contained shall prohibit a brewer from sponsor-
47 ing any professional or amateur athletic event or from
48 providing prizes or awards for participants and winners
49 in any such events: *Provided, however*, That no such
50 event shall be sponsored which permits actual partici-
51 pation by athletes or other persons who are minors,
52 unless specifically authorized by the commissioner;

53 (7) For any licensee to permit in his premises any
54 lewd, immoral or improper entertainment, conduct or
55 practice;

56 (8) For any licensee except the holder of a license to
57 operate a private club issued under the provisions of
58 article seven, chapter sixty of this code, or a holder of
59 a license or a private wine restaurant issued under the
60 provisions of article eight of said chapter sixty, to
61 possess a federal license, tax receipt or other permit

62 entitling, authorizing or allowing such licensee to sell
63 liquor or alcoholic drinks other than nonintoxicating
64 beer;

65 (9) For any licensee to obstruct the view of the interior
66 of his premises by enclosure, lattice, drapes or any
67 means which would prevent plain view of the patrons
68 occupying such premises. The interior of all licensed
69 premises shall be adequately lighted at all times:
70 *Provided*, That provisions of this subdivision shall not
71 apply to the premises of a Class B retailer, the premises
72 of a private club licensed under the provisions of article
73 seven, chapter sixty of this code, or the premises of a
74 private wine restaurant licensed under the provisions of
75 article eight of said chapter sixty;

76 (10) For any licensee to manufacture, import, sell,
77 trade, barter, possess or acquiesce in the sale, possession
78 or consumption of any alcoholic liquors on the premises
79 covered by such license or on premises directly or
80 indirectly used in connection therewith: *Provided*, That
81 the prohibition contained in this subdivision with
82 respect to the selling or possessing or to the acquiescence
83 in the sale, possession or consumption of alcoholic
84 liquors shall not be applicable with respect to the holder
85 of a license to operate a private club issued under the
86 provisions of article seven, chapter sixty of this code, nor
87 shall the prohibition be applicable to a private wine
88 restaurant licensed under the provisions of article eight
89 of said chapter insofar as such private wine restaurant
90 is authorized serve wine;

91 (11) For any retail licensee to sell or dispense
92 nonintoxicating beer, as defined in this article, pur-
93 chased or acquired from any source other than a
94 distributor, brewer or manufacturer licensed under the
95 laws of this state;

96 (12) For any licensee to permit loud, boisterous or
97 disorderly conduct of any kind upon his or her premises
98 or to permit the use of loud musical instruments if either
99 or any of the same may disturb the peace and quietude
100 of the community wherein such business is located:
101 *Provided*, That no licensee shall have in connection with

102 his or her place of business any loudspeaker located on
103 the outside of the licensed premises that broadcasts or
104 carries music of any kind;

105 (13) For any person whose license has been revoked,
106 as in this article provided, to obtain employment with
107 any retailer within the period of one year from the date
108 of such revocation, or for any retailer to employ
109 knowingly any such person within such time;

110 (14) For any distributor to sell, possess for sale,
111 transport or distribute nonintoxicating beer except in
112 the original container;

113 (15) For any licensee to knowingly permit any act to
114 be done upon the licensed premises, the commission of
115 which constitutes a crime under the laws of this state;

116 (16) For any Class B retailer to permit the consump-
117 tion of nonintoxicating beer upon his licensed premises;

118 (17) For any Class A licensee, his, her, its or their
119 servants, agents or employees, or for any licensee by or
120 through such servants, agents or employees, to allow,
121 suffer or permit any person less than eighteen years of
122 age to loiter in or upon any licensed premises; except,
123 however, that the provisions of this subdivision shall not
124 apply where such person under the age of eighteen years
125 is in or upon such premises in the immediate company
126 of his or her parent or parents, or where and while such
127 person under the age of eighteen years is in or upon such
128 premises for the purpose of and actually making a
129 lawful purchase of any items or commodities therein
130 sold, or for the purchase of and actually receiving any
131 lawful service therein rendered, including the consump-
132 tion of any item of food, drink or soft drink therein
133 lawfully prepared and served or sold for consumption
134 on such premises;

135 (18) For any distributor to sell, offer for sale,
136 distribute or deliver any nonintoxicating beer outside
137 the territory assigned to such distributor by the brewer
138 or manufacturer of such nonintoxicating beer or to sell,
139 offer for sale, distribute or deliver any such nonintox-
140 icating beer to any retailer whose principal place of

141 business or licensed premises is within the assigned
142 territory of another distributor of such nonintoxicating
143 beer: *Provided*, That nothing herein shall be deemed to
144 prohibit sales of convenience between distributors
145 licensed in this state wherein one such distributor sells,
146 transfers or delivers to another such distributor a
147 particular brand or brands for sale at wholesale; and

148 (19) For any licensee or any agent, servant or
149 employee of any such licensee to knowingly violate any
150 rule or regulation lawfully promulgated by the commis-
151 sioner in accordance with the provisions of chapter
152 twenty-nine-a of this code.

153 (b) Any person who violates any provision of this
154 article including, but not limited to, any provision of this
155 section, or any rule, regulation, or order lawfully
156 promulgated by the commissioner, or who makes any
157 false statement concerning any material fact in submit-
158 ting application for license or for a renewal of a license
159 or in any hearing concerning the revocation thereof, or
160 who commits any of the acts herein declared to be
161 unlawful, shall be guilty of a misdemeanor, and shall be
162 punished for each offense by a fine of not less than
163 twenty-five nor more than five hundred dollars, or
164 imprisoned in the county jail for not less than thirty
165 days or more than six months, or by both fine and
166 imprisonment in the discretion of the court. Magistrates
167 shall have concurrent jurisdiction with the circuit court,
168 and any other courts having criminal jurisdiction in
169 their county, for the trial of all misdemeanors arising
170 under this article.

171 (c) Nothing in this article nor any rule or regulation
172 of the commissioner shall prevent or be deemed to
173 prohibit any licensee from employing any person who is
174 at least eighteen years of age to serve in such licensee's
175 lawful employ, including the sale or delivery of nonin-
176 toxicating beer as defined in this article. With the prior
177 approval of the commissioner, a licensee whose principal
178 business is the sale of food or consumer goods or the
179 providing of recreational activities, including, but not
180 limited to, nationally franchised fast food outlets,
181 family-oriented restaurants, bowling alleys, drug stores,

182 discount stores, grocery stores, and convenience stores,
183 may employ persons who are less than eighteen years
184 of age but at least sixteen years of age: *Provided*, That
185 such person's duties shall not include the sale or delivery
186 of nonintoxicating beer or alcoholic liquors: *Provided*,
187 *however*, That the authorization to employ such persons
188 under the age of eighteen years shall be clearly
189 indicated on the licensee's license.

**§11-16-21. Requirements as to franchise agreements
between brewers and distributors; transfer
of franchise by distributor; notice thereof
to brewer; arbitration of disputes as to such
transfer; violations and penalties; limitation
of section.**

1 (a) On and after July one, one thousand nine hundred
2 seventy-one, it shall be unlawful for any brewer to
3 transfer or deliver to a distributor any nonintoxicating
4 beer, ale or other malt beverage or malt cooler without
5 first having entered into an equitable franchise agree-
6 ment with such distributor, which franchise agreement
7 shall be in writing, shall be identical as to terms and
8 conditions with all other franchise agreements between
9 such brewer and its other distributors in this state, and
10 which shall contain a provision in substance or effect as
11 follows:

12 (1) The brewer recognizes that the distributor is free
13 to manage his business in the manner the distributor
14 deems best, and that this prerogative vests in the
15 distributor, subject to the provisions of this article, the
16 exclusive right to establish his or her selling prices, to
17 select the brands of beer he or she wishes to handle, and
18 to determine the efforts and resources which the
19 distributor will exert to develop and promote the sale
20 of the brewer's products handled by the distributor.
21 However, since the brewer does not expect that its
22 products handled by the distributor will be sold by
23 others in the territory assigned to the distributor, the
24 brewer is dependent upon the distributor alone for the
25 sale of such products in said territory. Consequently, the
26 brewer expects that the distributor will price compet-
27 itively the products handled by the distributor, devote

28 reasonable effort and resources to the sale of such
29 products and maintain a satisfactory sales level.

30 (2) Whenever the manufacturing, bottling or other
31 production rights for the sale of nonintoxicating beer at
32 wholesale of any brewer is acquired by another brewer,
33 the franchised distributor of the selling brewer shall be
34 entitled to continue distributing the selling brewer's
35 beer products as authorized in the distributor's existing
36 franchise agreement, and the acquiring brewer shall
37 market all the selling brewer's beer products through
38 said franchised distributor as though the acquiring
39 brewer had made the franchise agreement, and the
40 acquiring brewer may terminate said franchise agree-
41 ment only in accordance with subdivision (2), subsection
42 (b) of this section: *Provided*, That the acquiring brewer
43 may distribute any of its other beer products through
44 its duly authorized franchises in accordance with all
45 other provisions of this section.

46 (b) It shall also be unlawful:

47 (1) For any brewer or brewpub or distributor, or any
48 officer, agent or representative of any brewer or
49 brewpub or distributor, to coerce or persuade or attempt
50 to coerce or persuade any person licensed to sell,
51 distribute or job nonintoxicating beer, ale or other malt
52 beverage or malt cooler at wholesale or retail, to enter
53 into any contracts or agreements, whether written or
54 oral, or to take any other action, which will violate or
55 tend to violate any provision of this article or any of the
56 rules, regulations, standards, requirements or orders of
57 the commissioner promulgated as provided in section
58 twenty-one of this article, or

59 (2) For any brewer or brewpub or distributor, or any
60 officer, agent or representative of any brewer or
61 brewpub or distributor, to cancel, terminate or rescind
62 without due regard for the equities of such brewer or
63 brewpub or distributor, and without just cause, any
64 franchise agreement, whether oral or written, and in the
65 case of an oral franchise agreement, whether the same
66 was entered into on or before the eleventh day of June,
67 one thousand nine hundred seventy-one, and in the case

68 of a franchise agreement in writing, whether the same
69 was entered into on, before or subsequent to July one,
70 one thousand nine hundred seventy-one. The cancella-
71 tion, termination or rescission of any such franchise
72 agreement shall not become effective for at least ninety
73 days after written notice of such cancellation, termina-
74 tion or rescission has been served on the affected party
75 and the commissioner by certified mail, return receipt
76 requested: *Provided*, That said ninety-day period and
77 said notice of cancellation, termination or rescission
78 shall not apply if such cancellation, termination or
79 rescission is agreed to in writing by both the brewer and
80 the distributor involved.

81 (c) In the event a distributor desires to sell or transfer
82 his or her franchise, such distributor shall give to the
83 brewer or brewpub at least sixty days notice in writing
84 of such impending sale or transfer and the identity of
85 the person, firm or corporation to whom such sale or
86 transfer is to be made and such other information as the
87 brewer may reasonably request. Such notice shall be
88 made upon forms and contain such additional informa-
89 tion as the commissioner by rule or regulation shall
90 prescribe. A copy of such notice shall be forwarded to
91 the commissioner. The brewer or brewpub shall be
92 given sixty days to approve or disapprove of such sale
93 or transfer. If the brewer or brewpub neither approves
94 nor disapproves thereof within sixty days of the date of
95 receipt of such notice, the sale or transfer of such
96 franchise shall be deemed to be approved by such
97 brewer. In the event the brewer or brewpub shall
98 disapprove of the sale or transfer to the prospective
99 franchisee, transferee or purchaser, such brewer or
100 brewpub shall give notice to the distributor of that fact
101 in writing, setting forth the reason or reasons for such
102 disapproval. The approval shall not be unreasonably
103 withheld by the brewer or brewpub. The fact that the
104 prospective franchisee, transferee or purchaser has not
105 had prior experience in the nonintoxicating beer
106 business or beer business shall not be deemed sufficient
107 reason in and of itself for a valid disapproval of the
108 proposed sale or transfer, but may be considered in
109 conjunction with other adverse factors in supporting the

110 position of the brewer or brewpub. Nor may the brewer
111 or brewpub impose requirements upon the prospective
112 franchisee, transferee or purchaser which are more
113 stringent or restrictive than those currently demanded
114 of or imposed upon the brewer's or brewpub's or other
115 distributors in the state of West Virginia. A copy of such
116 notice of disapproval shall likewise be forwarded to the
117 commissioner and to the prospective franchisee, trans-
118 feree or purchaser. In the event the issue be not resolved
119 within twenty days from the date of such disapproval,
120 either the brewer, brewpub, distributor or prospective
121 franchisee, transferee or purchaser shall notify the other
122 parties of his or her demand for arbitration and shall
123 likewise notify the commissioner thereof. A dispute or
124 disagreement shall thereupon be submitted to arbitra-
125 tion in the county in which the distributor's principal
126 place of business is located by a board of three
127 arbitrators, which request for arbitration shall name
128 one arbitrator. The party receiving such notice shall
129 within ten days thereafter by notice to the party
130 demanding arbitration name the second arbitrator, or
131 failing to do so, the second arbitrator shall be appointed
132 by the chief judge of the circuit court of the county in
133 which the distributor's principal place of business is
134 located on request of the party requesting arbitration in
135 the first instance. The two arbitrators so appointed shall
136 name the third, or failing to do so within ten days after
137 appointment of the second arbitrator, the third arbitra-
138 tor may be appointed by said chief judge upon request
139 of either party. The arbitrators so appointed shall
140 promptly hear and determine and the questions submit-
141 ted pursuant to the procedures established by the
142 American Arbitration Association and shall render
143 their decision with all reasonable speed and dispatch but
144 in no event later than twenty days after the conclusion
145 of evidence. Said decision shall include findings of fact
146 and conclusions of law and shall be based upon the
147 justice and equity of the matter. Each party shall be
148 given notice of such decision. If the decision of the
149 arbitrators be in favor of or in approval of the proposed
150 sale or transfer, the brewer or brewpub shall forthwith
151 agree to the same and shall immediately transfer the

152 franchise to the proposed franchisee, transferee or
153 purchaser, unless notice of intent to appeal such decision
154 is given the arbitrators and all other parties within ten
155 days of notification of such decision. If any such party
156 deems himself aggrieved thereby, such party shall have
157 a right to bring an appropriate action in circuit court.
158 Any and all notices given pursuant to this subsection
159 shall be given to all parties by certified or registered
160 mail, return receipt requested.

161 (d) The violation of any provision of this section by any
162 brewer or brewpub shall constitute grounds for the
163 forfeiture of the bond furnished by such brewer or
164 brewpub in accordance with the provisions of section
165 twelve of this article. Moreover, any circuit court of the
166 county in which a distributor's principal place of
167 business is located shall have the jurisdiction and power
168 to enjoin the cancellation, termination or rescission of
169 any franchise agreement between a brewer or brewpub
170 and such distributor, and, in granting an injunction to
171 a distributor, the court shall provide that the brewer or
172 brewpub so enjoined shall not supply the customers or
173 territory of the distributor while the injunction is in
174 effect.

§11-16-26. Municipal license tax.

1 Any municipal corporation in this state shall have the
2 authority to levy a license tax under the provisions of
3 this article upon any retailer, distributor or brewer or
4 operator of a brewpub of nonintoxicating beer whose
5 place of business is situated within such municipality,
6 but the amount of the license tax levied by such
7 municipal corporation shall in no event exceed the
8 amount fixed herein to be levied by the state. Only one
9 municipal tax is to be so imposed and that only by the
10 municipality in which the place of business, or ware-
11 house, is located. Cities and incorporated towns are
12 hereby empowered to enact ordinances for the enforce-
13 ment of this article in conformity with the provisions of
14 the same: *Provided*, That in no case shall the rate of such
15 municipal license tax exceed the rate of such tax in
16 effect on the first day of January, one thousand nine
17 hundred eighty-six.

18 In the case of a brewpub, such municipal tax shall not
19 exceed the same proportions of taxation as the other
20 licensees.

CHAPTER 120

(H. B. 2226—By Delegates Love and Wallace)

[Passed February 12, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal article twelve-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the interagency committee on pesticides.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the interagency committee on pesticides.

1 Article twelve-c, chapter nineteen of the code of West
2 Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 121

(S. B. 68—By Senators Spears and Helmick)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section one, article seven, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the poet laureate of West Virginia; appointment; qualifications; and increasing salary.

Be it enacted by the Legislature of West Virginia:

That section one, article seven, 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 7. POET LAUREATE.

§29-7-1. Appointment; qualifications; salary.

1 There shall be a poet laureate of West Virginia, who
 2 shall be appointed by, and serve during the will and
 3 pleasure of the governor. No person shall be eligible to
 4 such appointment who is not a resident of this state, and
 5 who has not written and published poems of recognized
 6 merit. The poet laureate shall receive an annual salary
 7 of two thousand dollars, payable in equal quarterly
 8 installments.

CHAPTER 122

(Com. Sub. for S. B. 30—By Senators Whitlow and Anderson)

[Passed March 6, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three, relating to probation and parole; and when and how notification of date of parole hearing or release date to victim or member of victim's immediate family is to be given.

Be it enacted by the Legislature of West Virginia:

That article twelve, chapter sixty-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 twenty-three, to read as follows:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-23. Notification of parole hearing or release date to victim or member of immediate family.

1 At the time of sentencing following a conviction for
 2 murder, aggravated robbery, sexual assault in the first
 3 degree, kidnapping, arson or sexual offenses against
 4 minors, the prosecuting attorney shall present, in
 5 writing, to the victims or immediate family members of
 6 deceased victims of murder, a document specifying that
 7 the victim or immediate family members has the right
 8 to notification prior to the time of a parole hearing and
 9 release date. The notice provided by the prosecutor shall

10 specify the method to request notification from the
11 board.

12 At least thirty days prior to the date of release or the
13 date that a parole hearing is to be held for an inmate
14 who is in the custody of the commissioner of corrections,
15 the board of probation and parole shall notify the victim
16 or victims of the offense for which the inmate is
17 incarcerated of the hearing and release date. If a victim
18 is deceased, notification of the date of the hearing and
19 release shall be made to a member of the victim's
20 immediate family. The notification set forth in this
21 section shall be required to be sent only to victims or
22 family members of deceased victims of the offenses of
23 murder, aggravated robbery, sexual assault in the first
24 degree, kidnapping, arson and sexual offenses against
25 minors, and only if the victim or victim's immediate
26 family member has, in writing to the board, requested
27 that such notice be sent. Notice stating the date, time
28 and location of the parole hearing and the release date
29 shall be sent by certified mail, return receipt requested.

CHAPTER 123

(Com. Sub. for S. B. 135—By Senator Hawse)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eleven, article two-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, three, four, five, five-a, six, six-a, eight, nine and ten of said article; and to further amend said article by adding thereto three new sections, designated sections six-b, six-c and eight-a, all relating to auctioneers and apprentice auctioneers; definitions; procedure and fees for obtaining a license; department of agriculture as statutory agent for licensees, fees; requiring bonds and specifying approved methods of bonding; requirements for license; promulgation of rules and regulations; duties of licensee; examination of applicants; examination fee; excuse for illness; renewal

fees; apprentice licenses; waiver of apprenticeship requirement; investigation of complaints; board of review; duties and responsibilities of apprentice auctioneers and sponsoring auctioneer; procedure for nonresident auctioneer's and apprentice auctioneer's license; civil and criminal penalties for violation of article or rules and regulations; suspension, revocation or denial of licenses; written contracts for auctions and exception; and advertising of auction sales.

Be it enacted by the Legislature of West Virginia:

That section eleven, article two-c, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, three, four, five, five-a, six, six-a, eight, nine and ten of said article be amended and reenacted; and that said article be further amended by adding thereto three new sections, designated sections six-b, six-c and eight-a, to read as follows:

ARTICLE 2C. AUCTIONEERS.

- §19-2C-1. Definitions.
- §19-2C-3. Procedure for license; department of agriculture as statutory agent for licensees; fee.
- §19-2C-4. Bond required.
- §19-2C-5. Requirements for license; rules and regulations; duties of licensee.
- §19-2C-5a. Examinations of applicants; excuse for illness; fee renewal.
- §19-2C-6. Apprentice licenses; fees.
- §19-2C-6a. Investigation of complaints; board of review.
- §19-2C-6b. Duties and responsibilities of an apprentice auctioneer and a sponsoring auctioneer.
- §19-2C-6c. Procedure for obtaining nonresident auctioneer's and apprentice auctioneer's license.
- §19-2C-8. Penalties for violation of article or rules and regulations.
- §19-2C-8a. Revocation.
- §19-2C-9. Written contracts; exception.
- §19-2C-10. Advertising.

§19-2C-1. Definitions.

- 1 For the purposes of this article:
- 2 (a) The term "auctioneer" means and includes a person
- 3 who sells goods or real estate at public auction for
- 4 another on commission or for other compensation. The
- 5 term "auctioneer" does not include: (1) Persons conduct-
- 6 ing sales at auctions conducted by or under the direction

7 of any public authority or pursuant to any judicial order
8 or direction or to any sale required by law to be at
9 auction; (2) the owner of any real or personal property
10 when personally sold at auction by such owner and such
11 owner has not personally conducted an auction within
12 the previous twelve-month period; (3) persons conduct-
13 ing sales pursuant to a deed of trust or other security
14 agreement; (4) fiduciaries of estates when selling real or
15 personal property of such estate; and (5) persons
16 conducting sales on behalf of charitable, religious,
17 fraternal or other nonprofit organizations: **Provided,**
18 That nothing contained in this article exempts persons
19 conducting sales at public markets from the provisions
20 of article two-a, chapter nineteen of this code, where the
21 sale is confined solely to livestock, poultry and other
22 agriculture and horticulture products.

23 (b) The term "public auction" means any public sale
24 of real or personal property when offers or bids are
25 made by prospective purchasers and the property sold
26 to the highest bidder.

27 (c) The term "commissioner" means the commissioner
28 of agriculture of West Virginia.

29 (d) The term "department" means the West Virginia
30 department of agriculture.

**§19-2C-3. Procedure for license; department of agricul-
ture as statutory agent for licensees; fee.**

1 Any person who wishes to conduct an auction as an
2 auctioneer may apply for a license on forms prescribed
3 by the commissioner and containing such information as
4 the commissioner may by rule or regulation require. A
5 nonreturnable application fee of fifty dollars shall
6 accompany each application as well as a license fee of
7 fifty dollars. All fees collected under this article shall be
8 paid into the general revenue fund in the state treasury.

9 In addition to the payment of fees, an applicant shall
10 file with his application a bond as required in section
11 four of this article.

12 The commissioner shall, within thirty days after the
13 receipt of an application, notify the applicant of his

14 eligibility to be examined at the next regularly sche-
15 duled examination, as well as the date of such
16 examination.

17 In the event the license is denied, the applicant shall
18 be refunded the license fee submitted with the
19 application.

20 Licenses issued shall expire on the thirty-first day of
21 December of each year but shall be renewable upon the
22 payment of the annual license fee within sixty days of
23 the expiration date: *Provided*, That licenses issued for
24 fiscal year one thousand nine hundred ninety-one will be
25 extended, at no additional fee, through the thirty-first
26 day of December, one thousand nine hundred ninety-one.
27 Renewals received more than sixty days after the
28 expiration date are subject to a late renewal fee of
29 twenty-five dollars in addition to the annual renewal fee.
30 Licenses which have been expired for more than two
31 years will not be renewed and the auctioneer or
32 apprentice auctioneer will be required to take the
33 written and oral examination and to pay the examina-
34 tion fee. No renewal will be made unless the other
35 requirements of this article are complied with.

36 Should a duplicate or replacement license or a license
37 reflecting a change in information be required, the
38 auctioneer or apprentice auctioneer must submit with
39 such request a fee of five dollars.

40 The state department of agriculture is the agent for
41 the purpose of service of process on any licensed
42 auctioneer for any action occasioned by the performance
43 of the duties of such auctioneer. Every licensed auction-
44 eer, by virtue of his application for license, shall be
45 considered to have consented to such statutory agency.

§19-2C-4. Bond required.

1 Every person applying for a license as an auctioneer,
2 apprentice auctioneer or continuing to act as a licensed
3 auctioneer or apprentice auctioneer shall file with the
4 commissioner and maintain in full effect a bond
5 satisfactory to the commissioner and in form and
6 amount as prescribed by the commissioner pursuant to

7 the rules and regulations promulgated in accordance
8 with this article: *Provided*, That in no event shall the
9 amount of such bond be less than ten thousand dollars
10 for an auctioneer and in no event less than five thousand
11 dollars for an apprentice auctioneer. The bond may
12 include, at the option of the applicant, corporate surety
13 bonding, collateral bonding (including costs and secur-
14 ities), establishment of an escrow account, an irrevoca-
15 ble letter of credit or a combination of these methods.
16 If collateral bonding is used, the auctioneer may elect
17 to deposit cash, or any of the following collateral
18 securities or certificates: Bonds of the United States or
19 its possessions, of the federal land bank, or of the
20 homeowners' loan corporation; full faith and credit
21 general obligation bonds of the state of West Virginia,
22 or other states, and of any county, district, or munici-
23 pality of the state of West Virginia or other states; or
24 certificates of deposit in a bank in this state, which
25 certificates shall be in the name of the department. The
26 cash deposit or market value of such securities or
27 certificates shall be equal to or greater than the sum of
28 the bond. It shall be the duty of the applicant to ensure
29 the market value of such bonds is sufficient. The
30 commissioner shall, upon receipt of any such deposits of
31 cash, securities or certificates, promptly place the same
32 with the treasurer of the state of West Virginia, whose
33 duty it shall be to receive and hold the same in the name
34 of the state in trust for the purpose for which the deposit
35 is made when the license is issued. The applicant
36 making the deposit shall be entitled from time to time
37 to receive from the state treasurer, upon written
38 approval of the commissioner, the whole or any portion
39 of any cash, securities or certificates so deposited, upon
40 depositing with him in lieu thereof, cash or other
41 securities or certificates of the classes herein specified
42 having value equal to or greater than the sum of the
43 bond. Such bond shall be conditioned upon the faithful
44 compliance by the auctioneer with the provisions of this
45 article and the payment of all required taxes, fees and
46 penalties imposed by this state and its political subdi-
47 visions, as well as the payment by any auctioneer of any
48 final judgment obtained for damages arising out of his

49 conduct or duties as an auctioneer. Such bond shall be
50 open to public inspection.

§19-2C-5. Requirements for license; rules and regulations; duties of licensee.

1 (1) Each person seeking a license hereunder after the
2 effective date of this section shall submit satisfactory
3 evidence to the commissioner showing:

4 (a) That he or she has successfully completed the
5 written and oral examinations provided for in this
6 article;

7 (b) That he or she has a good reputation;

8 (c) That he or she is of trustworthy character;

9 (d) That he or she has met the apprenticeship
10 requirements set forth in this article, if applicable;

11 (e) That he or she is a citizen of the United States;
12 and

13 (f) That he or she has a general knowledge of the
14 auctioneering profession and the principles involved in
15 conducting an auction.

16 (2) The commissioner shall promulgate such reasona-
17 ble rules and regulations as he or she considers
18 necessary to carry out the intent and the administration
19 and enforcement of this article, which said rules and
20 regulations shall be promulgated in accordance with the
21 applicable provisions of chapter twenty-nine-a of this
22 code.

23 (3) Each licensee shall promptly produce for inspec-
24 tion such license at all sales conducted by or partici-
25 pated in by such licensee when requested to do so by any
26 person and shall keep complete and accurate records of
27 all transactions engaged in for a period of six months,
28 which records shall be open to inspection by the
29 commissioner or his authorized representative.

§19-2C-5a. Examinations of applicants; excuse for illness; fee renewal.

1 Examinations shall be held in April and October of

2 each year, at a time and place to be designated by the
3 commissioner or his authorized representative.

4 Any individual auctioneer applicant may take the
5 examination for auctioneer or apprentice auctioneer at
6 the regularly scheduled time and place. The apprentice
7 auctioneer's examination shall consist of a written
8 examination. The auctioneer's examination will consist
9 of both a written and oral examination. The passing
10 grade for any written examination shall be seventy
11 percent out of one hundred percent. The oral portion
12 will be scored by the commissioner or his authorized
13 representative. If the applicant fails either the written
14 or oral portion of the examination, no license will be
15 issued and he or she shall not be administered the
16 examination again until the next regularly scheduled
17 examination date. A person who is qualified for a
18 auctioneer's license as provided for in this article is
19 considered to be a professional in his trade.

20 One notice only of the examination shall be mailed to
21 the applicant at the address given on the application. If
22 the applicant fails to appear for such examination,
23 except as provided herein, a new application and a new
24 fee shall be required. No fee shall be returned except
25 when the applicant fails to take the examination because
26 of illness evidenced by a doctor's certificate sent to the
27 commissioner. If excused because of illness the applicant
28 shall be admitted to the next scheduled examination
29 without paying an additional fee. No applicant shall be
30 excused from taking the scheduled examination for any
31 reason other than illness unless in the judgment of the
32 commissioner the applicant would suffer undue hard-
33 ship by not being excused.

34 An examination fee of fifty dollars, in addition to any
35 other fees required by this article, shall be collected
36 from each person taking such examination. If the
37 applicant has previously paid the examination fee and
38 successfully completed the apprentice auctioneer's
39 examination, no additional examination fee will be
40 required to take the auctioneer's examination as
41 provided for in this article.

42 If the commissioner determines that an applicant does
43 not qualify for a license, he or she shall so notify the
44 applicant by certified mail. The notice shall state the
45 reason for refusal to grant a license and the applicant's
46 right to appeal the commissioner's decision within
47 twenty days of receipt of the notice.

48 An examination shall not be required for the renewal
49 of any license unless such license has been revoked or
50 suspended, in which case the applicant may be required,
51 by the commissioner, to take and pass any written or
52 oral examination required by the department. In cases
53 where a license has been expired for more than two
54 years and not been revoked or suspended, the applicant
55 is required to take and pass any written and oral
56 examinations required by the department. The commis-
57 sioner is hereby authorized to promulgate rules as he or
58 she considers necessary for the renewal of auctioneer
59 licenses, including, but not limited to, requirements for
60 continuing education of auctioneers.

§19-2C-6. Apprentice licenses; fees.

1 The department of agriculture may grant apprentice
2 auctioneer's licenses to those persons considered quali-
3 fied by the commissioner. Every applicant for an
4 apprentice auctioneer's license must take and pass a
5 written examination relating to the skills and knowl-
6 edge and statutes and regulations governing auction-
7 eers. Every applicant shall furnish to the commissioner
8 on forms provided by the department satisfactory proof
9 of the following:

- 10 (a) That he or she has a good reputation;
- 11 (b) That he or she is a trustworthy character; and
- 12 (c) That he or she is a citizen of the United States.

13 Any apprentice auctioneer may take the examination
14 to become an auctioneer after serving a two-year
15 apprenticeship under a licensed auctioneer: *Provided,*
16 That if the apprentice auctioneer has attended a
17 nationally accredited graduate school of auctioneering,
18 approved by the commissioner, he or she shall serve an
19 apprenticeship of only six months. Before an apprentice

20 auctioneer may take the auctioneer's examination, the
21 apprentice auctioneer shall conduct at least six auction
22 sales under the direct supervision of the sponsoring
23 auctioneer. The commissioner may waive the require-
24 ments of this section, on an individual basis, upon the
25 presentation of written evidence that the applicant has
26 educational training or exceptional experience in the
27 auctioneering profession and that the applicant has been
28 unable to obtain sponsorship by a licensed auctioneer:
29 *Provided, however,* That the commissioner shall promul-
30 gate rules and regulations setting forth educational and
31 experience qualifications which would entitle an
32 individual to a waiver of the provisions of this section:
33 *Provided further,* That the commissioner shall not waive
34 apprenticeship requirements for any applicant without
35 the concurrence of the board of review.

36 When any apprentice auctioneer is discharged or
37 terminates his employment with an auctioneer for any
38 reason, the auctioneer shall immediately provide written
39 notification to the commissioner. No discharged or
40 terminated apprentice auctioneer shall thereafter
41 perform any acts under the authority of his license until
42 such apprentice auctioneer receives a new license
43 bearing the name and address of his new employer. No
44 more than one license shall be issued to any apprentice
45 auctioneer for the same period of time. The fee for the
46 transfer of the license of an apprentice auctioneer to a
47 new employer auctioneer is fifteen dollars.

48 The fee for the annual renewal of the apprentice
49 auctioneer's license is fifty dollars. Bond requirements
50 for an apprentice auctioneer shall be established by
51 reasonable rules and regulations promulgated by the
52 commissioner, and both the annual renewal fee and the
53 bond must be filed with the department of agriculture:
54 *Provided,* That the bond required by this section shall
55 not be less than five thousand dollars. The department
56 shall not issue an apprentice auctioneer's license until
57 bond has been filed in accordance with this article. All
58 apprentice auctioneer licenses expire on the thirty-first
59 day of December of each year but are renewable upon
60 the payment of the annual fee.

§19-2C-6a. Investigation of complaints; board of review.

1 The department of agriculture may, upon its own
2 action, and shall upon the verified written complaint of
3 any person, investigate the actions of any auctioneer,
4 apprentice auctioneer, any applicant for an auctioneer's
5 or apprentice auctioneer's license, or any person who
6 assumes to act in that capacity, if the complaint,
7 together with other evidence presented in connection
8 with it, establishes probable cause.

9 Upon verification of the complaint, the department
10 shall present the complaint to the board of review. The
11 board of review shall consider all of the facts of the
12 complaint and recommend a course of action to the
13 commissioner.

14 The board of review shall be appointed by the
15 governor, by and with the advice and consent of the
16 Senate, and shall consist of three members, each
17 appointed for a staggered three-year term. Two
18 members of the board of review shall be licensed
19 auctioneers in West Virginia and residents of this state
20 and shall have been licensed and been practicing the
21 profession of auctioneering for five years immediately
22 preceding their appointment. The third member shall
23 be a lay person from the commercial or agricultural
24 community who has utilized services of auctioneers for
25 at least three years. No more than one board member
26 shall be from any one congressional district and no more
27 than two members shall be from the same political
28 party. Board members shall receive no compensation for
29 their service on the board, but shall be entitled to
30 receive reimbursement for expenses in accordance with
31 the department of agriculture travel regulations.

32 During the establishment of the board one member
33 shall be appointed for a three-year term, one member
34 for a two-year term and one member for a one-year
35 term. The first year of each term expires on the first
36 day of January, one thousand nine hundred ninety-two,
37 and subsequently on the first day of January of each
38 year. There shall be no limit on the number of consec-
39 utive terms a member may serve on the board. The

40 governor is authorized to fill a vacancy when it occurs
41 on the board for any reason. An appointment to fill a
42 vacancy shall be for the remainder of the existing term
43 of the vacant position.

§19-2C-6b. Duties and responsibilities of an apprentice auctioneer and a sponsoring auctioneer.

1 An apprentice auctioneer shall only conduct or assist
2 in auctions under the direct supervision of his sponsor-
3 ing auctioneer. A licensed apprentice auctioneer may
4 not enter into a contract to conduct an auction unless
5 the contract is cosigned by his sponsoring auctioneer.

6 The sponsoring auctioneer is responsible for the
7 actions of an apprentice auctioneer. It is his responsi-
8 bility to ensure adherence to this and all applicable
9 sections of state law: *Provided*, That if the apprentice
10 auctioneer conducts auctions without the consent of his
11 sponsor, only the apprentice auctioneer is subject to the
12 penalties in section eight of this article.

§19-2C-6c. Procedure for obtaining nonresident auctioneer's and apprentice auctioneer's license.

1 To qualify for a nonresident license by reciprocity, the
2 applicant must show evidence of licensing in another
3 state for a period of one year preceding the date of
4 application. The licensing may have been as an appren-
5 tice auctioneer or as an auctioneer. *Provided* this
6 qualification is met and the applicant meets all the other
7 requirements as required by this article and by
8 regulation, he or she shall be licensed either as an
9 apprentice auctioneer or as an auctioneer, based on a
10 nonresident license, as the case may be.

11 When an applicant's resident state has no licensing
12 law for auctioneers or the applicant's resident state has
13 no written or oral examination associated with its
14 licensing requirements, the department of agriculture
15 shall require proof that the applicant has been a
16 practicing auctioneer for a period of two years preced-
17 ing the date of application. The proof shall be in the
18 form of sale bills, contracts, sale permits and other such
19 evidence acceptable to the commissioner. *Provided* this

20 qualification is met, and the applicant meets other
21 requirements for licensing as required by the statutes
22 and regulations, the applicant shall be admitted to the
23 next scheduled written and oral examination for
24 auctioneers without being required to first serve an ap-
25 prenticeship.

§19-2C-8. Penalties for violation of article or rules and regulations.

1 (a) *Criminal penalties.* — Any person, firm, associa-
2 tion or corporation violating any of the provisions of this
3 article, or of the rules and regulations adopted pursuant
4 to the provisions thereof, shall be guilty of a misdemea-
5 nor, and, upon conviction thereof, shall be fined not less
6 than fifty dollars nor more than two hundred dollars for
7 the first offense, and not less than four hundred dollars
8 nor more than one thousand dollars for the second and
9 subsequent offenses. Magistrates have concurrent
10 jurisdiction with circuit courts to enforce the provisions
11 of this article.

12 (b) *Civil penalties.* — (1) Any person violating a
13 provision of this article or any rule or regulation
14 adopted hereunder may be assessed a civil penalty by
15 the commissioner. In determining the amount of any
16 civil penalty, the commissioner shall give due consid-
17 eration to the history of previous violations of the person,
18 the seriousness of the violation, and the demonstrated
19 good faith of the person charged in attempting to
20 achieve compliance with this article before and after
21 written notification of the violation; (2) the commissioner
22 may assess a penalty of not more than two hundred
23 dollars for each first offense, and not more than one
24 thousand dollars for a second and subsequent offense;
25 and (3) the civil penalty is payable to the state of West
26 Virginia and is collectible in any manner now or
27 hereafter provided for collection of debt. If any person
28 liable to pay the civil penalty neglects or refuses to pay
29 the same, the amount of the civil penalty, together with
30 interest at ten percent, is a lien in favor of the state of
31 West Virginia upon the property, both real and per-
32 sonal, of such a person after the same has been entered
33 and docketed to record in the county where such

34 property is situated. The clerk of the county, upon
35 receipt of the certified copy of such, shall enter same to
36 record without requiring the payment of costs as a
37 condition precedent to recording.

38 (c) Notwithstanding any other provision of law to the
39 contrary, the commissioner may promulgate and adopt
40 rules which permit consent agreements or negotiated
41 settlements for the civil penalties assessed as a result of
42 violation of the provisions of this article.

43 (d) No state court may allow for the recovery of
44 damages for any administrative action taken if the court
45 finds that there was probable cause for such action.

§19-2C-8a. Revocation.

1 In addition to the penalties in section eight of this
2 article, the commissioner may, by order, suspend, deny
3 or revoke any license granted hereunder for any
4 violation of this article or the rules and regulations
5 promulgated hereunder or for any of the following
6 reasons:

7 (a) Obtaining a license through false or fraudulent
8 representation;

9 (b) Making any substantial misrepresentation in any
10 application for an auctioneer's or apprentice auctioneer's
11 license;

12 (c) Engaging in a continued or flagrant course of
13 misrepresentation or for making false promises through
14 an agent, advertisement or otherwise;

15 (d) Failing to account for or remit within a reasonable
16 time any money belonging to others that comes into his
17 possession;

18 (e) Being convicted in any court of competent juris-
19 diction of this state or any other state of a criminal
20 offense involving moral turpitude or a felony; or for
21 failing to notify the department of any such conviction
22 within fifteen days of conviction;

23 (f) Engaging in any conduct of an auctioneer which
24 demonstrates dishonesty or incompetency;

25 (g) Engaging in any other conduct that constitutes
26 fraudulent or dishonest dealing; and

27 (h) Acting as an attorney for a client.

28 Any auctioneer or apprentice auctioneer who has had
29 his license suspended or revoked shall not be issued
30 another such license until a period not to exceed two
31 years has elapsed from the date of revocation. The
32 commissioner may also require the successful comple-
33 tion of the examinations required for an auctioneer's
34 license or an apprentice auctioneer's license.

§19-2C-9. Written contracts; exception.

1 No person shall act as auctioneer on the sale at public
2 auction of any goods, wares, merchandise or of any other
3 property, real or personal, until he or she has entered
4 into a written contract in duplicate with the owner or
5 consignor of the property to be sold, containing the
6 terms and conditions upon which the licensee receives
7 or accepts the property for sale at auction. No appren-
8 tice auctioneer shall be authorized to enter into a
9 contract without the written consent of his or her
10 sponsoring auctioneer. All contracts shall be in the name
11 of and on behalf of the sponsoring auctioneer.

12 The commissioner may require by rule the following:

13 (a) That written contracts between the auctioneer and
14 the seller be made in duplicate;

15 (b) That the original contract is to be retained by the
16 auctioneer for a period of six months;

17 (c) That one copy of the contract is to be furnished to
18 each person that entered into the contract;

19 (d) That an apprentice auctioneer may not contract
20 directly with a client but only through his or her
21 sponsoring auctioneer;

22 (e) That an apprentice auctioneer may not engage in
23 a sale with an auctioneer by whom he or she is not
24 sponsored without first obtaining the written consent of
25 his or her sponsoring auctioneer; and

26 (f) That on all contracts between an auctioneer and a
27 seller there shall be a prominent statement indicating
28 that the auctioneer is licensed by the department of
29 agriculture and bonded in favor of the state of West Vir-
30 ginia.

§19-2C-10. Advertising.

1 In advertising an auction sale by any licensed
2 auctioneer, the principal auctioneer or auctioneers who
3 physically conduct the sale shall be listed prominently
4 in such advertising as used by said auctioneer or
5 auctioneers. The individual auctioneer or auctioneers
6 who conduct the sale shall be the person or persons who
7 call for, accept and close bids on the majority of items
8 offered for sale.

9 Any apprentice auctioneer who advertises, as pro-
10 vided in this section, shall indicate in his advertisement
11 the name of the sponsoring auctioneer under whom he
12 or she is licensed.

13 The auctioneer's name and license number shall be
14 displayed in equal prominence with the name of the
15 apprentice auctioneer and license number in such
16 advertisement.

17 Nothing in the provisions of this article shall be
18 construed so as to prohibit any other auctioneer, licensed
19 pursuant to this article, from assisting with any auction,
20 notwithstanding the failure to list the name of the other
21 auctioneer in any advertising associated with such auc-
22 tion.

CHAPTER 124

(S. B. 409—By Senators Jones, Wiedebusch, Heck, Chafin, Helmick,
Pritt, Humphreys, Felton, Wagner and Lucht)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eleven, relating to the licensing of contractors;

providing definitions; creating contractor licensing board; setting forth the administrative duties of the board; providing for the promulgation of legislative rules; providing exemptions from licensing requirements; providing for the application and issuance of license; providing for fees for licenses, expiration of licenses and renewal of licenses; prohibiting assignment or transfer of license; providing prerequisites to obtain a building permit; requiring notice of license in bid submissions; providing for reinstatement of license; providing criminal penalties for violations of article; providing disciplinary powers to the board; providing administrative duties for the division of labor; creating a special revenue account and the procedure for expenditure therefrom and deposits thereto; providing for record keeping; and providing for reciprocity.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

- §21-11-1. Short title.
- §21-11-2. Policy declared.
- §21-11-3. Definitions.
- §21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.
- §21-11-5. Administrative duties of the board; regulations.
- §21-11-6. Necessity for license; exemptions.
- §21-11-7. Application for and issuance of license.
- §21-11-8. Licenses; expiration date; fees; renewal.
- §21-11-9. Unlawful use, assignment, transfer of license; revocation.
- §21-11-10. Prerequisites to obtaining building permit.
- §21-11-11. Notice included with invitations to bid and specifications.
- §21-11-12. License renewal, lapse and reinstatement.
- §21-11-13. Violation of article; injunction; criminal penalties.
- §21-11-14. Disciplinary powers of the board.
- §21-11-15. Administrative duties of division.
- §21-11-16. Rules.
- §21-11-17. Record keeping.
- §21-11-18. Reciprocity.
- §21-11-19. Termination of board.

§21-11-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "West Virginia Contractor Licensing Act".

§21-11-2. Policy declared.

- 1 It is hereby declared to be the policy of the state of
- 2 West Virginia that all persons desiring to perform
- 3 contracting work in this state be duly licensed to ensure
- 4 capable and skilled craftsmanship utilized in construc-
- 5 tion projects in this state, both public and private, fair
- 6 bidding practices between competing contractors,
- 7 through uniform compliance with the laws of this state,
- 8 and protection of the public from unfair, unsafe and
- 9 unscrupulous bidding and construction practices.

§21-11-3. Definitions.

- 1 (a) "Commissioner" means the commissioner of the
- 2 division of labor.

- 3 (b) "Board" means the West Virginia contractor
- 4 licensing board.

- 5 (c) "Contractor" means a person who in any capacity
- 6 for compensation, other than as an employee of another,
- 7 undertakes, offers to undertake, purports to have the
- 8 capacity to undertake, or submits a bid to construct,
- 9 alter, repair, add to, subtract from, improve, move,
- 10 wreck or demolish any building, highway, road, rail-
- 11 road, structure or excavation associated with a project,
- 12 development or improvement, or to do any part thereof,
- 13 including the erection of scaffolding or other structures
- 14 or works in connection therewith, where the cost of the
- 15 undertaking is one thousand dollars or more.

- 16 Contractor includes a construction manager who
- 17 performs management and counseling services for a
- 18 construction project for a professional fee.

- 19 Contractor does not include:

- 20 (1) One who merely furnishes materials or supplies
- 21 without fabricating or consuming them in the construc-
- 22 tion project;
- 23 (2) A person who personally performs construction

24 work on the site of real property which the person owns
25 or leases whether for commercial or residential
26 purposes;

27 (3) A person who is licensed or registered as a
28 professional and who functions under the control of any
29 other licensing or regulatory board, whose primary
30 business is real estate sales, appraisal, development,
31 management and maintenance, who acting in his or her
32 respective professional capacity and any employee of
33 such professional, acting in the course of his or her
34 employment, performs any work which may be consi-
35 dered to be performing contracting work; or

36 (4) A corporation, partnership or sole proprietorship
37 whose primary purpose is to prepare construction plans
38 and specifications used by the contractors defined in
39 subsection (c) of this section and who employs full time
40 a registered architect licensed to practice in this state
41 or a registered professional engineer licensed to practice
42 in this state. Employees of such corporation, partnership
43 or sole proprietorship shall also be exempt from the
44 requirements of this article.

45 (d) "Electrical contractor" means a person who
46 engages in the business of contracting to install, erect,
47 repair or alter electrical equipment for the generation,
48 transmission or utilization of electrical energy.

49 (e) "General building contractor" means a person
50 whose principal business is in connection with any
51 structures built, being built or to be built for the
52 support, shelter and enclosure of persons, animals,
53 chattels or movable property of any kind, requiring in
54 the construction the use of more than two contractor
55 classifications, or a person who supervises the whole or
56 any part of such construction.

57 (f) "General engineering contractor" means a person
58 whose principal business is in connection with public or
59 private works projects, including, but not limited to, one
60 or more of the following: Irrigation, drainage and water
61 supply projects; electrical generation projects; swim-
62 ming pools; flood control; harbors; railroads; highways;
63 tunnels; airports and airways; sewers and sewage

64 disposal systems; bridges; inland waterways; pipelines
65 for transmission of petroleum and other liquid or
66 gaseous substances; refineries; chemical plants and
67 other industrial plants requiring a specialized engineer-
68 ing knowledge and skill; piers and foundations; and
69 structures or work incidental thereto.

70 (g) "Heating, ventilating and cooling contractor"
71 means a person who engages in the business of contract-
72 ing to install, erect, repair, service or alter heating,
73 ventilating and air conditioning equipment or systems
74 to heat, cool or ventilate residential and commercial
75 structures.

76 (h) "License" means a license to engage in business in
77 this state as a contractor in one of the classifications set
78 out in this article.

79 (i) "Multifamily contractor" means a person who is
80 engaged in construction, repair or improvement of a
81 multifamily residential structure.

82 (j) "Person" includes an individual, firm, sole proprie-
83 torship, partnership, corporation, association or other
84 entity engaged in the undertaking of construction
85 projects or any combination thereof.

86 (k) "Piping contractor" means a person whose princi-
87 pal business is the installation of process, power plant,
88 air, oil, gasoline, chemical or other kinds of piping; and
89 boilers and pressure vessels using joining methods of
90 thread, weld, solvent weld or mechanical methods.

91 (l) "Plumbing contractor" means a person whose
92 principal business is the installation, maintenance,
93 extension and alteration of piping, plumbing fixtures,
94 plumbing appliances and plumbing appurtenances,
95 venting systems and public or private water supply
96 systems within or adjacent to any building or structure;
97 included in this definition is installation of gas piping,
98 chilled water piping in connection with refrigeration
99 processes and comfort cooling, hot water piping in
100 connection with building heating, and piping for stand
101 pipes.

102 (m) "Residential contractor" means a person whose

103 principal business is in connection with construction,
104 repair or improvement of real property used as, or
105 intended to be used for, residential occupancy.

106 (n) "Specialty contractor" means a person who
107 engages in specialty contracting services which do not
108 substantially fall within the scope of any contractor
109 classification as set out herein.

110 (o) "Residential occupancy" means occupancy of a
111 structure for residential purposes for periods greater
112 than thirty consecutive calendar days.

113 (p) "Residential structure" means a building or
114 structure used or intended to be used for residential
115 occupancy, together with related facilities appurtenant
116 to the premises as an adjunct of residential occupancy,
117 which contains not more than three distinct floors which
118 are above grade in any structural unit regardless of
119 whether the building or structure is designed and
120 constructed for one or more living units. Dormitories,
121 hotels, motels or other transient lodging units are not
122 residential structures.

123 (q) "Subcontractor" means a person who performs a
124 portion of a project undertaken by a principal or general
125 contractor or another subcontractor.

126 (r) "Division" means the division of labor.

127 (s) "Cease and desist order" means an order issued by
128 the commissioner pursuant to the provisions of this
129 article.

**§21-11-4. West Virginia contractor licensing board
created; members; appointment; terms;
vacancies; qualifications; quorum.**

1 (a) There is hereby created the West Virginia contrac-
2 tor licensing board. The board shall consist of ten
3 members, appointed by the governor by and with the
4 advice and consent of the Senate for terms of four years.
5 Such members shall serve until their successors are
6 appointed and have qualified. Eight of the appointed
7 members shall be owners of businesses engaged in the
8 various contracting industries, with at least one member

9 appointed from each of the following contractor classes:
10 One electrical contractor, one general building contrac-
11 tor, one general engineering contractor, one heating,
12 ventilating and cooling contractor, one multifamily
13 contractor, one piping contractor, one plumbing contrac-
14 tor and one residential contractor, as defined in section
15 three hereof. Two of the appointed members shall be
16 building code officials who are not members of any
17 contracting industry. At least two members of the board
18 shall reside at the time of their appointment in each
19 congressional district as existing on the first day of
20 January, one thousand nine hundred ninety-one. The
21 commissioner of labor, the secretary of the department
22 of tax and revenue or his designee, and the commis-
23 sioner of the bureau of employment programs or his
24 designee, shall be ex officio nonvoting members of the
25 board.

26 (b) Terms of the members first appointed shall be two
27 members for one year, two members for two years, three
28 members for three years, and three members for four
29 years, as designated by the governor at the time of
30 appointment. Thereafter, terms shall be for four years.
31 A member who has served all or part of two consecutive
32 terms shall not be subject to reappointment unless four
33 years have elapsed since the member last served.
34 Vacancies shall be filled by appointment by the
35 governor for the unexpired term of any member whose
36 office is vacant and shall be made within sixty days of
37 the occurrence of the vacancy. A vacancy on the board
38 shall not impair the right of the remaining members to
39 exercise all the powers of the board.

40 (c) The board shall elect a chair from one of the voting
41 members of the board. The board shall meet at least
42 once annually and at such other times as called by the
43 chair or a majority of the board. Board members shall
44 receive no remuneration for their service, but shall be
45 reimbursed for their actual expenses incurred in the
46 performance of their duties as such. A majority of the
47 membership of the board shall constitute a quorum of
48 the board.

§21-11-5. Administrative duties of the board; regulations.

1 (a) Pursuant to the provisions of chapter twenty-nine-
2 a of this code, the board shall adopt rules and regula-
3 tions relating to the following:

4 (1) The minimum qualifications for applicants for
5 examination and license in each of the following
6 specified classes of contractor:

7 (A) Electrical contractor;

8 (B) General building contractor;

9 (C) General engineering contractor;

10 (D) Heating, ventilating and cooling contractor;

11 (E) Multifamily contractor;

12 (F) Piping contractor;

13 (G) Plumbing contractor;

14 (H) Residential contractor; or

15 (I) Specialty contractor;

16 (2) The content of examinations for applicants in each
17 class;

18 (3) Procedures for application, examination and
19 license renewal, and the manner in which the examina-
20 tion will be conducted;

21 (4) The continued competency of licensees for purposes
22 of renewal and reinstatement of licenses; and

23 (5) Procedures for disciplinary action before the
24 board.

25 (b) The board shall:

26 (1) Hold at least one examination in each calendar
27 quarter for each specific classification of contractor,
28 designate the time and place of such examinations, and
29 notify applicants thereof;

30 (2) Request, through the division, investigation of any
31 alleged violation of this article or of the regulations;

32 (3) Forward results of examinations to the division
33 within twenty days following the examination;

34 (4) Notify the commissioner and board members of
35 meeting dates and agenda items at least five days prior
36 to such meetings; and

37 (5) Take minutes and records of all meetings and pro-
38 ceedings.

§21-11-6. Necessity for license; exemptions.

1 (a) On or after the first day of October, one thousand
2 nine hundred ninety-one, no person shall engage in this
3 state in any act as a contractor, as defined in this article,
4 unless such person holds a license issued under the
5 provisions of this article. No firm, partnership, corpo-
6 ration, association or other entity shall engage in
7 contracting in this state unless an officer thereof holds
8 a license issued pursuant to this article.

9 (b) Any person to whom a license has been issued
10 under this article shall keep the license or a copy thereof
11 posted in a conspicuous position at every construction
12 site where work is being done by the contractor. The
13 contractor's license number shall be included in all
14 contracting advertisements and all fully executed and
15 binding contracts. Any person violating the provisions
16 of this subsection shall be subject, after hearing, to a
17 warning, a reprimand, or a fine of not more than two
18 hundred dollars.

19 (c) Except as otherwise provided in this code, the
20 following are exempt from licensure:

21 (1) Work done exclusively by employees of the United
22 States government, the state of West Virginia, a county,
23 municipality or municipal corporation, and any govern-
24 mental subdivision or agency thereof;

25 (2) The sale or installation of a finished product,
26 material or article or merchandise which is not actually
27 fabricated into and does not become a permanent fixed
28 part of the structure;

29 (3) Work performed personally by an owner or lessee
30 of real property on property the primary use of which
31 is for agricultural or farming enterprise;

32 (4) A material supplier who renders advice concerning

33 use of products sold and who does not provide construc-
34 tion or installation services;

35 (5) Work performed by a public utility company
36 regulated by the West Virginia public service commis-
37 sion and its employees;

38 (6) Repair work contracted for by the owner of the
39 equipment on an emergency basis in order to maintain
40 or restore the operation of such equipment;

41 (7) Work performed by an employer's regular em-
42 ployees, for which the employees are paid regular wages
43 and not a contract price, on business property owned or
44 leased by the employer;

45 (8) Work personally performed on a structure by the
46 owner or occupant thereof; and

47 (9) Work performed when the specifications for such
48 work have been developed or approved by engineering
49 personnel employed by the owner of a facility by
50 registered professional engineers licensed pursuant to
51 the laws of this state when the work to be performed
52 because of its specialized nature or process cannot be
53 reasonably or timely contracted for within the general
54 area of the facility.

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

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

10 (b) A person holding a business registration certificate
11 to conduct business in this state as a contractor on the
12 thirtieth day of September, one thousand nine hundred
13 ninety-one, may register with the board, certify by
14 affidavit the requirements of subsection (c), section
15 fifteen hereof, and pay such license fee not to exceed one

16 hundred fifty dollars and shall be issued a contractor's
17 license without further examination.

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

1 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
4 not to exceed one hundred fifty dollars. The board shall
5 promulgate rules and regulations pursuant to the
6 provisions of chapter twenty-nine-a of this code concern-
7 ing license renewal: *Provided*, That the rules may not
8 be more restrictive than those prescribed for initial
9 licensure.

**§21-11-9. Unlawful use, assignment, transfer of license;
revocation.**

1 No license may be used for any purpose by any person
2 other than the person to whom the license is issued. No
3 license may be assigned, transferred or otherwise
4 disposed of so as to permit the unauthorized use thereof.
5 Any person who violates this section is subject to the
6 penalties imposed in section thirteen of this article.

§21-11-10. Prerequisites to obtaining building permit.

1 Any person making application to the building
2 inspector or other authority of any incorporated munic-
3 ipality or other political subdivision in this state charged
4 with the duty of issuing building or other permits for
5 the construction of any building, highway, sewer or
6 structure or for any removal of materials or earth,
7 grading or improvement, shall, before issuance of the
8 permit, either furnish satisfactory proof to the inspector
9 or authority that such person is duly licensed under the
10 provisions of this article to carry out or superintend the
11 same, or file a written affidavit that such person is not
12 subject to licensure as a contractor or subcontractor as
13 defined in this article. The inspector or authority shall
14 not issue a building permit to any person who does not
15 possess a valid contractor's license when required by
16 this article.

**§21-11-11. Notice included with invitations to bid and
specifications.**

1 Any architect or engineer preparing any plan and
2 specification for contracting work to be performed in
3 this state shall include in such plan, specification and
4 invitation to bid a reference to this article informing any
5 prospective bidder that such person's contractor's
6 license number must be included on any bid submission.
7 A subcontractor shall furnish such person's contractor's
8 license number to the contractor prior to the award of
9 the contract.

§21-11-12. License renewal, lapse and reinstatement.

1 (a) A license which is not renewed on or before the
2 renewal date shall lapse. The board may establish by
3 regulation a delayed renewal fee to be paid for issuance
4 of any license which has lapsed: *Provided*, That no
5 license which has lapsed for a period of two years or
6 more may be renewed.

7 (b) In the event that continuing education or other
8 requirements are made a condition of license reinstatement
9 after lapse, suspension or revocation, such requirements
10 must be satisfied before the license is reissued.

§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,
3 the board or commissioner shall issue a cease and desist
4 order requiring such person to immediately cease all
5 operations in the state. The order shall be withdrawn
6 upon issuance of a license to such person. After a
7 hearing, the board may impose a penalty of not less than
8 two hundred dollars nor more than one thousand dollars
9 upon any person engaging in contracting business in the
10 state without a valid license.

11 (b) Any person continuing to engage in contracting
12 business in the state without a valid license after service
13 of a cease and desist order is guilty of a misdemeanor,
14 and, upon conviction thereof, shall be fined not less than
15 two hundred dollars nor more than five thousand
16 dollars, or imprisoned in the county jail not more than
17 one month, or both fined and imprisoned.

18 (c) The board may institute proceedings in the circuit
19 court of the county in which the alleged violations of the
20 provisions of this article occurred or are now occurring
21 to enjoin any violation of any provision of this article.

22 (d) Any person who undertakes any construction work
23 without a valid license when such license is required by
24 this article, when the total cost of the contractor's
25 construction contract on any project upon which the
26 work is undertaken is twenty-five thousand dollars or
27 more, shall, in addition to any other penalty herein
28 provided, be assessed by the board an administrative
29 penalty not to exceed two hundred dollars per day for
30 each day the person is in violation.

31 (e) The board shall, by regulation, provide for an
32 administrative hearing before a penalty is levied, and
33 for review of any final ruling issued pursuant to such
34 hearing.

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

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

3 (1) Permanently revoke a license;

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

5 (3) Censure or reprimand a licensee;

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

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

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

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

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

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

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

40 (f) Any party adversely affected by any action of the
41 board may appeal such action pursuant to the provisions
42 of chapter twenty-nine-a of this code.

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

44 (1) Abandonment, without legal excuse, of any
45 construction project or operation engaged in or under-
46 taken by the licensee;

47 (2) Willful failure or refusal to complete a construction
48 project or operation with reasonable diligence, thereby
49 causing material injury to another;

50 (3) Willful departure from or disregard of plans or
51 specifications in any material respect without the
52 consent of the parties to the contract;

53 (4) Willful or deliberate violation of the building laws
54 or regulations of the state or of any political subdivision
55 thereof;

56 (5) Willful or deliberate failure to pay any moneys
57 when due for any materials free from defect, or services
58 rendered in connection with such person's operations as

59 a contractor when such person has the capacity to pay
60 or when such person has received sufficient funds under
61 the contract as payment for the particular construction
62 work for which the services or materials were rendered
63 or purchased, or the fraudulent denial of any amount
64 with intent to injure, delay or defraud the person to
65 whom the debt is owed;

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

69 (7) Willful or deliberate failure to comply in any
70 material respect with the provisions of this article or the
71 rules of the board;

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

76 (9) Willfully or deliberately acting with the intent to
77 evade the provisions of this article by: (i) Aiding or
78 abetting an unlicensed person to evade the provisions of
79 this article; (ii) combining or conspiring with an
80 unlicensed person to perform an unauthorized act; (iii)
81 allowing a license to be used by an unlicensed person;
82 or (iv) attempting to assign, transfer or otherwise
83 dispose of a license or permitting the unauthorized use
84 thereof;

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

88 (11) Performing work which is not commensurate
89 with a general standard of the specific classification of
90 contractor or which is below a building or construction
91 code adopted by the municipality or county in which the
92 work is performed.

93 (h) In all disciplinary hearings the board has the
94 burden of proof as to all matters in contention. No
95 disciplinary action shall be taken by the board except
96 on the affirmative vote of at least six members thereof.
97 Except for violations of section thirteen of this article,

98 no disciplinary action shall be taken by the board for
99 any such cause as is set out herein unless the licensee
100 has been finally adjudicated as having perpetrated such
101 act in a court of record. Other than as specifically set
102 out herein, the board shall have no power or authority
103 to impose or assess damages.

§21-11-15. Administrative duties of division.

- 1 (a) For and on behalf of the board, the division and
2 commissioner shall perform the following administra-
3 tive duties:
 - 4 (1) Collect and record all fees;
 - 5 (2) Maintain records and files;
 - 6 (3) Issue and receive application forms;
 - 7 (4) Notify applicants of the results of the board
8 examination;
 - 9 (5) Arrange space for holding examinations and other
10 proceedings;
 - 11 (6) Issue licenses and temporary licenses as authorized
12 by this article and the board;
 - 13 (7) Issue duplicate licenses upon submission of a
14 written request by the licensee attesting to loss of or the
15 failure to receive the original and payment by the
16 licensee of a fee established by regulation adopted by the
17 division;
 - 18 (8) Notify licensees of renewal dates at least thirty
19 days before the expiration date of their license;
 - 20 (9) Answer routine inquiries;
 - 21 (10) Maintain files relating to individual licensees;
 - 22 (11) Arrange for printing and advertising;
 - 23 (12) Purchase supplies;
 - 24 (13) Employ additional help when needed;
 - 25 (14) Perform other services that may be requested by
26 the board;
 - 27 (15) Provide inspection, enforcement and investigative

28 services to the board; and

29 (16) Issue cease and desist orders to persons engaging
30 in contracting within the state without a valid license.

31 (b) All authority not specifically delegated to the
32 commissioner and division shall be the responsibility of
33 the board.

34 (c) Following successful completion of the examina-
35 tion, and prior to the issuance of the license, the
36 applicant shall certify by affidavit that the applicant:

37 (1) Is in compliance with the business franchise tax
38 provisions of chapter eleven of this code;

39 (2) Has registered, and is in compliance, with the
40 workers' compensation fund and the employment
41 security fund, as required by chapter twenty-three and
42 chapter twenty-one-a of this code; and

43 (3) Is in compliance with the applicable wage bond
44 requirements of section one, article five of this chapter:
45 *Provided*, That in the case of an out-of-state contractor
46 not doing business in this state and seeking licensure for
47 bidding purposes only, the applicant may be granted a
48 conditional license for bid purposes only.

§21-11-16. Rules.

1 The board may adopt rules and regulations as are
2 necessary to carry out the provisions of this article
3 pursuant to the provisions of chapter twenty-nine-a of
4 this code. The board may disseminate educational or any
5 other material designed to improve performance
6 standards of any contractor group to contractors within
7 the state. The board may adopt, and use, a seal with the
8 words "state contractor licensing board of West Vir-
9 ginia".

§21-11-17. Record keeping.

1 (a) The board shall keep a record of all actions taken
2 and account for moneys received. All moneys shall be
3 deposited in a special account in the state treasury to
4 be known as the "West Virginia Contractor Licensing
5 Board Fund". Expenditures from said fund shall be for

6 the purposes set forth in this article and are not
7 authorized from collections but are to be made only in
8 accordance with appropriation by the Legislature and
9 in accordance with the provisions of article three,
10 chapter twelve of this code and upon the fulfillment of
11 the provisions set forth in article two, chapter five-a of
12 this code: *Provided*, That for the fiscal year ending the
13 thirtieth day of June, one thousand nine hundred ninety-
14 two, expenditures are authorized from collections rather
15 than pursuant to an appropriation by the Legislature.
16 Amounts collected which are found from time to time
17 to exceed the funds needed for purposes set forth in this
18 article may be transferred to other accounts or funds
19 and redesignated for other purposes by appropriation of
20 the Legislature.

21 (b) The board shall maintain at the principal office,
22 open for public inspection during office hours, a
23 complete indexed record of all applications, licenses
24 issued, licenses renewed and all revocations, cancella-
25 tions and suspensions of licenses. Applications shall
26 show the date of application, name, qualifications, place
27 of business and place of residence of each applicant; and
28 whether the application was approved or refused.

29 (c) (1) All investigations, complaints, reports, records,
30 proceedings and other information received by the
31 commissioner and board and related to complaints made
32 to the commissioner or board or investigations con-
33 ducted by the commissioner or board pursuant to this
34 article, including the identity of the complainant or
35 respondent, shall be confidential and shall not be
36 knowingly and improperly disclosed by any member or
37 former member of the board, the commissioner or staff,
38 except as follows:

39 (A) Upon a finding that probable cause exists to
40 believe that a respondent has violated the provisions of
41 this article, the complaint and all reports, records,
42 nonprivileged and nondeliberative materials introduced
43 at any probable cause hearing held pursuant to the
44 complaint are thereafter not confidential: *Provided*,
45 That confidentiality of such information shall remain in
46 full force and effect until the respondent has been served

47 with a copy of the statement of charges.

48 (B) Any subsequent hearing held in the matter for the
49 purpose of receiving evidence or the arguments of the
50 parties or their representatives shall be open to the
51 public and all reports, records and nondeliberative
52 materials introduced into evidence at such subsequent
53 hearing, as well as the board's and commissioner's
54 orders, are not confidential.

55 (C) The commissioner or board may release any
56 information relating to an investigation at any time if
57 the release has been agreed to in writing by the
58 respondent.

59 (D) The complaint as well as the identity of the
60 complainant shall be disclosed to a person named as
61 respondent in any such complaint filed immediately
62 upon such respondent's request.

63 (E) Where the commissioner or board is otherwise
64 required by the provisions of this article to disclose such
65 information or to proceed in such a manner that
66 disclosure is necessary and required to fulfill such
67 requirements.

68 (2) If, in a specific case, the commissioner or board
69 finds that there is a reasonable likelihood that the
70 dissemination of information or opinion in connection
71 with a pending or imminent proceeding will interfere
72 with a fair hearing or otherwise prejudice the due
73 administration of justice, the commissioner or board
74 shall order that all or a portion of the information
75 communicated to the commissioner or board to cause an
76 investigation and all allegations of violations or miscon-
77 duct contained in a complaint shall be confidential, and
78 the person providing such information or filing a
79 complaint shall be bound to confidentiality until further
80 order of the board.

81 (d) If any person violates the provisions of subsection
82 (c) of this section by knowingly and willfully disclosing
83 any information made confidential by such section or by
84 the commissioner or board, such person shall be guilty

85 of a misdemeanor, and, upon conviction thereof, shall be
86 fined not less than five hundred dollars nor more than
87 five thousand dollars, or imprisoned in the county jail
88 not more than one month, or both fined and imprisoned.

89 (e) The commissioner shall certify to the state auditor
90 and to the board a detailed statement of all moneys
91 received and spent during the preceding fiscal year.

§21-11-18. Reciprocity.

1 To the extent that other states which provide for the
2 licensing of contractors provide for similar action, the
3 board, in its discretion, may grant licenses of the same
4 or equivalent classification to contractors licensed by
5 other states, without written examination upon satisfac-
6 tory proof furnished to the board that the qualifications
7 of such applicants are equal to the qualifications of
8 holders of similar licenses in this state, and upon
9 certification to the commissioner as required by
10 subsection (c), section fifteen of this article, and upon
11 payment of the required fee.

§21-11-19. Termination of board.

1 The West Virginia contractors licensing board shall
2 be terminated pursuant to the provisions of article ten,
3 chapter four of this code, on the first day of July, one
4 thousand nine hundred ninety-seven, unless sooner
5 terminated or unless continued or reestablished pursu-
6 ant to that article.

CHAPTER 125

(H. B. 2359—By Delegates Stemple and P. White)

[Passed March 1, 1991; 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 licenses to practice medicine and surgery or podiatry; additional requirements for graduate clinical training for all applicants for podiatric licensure; clarifying that

applicants for licenses must have successfully completed all required graduate clinical training; and establishing that licenses granted prior to July 1, 1991, shall continue in full effect as provided by the law.

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 medi-
2 cine and surgery or to practice podiatry to any individ-
3 ual who is qualified to do so in accordance with the
4 provisions of this article.

5 (b) For an individual to be licensed to practice
6 medicine and surgery in this state, he or she must meet
7 the following requirements:

8 (1) He or she shall submit an application to the board
9 on a form provided by the board and remit to the board
10 a reasonable examination fee, the amount of such
11 reasonable fee to be set by the board. The application
12 must, as a minimum, require a sworn and notarized
13 statement that the applicant is of good moral character
14 and that he or she is physically and mentally capable
15 of engaging in the practice of medicine and surgery;

16 (2) He or she must provide evidence of graduation and
17 receipt of the degree of doctor of medicine or its
18 equivalent from a school of medicine, which is approved
19 by the liaison committee on medical education or by the
20 board;

21 (3) He or she must submit evidence to the board of
22 having successfully completed a minimum of one year
23 of graduate clinical training in a program approved by
24 the accreditation council for graduate medical educa-
25 tion; and

26 (4) He or she must pass an examination approved by

27 the board, which examination can be related to a
28 national standard. The examination shall be in the
29 English language and be designed to ascertain an
30 applicant's fitness to practice medicine and surgery. The
31 board shall before the date of examination determine
32 what will constitute a passing score: *Provided*, That the
33 said board, or a majority of them, may accept in lieu
34 of an examination of applicants, the certificate of the
35 national board of medical examiners. If an applicant
36 fails to pass the examination on two occasions, he or she
37 shall successfully complete a course of study or training,
38 as approved by the board, designed to improve his or
39 her ability to engage in the practice of medicine and
40 surgery, before being eligible for reexamination.

41 (c) In addition to the requirements of subsection (b)
42 hereof, any individual who has received the degree of
43 doctor of medicine or its equivalent from a school of
44 medicine located outside of the United States, the
45 Commonwealth of Puerto Rico and Canada, to be
46 licensed to practice medicine in this state, must also
47 meet the following additional requirements and
48 limitations:

49 (1) He or she must be able to demonstrate to the
50 satisfaction of the board his or her ability to commun-
51 icate in the English language;

52 (2) Before taking a licensure examination, he or she
53 must have fulfilled the requirements of the educational
54 commission for foreign medical graduates for certifica-
55 tion, or he or she must provide evidence of receipt of a
56 passing score on the examination of the educational
57 commission for foreign medical graduates; and

58 (3) He or she must submit evidence to the board of
59 having successfully completed a minimum of two years
60 of graduate clinical training in a program approved by
61 the accreditation council for graduate medical
62 education.

63 (d) For an individual to be licensed to practice
64 podiatry in this state, he or she must meet the following
65 requirements:

66 (1) He or she shall submit an application to the board
67 on a form provided by the board and remit to the board
68 a reasonable examination fee, the amount of such
69 reasonable fee to be set by the board. The application
70 must, as a minimum, require a sworn and notarized
71 statement that the applicant is of good moral character
72 and that he or she is physically and mentally capable
73 of engaging in the practice of podiatric medicine;

74 (2) He or she must provide evidence of graduation and
75 receipt of the degree of doctor of podiatric medicine and
76 its equivalent from a school of podiatric medicine which
77 is approved by the council of podiatry education or by
78 the board;

79 (3) He or she must pass an examination approved by
80 the board, which examination can be related to a
81 national standard. The examination shall be in the
82 English language and be designed to ascertain an
83 applicant's fitness to practice podiatric medicine. The
84 board shall before the date of examination determine
85 what will constitute a passing score. If an applicant fails
86 to pass the examination on two occasions, he or she shall
87 successfully complete a course of study or training, as
88 approved by the board, designed to improve his or her
89 ability to engage in the practice of podiatric medicine,
90 before being eligible for reexamination; and

91 (4) He or she must submit evidence to the board of
92 having successfully completed a minimum of one year
93 of graduate clinical training in a program approved by
94 the council on podiatric medical education, or the
95 colleges of podiatric medicine. The board may consider
96 a minimum of two years of graduate podiatric clinical
97 training in the U. S. armed forces or three years private
98 podiatric clinical experience in lieu of this requirement.

99 (e) All licenses to practice medicine and surgery
100 granted prior to July first, one thousand nine hundred
101 ninety-one, and valid on that date, shall continue in full
102 effect for such term and under such conditions as
103 provided by law at the time of the granting of the
104 license: *Provided*, That the provisions of subsection (d)
105 of this section shall not apply to any person legally

106 entitled to practice chiropody or podiatry in this state
107 prior to the eleventh day of June, one thousand nine
108 hundred sixty-five: *Provided, however,* That all persons
109 licensed to practice chiropody prior to the eleventh day
110 of June, one thousand nine hundred sixty-five, shall be
111 permitted to use the term "chiropody-podiatry" and
112 shall have the rights, privileges and responsibilities of
113 a podiatrist set out in this article.

CHAPTER 126

(Com. Sub. for H. B. 2478—By Delegates P. White and Flanigan)

[Passed February 28, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to requiring physicians and podiatrists to successfully complete fifty hours of continuing education every two years as a condition of renewal of licensure; automatic suspension of license for failure to timely notify the board of such completion; rules; requiring physicians and podiatrists provide supporting documentation of continuing education when requested to do so by board; and requiring written representation of continuing education in order to renew inactive licenses.

Be it enacted by the Legislature of West Virginia:

That section twelve, 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.

§30-3-12. Biennial renewal of license to practice medicine and surgery or podiatry; continuing education; rules; fee; inactive license.

- 1 (a) A license to practice medicine and surgery or
- 2 podiatry in this state is valid for a term of two years

3 and shall be renewed upon a receipt of a reasonable fee,
4 as set by the board, submission of an application on
5 forms provided by the board and, beginning with the
6 biennial renewal application forms completed by
7 licensees and submitted to the board in one thousand
8 nine hundred ninety-three, a certification in accordance
9 with rules and regulations promulgated by the board in
10 accordance with chapter twenty-nine-a of this code of
11 participation in and successful completion of a min-
12 imum of fifty hours of continuing medical or podiatric
13 education satisfactory to the board, as appropriate to the
14 particular license, during the preceding two-year
15 period. Continuing medical education satisfactory to the
16 board is continuing medical education designated as
17 Category I by the american medical association or the
18 academy of family physicians and continuing podiatric
19 education satisfactory to the board is continuing
20 podiatric education approved by the council on podiatric
21 education.

22 In addition, the Legislature hereby finds and declares
23 that it is in the public interest to encourage alternate
24 categories of continuing education satisfactory to the
25 board for physicians and podiatrists. In order to provide
26 adequate notice of the same to physicians and podia-
27 trists, no later than the first day of June, one thousand
28 nine hundred ninety-one, the board shall file rules under
29 the provisions of section fifteen, article three, chapter
30 twenty-nine-a of this code, delineating any alternate
31 categories of continuing medical or podiatric education
32 which may be considered satisfactory to the board and
33 any procedures for board approval of such continuing
34 education.

35 Notwithstanding any provision of this chapter to the
36 contrary, failure to timely submit to the board a
37 certification in accordance with rules and regulations
38 promulgated by the board in accordance with chapter
39 twenty-nine-a of this code of successful completion of a
40 minimum of fifty hours of continuing medical or
41 podiatric education satisfactory to the board, as approp-
42 riate to the particular license, shall, beginning the first

43 day of July, one thousand nine hundred ninety-three,
44 result in the automatic suspension of any license to
45 practice medicine and surgery or podiatry until such
46 time as the certification in accordance with rules and
47 regulations promulgated by the board in accordance
48 with chapter twenty-nine-a of this code, with all
49 supporting written documentation, is submitted to and
50 approved by the board.

51 Any individual who accepts the privilege of practicing
52 medicine and surgery or podiatry in this state is
53 required to provide supporting written documentation
54 of the continuing education represented as received
55 within thirty days of receipt of a written request to do
56 so by the board. If a licensee fails or refuses to provide
57 supporting written documentation of the continuing
58 education represented as received as required in this
59 section, such failure or refusal to provide supporting
60 written documentation is prima facie evidence of
61 renewing a license to practice medicine and surgery or
62 podiatry by fraudulent misrepresentation.

63 (b) The board may renew, on an inactive basis, the
64 license of a physician or podiatrist who is currently
65 licensed to practice medicine and surgery or podiatry in,
66 but is not actually practicing, medicine and surgery or
67 podiatry in this state. A physician or podiatrist holding
68 an inactive license shall not practice medicine and
69 surgery or podiatry in this state. His or her inactive
70 license may be converted by the board to an active one
71 upon a written request to the board that accounts for
72 his or her period of inactivity to the satisfaction of the
73 board: *Provided*, That beginning on the first day of July,
74 one thousand nine hundred ninety-three, such licensee
75 submits written documentation of participation in and
76 successful completion of a minimum of fifty hours of
77 continuing medical or podiatric education satisfactory to
78 the board, as appropriate to the particular license,
79 during each preceding two-year period. An inactive
80 license may be obtained upon receipt of a reasonable fee,
81 as set by the board, and submission of an application on
82 forms provided by the board on a biennial basis.

CHAPTER 127

(Com. Sub. for H. B. 2484—By Delegates P. White and Flanigan)

[Passed March 6, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to physician assistants; requirements for certification; legal responsibility and supervision; reporting of discipline by health care facilities; providing that a physician assistant may not dispense a prescription for a refraction; continuing education; and fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-16. Physician assistants; definitions; board of medicine rules and regulations; annual report; certification; temporary certification; recertification; job description required; revocation or suspension of certification; responsibilities of supervising physician; legal responsibility for physician assistants; reporting by health care facilities; identification; limitations on employment and duties; fees; unlawful use of title of "physician assistant"; continuing education; unlawful representation of physician assistant as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Physician assistant" means an assistant to a
3 physician who is a graduate of an approved program of
4 instruction in primary health care or surgery, has
5 attained a baccalaureate or master's degree, has passed
6 the national certification examination and is qualified to
7 perform direct patient care services under the supervi-
8 sion of a physician;

9 (2) "Supervising physician" means a doctor or doctors
10 of medicine or podiatry permanently licensed in this
11 state who assume legal and supervisory responsibility
12 for the work or training of any physician assistant under
13 his or her supervision;

14 (3) "Approved program" means an educational pro-
15 gram for physician assistants approved and accredited
16 by the committee on allied health education and
17 accreditation on behalf of the American Medical
18 Association; and

19 (4) "Health care facility" means any licensed hospital,
20 nursing home, extended care facility, state health or
21 mental institution, clinic or physician's office.

22 (b) The board shall promulgate rules and regulations
23 governing the extent to which physician assistants may
24 function in this state. Such regulations shall provide
25 that the physician assistant is limited to the perform-
26 ance of those services for which he or she is trained and
27 that he or she performs only under the supervision and
28 control of a physician permanently licensed in this state,
29 but such supervision and control does not require the
30 personal presence of the supervising physician at the
31 place or places where services are rendered if the
32 physician assistant's normal place of employment is on
33 the premises of the supervising physician. The supervising
34 physician may send the physician assistant off the
35 premises to perform duties under his or her direction,
36 but a separate place of work for the physician assistant
37 shall not be established. In promulgating such rules and
38 regulations, the board shall allow the physician assistant
39 to perform those procedures and examinations and in
40 the case of certain authorized physician assistants to
41 prescribe at the direction of his or her supervising
42 physician in accordance with subsection (1) of this
43 section those categories of drugs submitted to it in the
44 job description required by subsection (i) of this section.
45 The board shall compile and publish a biennial report
46 that includes a list of currently certified physician
47 assistants and their employers and location in the state;
48 a list of approved programs; the number of graduates
49 of such approved programs each year; and the number

50 of physician assistants from other states practicing in
51 this state.

52 (c) The board shall certify as a physician assistant any
53 person who files an application and furnishes satisfac-
54 tory evidence to it that he or she has met the following
55 standards:

56 (1) He or she is a graduate of an approved program
57 of instruction in primary health care or surgery;

58 (2) He or she has passed the examination for a
59 primary care physician assistant administered by the
60 National Board of Medical Examiners on behalf of the
61 National Commission on Certification of Physician
62 Assistants;

63 (3) He or she is of good moral character; and

64 (4) He or she has attained a baccalaureate or master's
65 degree.

66 (d) The board may certify as a physician assistant any
67 person who files an application and furnishes satisfac-
68 tory evidence that he or she is of good moral character
69 and meets either of the following standards:

70 (1) He or she is a graduate of an approved program
71 of instruction in primary health care or surgery prior
72 to the first day of July, one thousand nine hundred
73 ninety-four, and has passed the examination for a
74 primary care physician assistant administered by the
75 National Board of Medical Examiners on behalf of the
76 National Commission on Certification of Physician
77 Assistants; or

78 (2) He or she had been certified by the board as a
79 physician assistant then classified as "Type B," prior to
80 the first day of July, one thousand nine hundred eighty-
81 three.

82 Certification of an assistant to a physician practicing
83 the specialty of ophthalmology is permitted under this
84 section: *Provided*, That a physician assistant may not
85 dispense a prescription for a refraction.

86 (e) When any graduate of an approved program
87 submits an application to the board, accompanied by a

88 job description in conformity with subsection (i) of this
89 section, for a physician assistant certificate, the board
90 shall issue to such applicant a temporary certificate
91 allowing such applicant to function as a physician
92 assistant for the period of one year. Said temporary
93 certificate may be renewed for one additional year upon
94 the request of the supervising physician. A physician
95 assistant who has not been certified as such by the
96 National Board of Medical Examiners on behalf of the
97 National Commission on Certification of Physician
98 Assistants will be restricted to work under the direct
99 supervision of the supervising physician.

100 (f) Any physician applying to the board to supervise
101 a physician assistant shall provide a job description that
102 sets forth the range of medical services to be provided
103 by such assistant. Before a physician assistant can be
104 employed or otherwise use his or her skills, the
105 supervising physician must obtain approval of the job
106 description from the board. The board may revoke or
107 suspend any certification of an assistant to a physician
108 for cause, after giving such person an opportunity to be
109 heard in the manner provided by sections eight and
110 nine, article one of this chapter.

111 (g) The supervising physician is responsible for
112 observing, directing and evaluating the work, records
113 and practices of each physician assistant performing
114 under his or her supervision. He or she shall notify the
115 board in writing of any termination of his or her
116 supervisory relationship with a physician assistant
117 within ten days of the termination. The legal responsi-
118 bility for any physician assistant remains with the
119 supervising physician at all times, including occasions
120 when the assistant under his or her direction and
121 supervision, aids in the care and treatment of a patient
122 in a health care facility. In his or her absence, a
123 supervising physician must designate an alternate
124 supervising physician, however, the legal responsibility
125 remains with the supervising physician at all times. A
126 health care facility is not legally responsible for the
127 actions or omissions of the physician assistant unless the
128 physician assistant is an employee of the facility.

129 (h) The acts or omissions of a physician assistant
130 employed by health care facilities providing inpatient
131 services shall be the legal responsibility of said facilities.
132 Physician assistants employed by such facilities in staff
133 positions shall be supervised by a permanently licensed
134 physician.

135 (i) A health care facility shall report in writing to the
136 board within sixty days after the completion of the
137 facility's formal disciplinary procedure, and also after
138 the commencement, and again after the conclusion, of
139 any resulting legal action, the name of any physician
140 assistant practicing in the facility whose privileges at
141 the facility have been revoked, restricted, reduced or
142 terminated for any cause including resignation, together
143 with all pertinent information relating to such action.
144 The health care facility shall also report any other
145 formal disciplinary action taken against any physician
146 assistant by the facility relating to professional ethics,
147 medical incompetence, medical malpractice, moral
148 turpitude or drug or alcohol abuse. Temporary suspen-
149 sion for failure to maintain records on a timely basis or
150 failure to attend staff or section meetings need not be
151 reported.

152 (j) When functioning as a physician assistant, the
153 physician assistant shall wear a name tag that identifies
154 him or her as a physician assistant. A two and one-half
155 by three and one-half inch card of identification shall
156 be furnished by the board upon certification of the
157 physician assistant.

158 (k) A physician assistant providing primary care
159 outpatient services in a medically underserved area or
160 other area of need, both as defined by the board, may
161 write or sign prescriptions or transmit prescriptions by
162 word of mouth, telephone or other means of commun-
163 ication at the direction of his or her supervising
164 physician. The board shall promulgate rules and
165 regulations governing the eligibility and extent to which
166 such a physician assistant may prescribe at the direction
167 of the supervising physician. The regulations shall
168 provide for a state formulary classifying pharmacologic
169 categories of drugs which may be prescribed by such a

170 physician assistant. In classifying such pharmacologic
171 categories, those categories of drugs which shall be
172 excluded shall include, but not be limited to, Schedules
173 I and II of the Uniformed Controlled Substances Act,
174 anticoagulants, antineoplastics, antipsychotics, radio-
175 pharmaceuticals, general anesthetics, and radiographic
176 contrast materials. Drugs listed under Schedule III
177 shall be limited to a forty-eight hour supply without
178 refill. The regulations shall provide that all pharmaco-
179 logical categories of drugs to be prescribed by a
180 physician assistant shall be listed in each job description
181 submitted to the board as required in subsection (i) of
182 this section. The regulations shall provide the maximum
183 dosage a physician assistant may prescribe. The
184 regulation shall also provide that to be eligible for such
185 prescription privileges, a physician assistant shall have
186 performed patient care services for a minimum of two
187 years immediately preceding the submission to the
188 board of the job description containing prescription
189 privileges and shall have successfully completed an
190 accredited course of instruction in clinical pharmacol-
191 ogy approved by the board. The regulations shall also
192 provide that to maintain prescription privileges, a
193 physician assistant shall continue to maintain national
194 certification as a physician assistant, and in meeting
195 such national certification requirements shall complete
196 a minimum of ten hours of continuing education in
197 rational drug therapy in each certification period.
198 Nothing in this subsection shall be construed to permit
199 a physician assistant to independently prescribe or
200 dispense drugs.

201 (l) A supervising physician shall not supervise at any
202 one time more than two physician assistants, except that
203 a physician may supervise up to four hospital-employed
204 physician assistants: *Provided*, That an alternative
205 supervisor has been designated for each.

206 A physician assistant shall not sign any prescription,
207 except in the case of an authorized physician assistant
208 at the direction of his or her supervising physician in
209 accordance with the provisions of subsection (k) of this
210 section. A physician assistant shall not perform any

211 service that his or her supervising physician is not
212 qualified to perform. A physician assistant shall not
213 perform any service that is not included in his or her
214 job description and approved by the board as provided
215 for in this section.

216 The provisions of this section do not authorize any
217 physician assistant to perform any specific function or
218 duty delegated by this code to those persons licensed as
219 chiropractors, dentists, dental hygienists, optometrists
220 or pharmacists or certified as nurse anesthetists.

221 (m) Each job description submitted by a licensed
222 supervising physician shall be accompanied by a fee of
223 one hundred dollars. A fee of fifty dollars shall be
224 charged for the biennial renewal of the certificate. A fee
225 of twenty-five dollars shall be charged for any change
226 of supervising physician.

227 (n) Beginning with the biennial renewal forms
228 completed by physician assistants and submitted to the
229 board in one thousand nine hundred ninety-three, as a
230 condition of renewal of physician assistant certification,
231 each physician assistant shall provide written documenta-
232 tion pursuant to rules and regulations promulgated by
233 the board in accordance with chapter twenty-nine-a of
234 this code of participation in and successful completion
235 during the preceding two-year period of a minimum of
236 either forty hours of continuing education designated as
237 Category I by the American Medical Association,
238 American Academy of Physician Assistants or the
239 Academy of Family Physicians, and sixty hours of
240 continuing education designated as Category II by such
241 association or either academy. Notwithstanding any
242 provision of this chapter to the contrary, failure to
243 timely submit such required written documentation
244 shall result in the automatic suspension of any certifi-
245 cation as a physician assistant until such time as the
246 written documentation is submitted to and approved by
247 the board.

248 (o) It is unlawful for any person who is not certified
249 by the board as a physician assistant to use the title of
250 "physician assistant" or to represent to any other person

251 that he or she is a physician assistant. Any person who
252 violates the provisions of this subsection is guilty of a
253 misdemeanor, and, upon conviction thereof, shall be
254 fined not more than two thousand dollars.

255 (p) It is unlawful for any physician assistant to
256 represent to any person that he or she is a physician,
257 surgeon or podiatrist. Any person who violates the
258 provisions of this subsection is guilty of a felony, and,
259 upon conviction thereof, shall be imprisoned in the
260 penitentiary for not less than one nor more than two
261 years, or be fined not more than two thousand dollars,
262 or both fined and imprisoned.

CHAPTER 128

(Com. Sub. for S. B. 382—By Senator Chafin)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact sections two, six, nine, ten, fourteen, fourteen-a and sixteen, article five, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section fourteen-b, all relating to the board of pharmacy; adding new members to the board and stating their qualifications; registration and licensing of pharmacists; increasing and adding new fees; providing for use of funds; and creating a pharmacist in charge.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

- §30-5-2. Board of pharmacy; appointment; qualifications and terms of members; powers and duties generally.
- §30-5-6. Registration of pharmacists from other states.
- §30-5-9. Fees.
- §30-5-10. Annual renewal of registration license.
- §30-5-14. Pharmacies or drugstores to be registered; permit to operate; fees; registered pharmacist to conduct business.
- §30-5-14a. Pharmacist-in-charge.
- §30-5-14b. Use of funds resulting from increased fees.
- §30-5-16. Permit for manufacture, packaging, etc., of drugs, medicines, cosmetics, distribution of legend drugs, etc.; regulations as to sanitation and equipment; penalties; revocation of permit; for permits, including permit to handle controlled substances.

§30-5-2. Board of pharmacy; appointment, qualifications and terms of members; powers and duties generally.

1 There shall be a state board of pharmacy, known as
2 the "West Virginia board of pharmacy", which shall
3 consist of five practicing pharmacists and two public
4 members, who shall be appointed by the governor by
5 and with the advice and consent of the Senate. Each
6 pharmacist member of the board, at the time of his
7 appointment, shall be a citizen and registered pharma-
8 cist of this state. The public members shall be residents
9 of this state who have attained the age of majority and
10 may not be a past or present member of the profession
11 of pharmacy, the spouse of a member of the profession
12 of pharmacy, a person who has ever had any material
13 financial interest in the providing of pharmacy service
14 or who has engaged in any activity directly related to
15 the practice of pharmacy. Each member of the board
16 shall receive one hundred fifty dollars for each day spent
17 in attending to the duties of the board or of its
18 committees, and shall be reimbursed for all actual and
19 necessary expenses incurred in carrying out his duties.

20 The members of the board in office on the date this
21 section takes effect shall, unless sooner removed,
22 continue to serve until their respective terms expire and
23 until their successors have been appointed and have
24 qualified. On or before the first day of July, one
25 thousand nine hundred thirty-one, and on or before the
26 first day of July of each year thereafter, the governor
27 shall appoint one member to serve for a term of five

28 years, commencing on said first day of July, and any
29 member shall be eligible for reappointment.

30 The board, in addition to the authority, powers and
31 duties granted to the board by this chapter and chapter
32 sixteen of the code, shall have the authority to: (a)
33 Regulate the practice of the profession of pharmacy; (b)
34 regulate the employment of apprentices and interns in
35 pharmacy; (c) appoint, within the limit of appropriations,
36 inspectors who shall be registered pharmacists,
37 and investigators, both intended to act as agents of the
38 board within the provisions of this chapter and chapter
39 sixteen of the code and such rules and regulations as the
40 board shall promulgate; and (d) adopt rules of professional
41 conduct appropriate to the establishment and
42 maintenance of high standards of integrity and dignity
43 in a profession.

§30-5-6. Registration of pharmacists from other states.

1 The board of pharmacy may register and admit to
2 practice as pharmacists in this state such persons as
3 have been legally registered or licensed as pharmacists
4 in other states: *Provided*, That the applicant for such
5 registration shall appear personally before the board, at
6 a regular meeting, and shall present satisfactory
7 evidence of qualification equal to that required of
8 applicants for registration in this state, and that he was
9 registered or licensed by examination in such other
10 state, and that the standard of competence required in
11 such other state is not lower than that required in this
12 state: *Provided, however*, That the board is satisfied that
13 such other state accords similar recognition to registered
14 pharmacists of this state. Applicants for registration
15 under this section shall, with their application,
16 forward to the secretary of the board of pharmacy a fee
17 of two hundred fifty dollars, unless the applicant desires
18 to be examined other than at a regular meeting of the
19 board. In that case, there will be an additional fee of
20 one hundred fifty dollars.

§30-5-9. Fees.

1 The board of pharmacy shall be entitled to charge and
2 collect the following fees, in addition to those provided

3 in article one of this chapter and in sections five,
4 fourteen and sixteen of this article: For renewing the
5 registration of a pharmacist, thirty dollars; to register
6 an intern pharmacist, ten dollars plus five dollars for
7 each of the remaining periods of his internship; and to
8 register a consultant pharmacist, twenty dollars for the
9 initial application and ten dollars for each additional
10 application.

§30-5-10. Annual renewal of registration license.

1 Every registered pharmacist who desires to continue
2 in the practice of pharmacy shall on or before the first
3 day of July, one thousand nine hundred ninety-one, and
4 annually thereafter apply to the state board of phar-
5 macy for a renewal of his license, and shall transmit
6 with his application the fee prescribed in the preceding
7 section of this article. Notification of the annual renewal
8 shall be given by the board at least thirty days prior to
9 said first day of July. If any pharmacist fails for a
10 period of thirty days after said first day of July to apply
11 to the board for a renewal of his license, his name shall
12 be erased from the register of registered pharmacists
13 and such person, in order to again become licensed, shall
14 be required to appear personally before the board, or an
15 authorized committee of the board, to show cause for
16 permitting the license to lapse. If such person submits
17 to the board satisfactory reasons for allowing the license
18 to lapse and satisfies the board as to his qualifications
19 to practice the profession, such person shall be rein-
20 stated upon payment of a reinstatement fee of two
21 hundred fifty dollars plus the renewal fee of thirty
22 dollars.

**§30-5-14. Pharmacies or drugstores to be registered;
permit to operate; fees; registered pharma-
cist to conduct business.**

1 The board of pharmacy shall require and provide for
2 the annual registration of every pharmacy or drugstore,
3 as defined, doing business in this state. Any person,
4 firm, corporation or partnership desiring to operate,
5 maintain, open or establish a pharmacy or drugstore, as
6 defined in this state shall apply to the board of

7 pharmacy for a permit to do so. The application for such
8 permit or license shall be made on a form prescribed
9 and furnished by the board of pharmacy, which, when
10 properly executed, shall indicate the owner, manager,
11 trustee, lessee, receiver, or other person or persons
12 desiring such permit, as well as the location of such
13 pharmacy or drugstore, including street and number,
14 and such other information as the board of pharmacy
15 may require. If it is desired to operate, maintain, open
16 or establish more than one pharmacy or drugstore,
17 separate application shall be made and separate permits
18 or licenses shall be issued for each. Every initial
19 application for a permit shall be accompanied by the
20 required fee of one hundred fifty dollars. The fee for
21 renewal of such permit or license shall be seventy-five
22 dollars annually. If an application is found satisfactory,
23 the secretary of the board of pharmacy shall issue to the
24 applicant a permit or license for each pharmacy or
25 drugstore for which application is made. Permits or
26 licenses issued under this section shall not be transfer-
27 able and shall expire on the thirtieth day of June of each
28 calendar year, and if application for renewal of permit
29 or license is not made on or before that date, or a new
30 one granted on or before the first day of August,
31 following, the old permit or license shall lapse and
32 become null and void and shall require an inspection of
33 the pharmacy and a fee of one hundred fifty dollars plus
34 one hundred fifty dollars for the inspection. Every such
35 place of business so registered shall be in direct charge
36 of a registered pharmacist and operate in compliance
37 with the general provisions governing the practice of
38 pharmacy and the operation of a drugstore or
39 pharmacy.

40 The provisions of this section shall have no application
41 to the sale of patent or proprietary medicines which are
42 not poisonous, deleterious or habit-forming nor to such
43 ordinary drugs in original retail packages when such
44 are not poisonous, deleterious or habit-forming nor to
45 flavoring extracts or dyestuffs as are usually sold in a
46 country store.

§30-5-14a. Pharmacist-in-charge.

1 Every pharmacy or drugstore, at all times, shall be
2 under the jurisdiction of a licensed pharmacist who shall
3 be designated as the pharmacist-in-charge.

4 The pharmacist-in-charge is responsible for the
5 pharmacy's compliance with state and federal pharmacy
6 laws and regulations.

7 The pharmacist-in-charge is responsible for maintain-
8 ing records and inventory.

9 It is a violation of this section if the owner of a
10 pharmacy fails to designate a pharmacist-in-charge or
11 permit the practice of pharmacy without having
12 designated a pharmacist-in-charge, or fails to notify the
13 board of pharmacy if the designated pharmacist-in-
14 charge leaves.

15 Before a permit is issued to operate a pharmacy, or
16 renewed, the application must designate the pharma-
17 cist-in-charge. The designated pharmacist-in-charge
18 must be present when a new store is to be inspected.

19 A pharmacist-in-charge cannot hold the designated
20 position at more than one pharmacy, whether within or
21 without the state of West Virginia. The board of
22 pharmacy shall promulgate rules relative to pharmacies
23 which are operated over forty hours a week.

24 An interim pharmacist-in-charge may be designated
25 for a period not to exceed sixty days. The request for
26 an interim pharmacist-in-charge shall detail the circum-
27 stances which warrant such a change.

28 The board of pharmacy shall furnish the form which
29 designates a change of the pharmacist-in-charge and
30 every such application shall be subject to a fee of ten
31 dollars.

§30-5-14b. Use of funds resulting from increased fees.

1 The increased funds resulting from the increased fees
2 under sections five, nine and fourteen of this article shall
3 be used only: (a) For the employment of an investigator
4 or investigators pursuant to section two of this article;
5 (b) for the reimbursement of necessary expenses of such
6 investigator or investigators upon the submittal of

7 proper vouchers therefor; (c) for the payment of
8 additional expenses necessitated by the conduct of the
9 office of such investigator or investigators; and (d) upon
10 payment of the total expenses, including salaries of such
11 investigator or investigators, any remaining funds shall
12 be used for the conduct of the office of the West Virginia
13 board of pharmacy.

**§30-5-16. Permit for manufacture, packaging, etc., of
drugs, medicines, cosmetics, distribution of
legend drugs, etc.; regulations as to sanitation
and equipment; penalties; revocation of
permit; for permits, including permit to
handle controlled substances.**

1 No drugs or medicines, or toilet articles, dentifrices,
2 or cosmetics, shall be manufactured, made, produced,
3 packed, packaged or prepared within the state, except
4 under the personal and immediate supervision of a
5 registered pharmacist or such other person as may be
6 approved by the board of pharmacy, after an investiga-
7 tion and determination by said board that they are
8 qualified by scientific or technical training and/or
9 experience to perform such duties of supervision as may
10 be necessary to protect the public health and safety; and
11 no person shall manufacture, make, produce, pack,
12 package or prepare any such articles without first
13 obtaining a permit to do so from the board of pharmacy.
14 Such permit shall be subject to such rules and regula-
15 tions, with respect to sanitation and/or equipment, as
16 the board of pharmacy may from time to time adopt for
17 the protection of the public health and safety.

18 Any person, firm, corporation, partnership, company,
19 cooperative society or organization who offers for sale,
20 sells, offers or exposes for sale through the method of
21 distribution any legend drugs shall be subject to this
22 article.

23 The application for such permits shall be made on a
24 form to be prescribed and furnished by the board of
25 pharmacy and shall be accompanied by the following
26 fees: For a distributor, one hundred fifty dollars, for a
27 manufacturer, five hundred dollars, which amounts

28 shall also be paid as the fees for each annual renewal
29 of such permits. Separate applications shall be made
30 and separate permits issued for each separate place of
31 manufacture, distribution, making, producing, packing,
32 packaging or preparation.

33 The following fees shall be charged for a permit to
34 handle controlled substances: For a hospital or clinic,
35 fifty dollars; for extended care facilities, twenty-five
36 dollars; for a nursing home, twenty-five dollars; for a
37 teaching institution, twenty-five dollars; for a re-
38 searcher, twenty-five dollars; for a medical examiner,
39 twenty-five dollars; and for a pharmacy or drug store,
40 fifteen dollars, which amounts shall also be paid for each
41 annual renewal of such permits.

42 Permits issued under the provisions of this section
43 shall be posted in a conspicuous place in the factory or
44 place for which issued; such permits shall not be
45 transferable, and shall expire on the thirtieth day of
46 June following the day of issue and shall be renewed
47 annually. Nothing in this section shall be construed to
48 apply to those operating registered pharmacies or
49 drugstores.

50 Any person, firm, corporation, partnership, company,
51 cooperative society or organization violating any of the
52 provisions of this section and any permittee hereunder
53 who shall violate any of the conditions of this permit or
54 any of the rules and regulations adopted by the board
55 of pharmacy in pursuance of the power hereby con-
56 ferred shall, upon conviction, be deemed guilty of a
57 misdemeanor and fined not more than fifty dollars for
58 each offense, and each and every day such violation
59 continues shall constitute a separate and distinct offense,
60 and upon conviction of a permittee, his permit shall also
61 forthwith be revoked and become null and void.

62 Any person, firm, corporation, partnership, company,
63 cooperative society, organization or any permittee
64 hereunder who shall have been convicted of two or more
65 successive violations of the provisions of this section or
66 of the rules and regulations adopted by the board of
67 pharmacy in pursuance of the powers hereby conferred

68 shall at the discretion of the board of pharmacy have
 69 such permit permanently revoked, and the board of
 70 pharmacy is hereby authorized to refuse the issuance of
 71 further permits to such person, firm, corporation,
 72 partnership, company, cooperative society, organization
 73 or permittee.

CHAPTER 129

(Com. Sub. for H. B. 2494—By Delegates Gallagher and Border)

[Passed March 9, 1991; 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 six-a, relating to requiring mail-order houses which dispense drugs into or out of the state to register with the board of pharmacy prior to doing business; exempting mail-order houses which operate solely as wholesale distributors; and promulgation of rules and regulations by board of pharmacy.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 5. PHARMACISTS, ASSISTANT PHARMACISTS AND DRUGSTORES.

§30-5-6a. Permits for mail-order houses.

1 (a) Every mail-order house which dispenses drugs or
 2 medicines through the United States mail or otherwise
 3 from any point in the state of West Virginia to any point
 4 outside of the state of West Virginia shall be registered
 5 as a pharmacy or drugstore pursuant to the provisions
 6 of section fourteen of this article: *Provided*, That the

7 provisions of this subsection do not apply to any mail-
8 order house which operates solely as a wholesale
9 distributor.

10 (b) Every mail-order house which dispenses drugs or
11 medicines through the United States mail or otherwise
12 from any point outside of the state of West Virginia to
13 any point within the state of West Virginia shall, as a
14 condition precedent to being qualified and authorized to
15 transact such business in the state of West Virginia,
16 annually register with the board of pharmacy to conduct
17 such business in this state. Every such business shall be
18 required to provide to the board of pharmacy satisfac-
19 tory evidence that it qualifies as a pharmacy or
20 drugstore and that such business is licensed or regis-
21 tered as a pharmacy or drugstore in the state where the
22 business dispenses prescriptions by mail order to
23 residents of this state. The board of pharmacy shall
24 promulgate rules, in accordance with the provisions of
25 article three, chapter twenty-nine-a of this code, for the
26 procedures of registration pursuant to this subsection:
27 *Provided*, That the provisions of this subsection do not
28 apply to any mail-order house which operates solely as
29 a wholesale distributor.

CHAPTER 130

(S. B. 624—By Senators Pritt, Blatnik and Holliday)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article fourteen-a, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to osteopathic physician assistants; promulgation of rules by the board of osteopathy; certification of osteopathic physician assistants; supervising physicians and employing health care facilities; reporting of disciplinary procedures; identification; fees; continuing medical education; criminal penalties; and limited prescriptive authority.

Be it enacted by the Legislature of West Virginia:

That section one, article fourteen-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 14A. ASSISTANTS TO OSTEOPATHIC PHYSICIANS AND SURGEONS.

§30-14A-1. Osteopathic physician assistant to osteopathic physicians and surgeons; definitions; board of osteopathy rules; certification; temporary certification; recertification; job description required; revocation or suspension of certification; responsibilities of the supervising physician; legal responsibility for osteopathic physician assistants; reporting of disciplinary procedures; identification; limitation on employment and duties; fees; unlawful use of the title of "osteopathic physician assistant"; unlawful representation of an osteopathic physician assistant as a physician; criminal penalties.

1 (a) As used in this section:

2 (1) "Osteopathic physician assistant" means an
3 assistant to an osteopathic physician who is a graduate
4 of an approved program of instruction in primary care
5 or surgery, has passed the national certification exam-
6 ination and is qualified to perform direct patient care
7 services under the supervision of an osteopathic
8 physician;

9 (2) "Supervising physician" means a doctor of osteo-
10 pathy permanently licensed in this state who assumes
11 legal and supervising responsibility for the work or
12 training of any osteopathic physician assistant under his
13 or her supervision;

14 (3) "Approved program" means an educational pro-
15 gram for osteopathic physician assistants approved and
16 accredited by the committee on allied health education
17 and accreditation;

18 (4) "Health care facility" means any licensed hospital,
19 nursing home, extended care facility, state health or

20 mental institution, clinic or physician's office; and

21 (5) "Direct supervision" means the presence of the
22 supervising physician at the site where the osteopathic
23 physician assistant performs medical duties.

24 (b) The board shall promulgate rules governing the
25 extent to which osteopathic physician assistants may
26 function in this state. Such rules shall provide that the
27 osteopathic physician assistant is limited to the perfor-
28 mance of those services for which he or she is trained
29 and that he or she performs only under the supervision
30 and control of an osteopathic physician permanently
31 licensed in this state, but such supervision and control
32 does not require the personal presence of the supervising
33 physician at the place or places where services are
34 rendered if the osteopathic physician assistant's normal
35 place of employment is on the premises of the supervis-
36 ing physician. The supervising physician may send the
37 osteopathic physician assistant off the premises to
38 perform duties under his or her direction, but a separate
39 place of work for the osteopathic physician assistant
40 shall not be established. In promulgating such rules, the
41 board may allow the osteopathic physician assistant to
42 perform those procedures and examinations and in the
43 case of authorized osteopathic physician assistants to
44 prescribe at the direction of his or her supervising
45 physician in accordance with subsection (o) of this
46 section those categories of drugs submitted to it in the
47 job description required by subsection (e) of this section.
48 The board shall compile and publish an annual report
49 that includes a list of currently certified osteopathic
50 physician assistants and their employers and location in
51 the state.

52 (c) The board shall certify as an osteopathic physician
53 assistant any person who files an application and
54 furnishes satisfactory evidence to it that he or she has
55 met the following standards:

56 (1) He or she is a graduate of an approved program
57 of instruction in primary health care or surgery;

58 (2) He or she has passed the examination for a
59 primary care physician assistant or surgery adminis-

60 tered by the national board of medical examiners on
61 behalf of the national commission on certification of
62 physician assistants; and

63 (3) He or she is of good moral character.

64 (d) When any graduate of an approved program
65 submits an application to the board, accompanied by a
66 job description in conformity with subsection (e) of this
67 section, for an osteopathic physician assistant certificate,
68 the board may issue to such applicant a temporary
69 certificate allowing such applicant to function as an
70 osteopathic physician assistant for the period of one
71 year. Said temporary certificate may be renewed for one
72 additional year upon the request of the supervising
73 physician. An osteopathic physician assistant who has
74 not been certified as such by the national board of
75 medical examiners on behalf of the national commission
76 on certification of physician assistants will be restricted
77 to work under the direct supervision of the supervising
78 physician.

79 (e) Any osteopathic physician applying to the board to
80 supervise an osteopathic physician assistant shall
81 provide a job description that sets forth the range of
82 medical services to be provided by such assistant. Before
83 an osteopathic physician assistant can be employed or
84 otherwise use his or her skills, the supervising physician
85 must obtain approval of the job description from the
86 board. The board may revoke or suspend any certification
87 of an assistant to a physician for cause, after giving
88 such person an opportunity to be heard in the manner
89 provided by sections eight and nine, article one of this
90 chapter.

91 (f) The supervising physician is responsible for
92 observing, directing and evaluating the work records
93 and practices of each osteopathic physician assistant
94 performing under his or her supervision. He or she shall
95 notify the board in writing of any termination of his or
96 her supervisory relationship with an osteopathic physi-
97 cian assistant within ten days of his or her termination.
98 The legal responsibility for any osteopathic physician
99 assistant remains with the supervising physician at all

100 times, including occasions when the assistant, under his
101 or her direction and supervision, aids in the care and
102 treatment of a patient in a health care facility. In his
103 or her absence, a supervising physician must designate
104 an alternate supervising physician; however, the legal
105 responsibility remains with the supervising physician at
106 all times. A health care facility is not legally responsible
107 for the actions or omissions of an osteopathic physician
108 assistant unless the osteopathic physician assistant is an
109 employee of the facility.

110 (g) The acts or omissions of an osteopathic physician
111 assistant employed by health care facilities providing
112 inpatient services shall be the legal responsibility of said
113 facilities. Osteopathic physician assistants employed by
114 such facilities in staff positions shall be supervised by
115 a permanently licensed physician.

116 (h) A health care facility shall report in writing to the
117 board within sixty days after the completion of the
118 facility's formal disciplinary procedure, and also after
119 the commencement, and again after the conclusion, of
120 any resulting legal action, the name of any osteopathic
121 physician assistant practicing in the facility whose
122 privileges at the facility have been revoked, restricted,
123 reduced or terminated for any cause including resigna-
124 tion, together with all pertinent information relating to
125 such action. The health care facility shall also report any
126 other formal disciplinary action taken against any
127 osteopathic physician assistant by the facility relating to
128 professional ethics, medical incompetence, medical
129 malpractice, moral turpitude or drug or alcohol abuse.
130 Temporary suspension for failure to maintain records on
131 a timely basis or failure to attend staff or section
132 meetings need not be reported.

133 (i) When functioning as an osteopathic physician
134 assistant, the osteopathic physician assistant shall wear
135 a name tag that identifies him or her as a physician
136 assistant.

137 (j) (1) A supervising physician shall not supervise at
138 any time more than two osteopathic physician assistants,
139 except that a physician may supervise up to four

140 hospital-employed osteopathic physician assistants:
141 *Provided*, That an alternative supervisor has been
142 designated for each.

143 (2) An osteopathic physician assistant shall not
144 perform any service that his or her supervising physi-
145 cian is not qualified to perform.

146 (3) An osteopathic physician assistant shall not
147 perform any service that is not included in his or her
148 job description and approved by the board as provided
149 for in this section.

150 (4) The provisions of this section do not authorize an
151 osteopathic physician assistant to perform any specific
152 function or duty delegated by this code to those persons
153 licensed as chiropractors, dentists, registered nurses,
154 licensed practical nurses, dental hygienists, optometrists
155 or pharmacists or certified as nurse anesthetists.

156 (k) Each job description submitted by a licensed
157 osteopathic supervising physician shall be accompanied
158 by a fee of one hundred dollars. A fee of fifty dollars
159 shall be charged for the annual renewal of the certifi-
160 cate. A fee of twenty-five dollars shall be charged for
161 any change of supervising physician.

162 (l) As a condition of renewal of osteopathic physician
163 assistant certification, each osteopathic physician
164 assistant shall provide written documentation satisfac-
165 tory to the board of participation in and successful
166 completion during the preceding one-year period of a
167 minimum of twenty hours of continuing education in
168 courses approved by the board of osteopathy for the
169 purposes of continuing education of osteopathic physi-
170 cian assistants. Notwithstanding any provision of this
171 chapter to the contrary, failure to timely submit such
172 required written documentation shall result in the
173 automatic suspension of any certification as an osteopa-
174 thic physician assistant until such time as the written
175 documentation is submitted to and approved by the
176 board.

177 (m) It is unlawful for any person who is not certified
178 by the board as an osteopathic physician assistant to use

179 the title of "osteopathic physician assistant" or to
180 represent to any other person that he or she is an
181 osteopathic physician assistant. Any person who violates
182 the provisions of this subsection is guilty of a misdemea-
183 nor, and, upon conviction thereof, shall be fined not
184 more than two thousand dollars.

185 (n) It is unlawful for any osteopathic physician
186 assistant to represent to any person that he or she is a
187 physician. Any person who violates the provisions of this
188 subsection is guilty of a felony, and, upon conviction
189 thereof, shall be imprisoned in the penitentiary for not
190 less than one, nor more than two years, or be fined not
191 more than two thousand dollars, or both fined and
192 imprisoned.

193 (o) An osteopathic physician assistant providing
194 primary care outpatient services in a medically under-
195 served area or other area of need, both as defined by
196 the board, may write or sign prescriptions or transmit
197 prescriptions by word of mouth, telephone or other
198 means of communication at the direction of his or her
199 supervising physician. The board shall promulgate rules
200 and regulations governing the eligibility and extent to
201 which such an osteopathic physician assistant may
202 prescribe at the direction of the supervising physician.
203 The regulations shall provide for a state formulary
204 classifying pharmacologic categories of drugs which
205 may be prescribed by such an osteopathic physician
206 assistant. In classifying such pharmacologic categories,
207 those categories of drugs which shall be excluded shall
208 include, but not be limited to, Schedules I and II of the
209 uniform controlled substances act, anticoagulants,
210 antineoplastics, antipsychotics, radiopharmaceuticals,
211 general anesthetics and radiographic contrast materials.
212 Drugs listed under Schedule III shall be limited to a
213 forty-eight hour supply without refill. The regulations
214 shall provide that all pharmacological categories of
215 drugs to be prescribed by an osteopathic physician
216 assistant shall be listed in each job description submit-
217 ted to the board as required in subsection (e) of this
218 section. The regulations shall provide the maximum
219 dosage an osteopathic physician assistant may prescribe.

220 The regulations shall also provide that to be eligible
221 for such prescription privileges, an osteopathic physi-
222 cian assistant must submit an application to the board
223 for such privileges. The regulations shall also provide
224 that an osteopathic physician assistant shall have
225 performed patient care services for a minimum of two
226 years immediately preceding the submission to the
227 board of said application for prescription privileges and
228 shall have successfully completed an accredited course
229 of instruction in clinical pharmacology approved by the
230 board. The regulations shall also provide that to
231 maintain prescription privileges, an osteopathic physi-
232 cian assistant shall continue to maintain national
233 certification as an osteopathic physician assistant, and
234 in meeting such national certification requirements
235 shall complete a minimum of ten hours of continuing
236 education in rational drug therapy in each certification
237 period. Nothing in this subsection shall be construed to
238 permit an osteopathic physician assistant to independ-
239 ently prescribe or dispense drugs.

CHAPTER 131

(Com. Sub. for H. B. 2765—By Delegate Ashcraft)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, five, six and seven, article twenty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto six new sections, designated sections seven-a, seven-b, seven-c, seven-d, seven-e and eight-a, all relating to creating new definitions relating to the practice of school psychology; providing for license exemption in certain instances; requiring the addition of at least one licensed school psychologist to the board of examiners of psychologists; adding school psychologist examination to board duties and authorizing reasonable fees thereto; removing the reference to the specific amount of the application fee; creating

eligibility requirements for certain levels of licensed school psychologists; addressing eligibility of school psychologists currently certified by the state board; defining eligibility of certain doctoral applicants; and specifying provisions for license renewal.

Be it enacted by the Legislature of West Virginia:

That sections two, three, five, six and seven, article twenty-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 six new sections, designated sections seven-a, seven-b, seven-c, seven-d, seven-e and eight-a, all to read as follows:

ARTICLE 21. PSYCHOLOGISTS; SCHOOL PSYCHOLOGISTS.

- §30-21-2. Definitions.
- §30-21-3. License required; firms, associations and corporations engaging in the practice of psychology.
- §30-21-5. Creation of board of examiners of psychologists; members, terms, meetings, officers, oath and compensation; general provisions.
- §30-21-6. Powers and duties of board; funds of board.
- §30-21-7. Qualifications of applicants; exceptions; applications; fee.
- §30-21-7a. Eligibility for school psychologist resident.
- §30-21-7b. Eligibility for licensed school psychologist.
- §30-21-7c. Eligibility for licensed school psychologist independent practitioner.
- §30-21-7d. Eligibility for current school psychologist.
- §30-21-7e. Eligibility of doctoral applicants.
- §30-21-8a. Issuance of license; renewal of license; renewal fee; display of license.

§30-21-2. Definitions.

- 1 Unless the context in which used clearly requires a
- 2 different meaning, as used in this article:
- 3 (a) "Applicant" means any person making application
- 4 for an original or renewal license or a temporary permit
- 5 under the provisions of this article.
- 6 (b) "Licensee" means any person holding a license or
- 7 a temporary permit issued under the provisions of this
- 8 article.
- 9 (c) "Board" means the board of examiners of psychol-
- 10 ogists created by this article.
- 11 (d) "Psychology" means the science involving the

12 principles, methods and procedures of understanding,
13 predicting and influencing behavior; the principles
14 pertaining to learning, perception, motivation, thinking,
15 emotions and interpersonal relationships; the methods
16 and procedures of interviewing and counseling; the
17 methods and procedures of psychotherapy, meaning the
18 use of learning, conditioning methods and emotional
19 reactions, in a professional relationship, to assist a
20 person or persons to modify feelings, attitudes and
21 behavior, which are intellectually, socially or emotion-
22 ally maladjustive or ineffectual; the constructing,
23 administering and interpreting of tests of intelligence,
24 special abilities, aptitudes, interests, attitudes, personal-
25 ity characteristics, emotions and motivation; the psycho-
26 logical evaluation, prevention and improvements of
27 adjustment problems of individuals and groups; and the
28 resolution of interpersonal and social conflicts.

29 (e) "Practice of psychology" means the rendering or
30 offering to render for a fee, salary or other compensa-
31 tion, monetary or otherwise, any psychological service
32 involving: (i) The application of the principles, methods
33 and procedures of understanding, predicting and
34 influencing behavior; (ii) the application of the princi-
35 ples pertaining to learning, perception, motivation,
36 thinking, emotions and interpersonal relationships; (iii)
37 the application of the methods and procedures of
38 interviewing and counseling; (iv) the application of the
39 methods and procedures of psychotherapy, meaning the
40 use of learning, conditioning methods and emotional
41 reactions, in a professional relationship, to assist a
42 person or persons to modify feelings, attitudes and
43 behavior, which are intellectually, socially or emotion-
44 ally maladjustive or ineffectual; (v) the constructing,
45 administering and interpreting of tests of intelligence,
46 special abilities, aptitudes, interests, attitudes, personal-
47 ity characteristics, emotions and motivation; (vi) the
48 psychological evaluation, prevention and improvement
49 of adjustment problems of individuals and groups; and
50 (vii) the resolution of interpersonal and social conflicts.

51 However, for the purpose of this article, the term
52 "practice of psychology" shall not include:

53 (1) Teaching, lecturing or engaging in research in
54 psychology as part of salaried employment at an
55 institution of higher learning;

56 (2) The official duties of a person employed as a
57 psychologist by the state of West Virginia or any of its
58 departments, agencies, divisions or bureaus, or local
59 governments, except for the West Virginia department
60 of education, a county board of education, or a regional
61 education agency, which duties are performed under the
62 direct and regular supervision of a licensee;

63 (3) The official duties of a person employed as a
64 psychologist by any department, agency, division or
65 bureau of the United States of America;

66 (4) The official duties of a person working under the
67 direct and regular supervision of a licensee for the
68 purpose of gaining the experience required for a license
69 hereunder by the provisions of subdivision (4), subsec-
70 tion (a), section seven of this article, which experience
71 is of a type approved by the board;

72 (5) The use, in good faith, of certain psychological
73 techniques, procedures, methods and principles as an
74 incident to engaging in a recognized occupation or
75 profession, other than the practice of psychology,
76 including, but not limited to, the occupation or profes-
77 sion of a physician, lawyer, dentist, social worker,
78 sociologist, political scientist, economist, probation or
79 parole officer, rehabilitation or marriage counselor,
80 clergyman, audiologist, speech pathologist, teacher,
81 educational or guidance counselor and a placement or
82 personnel director;

83 (6) The activities of a student of psychology, psycho-
84 logical intern or psychological resident, which activities
85 are a part of and are engaged in pursuant to a course
86 of study at an institution of higher learning; or

87 (7) The activities of an assistant or technician which
88 are performed under the direct and regular supervision
89 of a licensee.

90 (f) "Examination" means the examination in psychol-
91 ogy required by subdivision (5), subsection (a), section
92 seven of this article.

93 (g) "School psychological services" means the activi-
94 ties which school psychologists may engage in to
95 promote mental health and to facilitate the education of
96 school age children, which include, but are not limited
97 to, the following:

98 (A) Consultation, which includes collaboration with
99 individuals and groups of school personnel, parents,
100 families and representatives of community agencies;

101 (B) Psychological and psychoeducational assessment,
102 which includes the gathering, interpreting and com-
103 municating of information derived from the assessment
104 process which relates to learning and behavior;

105 (C) Intervention, which includes individual and group
106 counseling, behavioral intervention and crisis
107 intervention;

108 (D) Education, which includes parent training, school
109 inservice and community education;

110 (E) Facilitation, which includes assisting in develop-
111 ing useful communication between diverse groups of
112 people separated by institutional, bureaucratic, educa-
113 tional or other barriers;

114 (F) Research, which includes designing, reporting
115 and utilizing the results of research of a psychological
116 nature;

117 (G) Program planning and evaluation, which includes
118 program development, program implementation, pro-
119 gram evaluation and problem solving for organizational
120 decision making;

121 (H) Supervision, which includes the supervision of
122 intern school psychologists, other school psychologists
123 and personnel contracted to provide either psychological
124 or psychoeducational assessment data;

125 However, for the purpose of this article, the term
126 "practice of school psychology" shall not include:

127 (1) The activities of clinical, counseling, child, indus-
128 trial, health, and other types of psychology which the

129 board determines to be outside the scope of school
130 psychology activities;

131 (2) Teaching, lecturing or engaging in research in
132 school psychology as part of salaried employment at an
133 institution of higher learning;

134 (3) The official duties of a person employed as a school
135 psychologist by the state of West Virginia or any of its
136 departments, agencies, divisions or bureaus, or local
137 governments, except for the West Virginia department
138 of education, a county board of education, or a regional
139 education service agency, which duties are performed
140 under the direct and regular supervision of a licensee;

141 (4) The official duties of a person employed as a school
142 psychologist by any department, agency, division or
143 bureau of the United States of America;

144 (5) The official duties of a school psychologist working
145 under the direct and regular supervision of a licensee
146 for the purpose of gaining the experience required for
147 a license hereunder by the provisions of subdivision (4),
148 subsection (a), section seven of this article, which
149 experience is of a type approved by the board;

150 (6) The use, in good faith, of certain psychological
151 techniques, procedures, methods and principles as an
152 incident to engaging in a recognized occupation or
153 profession, other than the practice of school psychology,
154 including, but not limited to, the occupation or profes-
155 sion of a physician, lawyer, dentist, social worker,
156 sociologist, political scientist, economist, probation or
157 parole officer, rehabilitation or marriage counselor,
158 clergyman, audiologist, speech pathologist, teacher,
159 educational or guidance counselor and placement or
160 personnel director;

161 (7) The activities of a student of school psychology,
162 school psychological intern or extern, which activities
163 are a part of and are engaged in pursuant to a course
164 of study at an institution of higher learning;

165 (8) The activities of an assistant or technician which
166 are performed under the direct and regular supervision
167 of a licensee.

168 (h) "Practice of school psychology" means the render-
169 ing or offering to render for a fee, salary or other
170 compensation to an individual or to the public school
171 psychological services as defined in this article;

172 (i) "School psychologist" means any person who
173 proposes to provide school psychological services as
174 defined herein, to the public and in so doing claims to
175 have the knowledge, training, expertise and ethical
176 standards necessary to engage in such practice;

177 (j) "School board" means a West Virginia county
178 school board and also means the West Virginia depart-
179 ment of education, or a regional educational service
180 agency;

181 (k) "School board employee" means any person who
182 provides services for the school board and is reimbursed
183 via a salary and benefits and who has met the educa-
184 tional requirements under the state law and regulations
185 of the West Virginia board of education to be certified
186 or otherwise empowered by the state superintendent of
187 schools to provide school psychological services for
188 school boards;

189 (l) "School board contractee" means any person who
190 provides services for one or more school boards and is
191 reimbursed on a per evaluation, per unit of service, or
192 some other contract basis;

193 (m) "School psychologist resident" means a school
194 psychologist who provides school psychology services on
195 a school board property and is a school board employee;

196 (n) "Licensed school psychologist" means a school
197 psychologist who provides school psychology services on
198 school board property and is a school board employee
199 or contractee;

200 (o) "Licensed school psychologist independent practi-
201 tioners" means a school psychologist who provides school
202 psychology services to an individual or the public on
203 school board or nonschool board property, and provide
204 such services for a fee or other compensation, or as a
205 school board employee or contractee.

§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
2 hold himself out to the public as being engaged in, the
3 practice of psychology in this state, nor shall any person
4 use in connection with any trade, business, profession or
5 occupation, except in those instances specifically
6 excluded from the definition of the practice of psychol-
7 ogy by subparagraphs (1), (2), (3), (4) and (6), subdivision
8 (e), section two of this article, the word "psychologist,"
9 "psychology," "psychological" or any other title, word or
10 abbreviation which induces or tends to induce the belief
11 that such person is qualified to engage or is engaged in
12 the practice of psychology, unless and until he shall first
13 obtain a license or temporary permit to engage in the
14 practice of psychology in accordance with the provisions
15 of this article, which license or temporary permit
16 remains unexpired, unsuspended and unrevoked: *Pro-*
17 *vided*, That such license or temporary permit shall not
18 be required for an individual who is the holder of a
19 school psychology certificate issued by the West Virgi-
20 nia department of education and who is engaged in the
21 practice of school psychology solely within the scope of
22 employment as a school board employee: *Provided*,
23 *however*, That no such license or temporary permit shall
24 be required for a psychologist who is not a resident of
25 this state, who is the holder of a license or certificate
26 to engage in the practice of psychology issued by a state
27 with licensing or certification requirements determined
28 by the board to be at least as great as those provided
29 in this article, who has no regular place of practice in
30 this state and who engages in the practice of psychology
31 in this state for a period of not more than ten days in
32 any calendar year.

33 (b) No firm, association or corporation shall, except
34 through a licensee or licensees, render any service or
35 engage in any activity which if rendered or engaged in
36 by any individual would constitute the practice of
37 psychology.

§30-21-5. Creation of board of examiners of psychologists; members, terms, meetings, officers, oath and compensation; general provisions.

1 (a) There is hereby created the state board of examin-
2 ers of psychologists which shall be composed of five
3 members appointed by the governor by and with the
4 advice and consent of the Senate. Each member shall
5 have been actively engaged in the practice of psychology
6 or in the teaching of psychology in the state of West
7 Virginia for at least two years immediately preceding
8 his appointment and shall be the holder of a license
9 under the provisions of this article, or, in the case of the
10 members first appointed, shall be eligible for such a
11 license: *Provided*, That at least one member of the board
12 shall be a licensed school psychologist.

13 (b) The members of the board shall be appointed for
14 overlapping terms of three years each and until their
15 respective successors have been appointed and have
16 qualified, except for the original appointments. For the
17 purpose of original appointments, two members shall be
18 appointed for a term of three years and until their
19 successors have been appointed and have qualified, two
20 members shall be appointed for a term of two years and
21 until their successors have been appointed and have
22 qualified and one member shall be appointed for a term
23 of one year and until his successor has been appointed
24 and has qualified. Members may be reappointed for any
25 number of terms. Before entering upon the performance
26 of his duties, each member shall take and subscribe to
27 the oath required by section five, article four of the
28 constitution of this state. Vacancies shall be filled by
29 appointment by the governor for the unexpired term of
30 the member whose office shall be vacant and such
31 appointment shall be made within sixty days of the
32 occurrence of such vacancy. Any member may be
33 removed by the governor in case of incompetency,
34 neglect of duty, gross immorality or malfeasance in
35 office.

36 (c) The board shall elect from its membership a
37 chairman and secretary who shall serve at the will and
38 pleasure of the board. A majority of the members of the

39 board shall constitute a quorum and meetings shall be
40 held at the call of the chairman or upon the written
41 request of three members at such time and place as
42 designated in such call or request, and, in any event, the
43 board shall meet at least once annually to conduct the
44 examination hereinafter provided for and to transact
45 such other business as may come before it. Members
46 may be paid such reasonable compensation as the board
47 may from time to time determine, and in addition may
48 be reimbursed for all reasonable and necessary expenses
49 actually incurred in the performance of their duties,
50 which compensation and expenses shall be paid in
51 accordance with the provisions of subsection (b), section
52 six of this article.

§30-21-6. Powers and duties of board; funds of board.

1 (a) The board shall:

2 (1) Examine applicants and determine their eligibil-
3 ity for a license or temporary permit to engage in the
4 practice of psychology;

5 (2) Examine applicants and determine their eligibil-
6 ity for a license or temporary permit to engage in the
7 practice of school psychology as a licensed school
8 psychologist and/or licensed school psychologist inde-
9 pendent practitioner.

10 (3) Prepare, conduct and grade an apt and proper
11 written, oral or written and oral examination of
12 applicants for a license and determine the satisfactory
13 passing score thereon;

14 (4) Promulgate reasonable rules and regulations
15 implementing the provisions of this article and the
16 powers and duties conferred upon the board hereby,
17 including, but not limited to, reasonable rules and
18 regulations establishing standards to insure the proper
19 supervision of all persons working under the direct and
20 regular supervision of a licensee under the provisions of
21 this article, all of which reasonable rules and regula-
22 tions shall be promulgated in accordance with the
23 provisions of article three, chapter twenty-nine-a of this
24 code, set reasonable fees and record them in legislative
25 rules, Title 17, Series 1.

26 (5) Issue, renew, deny, suspend or revoke licenses and
27 temporary permits to engage in the practice of psychol-
28 ogy in accordance with the provisions of this article and,
29 in accordance with the administrative procedures
30 hereinafter provided, may review, affirm, reverse,
31 vacate or modify its order with respect to any such
32 denial, suspension or revocation;

33 (6) Investigate alleged violations of the provisions of
34 this article, reasonable rules and regulations promul-
35 gated hereunder and orders and final decisions of the
36 board and take appropriate disciplinary action against
37 any licensee for the violation thereof or institute
38 appropriate legal action for the enforcement of the
39 provisions of this article, reasonable rules and regula-
40 tions promulgated hereunder and orders and final
41 decisions of the board or take such disciplinary action
42 and institute such legal action;

43 (7) Employ, direct, discharge and define the duties of
44 full or part-time professional, clerical or other personnel
45 necessary to effectuate the provisions of this article;

46 (8) Keep accurate and complete records of its proceed-
47 ings, certify the same as may be appropriate, and
48 prepare, from time to time, a list showing the names and
49 addresses of all licensees;

50 (9) Whenever it deems it appropriate, confer with the
51 attorney general or his assistants in connection with all
52 legal matters and questions; and

53 (10) Take such other action as may be reasonably
54 necessary or appropriate to effectuate the provisions of
55 this article.

56 (b) All moneys paid to the board shall be accepted by
57 a person designated by the board and deposited by him
58 with the treasurer of the state and credited to an
59 account to be known as the "board of examiners of
60 psychologists fund." All of the reasonable compensation
61 of the members of the board, the reimbursement of all
62 reasonable and necessary expenses actually incurred by
63 such members and all other costs and expenses incurred
64 by the board in the administration of this article shall

65 be paid from such fund, and no part of the state's
66 general revenue fund shall be expended for this purpose.

§30-21-7. Qualifications of applicants; exceptions; applications; fee.

1 (a) To be eligible for a license to engage in the
2 practice of psychology, the applicant must:

3 (1) Be at least eighteen years of age;

4 (2) Be of good moral character;

5 (3) Be a holder of a doctor of philosophy degree or its
6 equivalent or a master's degree in psychology from an
7 accredited institution of higher learning, with adequate
8 course study at such institution in psychology, the
9 adequacy of any such course study to be determined by
10 the board;

11 (4) When the degree held is a doctor of philosophy
12 degree or its equivalent, have at least one year's
13 experience subsequent to receiving said degree in the
14 performance of any of the psychological services
15 described in subdivision (e), section two of this article,
16 including those activities excluded from the definition
17 of the term "practice of psychology" in said subdivision
18 (e), and, when the degree held is a master's degree, have
19 at least five years' experience subsequent to receiving
20 said degree in the performance of any of the psycholog-
21 ical services described in said subdivision (e), including
22 those activities excluded from the definition of the term
23 "practice of psychology" in said subdivision (e);

24 (5) Have passed the examination prescribed by the
25 board, which examination shall cover the basic subject
26 matter of psychology and psychological skills and
27 techniques;

28 (6) Not have been convicted of a felony or crime
29 involving moral turpitude; and

30 (7) Not, within the next preceding six months, have
31 taken and failed to pass the examination required by
32 subdivision (5), subsection (a) of this section.

33 (b) The following persons shall be eligible for a license

34 to engage in the practice of psychology without
35 examination:

36 (1) Any applicant who holds a doctor of philosophy
37 degree or its equivalent from an institution of higher
38 learning, with adequate course study at such institution
39 in psychology and who is a diplomate of the "American
40 Board of Examiners in Professional Psychology"; and

41 (2) Any person who holds a license or certificate to
42 engage in the practice of psychology issued by any other
43 state, the requirements for which license or certificate
44 are found by the board to be at least as great as those
45 provided in this article.

46 (c) Any person who is engaged in the practice of
47 psychology in this state, or is engaged in any of the
48 activities described in subdivision (e), (1), (2) or (3),
49 section two of this article, in this state, on the effective
50 date of this article and has been so engaged for a period
51 of two consecutive years immediately prior thereto shall
52 be eligible for a license to engage in the practice of
53 psychology without examination and without meeting
54 the requirements of subdivision (4), subsection (a) of this
55 section, if application for such license is made within six
56 months after the effective date of this article and if such
57 person meets the requirements of subdivisions (1), (2),
58 (3) and (6), subsection (a) of this section: *Provided*, That
59 an equivalent of a master's degree in psychology may
60 be considered by the board, only for the purpose of this
61 subsection (c), as meeting the requirements of subdivi-
62 sion (3), subsection (a) of this section.

63 (d) Any applicant for any such license shall submit an
64 application therefor at such time (subject to the time
65 limitation set forth in subsection (c) of this section), in
66 such manner, on such forms and containing such
67 information as the board may from time to time by
68 reasonable rule and regulation prescribe, and pay to the
69 board an application fee.

§30-21-7a. Eligibility for school psychologist resident.

1 (a) To qualify as a school psychologist resident the
2 applicant must have obtained a master's degree in

3 school psychology from a board approved graduate
4 program within a board approved institution of higher
5 education.

6 (b) If such individuals are employed by school
7 board(s) to practice school psychology, they may, within
8 sixty days of the initiation of their employment, register
9 with the board and pay a reasonable fee.

§30-21-7b. Eligibility for licensed school psychologist.

1 To meet minimum requirements for this license the
2 applicant must:

3 (1) Have obtained a valid certificate of school psychol-
4 ogy granted by the state superintendent of schools, have
5 obtained a certificate of advanced study in school
6 psychology and obtained a master's degree in school
7 psychology from a board-approved institution of higher
8 education, or have received equivalent training as
9 determined by the board;

10 (2) Have completed at least three academic years of
11 supervised experience in school psychology which
12 includes a one year post degree internship or externship
13 towards completion of the requirements for a certificate
14 of advance study in school psychology or similar
15 designation approved by the board: *Provided*, That such
16 supervised experience shall include at least one face to
17 face meeting between the supervisor and supervisee per
18 month.

19 (3) Have passed a standardized national examination
20 in school psychology promulgated by the National
21 Association of School Psychologists or other similar
22 organizations and approved as a standardized testing
23 vehicle for school psychologists by the board;

24 (4) Have passed an oral examination conducted by the
25 board; and

26 (5) Complete appropriate application and other forms,
27 provide evidence of credentials, and pay appropriate
28 fees as determined by the board.

**§30-21-7c. Eligibility for licensed school psychologist
independent practitioner.**

1 (1) Such applicants shall meet all the minimum
2 requirements for eligibility as a licensed school
3 psychologist;

4 (2) Complete an additional two years of board ap-
5 proved supervision by a licensed school psychologist; and

6 (3) Pass an oral examination conducted by the board.

§30-21-7d. Eligibility for current school psychologist.

1 (1) Any person who holds a current certificate of
2 advanced study and has the equivalent of three aca-
3 demic years experience in school psychology or any
4 licensed psychologist who has been approved by the
5 state department of education on the effective date of
6 this section shall not be required to comply with the
7 provisions of section seven-b, article twenty-one, chapter
8 thirty of this code. Such persons shall submit approp-
9 riate documentation of credentials to the board, appli-
10 cation form, and pay an application fee: *Provided*, That
11 such applicants pass an oral exam given by the board
12 of psychology.

13 (2) Such persons seeking eligibility as a licensed
14 school psychologist independent practitioner must meet
15 the provisions of section seven-b of this article, must
16 have completed the equivalency of two years supervised
17 experience and shall complete an oral examination
18 before the board, submit required documentation, pay
19 appropriate fees and complete additional supervision
20 and training requirements as determined by the board.
21 Applicants seeking eligibility pursuant to this section
22 must make application on or before the first day of July,
23 one thousand nine hundred ninety-two.

§30-21-7e. Eligibility of doctoral applicants.

1 Applicants with a doctorate of philosophy degree or
2 its equivalent who apply for licensure as a school
3 psychologist must complete one year of board-approved
4 supervision or two years of such supervision if they have
5 not had an internship, pass a standardized national
6 examination in school psychology as defined in subdivi-
7 sion (3), section seven-b of this article, pass an oral
8 examination given by the board, and pay appropriate
9 fees.

§30-21-8a. Issuance of license; renewal of license; renewal fee; display of license.

1 On and after the first day of July, one thousand nine
2 hundred ninety-one and thereafter, whenever the board
3 finds that applicants meet all of the requirements of this
4 article for a license to engage in the practice of school
5 psychology, it shall forthwith issue to them such
6 licenses; and otherwise the board shall deny the same.
7 The license shall be valid for a period of three years
8 from the date issued and may be renewed for a period
9 of three years without examination upon application for
10 renewal on a form prescribed by the board and payment
11 to the board of a renewal fee: *Provided*, That the board
12 may deny an application for renewal for any reason
13 which would justify the denial of an original application
14 for a license. The board shall prescribe the form of
15 licenses and each license shall be conspicuously dis-
16 played by the licensee at the licensee's principal place
17 of practice.

CHAPTER 132

(S. B. 508—By Senators Blatnik and Minard)

[Passed March 5, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty-seven, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section ten-a; and to amend and reenact section eleven of said article, all relating to the board of barbers and beauticians; requirements for renting or leasing chair or booth; reporting requirements; and registration fee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27. BOARD OF BARBERS AND BEAUTICIANS.

§30-27-10a. Booth or chair rental; registration; fee; reporting requirements.

§30-27-11. Grounds for cancellation or refusal to issue or renew license.

§30-27-10a. Booth or chair rental; registration; fee; reporting requirements.

1 All persons licensed to practice as a barber, beauti-
2 cian or manicurist in this state who elects to rent or
3 lease a booth or chair from an owner or operator of any
4 barber or beauty shop shall first register with the board
5 of barbers and beauticians and pay a registration fee of
6 ten dollars. When registering, the registrant shall advise
7 the board of the length of any rental or lease agreement,
8 the name of the person and barber or beauty shop from
9 which a chair or booth is being rented or leased, and
10 the effective date of such rental. If a person registered
11 with the board pursuant to this section elects to move
12 from one barber or beauty shop to rent or lease a chair
13 or booth from another barber or beauty shop, he or she
14 shall again register with the board and pay a fee of two
15 dollars and fifty cents.

16 Each owner or operator of a barber or beauty shop
17 who elects to rent or lease chairs or booths therein shall
18 notify the board in writing of such rental within ten
19 days of the effective date of the rental.

20 The board shall quarterly notify the state tax commis-
21 sioner of all persons registered pursuant to this section
22 during the previous quarter. Such notice shall be in
23 writing and shall include the name of the persons
24 registered, the name of the person and barber or beauty
25 shop from whom space is being rented or leased, and
26 the length of any such rental or lease agreement.

§30-27-11. Grounds for cancellation or refusal to issue or renew license.

1 The board may refuse to issue a license of registration
2 to any applicant, or may refuse to renew, or may
3 suspend or revoke the same for any holder thereof, for
4 any of the following causes: (1) Conviction of the
5 commission of a felony, as shown by a certified copy of
6 the record of the court of conviction; (2) obtaining or

7 attempting to obtain a license to practice barbering or
8 beauty culture in this state by false pretenses, fraudu-
9 lent misrepresentation, or bribery by the use of money
10 or other consideration; (3) gross incompetency; (4) the
11 continued practice of barbering or beauty culture by a
12 person knowing himself or herself to be afflicted with
13 a contagious or infectious disease; (5) the use knowingly
14 of any false or deceptive statements in advertising; (6)
15 habitual drunkenness or habitual addiction to the use of
16 morphine, cocaine or other habit-forming drugs; (7)
17 conviction for the illegal sale of any intoxicating
18 beverage, as shown by a certified copy of the record of
19 the court of conviction; (8) violation of any of the rules
20 and regulations prescribed by the board of health; (9)
21 violation of any of the rules and regulations prescribed
22 by the board of barbers and beauticians; or (10) violation
23 of any licensing or registration requirement of section
24 ten-a of this article.

CHAPTER 133

(S. B. 429—By Senators Wooton and Humphreys)

[Passed March 9, 1991: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting the private practice of law by public defenders.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-17. Private practice of law by public defenders.

1 (a) No full-time public defender or full-time assistant

2 public defender may engage in any private practice of
3 law except as provided in this section.

4 (b) A board of directors may permit a newly employed
5 full-time public defender or full-time assistant public
6 defender to engage in the private practice of law for
7 compensation for the sole purpose of expeditiously
8 closing and withdrawing from existing private cases
9 from a prior private practice. In no event shall any
10 person employed for more than ninety days as a full-
11 time public defender or full-time assistant public
12 defender be engaged in any other private practice of law
13 for compensation: *Provided*, That until the first day of
14 January, one thousand nine hundred ninety-three, the
15 prohibition against the private practice of law does not
16 apply to full-time public defenders employed in Class II,
17 III or IV counties as defined by article seven, chapter
18 seven of this code.

19 (c) A board of directors may permit a full-time public
20 defender or full-time assistant public defender to engage
21 in private practice for compensation if the defender is
22 acting pursuant to an appointment made under a court
23 rule or practice of equal applicability to all attorneys in
24 the jurisdiction and if the defender remits to the public
25 defender corporation all compensation received.

26 (d) A board of directors may permit a full-time public
27 defender or full-time assistant public defender to engage
28 in uncompensated private practice of law if the public
29 defender or assistant public defender is acting:

30 (1) Pursuant to an appointment made under a court
31 rule or practice of equal applicability to all attorneys in
32 the jurisdiction; or

33 (2) On behalf of a close friend or family member; or

34 (3) On behalf of a religious, community or charitable
35 group.

36 (e) Violation of the requirements of this section is
37 sufficient grounds for immediate summary dismissal.

CHAPTER 134

(H. B. 2979—By Delegates Murensky and P. White)

[Passed March 9, 1991: in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and twenty-four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three and four, article twenty-nine-d, chapter sixteen of said code, all relating to the purpose, powers and duties of the finance board; the initial financial plan; plan for the following year and annual financial plans; providing for an eighteen-month initial financial plan; allowing the rating separately or together of the claims experience of active and retired employees, spouses and dependents with coverage under the public employees insurance program; removing the provision requiring health care providers agreeing to deliver services to a beneficiary of any one state health care program to provide services for beneficiaries of all state health care programs; removing the time-specific conditions for preferred provider contracts; and extending the provision prohibiting balance billing of medical bills under the public employees insurance program.

Be it enacted by the Legislature of West Virginia:

That sections five and twenty-four, article sixteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections three and four, article twenty-nine-d, chapter sixteen 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.

16. Public Health.

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

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

§5-16-24. Rules and regulations for administration of article; eligibility of certain retired employees and dependents of deceased members for coverage; employees on medical leave of absence entitled to coverage; life insurance.

§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.

1 (a) The purpose of the finance board created by this
2 article is to bring fiscal stability to the public employees
3 insurance agency through development of an annual
4 financial plan designed to meet the agency's estimated
5 total financial requirements, taking into account all
6 revenues projected to be made available to the agency,
7 and apportioning necessary costs equitably among
8 participating employers, employees and retired em-
9 ployees and providers of health care services.

10 (b) The finance board shall retain the services of an
11 impartial, professional actuary, with demonstrated
12 experience in analysis of large group health insurance
13 plans, to estimate the total financial requirements of the
14 public employees insurance agency for each fiscal year
15 and to review and render written professional opinions
16 as to financial plans proposed by the finance board. The
17 finance board shall also employ the actuary to develop
18 alternative financing options and to perform such other
19 services as may be requested by the finance board. All
20 reasonable fees and expenses for actuarial services shall
21 be paid by the public employees insurance agency. Any
22 financial plan or modifications to a financial plan
23 approved or proposed by the finance board pursuant to
24 this section shall be submitted to and reviewed by the
25 actuary, and may not be finally approved and submitted
26 to the governor and to the Legislature without the
27 actuary's written professional opinion that the plan may
28 be reasonably expected to generate sufficient revenues
29 to meet all estimated program and administrative costs
30 of the agency, excluding incurred but unreported

31 claims, for the fiscal year for which the plan is proposed.
32 The actuary's opinion on the initial plan required by
33 subsection (d) of this section shall allow for a target of
34 forty-five days of accounts payable to be carried over
35 into the next fiscal year. The actuary's opinion on the
36 financial plan for fiscal year one thousand nine hundred
37 ninety-two shall allow for between thirty and forty-five
38 days of accounts payable to be carried over into the next
39 fiscal year. The actuary's opinion on the financial plan
40 for any succeeding fiscal year shall allow for no more
41 than thirty days of accounts payable to be carried over
42 into the next fiscal year. The actuary's opinion for any
43 fiscal year shall not include a requirement for establish-
44 ment of a reserve fund.

45 (c) All financial plans required by this section shall
46 include the design of a benefit plan or plans. All
47 financial plans shall establish:

48 (1) Maximum levels of reimbursement which the
49 public employees insurance agency makes to categories
50 of health care providers;

51 (2) Any necessary cost containment measures for
52 implementation by the director;

53 (3) The levels of premium costs to participating
54 employers; and

55 (4) The types and levels of cost to participating
56 employees and retired employees.

57 The financial plans may provide for different levels
58 of costs based on the insureds' ability to pay. The
59 financial plans may also include optional alternative
60 benefit plans with alternative types and levels of cost.
61 The finance board may develop policies which encour-
62 age the use of West Virginia health care providers.

63 (d) *Initial plan.* — The director shall convene the first
64 meeting of the finance board no later than the fifteenth
65 day of September, one thousand nine hundred ninety.
66 For presentation by the director at the first meeting, the
67 governor shall prepare an estimate of the total amount
68 of general and special revenues which the state has or
69 will have available to fund the public employees

70 insurance agency and its programs for the fiscal year
71 ending on the thirtieth day of June, one thousand nine
72 hundred ninety-one.

73 Notwithstanding any provision of this article to the
74 contrary, during any meeting authorized by subsection
75 (h) of this section to review implementation of the initial
76 financial plan in light of actual experience, the finance
77 board, in its discretion, may elect to redesign the initial
78 financial plan so that revenues generated will meet all
79 incurred and projected program and administrative
80 costs of the public employees insurance agency by the
81 end of the fiscal year ending on the thirtieth day of June,
82 one thousand nine hundred ninety-two, rather than by
83 the thirtieth day of June, one thousand nine hundred
84 ninety-one. Before implementing any such modifica-
85 tions, the finance board shall obtain a written profes-
86 sional opinion from its actuary stating that the modified
87 plan may be reasonably expected to generate sufficient
88 revenues to meet all estimated program and administra-
89 tive costs of the public employees insurance agency for
90 the remainder of fiscal year one thousand nine hundred
91 ninety-one and for fiscal year one thousand nine
92 hundred ninety-two, allowing for between thirty and
93 forty-five days of accounts payable to be carried over
94 into fiscal year one thousand nine hundred ninety-three.
95 The finance board shall also afford interested and
96 affected persons an opportunity to offer comment on the
97 modified plan at a public meeting of the finance board.
98 Regardless of whether or not the finance board modifies
99 the initial financial plan as authorized by this subsec-
100 tion, the finance board shall prepare a financial plan for
101 fiscal year one thousand nine hundred ninety-two in
102 accordance with subsection (e) of this section.

103 The finance board shall prepare, no later than the
104 tenth day of November, one thousand nine hundred
105 ninety, a proposed financial plan designed to generate
106 revenues sufficient to meet all program and administra-
107 tive costs of the public employees insurance agency
108 which have already been incurred but are unpaid, or
109 which the actuary estimates will be incurred and paid
110 during the remainder of fiscal year one thousand nine

111 hundred ninety-one, excluding incurred but unreported
112 claims. The finance board shall establish in the proposed
113 financial plan a target of forty-five days of accounts
114 payable which may be carried over into the next fiscal
115 year.

116 The finance board shall request its actuary to review
117 the proposed financial plan and to render a written
118 professional opinion stating whether the plan may be
119 reasonably expected to generate sufficient revenues to
120 meet all estimated program and administrative costs of
121 the public employees insurance agency for the fiscal
122 year. The actuary's report shall explain the basis of his
123 or her opinion. If the actuary concludes that the
124 proposed financial plan will not generate sufficient
125 revenues to meet all anticipated costs, then the finance
126 board shall make necessary modifications to the pro-
127 posed plan to ensure that all actuarially-determined
128 financial requirements of the agency will be met.

129 Upon obtaining the actuary's opinion and making all
130 necessary modifications to the proposed plan, the
131 finance board shall conduct two or more public hearings
132 to receive public comment on the proposed financial
133 plan, shall review such comments, and shall finalize and
134 approve the financial plan no later than the twentieth
135 day of November, one thousand nine hundred ninety.
136 Employees shall be notified of any changes in the types
137 and levels of employee costs or benefits contained in the
138 financial plan at least thirty days prior to the date of
139 implementation of the financial plan.

140 The finance board shall submit to the governor and
141 to the Legislature the final, approved financial plan no
142 later than the first day of December, one thousand nine
143 hundred ninety. The financial plan shall become
144 effective and shall be implemented by the director on
145 the first day of January, one thousand nine hundred
146 ninety-one.

147 (e) *Plan for fiscal year one thousand nine hundred*
148 *ninety-two.* — No later than the first day of December,
149 one thousand nine hundred ninety, the governor shall
150 prepare and provide to the finance board an estimate
151 of the total amount of general and special revenues

152 which the state will have available to fund the public
153 employees insurance agency and its programs for the
154 fiscal year beginning the first day of July, one thousand
155 nine hundred ninety-one. The finance board shall
156 request its actuary to estimate the total financial
157 requirements of the public employees insurance agency
158 for the fiscal year.

159 The finance board shall prepare a proposed financial
160 plan designed to generate revenues sufficient to meet all
161 estimated program and administrative costs of the
162 public employees insurance agency for the fiscal year.
163 The proposed financial plan shall allow for between
164 thirty and forty-five days of accounts payable to be
165 carried over into the next fiscal year. Before final
166 adoption of the proposed financial plan, the finance
167 board shall request its actuary to review the plan and
168 to render a written professional opinion stating whether
169 the plan will generate sufficient revenues to meet all
170 estimated program and administrative costs of the
171 public employees insurance agency for the fiscal year.
172 The actuary's report shall explain the basis of its
173 opinion. If the actuary concludes that the proposed
174 financial plan will not generate sufficient revenues to
175 meet all anticipated costs, then the finance board shall
176 make necessary modifications to the proposed plan to
177 ensure that all actuarially-determined financial
178 requirements of the agency will be met.

179 Upon obtaining the actuary's opinion, the finance
180 board shall conduct one or more public hearings in each
181 congressional district to receive public comment on the
182 proposed financial plan, shall review such comments,
183 and shall finalize and approve the financial plan.

184 The finance board shall submit to the governor and
185 to the Legislature its final, approved financial plan for
186 fiscal year one thousand nine hundred ninety-two,
187 together with the actuary's final written opinion, no
188 later than the first day of May, one thousand nine
189 hundred ninety-one. The financial plan shall become
190 effective and shall be implemented by the director on
191 the first day of July, one thousand nine hundred ninety-
192 one.

193 (f) *Annual plans.* — The finance board shall prepare,
194 in the manner provided in subsection (e) of this section,
195 an annual financial plan for fiscal year one thousand
196 nine hundred ninety-three and each fiscal year thereaf-
197 ter during which the finance board remains in exist-
198 ence. Any such financial plan shall be designed to allow
199 thirty days or less of accounts payable to be carried over
200 into the next fiscal year. For each such fiscal year, the
201 governor shall provide his estimate of total revenues to
202 the finance board no later than the first day of July of
203 the preceding fiscal year. The finance board shall
204 submit its final, approved financial plan, after obtaining
205 the necessary actuary's opinion and conducting one or
206 more public hearings in each congressional district, to
207 the governor and to the Legislature no later than the
208 first day of January preceding the fiscal year. The
209 financial plan for a fiscal year shall become effective
210 and shall be implemented by the director on the first
211 day of July of such fiscal year.

212 (g) The provisions of chapter twenty-nine-a of this
213 code shall not apply to the preparation, approval and
214 implementation of the financial plans required by this
215 section.

216 (h) The finance board shall meet on at least a
217 quarterly basis to review implementation of its current
218 financial plan in light of the actual experience of the
219 public employees insurance agency. The board shall
220 review actual costs incurred, any revised cost estimates
221 provided by the actuary, expenditures, and any other
222 factors affecting the fiscal stability of the plan, and may
223 make any additional modifications to the plan necessary
224 to ensure that the total financial requirements of the
225 agency for the current fiscal year are met. The financial
226 board may not increase the types and levels of cost to
227 employees during its quarterly review except in the
228 event of a true emergency.

229 (i) For any fiscal year in which legislative appropri-
230 ations differ from the governor's estimate of general and
231 special revenues available to the agency, the finance
232 board shall, within thirty days after passage of the

233 budget bill, make any modifications to the plan neces-
234 sary to ensure that the total financial requirements of
235 the agency for the current fiscal year are met.

236 (j) The types and levels of costs to employers, em-
237 ployees and retired employees participating in public
238 employees insurance agency group insurance plans
239 which are currently in effect on the effective date of this
240 article are hereby authorized. The types and levels of
241 costs to employees participating in public employees
242 insurance agency group insurance plans which are
243 currently in effect on the effective date of this article
244 shall remain in effect unless and until changed or
245 authorized to be changed by the finance board in a
246 financial plan prepared and approved in accordance
247 with this section.

**§5-16-24. Rules and regulations for administration of
article; eligibility of certain retired em-
ployees and dependents of deceased
members for coverage; employees on medi-
cal leave of absence entitled to coverage; life
insurance.**

1 The director shall promulgate such rules and regula-
2 tions as may be required for the effective administration
3 of the provisions of this article. Except as specifically
4 provided in subsection (e), section four of this article, all
5 rules and regulations of the public employees insurance
6 agency and all hearings held by the public employees
7 insurance agency shall be exempt from the provisions
8 of chapter twenty-nine-a of this code. Any rules and
9 regulations now in existence promulgated by the public
10 employees insurance board or director shall remain in
11 full force and effect until they are amended or replaced
12 by the director.

13 Such regulations shall provide that any employee of
14 the state who has been compelled or required by law to
15 retire before reaching the age of sixty-five years shall
16 be eligible to participate in the public employees' health
17 insurance program at his own expense for the cost of
18 coverage after any extended coverage to which he, his
19 spouse and dependents may be entitled by virtue of his

20 accrued annual leave or sick leave, pursuant to the
21 provisions of section thirteen of this article, has expired.
22 Any employee who voluntarily retires, as provided by
23 law, shall be eligible to participate in the public
24 employees' health insurance program at his own expense
25 for the cost of coverage after any extended coverage to
26 which he, his spouse and dependents may be entitled by
27 virtue of his accrued annual leave or sick leave,
28 pursuant to the provisions of section thirteen of this
29 article, has expired. The dependents of any deceased
30 retired employee shall be entitled to continue their
31 participation and coverage upon payment of the total
32 cost for such coverage. In establishing the cost of health
33 insurance coverage for retired employees and their
34 spouses and dependents, the finance board, in its
35 discretion, may cause the claims experience of such
36 retired employees and their spouses and dependents to
37 be rated separately from that of active employees and
38 their spouses and dependents, or may cause the claims
39 experience of retired and active employees, and their
40 spouses and dependents, to be rated together.

41 Any employee who is on a medical leave of absence,
42 approved by his employer, shall, subject to the following
43 provisions of this paragraph, be entitled to continue his
44 coverage until he returns to his employment, and such
45 employee and employer shall continue to pay their
46 proportionate share of premium costs as provided by
47 this article: *Provided*, That the employer shall be
48 obligated to pay its proportionate share of the premium
49 cost only for a period of one year: *Provided, however*,
50 That during the period of such leave of absence, the
51 employee shall, at least once each month, submit to the
52 employer the statement of a qualified physician certifying
53 that the employee is unable to return to work.

54 Any retiree, retiring heretofore or hereafter, shall be
55 eligible to participate in the public employees' life
56 insurance program, including the optional life insurance
57 coverage as already available to active employees under
58 this article, at his own expense for the cost of coverage,
59 based upon actuarial experience; and the director shall
60 prepare, by rule and regulation, for such participation

61 and coverages under declining term insurance and
62 optional additional coverage for such retirees.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 29D. STATE HEALTH CARE.

§16-29D-3. Agencies to cooperate and to provide plan; contents of plan; reports to Legislature; late payments by state agencies and interest thereon.

§16-29D-4. Prohibition on balance billing; exceptions.

***§16-29D-3. Agencies to cooperate and to provide plan; contents of plan; reports to Legislature; late payments by state agencies and interest thereon.**

1 (a) All departments and divisions of the state,
2 including, but not limited to, the bureau of employment
3 programs, the division of health and the division of
4 human services within the department of health and
5 human resources; the public employees insurance
6 agency within the department of administration; the
7 division of rehabilitation services or such other depart-
8 ment or division as shall supervise or provide rehabil-
9 itation; and the university of West Virginia board of
10 trustees, as the governing board for the state's medical
11 schools, are authorized and directed to cooperate in
12 order, among other things, to ensure the quality of the
13 health care services delivered to the beneficiaries of
14 such departments and divisions and to ensure the
15 containment of costs in the payment for such services.

16 (b) It is expressly recognized that no other entity may
17 interfere with the discretion and judgment given to the
18 single state agency which administers the state's
19 medicaid program. Thus, it is the intention of the
20 Legislature that nothing contained in this article shall
21 be interpreted, construed, or applied to interfere with
22 the powers and actions of the single state agency which,
23 in keeping with applicable federal law, shall administer
24 the state's medicaid program as it perceives to be in the
25 best interest of that program and its beneficiaries.

26 (c) Such departments and divisions shall develop a

* Clerk's Note: This section was also amended by S. B. 132 (Chapter 16), which passed prior to this act.

27 plan or plans to ensure that a reasonable and appro-
28 priate level of health care is provided to the beneficiar-
29 ies of the various programs including the public
30 employees insurance agency and the workers' compen-
31 sation fund, the division of rehabilitation services and,
32 to the extent permissible, the state medicaid program.
33 The plan or plans may include, among other things, and
34 the departments and divisions are hereby authorized to
35 enter into:

36 (1) Utilization review and quality assurance
37 programs;

38 (2) The establishment of a schedule or schedules of the
39 maximum reasonable amounts to be paid to health care
40 providers for the delivery of health care services covered
41 by the plan or plans. Such a schedule or schedules may
42 be either prospective in nature or cost reimbursement
43 in nature, or a mixture of both: *Provided*, That any
44 payment methods or schedules for institutions which
45 provide inpatient care shall be institution-specific and
46 shall, at a minimum, take into account a disproportion-
47 ate share of medicaid, charity care and medical
48 education: *Provided, however*, That in no event may any
49 rate set in this article for an institutional health care
50 provider be greater than such institution's current rate
51 established and approved by the health care cost review
52 authority pursuant to article twenty-nine-b of this
53 chapter;

54 (3) Provisions for making payments in advance of the
55 receipt of health care services by a beneficiary, or in
56 advance of the receipt of specific charges for such
57 services, or both;

58 (4) Provisions for the receipt or payment of charges
59 by electronic transfers;

60 (5) Arrangements, including contracts, with preferred
61 provider organizations; and

62 (6) Arrangements, including contracts, with particu-
63 lar health care providers to deliver health care services
64 to the beneficiaries of the programs of the departments
65 and divisions at agreed upon rates in exchange for

66 controlled access to the beneficiary populations.

67 (d) The director of the public employees insurance
68 agency shall contract with an independent actuarial
69 company for a review every four years of the claims
70 experience of all governmental entities whose employees
71 participate in the public employees insurance agency
72 program, including, but not limited to, all branches of
73 state government, all state departments or agencies
74 (including those receiving funds from the federal
75 government or a federal agency), all county and
76 municipal governments, or any other similar entities for
77 the purpose of determining the cost of providing
78 coverage under the program, including administrative
79 cost, to each such governmental entity.

80 (e) Nothing in this section shall be construed to give
81 or reserve to the Legislature any further or greater
82 power or jurisdiction over the operations or programs
83 of the various departments and divisions affected by this
84 article than that already possessed by the Legislature in
85 the absence of this article.

86 (f) For the purchase of health care or health care
87 services by a health care provider participating in a
88 plan under this section on or after the first day of
89 September, one thousand nine hundred eighty-nine, by
90 the public employees insurance agency, the division of
91 rehabilitation services and the division of workers'
92 compensation, a state check shall be issued in payment
93 thereof within sixty-five days after a legitimate uncon-
94 tested invoice is actually received by such division or
95 agency. Any state check issued after sixty-five days shall
96 include interest at the current rate, as determined by
97 the state tax commissioner under the provisions of
98 section seventeen-a, article ten, chapter eleven of this
99 code, which interest shall be calculated from the sixty-
100 sixth day after such invoice was actually received by the
101 division or agency until the date on which the state
102 check is mailed to the vendor.

§16-29D-4. Prohibition on balance billing; exceptions.

1 (a) Except in instances involving the delivery of health
2 care services immediately needed to resolve an immi-

3 nent life-threatening medical or surgical emergency, the
4 agreement by a health care provider to deliver services
5 to a beneficiary of any department or division of the
6 state which participates in a plan or plans developed
7 under section three of this article shall be considered to
8 also include an agreement by that health care provider:

9 (1) To accept the assignment by the beneficiary of any
10 rights the beneficiary may have to bill such division or
11 department for, and to receive payment under such plan
12 or plans on account of, such services; and

13 (2) To accept as payment in full for the delivery of
14 such services the amount specified in plan or plans or
15 as determined by the plan or plans. In such instances,
16 the health care provider shall bill the division or
17 department, or such other person specified in the plan
18 or plans, directly for the services. The health care
19 provider shall not bill the beneficiary or any other
20 person on behalf of the beneficiary and, except for
21 deductibles or other payments specified in the applica-
22 ble plan or plans, the beneficiary shall not be personally
23 liable for any of the charges, including any balance
24 claimed by the provider to be owed as being the
25 difference between that provider's charge or charges
26 and the amount payable by the applicable department
27 or divisions. The plan or plans may specify what sums
28 are deductibles, copayments or are otherwise payable by
29 the beneficiary and the sums for which the health care
30 provider may bill the beneficiary: In addition, any
31 health care service which is not subject to payment by
32 the plan or plans shall be the responsibility of the
33 beneficiary and for those health care services which are
34 not covered by the plans, there shall be no prohibition
35 against billing the beneficiary directly.

36 (b) The prohibitions and limitations stated in subsec-
37 tion (a) of this section do not apply to the delivery of
38 health care services immediately needed to resolve an
39 imminent life-threatening medical or surgical emer-
40 gency. However, once the patient is stabilized, then the
41 delivery of any further health care services shall be
42 subject to subsection (a) of this section for those latter
43 services only.

44 (c) The exceptions provided in this section for the
 45 delivery of health care services immediately needed to
 46 resolve an imminent life-threatening medical or surgical
 47 emergency shall not apply to health care providers
 48 under contract with a department or division plan or
 49 plans.

CHAPTER 135

(S. B. 622—By Senators Tomblin, Blatnik, Brackenrich, Chernenko,
 Craigo, Hawse, Jones, Lucht, J. Manchin, M. Manchin, Sharpe,
 Spears, Wagner, Whitlow, Withers and Boley)

[Passed March 8, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-a, relating to the state board of investments; enacting the debt management act of 1991; legislative findings and declaration of public necessity; creating the division of debt management; director of division; definitions; debt information reporting by state spending units; powers and duties for the division; and authorizing the promulgation of legislative rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. THE DEBT MANAGEMENT ACT.

- §12-6A-1. Short title.
- §12-6A-2. Legislative findings and declaration of public necessity.
- §12-6A-3. Division of debt management created; director.
- §12-6A-4. Definitions.
- §12-6A-5. Powers and duties.
- §12-6A-6. Debt information reporting.
- §12-6A-7. Promulgation of rules.

§12-6A-1. Short title.

- 1 This article shall be known and may be cited as "The
- 2 Debt Management Act of 1991".

§12-6A-2. Legislative findings and declaration of public necessity.

1 (a) The Legislature hereby finds and declares that
2 efficient and effective state government requires the
3 designation of an authority having responsibility for
4 procuring, maintaining and reporting pertinent infor-
5 mation relating to the debt of the state and its agencies,
6 boards, commissions and authorities. In addition to
7 other duties and powers delegated to the state board of
8 investments by this article, the board shall perform the
9 functions and duties necessary to enable it to serve as
10 a central information source concerning the incurrence,
11 recording and reporting of debt issued by the state, its
12 agencies, boards, commissions and authorities.

13 (b) The Legislature hereby finds:

14 (1) The credit rating and acceptance of bonds, notes,
15 certificates of participation and other securities and
16 indebtedness of the state and its spending units have
17 been unstable as a result of the instability in traditional
18 national and international markets of goods and services
19 produced by the citizens of the state.

20 (2) In order to finance essential capital projects for the
21 benefit of the citizens of the state at the lowest possible
22 cost, the state must maintain high levels of acceptance
23 of the indebtedness of the state and its spending units
24 in the financial markets.

25 (3) In order to attain these goals, authorization of state
26 debt must be based on the ability of the state to meet
27 its total debt service requirements, in light of other uses
28 of its fiscal resources.

29 (c) The Legislature hereby further finds that the
30 public policies and responsibilities of the state as set
31 forth in this article cannot be fully attained without the
32 creation of a state division of debt management.

§12-6A-3. Division of debt management created; director.

1 There is hereby created within the office of the state
2 board of investments, the division of debt management.

3 The division shall be under the control of a director

4 to be appointed by the board and who shall be qualified
5 by reason of exceptional training and experience in the
6 field of activities of his respective division and shall
7 serve at the will and pleasure of the board.

§12-6A-4. Definitions.

1 For the purpose of this article:

2 "Debt" means bonds, notes, certificates of participa-
3 tion, certificate transactions, capital leases and all other
4 forms of securities and indebtedness.

5 "Division" means the division of debt management.

6 "State" means the state of West Virginia.

7 "Spending unit" means any of the state's agencies,
8 boards, commissions, committees, authorities or other of
9 its entities with the power to issue debt and secure such
10 debt, and not including local political subdivisions of the
11 state.

§12-6A-5. Powers and duties.

1 The division of debt management shall perform the
2 following functions and duties:

3 (1) Develop a long-term debt plan including criteria
4 for the issuance of debt by the state and its spending
5 units and the continuous evaluation of the current and
6 projected debt of the state and its spending units.

7 (2) Evaluate cash flow projections relative to proposed
8 and existing revenue bond issues.

9 (3) Act as liaison with the Legislature on all debt
10 matters, including, but not limited to, new debt issues
11 and the status of debt issued by the state and its
12 spending units.

13 (4) Assist the state and its spending units regarding
14 the issuance of debt if requested.

15 (5) Establish reporting requirements for the issuance
16 of debt by the state and its spending units pursuant to
17 the provisions of this article.

18 (6) Make and execute contracts and other instruments

19 and pay the reasonable value of services or commodities
20 rendered to the division pursuant to those contracts.

21 (7) Contract, cooperate or join with any one or more
22 other governments or public agencies, or with any
23 political subdivision of the state, or with the United
24 States, to perform any administrative service, activity
25 or undertaking which any such contracting party is
26 authorized by law to perform and to charge for
27 providing such services and expend any fees collected.

28 (8) Do all things necessary or convenient to effectuate
29 the intent of this article and to carry out its powers and
30 functions.

§12-6A-6. Debt information reporting.

1 (1) Within fifteen days following the end of each
2 calendar quarter, each state spending unit shall provide
3 the division and the legislative auditor, in the manner
4 provided by this article and in such form and detail as
5 the state board of investments may by regulation
6 require, a statement of the total debt of each such state
7 spending unit incurred during the calendar quarter and
8 owing at the end of such calendar quarter, which
9 statement shall include, but not be limited to, the name
10 of the state spending unit, the amounts and types of debt
11 incurred during the calendar quarter and outstanding
12 at the end of the calendar quarter, the cost and expenses
13 of incurring the debt, the maturity date of each debt,
14 the terms and conditions of the debt, the current debt
15 service on the debt, the current interest rate on the debt,
16 the source of the proceeds utilized for repayment of the
17 debt, the amounts of repayment during the calendar
18 quarter, the repayment schedule and the security for the
19 debt.

20 (2) Not less than fifteen days prior to a proposed
21 offering of debt to be issued by a state spending unit,
22 written notice of such proposed offering and the terms
23 thereof shall be given to the division by such state
24 spending unit in such form as the division may by
25 regulation require.

26 (3) Within thirty days following the end of each

27 calendar quarter and on an annual basis the state board
 28 of investments shall prepare and issue a report of all
 29 debt of the state and its spending units and of all
 30 proposed debt issuances of which the board has received
 31 notice and shall furnish a copy of such report to the
 32 governor, the president of the Senate, the speaker of the
 33 House of Delegates, the legislative auditor and upon
 34 request to any legislative committee and any member
 35 of the Legislature and such report shall be kept
 36 available for inspection by any citizen of the state.

§12-6A-7. Promulgation of rules.

1 The division of debt management shall promulgate
 2 rules relating to reporting requirements and its duties
 3 under this article and the rules shall be promulgated in
 4 accordance with the provisions of article three, chapter
 5 twenty-nine-a of this code.

CHAPTER 136

(Com. Sub. for H. B. 2473—By Delegates Rutledge and Carper)

[Passed February 26, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four hundred two, article four, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to securities and adding the National Association of Securities Dealers Automated Quotation/National Market System (NASDAQ/NMS) to the listings exempt from certain provisions of the uniform securities act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. GENERAL PROVISIONS.

§32-4-402. Exemptions.

1 (a) The following securities are exempt from sections
2 301 and 403:

3 (1) Any security (including a revenue obligation)
4 issued or guaranteed by the United States, any state,
5 any political subdivision of a state, or any agency or
6 corporate or other instrumentality of one or more of the
7 foregoing; or any certificate of deposit for any of the
8 foregoing;

9 (2) Any security issued or guaranteed by Canada, any
10 Canadian province, any political subdivision of any such
11 province, any agency or corporate or other instrumen-
12 tality of one or more of the foregoing, or any other
13 foreign government with which the United States
14 currently maintains diplomatic relations, if the security
15 is recognized as a valid obligation by the issuer or
16 guarantor;

17 (3) Any security issued by and representing an
18 interest in or a debt of, or guaranteed by, any bank
19 organized under the laws of the United States, or any
20 bank, savings institution or trust company organized
21 and supervised under the laws of any state;

22 (4) Any security issued by and representing an
23 interest in or a debt of, or guaranteed by, any federal
24 savings and loan association, or any building and loan
25 or similar association organized under the laws of any
26 state and authorized to do business in this state;

27 (5) Any security issued by and representing an
28 interest in or a debt of, or guaranteed by, any insurance
29 company organized under the laws of any state and
30 authorized to do business in this state;

31 (6) Any security issued or guaranteed by any federal
32 credit union or any credit union, industrial loan
33 association or similar association organized and super-
34 vised under the laws of this state;

35 (7) Any security issued or guaranteed by any railroad,
36 other common carrier, public utility or holding company
37 which is (A) subject to the jurisdiction of the interstate
38 commerce commission; (B) a registered holding com-
39 pany under the Public Utility Holding Company Act of

40 1935 or a subsidiary of such a company within the
41 meaning of that act; (C) regulated in respect of its rates
42 and charges by a governmental authority of the United
43 States or any state; or (D) regulated in respect of the
44 issuance or guarantee of the security by a governmental
45 authority of the United States, any state, Canada, or any
46 Canadian province;

47 (8) Any security listed or approved for listing upon
48 notice of issuance on the New York Stock Exchange, the
49 American Stock Exchange, or the Midwest Stock
50 Exchange, any other stock exchange approved by the
51 commissioner, the National Association of Securities
52 Dealers Automated Quotation/National Market System
53 (NASDAQ/NMS), or any other market system approved
54 by the commissioner, any other security of the same
55 issuer which is of senior or substantially equal rank, any
56 security called for by subscription rights or warrants so
57 listed or approved, or any warrant or right to purchase
58 or subscribe to any of the foregoing, except that the
59 commissioner may adopt and promulgate rules and
60 regulations pursuant to chapter twenty-nine-a of this
61 code which, after notice to such exchange or market
62 system and an opportunity to be heard, remove any such
63 exchange or market system from this exemption if the
64 commissioner finds that the listing requirements or
65 market surveillance of such exchange or market system
66 are such that the continued availability of such exemp-
67 tion for such exchange or market system is not in the
68 public interest and that removal is necessary for the
69 protection of investors;

70 (9) Any security issued by any person organized and
71 operated not for private profit but exclusively for
72 religious, educational, benevolent, charitable, fraternal,
73 social, athletic or reformatory purposes, or as a chamber
74 of commerce or trade or professional association, and no
75 part of the net earnings of which inures to the benefit
76 of any person, private stockholder or individual;

77 (10) Any commercial paper which arises out of a
78 current transaction or the proceeds of which have been
79 or are to be used for current transactions, and which
80 evidences an obligation to pay cash within twelve

81 months of the date of issuance, exclusive of days of
82 grace, or any renewal of such paper which is likewise
83 limited, or any guarantee of such paper or of any such
84 renewal;

85 (11) Any investment contract issued in connection
86 with an employees' stock purchase, savings, pension,
87 profit-sharing or similar benefit plan if the commis-
88 sioner is notified in writing thirty days before the
89 inception of the plan or, with respect to plans which are
90 in effect on the effective date of this chapter, within
91 sixty days thereafter (or within thirty days before they
92 are reopened if they are closed on the effective date of
93 this chapter); and

94 (12) Any security issued by an agricultural coopera-
95 tive association operating in this state and organized
96 under article four, chapter nineteen of this code, or by
97 a foreign cooperative association organized under the
98 laws of another state and duly qualified to transact
99 business in this state.

100 (b) The following transactions are exempt from
101 sections 301 and 403:

102 (1) Any isolated nonissuer transaction, whether
103 effected through a broker-dealer or not;

104 (2) Any nonissuer distribution of an outstanding
105 security if (A) a recognized securities manual contains
106 the names of the issuer's officers and directors, a
107 balance sheet of the issuer as of a date within eighteen
108 months, and a profit and loss statement for either the
109 fiscal year preceding that date or the most recent year
110 of operations, or (B) the security has a fixed maturity
111 or a fixed interest or dividend provision and there has
112 been no default during the current fiscal year or within
113 the three preceding fiscal years, or during the existence
114 of the issuer and any predecessors if less than three
115 years, in the payment of principal, interest or dividends
116 on the security;

117 (3) Any nonissuer transaction effected by or through
118 a registered broker-dealer pursuant to an unsolicited
119 order or offer to buy; but the commissioner may by rule

120 require that the customer acknowledge upon a specified
121 form that the sale was unsolicited, and that a signed
122 copy of each such form be preserved by the broker-
123 dealer for a specified period;

124 (4) Any transaction between the issuer or other person
125 on whose behalf the offering is made and an under-
126 writer, or among underwriters;

127 (5) Any transaction in a bond or other evidence of
128 indebtedness secured by a real or chattel mortgage or
129 deed of trust, or by an agreement for the sale of real
130 estate or chattels, if the entire mortgage, deed of trust,
131 or agreement, together with all the bonds or other
132 evidences of indebtedness secured thereby, is offered
133 and sold as a unit;

134 (6) Any transaction by an executor, administrator,
135 sheriff, marshal, constable, receiver, trustee in bank-
136 ruptcy, guardian or conservator, and any transaction
137 constituting a judicial sale;

138 (7) Any transaction executed by a bona fide pledgee
139 without any purpose of evading this chapter;

140 (8) Any offer or sale to a bank, savings institution,
141 trust company, insurance company, investment com-
142 pany as defined in the Investment Company Act of 1940,
143 pension or profit-sharing trust, or other financial
144 institution or institutional buyer, or to a broker-dealer,
145 whether the purchaser is acting for itself or in some
146 fiduciary capacity;

147 (9) Any transaction pursuant to an offer directed by
148 the offeror to not more than ten persons (other than
149 those designated in subdivision (8)) in this state during
150 any period of twelve consecutive months, whether or not
151 the offeror or any of the offerees is then present in this
152 state, if (A) the seller reasonably believes that all the
153 buyers in this state (other than those designated in
154 subdivision (8)) are purchasing for investment, and (B)
155 no commission or other remuneration is paid or given
156 directly or indirectly for soliciting any prospective
157 buyer in this state (other than those designated in
158 subdivision (8)); but the commissioner may by rule or

159 order, as to any security or transaction or any type of
160 security or transaction, withdraw or further condition
161 this exemption, or increase or decrease the number of
162 offerees permitted, or waive the conditions in clauses (A)
163 and (B) with or without the substitution of a limitation
164 on remuneration;

165 (10) Any offer or sale of a preorganization certificate
166 or subscription if (A) no commission or other remuner-
167 ation is paid or given directly or indirectly for soliciting
168 any prospective subscriber, (B) the number of subscrib-
169 ers does not exceed ten, and (C) no payment is made by
170 any subscriber;

171 (11) Any transaction pursuant to an offer to existing
172 security holders of the issuer, including persons who at
173 the time of the transaction are holders of convertible
174 securities, nontransferable warrants or transferable
175 warrants exercisable within not more than ninety days
176 of their issuance, if (A) no commission or other remun-
177 eration (other than a standby commission) is paid or
178 given directly or indirectly for soliciting any security
179 holder in this state, or (B) the issuer first files a notice
180 specifying the terms of the offer and the commissioner
181 does not by order disallow the exemption within the next
182 five full business days;

183 (12) Any offer (but not a sale) of a security for which
184 registration statements have been filed under both this
185 chapter and the Securities Act of 1933 if no stop order
186 or refusal order is in effect and no public proceeding or
187 examination looking toward such an order is pending
188 under either chapter.

189 (c) The commissioner may by order deny or revoke
190 any exemption specified in subdivision (9) or (11) of
191 subsection (a) or in subsection (b) with respect to a
192 specific security or transaction. No such order may be
193 entered without appropriate prior notice to all inter-
194 ested parties, opportunity for hearing, and written
195 findings of fact and conclusions of law, except that the
196 commissioner may by order summarily deny or revoke
197 any of the specified exemptions pending final determi-
198 nation of any proceeding under this subsection. Upon

199 the entry of a summary order, the commissioner shall
200 promptly notify all interested parties that it has been
201 entered and of the reasons therefor and that within
202 fifteen days of the receipt of a written request the
203 matter will be set down for hearing. If no hearing is
204 requested and none is ordered by the commissioner, the
205 order will remain in effect until it is modified or vacated
206 by the commissioner. If a hearing is requested or
207 ordered, the commissioner, after notice of and opportu-
208 nity for hearing to all interested persons, may modify or
209 vacate the order or extend it until final determination.
210 No order under this subsection may operate retroac-
211 tively. No person may be considered to have violated
212 section 301 or 403 by reasons of any offer or sale effected
213 after the entry of an order under this subsection if he
214 sustains the burden of proof that he did not know, and
215 in the exercise of reasonable care could not have known,
216 of the order.

217 (d) In any proceeding under this chapter, the burden
218 of proving an exemption or an exception from a
219 definition is upon the person claiming it.

CHAPTER 137

(Com. Sub. for S. B. 471—By Senators Jones and Heck)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to repeal section four, article sixteen-b, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal article sixteen-c of said chapter; to amend and reenact sections one, two, three, five, six and seven, article sixteen-b of said chapter; and to further amend said article by adding thereto eight new sections, designated sections fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two, all relating to reorganizing and combining the public port authority and the wayport authority; providing for continuation of public port authority; establishing board of directors, members thereof, officers, qualifications, terms, oath, compensa-

tion, quorum and delegation of power; authorizing executive director, appointment, powers and duties, compensation; providing definitions; establishing powers and duties of authority; reestablishing special West Virginia public port authority operations fund and combining with wayport fund; authorizing and providing for port revenue bonds generally; providing for public port revenue bond trust agreements; authorizing tolls, rents, fees, charges and revenues; providing funds to be trust funds; providing remedies; providing exemption from taxation; providing for preliminary expenses of authority; authorizing and providing for public port revenue refunding bonds generally; and repealing wayport authority statutes.

Be it enacted by the Legislature of West Virginia:

That section four, article sixteen-b, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article sixteen-c of said chapter be repealed; that sections one, two, three, five, six and seven, article sixteen-b of said chapter be amended and reenacted; that said article be further amended by adding thereto eight new sections, designated sections fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one and twenty-two, all to read as follows:

ARTICLE 16B. PUBLIC PORT AUTHORITY.

- §17-16B-1. Creation of authority.
- §17-16B-2. Board of directors — Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.
- §17-16B-3. Executive director; appointment; powers and duties; compensation.
- §17-16B-5. Definitions.
- §17-16B-6. Powers and duties of authority.
- §17-16B-7. Special West Virginia public port authority operations fund.
- §17-16B-15. Port revenue bonds — Generally.
- §17-16B-16. Public port revenue bonds — Trust agreements.
- §17-16B-17. Tolls, rents, fees, charges and revenues.
- §17-16B-18. Trust funds.
- §17-16B-19. Remedies.
- §17-16B-20. Exemption from taxes.
- §17-16B-21. Preliminary expenses.
- §17-16B-22. Public port revenue refunding bonds — Generally.

§17-16B-1. Creation of authority.

1 The West Virginia public port authority is hereby
2 continued and shall be under the supervision of the
3 secretary of the department of transportation pursuant
4 to the provisions of chapter five-f of this code.

**§17-16B-2. Board of directors — Members, officers,
qualifications, terms, oath, compensation,
quorum and delegation of power.**

1 (a) The governing and administrative powers of the
2 authority shall be vested in a board of directors
3 consisting of eleven members, including the transporta-
4 tion secretary, or his or her designee, who shall serve
5 as the chairman of the public port authority, and ten
6 individuals who shall be appointed by the governor with
7 the advice and consent of the Senate: *Provided*, That no
8 more than six members shall be members of the same
9 political party.

10 All directors of the authority shall be residents of the
11 state of West Virginia.

12 The directors shall annually elect one of their
13 members as vice chairman. The directors shall appoint
14 a person to serve as secretary and as treasurer. The
15 person appointed as treasurer shall give a bond for the
16 faithful performance of his or her duties as custodian
17 of all funds, securities and other investments of the
18 authority in an amount set by the board. The board may
19 elect such other officers from its membership or from
20 its staff as it deems proper, and prescribe their powers
21 and duties. Appointments to fill a vacancy of one of the
22 appointed members shall be made in the same manner
23 as the original appointment.

24 (b) All appointed members of the board shall be from
25 the private sector, with one member of the board from
26 each congressional district of the state as of the effective
27 date of this article, and shall represent the public
28 interest generally. At least two members shall be
29 appointed that have recognized ability and practical
30 experience in transportation. At least two members may
31 be appointed that have recognized ability and practical
32 experience in banking and finance. At least one member
33 may be appointed that has recognized ability and

34 practical experience in international trade. At least one
35 member may be appointed that has recognized ability
36 and practical experience in business management,
37 economics or accounting. Two members shall be ap-
38 pointed to represent the public at large.

39 One ex officio member of the board shall be the
40 secretary of the department of commerce, labor and
41 environmental resources or his or her designee.

42 One ex officio member of the board shall be the
43 director of the governor's office of community and
44 industrial development or his or her designee.

45 (c) Any member of the board of directors of the public
46 port authority, appointed pursuant to the provisions of
47 this section prior to amendment thereto, and any
48 member of the board of directors of the wayport
49 authority, appointed under the provisions of section two,
50 article sixteen-c of this chapter, prior to repeal of that
51 section, and confirmed by the Senate of West Virginia,
52 and serving in such capacity on the effective date of
53 amendment to this section, shall serve as a member of
54 the board of directors of the public port authority for
55 the duration of the appointed term. Thereafter, their
56 respective successors shall be appointed for terms of
57 three years. Each member shall serve until a successor
58 is appointed and qualified.

59 (d) Each director, before entering upon the duties of
60 the board, shall take and subscribe to the oath or
61 affirmation required by the West Virginia constitution.
62 A record of each such oath or affirmation shall be filed
63 in the office of the secretary of state.

64 (e) Members of the board shall not be entitled to
65 compensation for their services but shall be reimbursed
66 for all necessary expenses actually incurred in connec-
67 tion with the performance of their duties as members.

68 (f) Six members of the board shall constitute a
69 quorum and the affirmative vote of the majority of
70 members present at a meeting of the board shall be
71 necessary and sufficient for any action taken by the
72 board, except that the affirmative vote of at least six

73 members is required for the approval of any resolution
74 authorizing the issuance of any bonds pursuant to this
75 article.

76 (g) No vacancy in the membership of the board
77 impairs the right of a quorum to exercise all rights and
78 perform all duties of the board. Any action taken by the
79 board may be authorized by resolution at any regular
80 or special meeting and shall take effect upon the date
81 the chairman certifies the action of the authority by
82 affixing his or her signature to the resolution unless
83 some other date is otherwise provided in the resolution.

84 (h) The board may delegate to one or more of its
85 members or to its officials, agents or employees such
86 powers and duties as it may deem proper.

**§17-16B-3. Executive director; appointment; powers and
duties; compensation.**

1 (a) The board of directors shall appoint an executive
2 director of the authority.

3 (b) The executive director shall be paid a salary to be
4 determined by the board of directors. The executive
5 director shall be responsible for managing and admin-
6 istering the daily functions of the authority and for
7 performing any and all other functions necessary or
8 helpful for the effective functioning of the authority,
9 together with all other functions and powers as may be
10 delegated to him by the board. The executive director
11 may, with the authorization of the board of directors,
12 employ support staff as deemed necessary to carry out
13 the duties and responsibilities of the authority.

14 (c) The chairman of the board shall serve as tempor-
15 ary director of the authority until appointment of the
16 executive director pursuant to this section.

§17-16B-5. Definitions.

1 As used in this article, the following words and terms
2 shall have the following meanings, unless the context
3 shall indicate another or different meaning or intent:

4 (a) The word "authority" means the West Virginia
5 public port authority as created and continued by

6 section one of this article.

7 (b) The words "operation fund" mean the special West
8 Virginia public port authority operation fund as created
9 by section seven of this article.

10 (c) The words "port" or "public port" mean ports,
11 airports, wayports, terminals, buildings, roadways,
12 rights-of-way, rails, rail lines, facilities for rail, water,
13 highway or air transportation, and such structures,
14 equipment, facilities or improvements as are necessary
15 or incident thereto.

16 (d) The word "wayport" means an airport used
17 primarily as a location at which passengers and cargo
18 may be transferred between connecting flights of air
19 carriers engaged in air commerce; but also allows
20 passengers to initiate and terminate flights, and
21 shipments of cargo to originate and terminate at said
22 airport or similar type facility.

23 (e) The words "public port development" or "public
24 port project" mean any activities which are undertaken
25 with respect to public ports.

§17-16B-6. Powers and duties of authority.

1 (a) The authority is granted the following powers and
2 duties:

3 (1) The authority shall initiate meetings with political
4 subdivisions of the state to assess specific transportation
5 needs and shall determine the needs of the state as a
6 whole in terms of transportation, as well as consider
7 feasibility studies for the purpose of determining the
8 best site locations for transportation centers, terminals,
9 ports and harbors and foreign trade zones.

10 The authority shall give first consideration to selected
11 high priority opportunities as set forth in the document
12 entitled "Development of an Inland Port Authority", as
13 submitted to the governor's office of community and
14 industrial development on the second day of March, one
15 thousand nine hundred eighty-nine.

16 (2) On or before the first day of December, one
17 thousand nine hundred ninety-one, the authority shall

18 prepare and file a comprehensive report with the
19 governor and the Legislature setting forth the overall
20 strategic plan both short term and long term for
21 accomplishing the purposes set forth in this article.

22 (3) The public port authority shall coordinate with the
23 West Virginia parkways, economic development and
24 tourism authority or other parkways authority, estab-
25 lished pursuant to article sixteen-a, chapter seventeen of
26 this code, in the exercise of its powers and duties
27 hereunder and development of appropriate intermodal
28 transportation within the state.

29 (b) The authority has the following additional powers
30 and duties:

31 (1) The powers of a body corporate, including the
32 power to sue and be sued, to make contracts, and to
33 adopt and use a common seal and to alter the same as
34 may be deemed expedient;

35 (2) Acquire, purchase, install, lease, construct, own,
36 hold, operate, maintain, equip, use and control ports, as
37 defined herein, and such terminals, buildings, roadways,
38 rights-of-way, rails and such structures, equipment,
39 facilities or improvements as are necessary or incident
40 to carry out the provisions of this article, and in
41 connection therewith shall have the further right to
42 lease, install, construct, acquire, own, maintain, control
43 and use any and every kind or character of motive
44 powers and conveyances or appliances necessary or
45 proper to carry goods, wares and merchandise over,
46 along, upon or through the railway, highway, waterway
47 or airway or other conveyance of such transportation
48 system, excluding pipelines;

49 (3) To apply for and accept loans, grants or gifts of
50 money, property or service from any federal agency or
51 the state of West Virginia or any political subdivision
52 thereof or from any public or private sources available
53 for any and all of the purposes authorized in this article,
54 or imposed thereon by any such federal agency, the state
55 of West Virginia, or any political subdivision thereof, or
56 any public or private lender or donor, and to give such
57 evidences of indebtedness as may be required;

58 (4) To act as agent for the United States of America,
59 or any agency, department, corporation or instrumental-
60 ity thereof, in any manner coming within the purposes
61 or powers of the board;

62 (5) To initiate preservation of railroad, waterway,
63 highway and airway facilities, to promote economic
64 development and tourism of a specific nature in this
65 state;

66 (6) To meet and cooperate with similar authorities or
67 bodies of any of the several states contiguous with this
68 state, whose purpose in their respective states is to
69 establish an interstate or intermodal transportation
70 network;

71 (7) To enter into agreements, contracts or other
72 transactions with any federal, state, county, municipal
73 agency or private entity;

74 (8) To report annually to the Legislature by the first
75 day of December of each year on the status of projects,
76 operations, financial condition and other necessary
77 information relating to the statewide tourist intermodal
78 transportation system and public port authority
79 activities;

80 (9) To enter into agreements or contracts with the
81 West Virginia railroad maintenance authority for the
82 preservation, operation and use of railroad lines;

83 (10) The authority is hereby designated and empow-
84 ered to act on behalf of the state on submitting siting
85 proposals for public ports;

86 (11) The authority is empowered to take all steps
87 appropriate and necessary to effect siting, development
88 and operation of public ports within the state;

89 (12) To construct, reconstruct, improve, maintain,
90 repair and operate infrastructure projects at the
91 designated port sites as determined by the public port
92 authority;

93 (13) To receive and accept from any federal agency
94 grants for or in aid of the construction of any project,
95 and to receive and accept aid or contributions from any

96 sources of either money, property, labor or other things
97 of value, to be held, used and applied only for the
98 purposes for which such grants and contributions may
99 be made;

100 (14) The authority is authorized and empowered to
101 acquire by purchase, whenever it shall deem such
102 purchase expedient, any land, property, rights, rights-
103 of-way, franchises, easements and other interests in
104 lands as it may deem necessary or convenient for the
105 construction or operation of any project upon such terms
106 and at such price as may be considered by it to be
107 reasonable and to take title in the name of the state; and
108 for the purpose of acquiring any lands, rights or
109 easements deemed necessary or incidental for the
110 purposes of the authority, the authority has the right of
111 eminent domain to the same extent and to be exercised
112 in the same manner as now or hereafter provided by law
113 for such right of eminent domain by cities, incorporated
114 towns, and other municipal corporations;

115 (15) The authority is hereby designated and empo-
116 wered to act on behalf of the state and to represent the
117 state in the planning, financing, development, construc-
118 tion and operation of any port project or any facility
119 related to any such project, with the concurrence of the
120 affected public agency. Other state agencies and local
121 governmental entities in this state, including the West
122 Virginia housing development fund, shall cooperate to
123 the fullest extent the authority deems appropriate to
124 effectuate the duties of the authority. If requested to do
125 so by the authority, the West Virginia housing develop-
126 ment fund shall, subject to the provisions of article
127 eighteen, chapter thirty-one of the code of West Virgi-
128 nia, one thousand nine hundred thirty-one, as amended,
129 including, without limitation, the approval of its board
130 of directors, issue or use its best efforts to issue, either
131 in its own name or on behalf of the authority, such bonds
132 and notes as may be required to finance the planning,
133 development, construction and operation of any project
134 or any facility related to any project. In the event such
135 bonds or notes are issued by the West Virginia housing
136 development fund, the authority shall enter into all such

137 agreements as the West Virginia housing development
138 fund may determine are necessary to pledge revenues
139 from projects or other funds of the authority sufficient
140 to pay such bonds and notes and to pay all related fees,
141 costs and expenses;

142 (16) The authority shall initiate meetings with local
143 and area port authority districts, committees and
144 entities in the development of possible port site desig-
145 nations. The authority shall seek coordination, coopera-
146 tion and feasibility studies from local and area port
147 authority districts, committees and entities;

148 (17) The authority shall take affirmative steps to
149 coordinate freely all aspects of the submission of a siting
150 proposal for any port project, and to coordinate fully the
151 development of any project or any facility related to any
152 project with the federal government agency;

153 (18) To do any and all things necessary to carry out
154 and accomplish the purposes of this article, including
155 issuing revenue bonds or requesting other appropriate
156 state agencies to issue and administer public port
157 revenue bonds to finance projects;

158 (19) To assist and encourage the West Virginia
159 railroad maintenance authority to purchase railroad
160 tracks being abandoned by any common carrier, and to
161 financially assist the railroad maintenance authority in
162 making such purchase;

163 (20) To collect reasonable fees and charges in connec-
164 tion with making and servicing loans, notes, bonds,
165 obligations, commitments and other evidence of in-
166 debtedness, and in connection with providing technical,
167 consultive and project assistance services; and

168 (21) To do any and all things necessary to carry out
169 and accomplish the purposes of this article.

170 (c) Incidental to the development of a comprehensive
171 strategic plan for intermodal transportation, the
172 executive director and staff of the authority shall
173 analyze the shipment of products through the ports of
174 the state for the purpose of expediting such shipments,
175 and shall be authorized to collect and analyze such

176 information, which is maintained in the ordinary course
177 of business by the person, firm or corporation providing
178 such information, pertaining to the transportation of
179 products which has been moved by rail, water, highway
180 or air to and from points within and without this state:

181 (1) Any such information and data supplied to the
182 executive director of the authority shall be for exclusive
183 use of the executive director and the staff of the
184 authority. Such information is deemed confidential and
185 is not subject to disclosure under the freedom of
186 information act. Neither the executive director nor any
187 staff member of the authority shall publicly disclose this
188 information and data to any member of the board of the
189 authority, nor to any person, firm, corporation or agent.
190 It shall be unlawful for any officer or employee of this
191 state to divulge or make known in any manner any
192 information obtained pursuant to this subsection or
193 disclose information concerning the personal or business
194 affairs of any individual or the business of any single
195 firm or corporation, or disclose any particulars set forth
196 or disclosed in any report or other information provided
197 to the authority.

198 (2) Any officer or employee (or former officer or
199 employee) of this state who violates this subsection shall
200 be guilty of a misdemeanor, and, upon conviction
201 thereof, shall be fined not more than one thousand
202 dollars or imprisoned for not more than one year, or
203 both, together with costs of prosecution.

204 (3) In carrying out the functions theretofore described,
205 the authority shall be deemed to be performing an
206 essential governmental function as an instrumentality of
207 the state of West Virginia.

**§17-16B-7. Special West Virginia public port authority
operations fund.**

1 There is hereby established a special West Virginia
2 public port authority operations fund which shall
3 operate as a special revolving fund. All proceeds and
4 revenues of the authority shall be credited to the fund
5 by the state treasurer on a monthly basis. At the end
6 of each fiscal year, any unexpended funds in this

7 account shall be reappropriated and available for
8 expenditure for the subsequent fiscal year. On the
9 effective date of the amendment to this section, the West
10 Virginia wayport authority operations fund heretofore
11 created shall be transferred and combined with the
12 West Virginia public port authority operations fund.

§17-16B-15. Port revenue bonds — Generally.

1 The public port authority is hereby authorized to
2 provide by resolution at one time or from time to time,
3 for the issuance of public port revenue bonds of the state
4 for the purpose of paying all or any part of the cost of
5 one or more port projects. The principal of and the
6 interest on such bonds shall be payable solely from the
7 funds herein provided for such payment. The bonds of
8 each issue shall be dated, shall bear interest at such rate
9 or rates as may be determined by the authority in its
10 sole discretion, shall mature at such time or times not
11 exceeding forty years from their date or dates, as may
12 be determined by the authority, and may be made
13 redeemable before maturity, at the option of the public
14 port authority, at such price or prices and under such
15 terms and conditions as may be fixed by the public port
16 authority prior to the issuance of the bonds. The public
17 port authority shall determine the form of the bonds,
18 including any interest coupons to be attached thereto,
19 and shall fix the denomination or denominations of the
20 bonds and the place or places of payment of principal
21 and interest, which may be at any bank or trust
22 company within or without the state. The bonds shall be
23 executed by manual or facsimile signature by the
24 governor and by the chairman of the public port
25 authority, and the official seal of the public port
26 authority shall be affixed to or printed on each bond,
27 and attested, manually or by facsimile signature, by the
28 secretary of the public port authority, and any coupons
29 attached to any bond shall bear the manual or facsimile
30 signature of the chairman of the public port authority.
31 In case any officer whose signature or a facsimile of
32 whose signature appears on any bonds or coupons shall
33 cease to be such officer before the delivery of such
34 bonds, such signature or facsimile shall nevertheless be

35 valid and sufficient for all purposes the same as if he
36 had remained in office until such delivery; and in case
37 the seal of the public port authority has been changed
38 after a facsimile has been imprinted on such bonds, such
39 facsimile seal will continue to be sufficient for all
40 purposes. All bonds issued under the provisions of this
41 article shall have and are hereby declared to have all
42 the qualities and incidents of negotiable instruments
43 under the negotiable instruments law of the state. The
44 bonds may be issued in coupon or in registered form,
45 or both, as the public port authority may determine, and
46 provision may be made for the registration of any
47 coupon bonds as to principal alone and also as to both
48 principal and interest, and for the reconversion into
49 coupon bonds of any bonds registered as to both
50 principal and interest. The public port authority may
51 sell such bonds in such manner, either at public or at
52 private sale, and for such price as it may determine to
53 be in the best interests of the state.

54 The proceeds of the bonds of each issue shall be used
55 solely for the payment of the cost of the public port
56 authority project or projects for which such bonds shall
57 have been issued, and shall be disbursed in such manner
58 and under such restrictions, if any, as the public port
59 authority may provide in the resolution authorizing the
60 issuance of such bonds or in the trust agreement
61 hereinafter mentioned securing the same. If the pro-
62 ceeds of the bonds of any issue, by error of estimates or
63 otherwise, shall be less than such cost, additional public
64 port bonds may in like manner be used to provide the
65 amount of such deficit, and unless otherwise provided
66 in the resolution authorizing the issuance of such bonds
67 or in the trust agreement securing the same, shall be
68 deemed to be of the same issue and shall be entitled to
69 payment from the same fund without preference or
70 priority of the bonds first issued. If the proceeds of the
71 bonds of any issue shall exceed the cost of the project
72 or projects for which the same shall have been issued,
73 the surplus shall be deposited to the credit of the sinking
74 fund for such bonds.

75 Prior to the preparation of definitive bonds, the public

76 port authority may, under like restrictions, issue interim
77 receipts or temporary bonds, with or without coupons,
78 exchangeable for definitive bonds when such bonds shall
79 have been executed and are available for delivery. The
80 public port authority may also provide for the replace-
81 ment of any bonds which shall become mutilated or shall
82 be destroyed or lost. Bonds may be issued under the
83 provisions of this article without obtaining the consent
84 of any department, division, commission, board, bureau
85 or agency of the state, and without any other proceed-
86 ings or the happening of any other conditions or things
87 than those proceedings, conditions or things which are
88 specifically required by this article.

**§17-16B-16. Public port revenue bonds — Trust agree-
ments.**

1 In the discretion of the public port authority any
2 public port bonds issued under the provisions of this
3 article may be secured by a trust agreement by and
4 between the public port authority and a corporate
5 trustee, which may be any trust company or bank
6 having the powers of a trust company within or without
7 the state. Any such trust agreement may pledge or
8 assign the tolls, rents, fees, charges and other revenues
9 to be received, but shall not convey or mortgage any
10 project or any part thereof. Any such trust agreement
11 or any resolution providing for the issuance of such
12 bonds may contain such provisions for protecting and
13 enforcing the rights and remedies of the bondholders as
14 may be reasonable and proper and not in violation of
15 law, including covenants setting forth the duties of the
16 public port authority in relation to the acquisition of
17 property and the construction, reconstruction, improve-
18 ment, maintenance, repair, operation and insurance of
19 the project or projects in connection with which such
20 bonds shall have been authorized, and the custody,
21 safeguarding and application of all moneys, and
22 provisions for the employment of consulting engineers
23 in connection with the construction or operation of such
24 project or projects. It shall be lawful for any bank or
25 trust company incorporated under the laws of the state
26 which may act as depository of the proceeds of bonds

27 or of revenues to furnish such indemnifying bonds or to
28 pledge such securities as may be required by the public
29 port authority. Any such trust agreement may set forth
30 the rights and remedies of the bondholders and of the
31 trustee, and may restrict the individual right of action
32 by bondholders as is customary in trust agreements
33 securing bonds and debentures of corporations. In
34 addition to the foregoing, any such trust agreement may
35 contain such other provisions as the public port author-
36 ity may deem reasonable and proper for the security of
37 the bondholders. All expenses incurred in carrying out
38 the provisions of any such trust agreement may be
39 treated as a part of the cost of the operation of the
40 project or projects to which the trust agreement applies.

§17-16B-17. Tolls, rents, fees, charges and revenues.

1 (a) The public port authority is hereby authorized to
2 fix, revise, charge and collect tolls for the use of each
3 public port project and the different parts or sections
4 thereof, and to fix, revise, charge and collect rents, fees,
5 charges and other revenues, of whatever kind or
6 character, for the use of each port, public port, economic
7 development project or tourism project, or any part or
8 section thereof, and to contract with any person,
9 partnership, association or corporation desiring the use
10 of any part thereof, including the right-of-way adjoining
11 the paved portion, for placing thereon telephone,
12 telegraph, electric light, power or other utility lines, gas
13 stations, garages, stores, hotels, restaurants and adver-
14 tising signs, or for any other purpose, and to fix the
15 terms, conditions, rents and rates of charges for such
16 use. Such tolls, rents, fees and charges shall be so fixed
17 and adjusted in respect of the aggregate of tolls, or in
18 respect of the aggregate rents, fees and charges, from
19 the project or projects in connection with which the
20 bonds of any issue shall have been issued as to provide
21 a fund sufficient with other revenues, if any, to pay: (A)
22 The cost of maintaining, repairing and operating such
23 project or projects; and (B) the principal of and the
24 interest on such bonds as the same shall become due and
25 payable, and to create reserves for such purposes. Such
26 tolls, rents, fees and other charges shall not be subject

27 to supervision or regulation by any other commission,
28 board, bureau, department or agency of the state. The
29 tolls, rents, fees, charges and all other revenues derived
30 from the project or projects in connection with which the
31 bonds of any issue shall have been issued, except such
32 part thereof as may be necessary to pay such cost of
33 maintenance, repair and operation and to provide such
34 reserves therefor as may be provided for in the
35 resolution authorizing the issuance of such bonds or in
36 the trust agreement securing the same shall be set aside
37 at such regular intervals as may be provided in such
38 resolution or such trust agreement in a sinking fund
39 which is hereby pledged to, and charged with, the
40 payment of: (1) The interest upon such bonds as such
41 interest shall fall due; (2) the principal of such bonds as
42 the same shall fall due; (3) the necessary charges of
43 paying agents for paying principal and interest; and (4)
44 the redemption price or the purchase price of bonds
45 retired by call or purchase as therein provided. The use
46 and disposition of moneys to the credit of such sinking
47 fund shall be subject to the provisions of the resolution
48 authorizing the issuance of such public port bonds or of
49 such trust agreement. Except as may otherwise be
50 provided in such resolution or such trust agreement,
51 such sinking fund shall be a fund for all such bonds
52 without distinction or priority of one over another. The
53 moneys in the sinking fund, less such reserve as may be
54 provided in such resolution or trust agreement, if not
55 used within a reasonable time for the purchase of bonds
56 for cancellation as above provided, shall be applied to
57 the redemption of bonds at the redemption price then
58 applicable.

§17-16B-18. Trust funds.

1 All moneys received pursuant to the authority of this
2 article, whether as proceeds from the sale of bonds or
3 as revenues, shall be deemed to be trust funds, to be held
4 and applied solely as provided in this article. The
5 resolution authorizing the issuance of bonds of any issue
6 of the trust agreement securing such bonds shall provide
7 that any officer to whom, or any bank or trust company
8 to which, such moneys shall be paid shall act as trustee

9 of such moneys and shall hold and apply the same for
10 the purposes hereof, subject to such regulations as this
11 article and such resolution or trust agreement may
12 provide.

§17-16B-19. Remedies.

1 Any holder of bonds issued under the provisions of this
2 article or any of the coupons appertaining thereto, and
3 the trustee under any trust agreement, except to the
4 extent the rights herein given may be restricted by such
5 trust agreement, may either at law or in equity, by suit,
6 action, mandamus or other proceeding, protect and
7 enforce any and all rights under the laws of the state
8 or granted hereunder or under such trust agreement or
9 the resolution authorizing the issuance of such bonds,
10 and may enforce and compel the performance of all
11 duties required by this article or by such trust agree-
12 ment or resolution to be performed by the public port
13 authority or by any officer thereof, including the fixing,
14 charging and collecting of tolls, rents, fees and charges.

§17-16B-20. Exemption from taxes.

1 (a) The exercise of the powers granted by this article
2 will be in all respects for the benefit of the people of
3 the state, for the increase of their commerce and
4 prosperity, and for the improvement of their health and
5 living conditions, and as the operation and maintenance
6 of projects by the public port authority will constitute
7 the performance of essential governmental functions,
8 the public port authority shall not be required to pay
9 any taxes or assessments upon any project or any
10 property acquired or used by the public port authority
11 under the provisions of this article or upon the income
12 therefrom, and the bonds issued under the provisions of
13 this article, their transfer and the income therefrom
14 (including any profit made on the sale thereof) shall at
15 all times be free from taxation within the state.

16 (b) In lieu of payment by the public port authority of
17 county property taxes and other assessments on facilities
18 owned by it, or upon any facility which is leased to any
19 private person, corporation, or entity, the public port
20 authority shall make an annual payment as provided

21 herein to the county commission of such county. Any
22 public port authority project which is leased and is
23 exempt from taxation shall be subject to a payment in
24 lieu of taxes. Said payment shall be made to the county
25 commission of the county in which the project is located
26 and shall be in an amount equal to the property taxes
27 otherwise payable. The county commission receiving
28 such in lieu of payment shall distribute such payment
29 to the different levying bodies in that county in the same
30 manner as are property taxes. Nothing contained herein
31 may be construed to prohibit the public port authority
32 from collecting such in lieu of payment from any private
33 party by contract or otherwise.

§17-16B-21. Preliminary expenses.

1 The secretary of transportation is hereby authorized,
2 in his or her discretion, to expend out of any funds
3 available for the purpose, such moneys as may be
4 necessary for the study of any public port economic
5 development or tourism project or projects and to use
6 the division of highway's engineering and other forces,
7 including consulting engineers and traffic engineers, for
8 the purpose of effecting such study and to pay for such
9 additional engineering and traffic and other expert
10 studies as he may deem expedient; and all such expenses
11 incurred by the state department of transportation and
12 the state division of highways prior to the issuance of
13 public port revenue bonds or revenue refunding bonds
14 under the provisions of this article shall be paid by the
15 state division of highways or the state department of
16 transportation and charged to the appropriate project or
17 projects, and the state division of highways and the state
18 department of transportation shall keep proper records
19 and accounts showing each amount so charged. Upon
20 the sale of public port revenue bonds or revenue
21 refunding bonds for any public port project or projects,
22 the funds so expended by the state division of highways
23 or the state department of transportation in connection
24 with such project or projects shall be reimbursed to the
25 state division of highways and the state department of
26 transportation from the proceeds of such bonds.

**§17-16B-22. Public port revenue refunding bonds —
Generally.**

1 The public port authority is hereby authorized to
2 provide by resolution for the issuance of public port
3 revenue refunding bonds of the state for the purpose of
4 refunding any bonds then outstanding which shall have
5 been issued under the provisions of this article, includ-
6 ing the payment of any redemption premium thereon
7 and any interest accrued or to accrue to the date of
8 redemption of such bonds; and if deemed advisable by
9 the public port authority, for the additional purpose of
10 constructing improvements, extensions or enlargements
11 of the project or projects in connection with which the
12 bonds to be refunded shall have been issued.

13 The public port authority is further authorized to
14 provide by resolution for the issuance of public port
15 refunding revenue bonds of the state for the combined
16 purpose of two or more of the following: (a) Refunding
17 any public port bonds then outstanding which shall have
18 been issued under the provisions of this article, includ-
19 ing the payment of any redemption premium thereon
20 and any interest accrued or to accrue to the date of
21 redemption of such bonds; and (b) paying all or any part
22 of the cost of any additional public port project or
23 projects.

24 The issuance of such bonds, the maturities and other
25 details thereof, the rights of the holders thereof, and the
26 rights, duties and obligations of the public port author-
27 ity in respect of the same, shall be governed by the
28 provisions of this article insofar as the same may be
29 applicable.

CHAPTER 138

(S. B. 383—By Senator Lucht)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article five, chapter sixteen of said code by adding thereto a new section, designated section twelve-

b; and to amend article two, chapter eighteen of said code by adding thereto a new section, designated section five-c, all relating to missing children, and requiring that certain records be kept and information exchanged between the board of education, the state registrar of vital statistics and the division of public safety.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 15. Public Safety.
- 16. Public Health.
- 18. Education.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

*§15-2-12. Mission of the division; powers of superintendent, officers and members; patrol of turnpike.

1 (a) The West Virginia division of public safety shall
2 have the mission of statewide enforcement of criminal
3 and traffic laws with emphasis on providing basic
4 enforcement and citizen protection from criminal
5 depredation throughout the state and maintaining the
6 safety of the state's public streets, roads and highways.

7 (b) The superintendent and each of the officers and
8 members of the division are hereby empowered:

9 (1) To make arrests anywhere within the state of any
10 persons charged with the violation of any law of this
11 state, or of the United States, and when a witness to the
12 perpetration of any offense or crime, or to the violation
13 of any law of this state, or of the United States, may
14 arrest without warrant; to arrest and detain any persons

* Clerk's Note: This section was also amended by H. B. 2602 (Chapter 118), which passed subsequent to this act.

15 suspected of the commission of any felony or misdemea-
16 nor whenever complaint is made and warrant is issued
17 thereon for such arrest, and any person so arrested shall
18 be forthwith brought before the proper tribunal for
19 examination and trial in the county where the offense
20 for which any such arrest has been made was
21 committed;

22 (2) To serve criminal process issued by any court or
23 magistrate anywhere within this state (they shall not
24 serve civil process); and

25 (3) To cooperate with local authorities in detecting
26 crime and in apprehending any person or persons
27 engaged in or suspected of the commission of any crime,
28 misdemeanor or offense against the law of this state, or
29 of the United States, or of any ordinance of any
30 municipality in this state; and to take affidavits in
31 connection with any application to the division of
32 highways, division of motor vehicles and division of
33 public safety of West Virginia for any license, permit
34 or certificate that may be lawfully issued by these
35 divisions of state government.

36 (c) Members of the division of public safety are hereby
37 created forest patrolmen and game and fish wardens
38 throughout the state to do and perform any duties and
39 exercise any powers of such officers, and may appre-
40 hend and bring before any court or magistrate having
41 jurisdiction of such matters, anyone violating any of the
42 provisions of chapters twenty, sixty and sixty-one of this
43 code, and the division of public safety shall at any time
44 be subject to the call of the West Virginia alcohol
45 beverage control commissioner to aid in apprehending
46 any person violating any of the provisions of chapter
47 sixty of this code. They shall serve and execute warrants
48 for the arrest of any person and warrants for the search
49 of any premises issued by any properly constituted
50 authority, and shall exercise all of the powers conferred
51 by law upon a sheriff. They shall not serve any civil
52 process or exercise any of the powers of such officer in
53 civil matters.

54 (d) Any member of the division of public safety
55 knowing or having reason to believe that anyone has

56 violated the law may make complaint in writing before
57 any court or officer having jurisdiction and procure a
58 warrant for such offender, execute the same and bring
59 such person before the proper tribunal having jurisdic-
60 tion. He shall make return on all such warrants to such
61 tribunals and his official title shall be "member of the
62 division of public safety". Members of the division of
63 public safety may execute any summons or process
64 issued by any tribunal having jurisdiction requiring the
65 attendance of any person as a witness before such
66 tribunal and make return thereon as provided by law,
67 and any return by a member of the division of public
68 safety showing the manner of executing such warrant
69 or process shall have the same force and effect as if
70 made by a sheriff.

71 (e) Each member of the division of public safety, when
72 called by the sheriff of any county, or when the governor
73 by proclamation so directs, shall have full power and
74 authority within such county, or within the territory
75 defined by the governor, to direct and command
76 absolutely the assistance of any sheriff, deputy sheriff,
77 chief of police, policeman, game and fish warden, and
78 peace officer of the state, or of any county or munici-
79 pality therein, or of any able-bodied citizen of the United
80 States, to assist and aid in accomplishing the purposes
81 expressed in this article. When so called, any officer or
82 person shall, during the time his assistance is required,
83 be for all purposes a member of the division of public
84 safety and subject to all the provisions of this article.

85 (f) The superintendent may also assign members of
86 the division to perform police duties on any turnpike or
87 toll road, or any section thereof, operated by the West
88 Virginia parkways, economic development and tourism
89 authority: *Provided*, That such authority shall reim-
90 burse the division of public safety for salaries paid to
91 such members, and shall either pay directly or reim-
92 burse the division for all other expenses of such group
93 of members in accordance with actual or estimated costs
94 determined by the superintendent.

95 (g) The division of public safety may develop proposals
96 for a comprehensive county or multi-county plan on the

97 implementation of an enhanced emergency service
98 telephone system and for causing a public meeting on
99 such proposals, all as set forth in section six-a, article
100 six, chapter twenty-four of this code.

101 (h) The superintendent may also assign members of
102 the division to administer tests for the issuance of
103 commercial drivers' licenses, operator and junior
104 operator licenses as provided for in section seven, article
105 two, chapter seventeen-b of this code: *Provided*, That the
106 division of motor vehicles shall reimburse the division
107 of public safety for salaries and employee benefits paid
108 to such members, and shall either pay directly or
109 reimburse the division for all other expenses of such
110 group of members in accordance with actual costs
111 determined by the superintendent.

112 (i) The superintendent shall be reimbursed by the
113 division of motor vehicles for salaries and employee
114 benefits paid to members of the division of public safety,
115 and shall either be paid directly or reimbursed by the
116 division of motor vehicles for all other expenses of such
117 group of members in accordance with actual costs
118 determined by the superintendent, for services per-
119 formed by such members relating to the duties and
120 obligations of the division of motor vehicles set forth in
121 chapters seventeen, seventeen-a, seventeen-b, seventeen-
122 c and seventeen-d of this code.

123 (j) By the first day of July, one thousand nine hundred
124 ninety-three, the superintendent shall establish a
125 network to implement reports of the disappearance of
126 children by local law-enforcement agencies to local
127 school division superintendents and the state registrar
128 of vital statistics. The network shall be designed to
129 establish cooperative arrangements between local law-
130 enforcement agencies and local school divisions concern-
131 ing reports of missing children and notices to law-
132 enforcement agencies of requests for copies of the
133 cumulative records and birth certificates of missing
134 children. The network shall also establish a mechanism
135 for reporting the identities of all missing children to the
136 state registrar of vital statistics.

CHAPTER 16. PUBLIC HEALTH.**ARTICLE 5. VITAL STATISTICS.****§16-5-12b. Notation on birth records of missing children.**

1 Upon receiving a report of the disappearance of any
2 child born in this state, the state registrar shall indicate
3 in a clear and conspicuous manner in the child's birth
4 record that the child has been reported as missing,
5 including the title and location of the law-enforcement
6 agency providing the report. Upon receiving a request
7 for any birth records containing a report of the
8 disappearance of any child, the state registrar shall
9 immediately notify the local law-enforcement agency
10 which provided the missing child report. The state
11 registrar shall transmit any relevant information
12 concerning the applicant's identity, address and other
13 pertinent data immediately to the relevant local law-
14 enforcement agency. The state registrar shall retain the
15 original written request until notified of the missing
16 child's recovery or the child attains the age of eighteen.
17 Upon notification that any missing child has been
18 recovered, the state registrar shall remove the report of
19 the disappearance from the child's birth record. The
20 provisions of this section shall be implemented by the
21 first day of July, one thousand nine hundred ninety-
22 three.

CHAPTER 18. EDUCATION.**ARTICLE 2. STATE BOARD OF EDUCATION.****§18-2-5c. Birth certificate required upon admission to public school; required notice to local law-enforcement agency of missing children.**

1 (a) No pupil shall be admitted for the first time to any
2 public school in this state unless the person enrolling the
3 pupil furnishes a certified copy of the pupil's birth
4 record confirming the pupil's identity and age. If a
5 certified copy of the pupil's birth record cannot be
6 obtained, the person so enrolling the pupil shall submit
7 an affidavit explaining the inability to produce a
8 certified copy of the birth record: *Provided*, That if any
9 person submitting such affidavit is in U.S. military

That sections one and two, article twenty-seven, 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 27. STORAGE AND DISPOSAL OF RADIOACTIVE WASTE MATERIALS.

§16-27-1. Definitions.

§16-27-2. Storage or disposal of radioactive waste material within the state prohibited; exceptions.

§16-27-1. Definitions.

1 As used in this article:

2 (1) "Byproduct material" means (i) any radioactive
3 material (except special nuclear material) yielded in or
4 made radioactive by exposure to the radiation incident
5 to the process of producing or utilizing special nuclear
6 material, and (ii) the tailings or wastes produced by the
7 extraction or concentration of uranium or thorium from
8 any ore processed primarily for its source material
9 content;

10 (2) "Dispose" or "disposal" means the discharge,
11 deposit, injection, dumping, spilling, leaking or placing
12 of a substance into or on any land, water or air;

13 (3) "Low-level waste" means radioactive waste that:

14 (A) Is neither high-level waste or transuranic, nor
15 spent nuclear fuel, nor by-product material as defined
16 in section 11 (e)(2) of the Atomic Energy Act of 1954,
17 as amended; and

18 (B) Is any radioactive material that the United States
19 nuclear regulatory commission classified as low-level
20 radioactive waste on or after the first day of January,
21 one thousand nine hundred eighty-nine: *Provided*, That
22 any material classified as low-level radioactive waste on
23 or after the first day of January, one thousand nine
24 hundred eighty-nine, shall be considered low-level
25 radioactive waste without regard to a nuclear regula-
26 tory commission determination that such material is
27 below regulatory concern; and

28 (C) Is any radioactive material produced after the

29 first day of January, one thousand nine hundred eighty-
30 nine, which would have been classified as a low-level
31 radioactive waste, utilizing the standards in effect on
32 that date, without regard to a determination by an
33 agency of the United States government that such
34 material is below regulatory concern;

35 (4) "Radioactive waste material" means any discarded
36 radioactive material in the form of, or resulting from
37 the use of, any byproduct material, source material or
38 special nuclear material and includes low-level waste;

39 (5) "Source material" means (i) uranium or thorium,
40 or any combination thereof, in any physical or chemical
41 form; or (ii) ores which contain by weight one twentieth
42 of one percent (0.05%) or more of (a) uranium, (b)
43 thorium or (c) any combination thereof. Source material
44 does not include special nuclear material;

45 (6) "Special nuclear material" means (i) plutonium,
46 uranium 233, uranium enriched in the isotope 233 or in
47 the isotope 235; or (ii) any material artificially enriched
48 by any of the foregoing but does not include source
49 material;

50 (7) "Store" or "storage" means the containment of a
51 substance, either on a temporary basis or for a period
52 of years, in such a manner as not to constitute disposal
53 or transportation; and

54 (8) "Transport" or "transportation" means any move-
55 ment of a substance and any loading, unloading or
56 storage incidental thereto.

57 The governor shall have the authority to add, by
58 executive order, to the listing of materials constituting
59 "source material" or "special nuclear material" by
60 including such additional like materials as may be
61 determined by the federal Nuclear Regulatory Commis-
62 sion to constitute "source material" or "special nuclear
63 material."

**§16-27-2. Storage or disposal of radioactive waste mate-
rial within the state prohibited; exceptions.**

1 (a) No person shall store or dispose of any radioactive

- 2 waste material within the state: *Provided*, That the
3 provisions of this section shall not be deemed to prohibit
4 (1) the storage or disposal of such material produced
5 within the state as a result of medical, educational,
6 research or industrial activities and so stored or
7 disposed of in compliance with all applicable state and
8 federal laws, or (2) the transportation of such material
9 out of or through the state when done in compliance
10 with all applicable state and federal laws: *Provided*,
11 *however*, That such waste from industrial activities shall
12 not include, for the purpose of this article, such material
13 produced from the operation of any nuclear power
14 generation facility, nuclear processing facility, or
15 nuclear reprocessing facility.
- 16 (b) The disposal of radioactive waste material in a
17 solid waste facility or in a commercial solid waste
18 facility, as defined in section four, article five-f, chapter
19 twenty of this code, is prohibited.

CHAPTER 141

(Com. Sub. for S. B. 454—By Senators Wiedebusch, Macnaughtan,
Brackenrich and Burdette, Mr. President)

[Passed March 8, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, 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 sixteen-a, relating to acquisition from the West Virginia railroad maintenance authority of a portion of the CSX railway system for the purpose of developing the "North Bend Rail Trail"; and authorizing the commissioner of the division of tourism and parks to develop, construct, operate and maintain bicycle and hiking trails, horseback trails, camping facilities and other compatible recreational and tourism facilities along the trail.

Be it enacted by the Legislature of West Virginia:

That article one, 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 sixteen-a, to read as follows:

ARTICLE 1. DIVISION OF TOURISM AND PARKS.

§5B-1-16a. Acquisition of former railway system for establishment of North Bend Rail Trail.

1 The commissioner may acquire from the West Virgi-
2 nia railroad maintenance authority approximately sixty
3 and fifty-seven one-hundredths miles of right-of-way of
4 the CSX railway system between Walker in Wood
5 County and Wilsonburg in Harrison County and related
6 property to be developed as the "North Bend Rail Trail":
7 *Provided*, That no state moneys may be used to purchase
8 the right-of-way or the related property. This acquired
9 property shall be operated under the authority of the
10 division of tourism and parks and used as an improve-
11 ment to North Bend State Park for:

12 (a) The construction and maintenance of barriers for
13 the protection of the trail from motorized vehicular
14 traffic and for the protection of adjacent public and
15 private property; and

16 (b) The development, construction, operation and
17 maintenance of bicycle and hiking trails, horseback
18 trails, camping facilities and other compatible recrea-
19 tional and tourism facilities to be so designated by the
20 commissioner.

CHAPTER 142

(S. B. 369—By Senators Burdette, Mr. President, and Boley)
[By Request of the Executive]

[Passed March 5, 1991: in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section four, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the membership of the railroad maintenance authority.

Be it enacted by the Legislature of West Virginia:

That section 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 RAILROAD MAINTENANCE AUTHORITY.

§29-18-4. West Virginia railroad maintenance authority created; organization of authority; appointment of members; term of office, compensation and expenses; director of authority.

1 There is hereby created the West Virginia railroad
2 maintenance authority. The authority is a governmental
3 instrumentality of the state and a body corporate. The
4 exercise by the authority of the powers conferred by this
5 article and the carrying out of its purposes and duties
6 shall be deemed and held to be, and are hereby
7 determined to be, essential governmental functions and
8 for a public purpose.

9 The authority shall consist of seven members. The
10 secretary of the department of transportation shall be
11 a member ex officio. The other six members shall be
12 appointed by the governor, by and with the advice and
13 consent of the Senate, for a term of six years. Of the
14 members of the authority first appointed, two shall be
15 appointed for a term ending on the thirtieth day of June,
16 one thousand nine hundred seventy-seven, two shall be
17 appointed for a term ending two years thereafter and
18 two shall be appointed for a term ending four years
19 thereafter. A person appointed to fill a vacancy occur-
20 ring prior to the expiration of the term for which his
21 predecessor was appointed shall be appointed only for
22 the remainder of such term. Each authority member
23 shall serve until the appointment and qualification of his
24 successor. No more than three of the appointed authority
25 members shall at any one time belong to the same
26 political party. Appointed authority members may be
27 reappointed to serve additional terms.

28 All members of the authority shall be citizens of the
29 state. Each appointed member of the board, before
30 entering upon his duties, shall comply with the require-

31 ments of article one, chapter six of this code and give
32 bond in the sum of twenty-five thousand dollars in the
33 manner provided in article two, chapter six of this code.
34 The governor may remove any authority member for
35 cause as provided in article six, chapter six of this code.

36 Annually the authority shall elect one of its members
37 as chairman and another as vice chairman, and shall
38 appoint a secretary-treasurer, who need not be a
39 member of the authority. Four members of the authority
40 shall constitute a quorum and the affirmative vote of
41 four members shall be necessary for any action taken
42 by vote of the authority. No vacancy in the membership
43 of the authority shall impair the rights of a quorum by
44 such vote to exercise all the rights and perform all the
45 duties of the authority. The person appointed as
46 secretary-treasurer, including an authority member if
47 he is so appointed, shall give bond in the sum of fifty
48 thousand dollars in the manner provided in article two,
49 chapter six of this code.

50 The secretary of the department of transportation
51 shall not receive any compensation for serving as an
52 authority member. Each of the six appointed members
53 of the authority shall receive fifty dollars for each day
54 or substantial part thereof actually spent in attending
55 meetings of the board or in discharging or carrying out
56 his duties and work as a member of the board. Each of
57 the six appointed members shall be reimbursed for all
58 reasonable and necessary expenses actually incurred in
59 the performance of his duties as a member of such
60 authority. All such compensation and expenses incurred
61 shall be payable solely from funds of the authority or
62 from funds appropriated for such purpose by the
63 Legislature and no liability or obligation shall be
64 incurred by the authority beyond the extent to which
65 moneys are available from funds of the authority or
66 from such appropriations.

67 There shall also be a director of the authority
68 appointed by the authority.

CHAPTER 143

(Com. Sub. for S. B. 33—By Senators Pritt, M. Manchin, Blatnik and J. Manchin)

[Passed March 4, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to real estate brokers and real estate salespersons; setting forth when actions for fees, commissions or other compensation may be brought; providing for the suspension of a salesperson's license upon revocation of the employing broker's license; setting forth specifications of listing agreements; requiring broker or salesperson to disclose whom he or she represents; permitting party not represented by the broker or salesperson to terminate relationship upon such disclosure; specifying when delivery of offer and acceptance thereof shall be made; and requiring all terms and conditions of a transaction to be included in the offer to purchase

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.

§47-12-17. **Actions for commissions; revocation of broker's license as suspending salesperson's licenses; listing agreements; broker or salesperson to disclose agency status; purchase agreements.**

1 No person, partnership, association or corporation
 2 shall bring or maintain an action in any court of this
 3 state for the recovery of a commission, a fee, or
 4 compensation for any act done or service rendered, the
 5 doing or rendering of which is prohibited under the
 6 provisions of this article to other than licensed real

7 estate brokers, unless such person was duly licensed
8 hereunder as a real estate broker at the time of the
9 doing of such act or the rendering of such service.

10 (a) No real estate salesperson shall have the right to
11 institute suit in his or her own name for the recovery
12 of a fee, commission, or compensation for the services
13 as a real estate salesperson, but any such action shall
14 be instituted and brought by the broker employing such
15 salesperson: *Provided*, That a real estate salesperson
16 shall have the right to institute suit in his or her own
17 name for the recovery of a fee, commission or compen-
18 sation for services as a real estate salesperson due him
19 or her from the broker by whom he or she is employed.

20 (b) The revocation of a broker's license shall automat-
21 ically suspend every real estate salesperson's license
22 granted to any person by virtue of his or her employ-
23 ment by the broker whose license has been revoked,
24 pending a change of employer and the issuance of a new
25 license. Such new license shall be issued without charge
26 if granted during the same year in which the original
27 license was granted.

28 (c) A broker or salesperson who obtains a listing shall,
29 at the time of securing such listing, give the person or
30 persons signing such listing a true, legible copy thereof.
31 Every listing agreement, exclusive or nonexclusive,
32 shall have set forth in its terms a definite expiration
33 date; it shall contain no provision requiring the party
34 signing such listing to notify the broker of his or her
35 intention to cancel such listing after such definite
36 expiration date; however, an exclusive listing agreement
37 may provide that upon the expiration of the exclusive
38 feature the listing shall continue to a definite expiration
39 date as a nonexclusive listing only.

40 (d) A broker or salesperson shall promptly, or at least
41 prior to any purchaser signing a written offer to
42 purchase, disclose in writing to all parties to a real
43 estate transaction, on a form promulgated by the
44 commission, whether the broker or salesperson repres-
45 ents the seller, the buyer, or both: *Provided*, That after
46 such disclosure, but prior to any purchaser signing a

47 written offer to purchase, the party not represented by
48 the broker or salesperson may terminate, without
49 incurring any liability, his or her relationship with such
50 broker or salesperson.

51 (e) A broker or salesperson shall promptly tender to
52 the seller every written offer to purchase obtained on the
53 property involved and, upon obtaining a proper accep-
54 tance of the offer to purchase, shall promptly deliver
55 true executed copies of same, signed by the seller and
56 purchaser, to both purchaser and seller; all brokers and
57 salespersons shall make certain that all of the terms and
58 conditions of the real estate transaction are included in
59 such offer to purchase.

CHAPTER 144

(S. B. 32—By Senators Pritt, J. Manchin and M. Manchin)

[Passed March 9, 1991: in effect from passage. Approved by the Governor.]

AN ACT to repeal sections ten, eleven, twelve, twenty, twenty-one and thirty-two, article fourteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two, three, four, six, thirteen, twenty-eight, thirty, thirty-one, forty and forty-four of said article, relating to application, licensure and certification for real estate appraisers; eliminating waiver of certain requirements for licensure; definitions; extending date for compliance with licensure and certification requirements if extended by applicable federal law; exemption for appraisals of personal property and government officers or employees; authorizing emergency rules; classification of licensure and certification; qualifications for licensure and certification; permitting transitional license if either experience or education requirement is not met in certain cases; requiring examination; increasing certain fees; and licensure, certification, or registration for temporary practice for nonresidents.

Be it enacted by the Legislature of West Virginia:

That sections ten, eleven, twelve, twenty, twenty-one and thirty-two, article fourteen, chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections two, three, four, six, thirteen, twenty-eight, thirty, thirty-one, forty and forty-four of said article be amended and reenacted, all to read as follows:

ARTICLE 14. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

- §37-14-2. Definitions.
- §37-14-3. Real estate appraiser license required.
- §37-14-4. Exceptions to license or certification requirement.
- §37-14-6. General powers and duties.
- §37-14-13. Term of license or certification.
- §37-14-28. Classification of licensure and certification.
- §37-14-30. Qualifications.
- §37-14-31. Examination required.
- §37-14-40. Licensure and certification fees.
- §37-14-44. Licensure and certification of nonresidents.

§37-14-2. Definitions.

1 As used in this article, the following terms shall have
2 the following meanings:

3 (a) "Appraisal" means an analysis, opinion or conclu-
4 sion prepared by a real estate appraiser relating to the
5 nature, quality, value or utility of specified interests in,
6 or aspects of, identified real estate or identified real
7 property. An appraisal may be classified by the nature
8 of the assignment as a valuation appraisal, an analysis
9 assignment, or a review assignment. The term "valua-
10 tion appraisal" refers to an analysis, opinion or conclu-
11 sion prepared by a real estate appraiser that estimates
12 the value of an identified parcel of real estate or
13 identified real property at a particular point in time. An
14 "analysis assignment" refers to an analysis, opinion or
15 conclusion prepared by a real estate appraiser that
16 relates to the nature, quality or utility of identified real
17 estate or identified real property. A "review assign-
18 ment" refers to an analysis, opinion or conclusion
19 prepared by a real estate appraiser that forms an
20 opinion as to the adequacy and appropriateness of a
21 valuation appraisal or an analysis assignment;

22 (b) "Appraisal foundation" means the appraisal
23 foundation established on the thirtieth day of November,
24 one thousand nine hundred eighty-seven, as a not-for-
25 profit corporation under the laws of Illinois;

26 (c) "Appraisal report" means any communication,
27 written or oral, of an appraisal. An appraisal report
28 may be classified by the nature of the assignment as a
29 "valuation report", "analysis report" or "review report".
30 For the purposes of this article, the testimony of an
31 appraiser dealing with the appraiser's analyses, conclu-
32 sions or opinions concerning identified real estate or
33 identified real property is deemed to be an oral
34 appraisal report;

35 (d) "Board" means the real estate appraiser licensing
36 and certification board established pursuant to the
37 provisions of this article;

38 (e) "Certified appraisal report" means a written
39 appraisal report that is certified as such by a state
40 licensed or certified real estate appraiser. When a real
41 estate appraiser identifies an appraisal report as
42 "certified", such real estate appraiser must indicate
43 which type of licensure or certification he or she holds.
44 The certification of an appraisal report by a state
45 licensed residential real estate appraiser or a state
46 certified general real estate appraiser represents to the
47 public that it meets the appraisal standards established
48 pursuant to this article;

49 (f) "Licensed real estate appraiser" means a person
50 who holds a current, valid license as a state licensed
51 residential real estate appraiser issued to him or her
52 under the provisions of this article;

53 (g) "Real estate" means an identified parcel or tract
54 of land, including improvements, if any;

55 (h) "Real estate appraisal activity" means the act or
56 process of making an appraisal of real estate or real
57 property and preparing an appraisal report;

58 (i) "Real estate appraiser" means a person who
59 engages in real estate appraisal activity for a fee or
60 other valuable consideration;

61 (j) "Real property interests" means one or more
62 defined interests, benefits or rights inherent in the
63 ownership of real estate; and

64 (k) "Certified real estate appraiser" means a person
65 who holds a current, valid certification as a state
66 certified general real estate appraiser issued to him or
67 her under the provisions of this article.

§37-14-3. Real estate appraiser license required.

1 (a) Beginning the first day of July, one thousand nine
2 hundred ninety-one, it is unlawful for any person, for
3 compensation or valuable consideration, to prepare a
4 valuation appraisal or a valuation appraisal report
5 relating to real estate or real property in this state
6 without first being licensed or certified as provided in
7 this article. This section shall not be construed to apply
8 to persons who do not render significant professional
9 assistance in arriving at a real estate appraisal analysis,
10 opinion or conclusion. Nothing in this article, however,
11 shall be construed to prohibit any person who is licensed
12 to practice in this state under any other law from
13 engaging in the practice for which he or she is licensed.

14 (b) Notwithstanding the provisions of subsection (a)
15 herein, the real estate appraiser licensing and certifica-
16 tion board may, by emergency rule, extend the date for
17 complying with the provisions of this article in accor-
18 dance with any extensions which may be provided under
19 applicable federal law, except that the date for com-
20 pliance set by emergency rule may not be extended
21 beyond the thirty-first day of December, one thousand
22 nine hundred ninety-one.

**§37-14-4. Exceptions to license or certification re-
quirement.**

1 This article does not apply to:

2 (a) A real estate broker or salesperson licensed by this
3 state who, in the ordinary course of his or her business,
4 gives an opinion to a potential seller or third party as
5 to the recommended listing price of real estate or an

6 opinion to a potential purchaser or third party as to the
7 recommended purchase price of real estate, when this
8 opinion as to the listing price or the purchase price is
9 not to be referred to as an appraisal, no opinion is
10 rendered as to the value of the real estate, and no fee
11 is charged;

12 (b) A casual or drive-by inspection of real estate in
13 connection with a consumer loan secured by the said
14 real estate, when the inspection is not referred to as an
15 appraisal, no opinion is rendered as to the value of the
16 real estate, and no fee is charged for the inspection;

17 (c) An employee who renders an opinion as to the
18 value of real estate for his full-time employer, for the
19 employer's internal use only and performed in the
20 regular course of the employee's position, when the
21 opinion is not referred to as an appraisal and no fee is
22 charged;

23 (d) Appraisals of personal property, including, but not
24 limited to, jewelry, household furnishings, vehicles, and
25 manufactured homes not attached to real estate; and

26 (e) Any officer or employee of the United States, or
27 of the state of West Virginia or a political subdivision
28 thereof, when the employee or officer is performing his
29 official duties: *Provided*, That such individual does not
30 furnish advisory service for compensation to the public
31 or act as an independent contracting party in West
32 Virginia or any subdivision thereof in connection with
33 the appraisal of real estate or real property: *Provided*,
34 *however*, That this exception shall not apply with respect
35 to federally related transactions as defined in Title XI
36 of the United States Code, entitled "Financial Institu-
37 tions Reform, Recovery, and Enforcement Act of 1989".

§37-14-6. General powers and duties.

1 The board shall:

2 (a) Define by rule the type of educational experience,
3 appraisal experience and equivalent experience that
4 will meet the statutory requirements of this article;

- 5 (b) Establish examination specifications as prescribed
6 herein and provide or procure appropriate exami-
7 nations;
- 8 (c) Approve or disapprove applications for certifica-
9 tion and licensure;
- 10 (d) Define by rule continuing education requirements
11 for the renewal of certification and licenses;
- 12 (e) Censure, suspend or revoke licenses and certifica-
13 tion as provided in this article;
- 14 (f) Hold meetings, hearings and examinations in
15 places and at times as it shall designate;
- 16 (g) Establish procedures for submitting, approving
17 and disapproving applications;
- 18 (h) Maintain an accurate registry of the names and
19 addresses of all persons certified or issued a license to
20 practice under this article;
- 21 (i) Maintain accurate records on applicants and
22 licensed or certified real estate appraisers;
- 23 (j) Issue to each licensed or certified real estate
24 appraiser a pocket card with the name and license or
25 certification number on each in the size and form it may
26 approve. The license or certification pocket card shall
27 remain the property of the state of West Virginia and,
28 upon suspension or revocation of the license to practice
29 pursuant to this article, shall be returned immediately
30 to the commission;
- 31 (k) Deposit all fees collected by the commission in the
32 state treasury. The state treasurer shall deposit the fees
33 to the credit of the West Virginia appraiser licensing
34 and certification board and shall disburse moneys from
35 the account to pay the cost of board operation.
36 Disbursements from the account shall not exceed the
37 moneys credited to it;
- 38 (l) Hire employees to assist in the discharge of the
39 duties imposed upon it by this article subject to the
40 policies and standards of the department of administra-
41 tion. No employee of the commission may be a paid

42 employee of any real estate association, group or real
43 estate dealers, brokers, appraisers or lenders;

44 (m) Perform any other functions and duties as may be
45 necessary in carrying out the provisions of this article.

46 All rules shall be promulgated pursuant to the
47 provisions of chapter twenty-nine-a of this code.
48 Emergency rules are specifically authorized upon the
49 effective date of this article and prior to the first day
50 of July, one thousand nine hundred ninety-one. The
51 members of the board shall be immune from any civil
52 action or criminal prosecution for initiating or assisting
53 in any lawful investigation of the actions of or partic-
54 ipating in any disciplinary proceeding concerning a
55 licensed or certified real estate appraiser pursuant to
56 this article: *Provided*, That such action is taken without
57 malicious intent and in the reasonable belief that the
58 action was taken pursuant to the powers and duties
59 vested in the members of the board under this article.

§37-14-13. Term of license or certification.

1 If the board determines that an applicant meets the
2 requirements of this article and is qualified to be
3 licensed or certified, it shall issue a license or certifi-
4 cation to the applicant that shall expire one year
5 following the date of issuance unless revoked or
6 suspended prior thereto. The board shall approve or
7 deny each application within ninety days of receipt.

§37-14-28. Classification of licensure and certification.

1 There shall be two classifications of real estate
2 appraisers:

3 (a) *State licensed residential real estate appraiser.* —
4 The state licensed residential real estate appraiser
5 classification shall consist of those persons who meet the
6 requirements for licensure that relate to the appraisal
7 of residential real estate of one to four units, when the
8 value of the property appraised is less than one million
9 dollars, a net operating income capitalization analysis is
10 not required by the terms of the assignment, and if the
11 value of the property appraised is over two hundred fifty

12 thousand dollars, the appraisal is noncomplex; and to
13 the appraisal of nonresidential real estate when the
14 value of the property appraised is less than one hundred
15 thousand dollars.

16 (b) *State certified general real estate appraiser.* — The
17 state certified general real estate appraiser classifica-
18 tion shall consist of those persons who meet the
19 requirements for certification relating to the appraisal
20 of all types of real estate.

21 The board is authorized to establish by rules promul-
22 gated pursuant to the provisions of chapter twenty-nine-
23 a of this code such further classes or classifications as
24 may be required by applicable federal law.

25 Each application for licensure or certification and
26 each application to take an examination shall specify the
27 classification being applied for and, if applicable, the
28 class of licensure or certification previously granted.

§37-14-30. Qualifications.

1 (a) *Residential classification.* — As a prerequisite to
2 taking the examination for licensure as a state licensed
3 residential real estate appraiser, an applicant shall
4 present evidence satisfactory to the board that he or she
5 has satisfied the criteria, including education and
6 experience criteria, for licensure of licensed appraisers
7 issued by the appraisal qualifications board of the
8 appraisal foundation, which criteria shall be incorpo-
9 rated in regulations of the board adopted pursuant to
10 the provisions of chapter twenty-nine-a of this code.

11 (b) *General classification.* — As a prerequisite to
12 taking the examination for certification as a state
13 certified general real estate appraiser, an applicant
14 shall present evidence satisfactory to the board that he
15 or she has satisfied the criteria, including education and
16 experience criteria, for certification of general apprais-
17 ers issued by the appraisal qualifications board of the
18 appraisal foundation, which criteria shall be incorpo-
19 rated in regulations of the board adopted pursuant to
20 the provisions of chapter twenty-nine-a of this code.

21 (c) *Transitional license.* — The board may extend the

22 time for satisfying the requirements of subdivision (a)
23 of this section with respect to either education require-
24 ments or experience requirements, but not both educa-
25 tion and experience requirements, and may issue a
26 transitional license as a state licensed residential real
27 estate appraiser so long as: (1) All other criteria for
28 licensure are satisfied; (2) the applicant passes the
29 examination required pursuant to section thirty-one of
30 this article; and (3) the educational deficiency is
31 corrected within one year of licensure, or the experience
32 deficiency, within two years.

§37-14-31. Examination required.

1 An original license or certification as a state licensed
2 or certified real estate appraiser shall not be issued to
3 any person who has not passed an examination admin-
4 istered through the board, which examination is
5 consistent with the uniform state examination for
6 licensure or certification issued or endorsed by the
7 appraisal qualifications board of the appraisal
8 foundation.

9 The board may offer for the benefit of prospective
10 applicants for licensure or certification a program of
11 instruction and preparation for the examination.

§37-14-40. Licensure and certification fees.

1 The board shall charge and collect appropriate fees
2 annually for its services under this article. The fees
3 charged by the board shall not exceed the amounts
4 indicated below:

- 5 (1) A license application fee of fifty dollars;
- 6 (2) A license examination fee of fifty dollars;
- 7 (3) A license fee of three hundred twenty-five dollars;
- 8 (4) A delinquent license fee of an additional one
9 hundred dollars;
- 10 (5) A registration fee for temporary practice of one
11 hundred dollars;
- 12 (6) A certification application fee of seventy-five
13 dollars;
- 14 (7) A certification examination fee of fifty dollars;

15 (8) A certification fee of five hundred twenty-five
16 dollars;

17 (9) A delinquent certification fee of an additional one
18 hundred dollars;

19 (10) The board may collect from individuals who
20 perform or seek to perform appraisal transactions
21 where required by federal law an annual registry fee
22 in an amount to be set by regulation in order to enable
23 the board to transfer the necessary fees to the federal
24 financial institution examination council on an annual
25 basis.

26 All fees and revenues collected by the board pursuant
27 to this article shall be deposited in a special fund that
28 shall be used solely for the purpose of paying the
29 expenses incurred in connection with the administration
30 of this article.

§37-14-44. Licensure and certification of nonresidents.

1 (a) *Consent to service of process.* — Each applicant for
2 licensure or certification and each registrant for
3 temporary practice within this state who is not a
4 resident of this state shall submit, with his or her
5 application, an irrevocable consent that service of
6 process upon him or her may be made by delivery of
7 the process to the secretary of state if, in an action
8 against the applicant in a court of this state arising out
9 of the applicant's activities as a real estate appraiser in
10 this state, the plaintiff cannot, in the exercise of due
11 diligence, effect personal service upon the applicant.

12 (b) *Nonresident licensure and certification.* — A
13 nonresident of this state who has complied with the
14 provisions of subsection (a) of this section may obtain a
15 license or certification as a real estate appraiser in this
16 state by complying with all of the provisions of this
17 article relating to the licensing or certification of real
18 estate appraisers.

19 (c) *Temporary practice.* — A nonresident of this state
20 who has complied with the provisions of subsection (a)
21 of this section may perform a contract relating to the
22 appraisal of real estate or real property in this state by
23 registering with the board. An applicant for temporary
24 registration shall:

- 25 (1) Submit an application on a form approved by the
26 board;
- 27 (2) Submit evidence that he or she is licensed or
28 certified to appraise real estate and real property in his
29 or her state of domicile;
- 30 (3) Submit evidence that the applicant's business in
31 the state is of a temporary nature;
- 32 (4) Certify that disciplinary proceedings are not
33 pending against the applicant in the applicant's state of
34 domicile; and
- 35 (5) Pay the temporary registration fee set forth in
36 section forty of this article.
- 37 (d) *License by reciprocity.* — If, in the determination
38 of the board, another state or territory or the District
39 of Columbia is deemed to have substantially equivalent
40 license or certification laws for real estate appraisers,
41 an applicant for licensure or certification in this state
42 who is licensed or certified under the laws of such other
43 state, territory or district may obtain a license or
44 certificate as a real estate appraiser in this state upon
45 such terms and conditions as may be determined by the
46 board: *Provided*, That the laws of such state, territory
47 or district accord substantially equal reciprocal rights
48 to a licensed or certified real estate appraiser in good
49 standing in this state: *Provided, however*, That discipli-
50 nary proceedings are not pending against such applicant
51 in his or her state of licensure or certification.

CHAPTER 145

(S. B. 71—By Senator J. Manchin)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to salvage yards.

Be it enacted by the Legislature of West Virginia:

That section two, article twenty-three, 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 23. SALVAGE YARDS.

§17-23-2. Definitions.

1 As used in this article:

2 (a) "Salvage" means old or scrap brass, copper, iron,
3 steel, other ferrous or nonferrous materials, batteries or
4 rubber and any junked, dismantled or wrecked machin-
5 ery, machines or motor vehicles or any parts of any
6 junked, dismantled or wrecked machinery, machines or
7 motor vehicles.

8 (b) "Salvage yard" means any place which is main-
9 tained, operated or used for the storing, keeping,
10 buying, selling or processing of salvage, or for the
11 operation and maintenance of a motor vehicle
12 graveyard.

13 (c) "Abandoned salvage yard" means any unlicensed
14 salvage yard or any salvage yard that was previously
15 licensed but upon which the license has not been
16 renewed for more than one year.

17 (d) "Fence" means an enclosure, barrier or screen
18 constructed of materials or consisting of plantings,
19 natural objects or other appropriate means approved by
20 the commissioner and located, placed or maintained so
21 as effectively to screen at all times salvage yards and
22 the salvage therein contained from the view of persons
23 passing upon the public roads of this state.

24 (e) "Owner or operator" includes an individual, firm,
25 partnership, association or corporation or the plural
26 thereof.

27 (f) "Commissioner" means the commissioner of the
28 West Virginia department of highways.

29 (g) "Residential community" means an area wherein
30 five or more occupied private residences are located
31 within any one thousand foot radius.

32 (h) "Occupied private residence" means a private
33 residence which is occupied for at least six months each
34 year.

CHAPTER 146

(Com. Sub. for S. B. 120—By Senators Spears and Brackenrich)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to scheduling governmental agencies or programs for termination pursuant to the West Virginia sunset law.

Be it enacted by the Legislature of West Virginia:

That section four, article ten, chapter 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. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of governmental entities or programs.

1 The following governmental entities and programs
2 shall be terminated on the date indicated but no
3 governmental entity or program shall be terminated
4 under this article unless a performance audit has been
5 conducted of such entity or program, except as autho-
6 rized under section fourteen of this article:

7 (1) On the first day of July, one thousand nine hundred
8 eighty-one: Judicial council of West Virginia; motor
9 vehicle certificate appeal board; and child welfare
10 licensing board.

11 (2) On the first day of July, one thousand nine hundred
12 eighty-two: Ohio River basin commission; commission on
13 postmortem examination; and the state commission on
14 manpower, training and technology.

15 (3) On the first day of July, one thousand nine hundred
16 eighty-three: Anatomical board; economic opportunity
17 advisory committee; and the community development
18 authority board.

19 (4) On the first day of July, one thousand nine hundred

- 20 eighty-four: The following programs of the department
21 of natural resources: Rabies control, work incentive
22 program; and the West Virginia alcoholic beverage
23 control licensing advisory board.
- 24 (5) On the first day of July, one thousand nine hundred
25 ninety-five: Beautification commission.
- 26 (6) On the first day of July, one thousand nine hundred
27 eighty-six: Health resources advisory council.
- 28 (7) On the first day of July, one thousand nine hundred
29 eighty-seven: Civil service commission advisory board;
30 and the motorcycle safety standards and specifications
31 board.
- 32 (8) On the first day of July, one thousand nine hundred
33 eighty-eight: Labor management relations board;
34 records management and preservation advisory commit-
35 tee; minimum wage rate board; commission on mass
36 transportation; and the public employees insurance
37 board.
- 38 (9) On the first day of July, one thousand nine hundred
39 eighty-nine: Mental retardation advisory committee;
40 board of school finance; veteran's affairs advisory
41 council; and the reclamation commission.
- 42 (10) On the first day of July, one thousand nine
43 hundred ninety: Consumer affairs advisory council;
44 savings and loan association; and the forest industries
45 industrial foundation.
- 46 (11) On the first day of July, one thousand nine
47 hundred ninety-one: The following divisions or pro-
48 grams of the department of agriculture: Interagency
49 committee on pesticides.
- 50 (12) On the first day of July, one thousand nine
51 hundred ninety-two: State water resources board; water
52 resources division, department of natural resources;
53 whitewater advisory board; state board of risk and
54 insurance management; West Virginia's membership in
55 the interstate commission on the Potomac River basin;
56 board of banking and financial institutions; the farm
57 management commission; state building commission;

58 the capitol building commission; the board of examiners
59 in counseling; public service commission; family protec-
60 tion services board; board of examiners of land survey-
61 ors; legislative oversight commission on education
62 accountability; West Virginia ethics commission; family
63 law masters system; state lottery commission; the
64 following divisions or programs of the department of
65 agriculture: Soil conservation committee, rural resource
66 division, meat inspection program; women's commission;
67 and the child advocate office of the department of health
68 and human resources.

69 (13) On the first day of July, one thousand nine
70 hundred ninety-three: Commission on uniform state
71 laws; state structural barriers compliance board; the oil
72 and gas inspectors examining board; the tree fruit
73 industry self-improvement program; the oil and gas
74 conservation commission; and the council of finance and
75 administration.

76 (14) On the first day of July, one thousand nine
77 hundred ninety-four: Ohio River valley water sanitation
78 commission; the southern regional education board; real
79 estate commission; the division of labor; division of
80 tourism and parks; division of corrections; and the
81 veteran's council.

82 (15) On the first day of July, one thousand nine
83 hundred ninety-five: Emergency medical services
84 advisory council; commission on charitable organiza-
85 tions; information system advisory commission; West
86 Virginia labor-management council; and the board of
87 social work examiners.

88 (16) On the first day of July, one thousand nine
89 hundred ninety-six: U.S. geological survey program
90 within the division of natural resources; state geological
91 and economic survey; division of culture and history;
92 and the board of investments.

93 (17) On the first day of July, one thousand nine
94 hundred ninety-seven: The driver's licensing advisory
95 board; department of health and human resources; West
96 Virginia health care cost review authority; and the
97 division of personnel.

CHAPTER 147

(H. B. 2212—By Delegates Love and Schadler)

[Passed February 14, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article one, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to changing the termination date of the division of tourism and parks.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article one, 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 1. DIVISION OF TOURISM & PARKS.

§5B-1-18. Sunset provision.

- 1 Unless sooner terminated by law, the division of
- 2 tourism and parks shall terminate on the first day of
- 3 July, one thousand nine hundred ninety-four, in accor-
- 4 dance with the provisions of article ten, chapter four of
- 5 this code.

CHAPTER 148

(H. B. 2232—By Delegates J. Martin and Schadler)

[Passed February 12, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article four, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the labor-management council.

Be it enacted by the Legislature of West Virginia:

That section six, article four, 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 4. LABOR-MANAGEMENT COUNCIL.**§5B-4-6. Duration of council.**

1 Pursuant to the provisions of section four, article ten,
2 chapter four of this code, the West Virginia labor-
3 management council shall continue to exist until the
4 first day of July, one thousand nine hundred ninety-five,
5 to allow for the completion of an audit by the joint
6 committee on government operations.

CHAPTER 149

(H. B. 2223—By Delegates Love and J. Martin)

[Passed March 8, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section eleven, article one, chapter nine-a; article one-b, chapter twenty-one; section four, article five-a, chapter twenty-one; section four, article fifteen, chapter twenty-nine; and article eleven, chapter thirty-one, all of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to repeal of code sections relating to agencies terminated following a performance and fiscal audit by the joint committee on government operations.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of sections relating to veterans' affairs advisory council; West Virginia labor management relations board; minimum wage rate board; mental retardation advisory committee; and the savings and loan association of the state of West Virginia.

1 Section eleven, article one, chapter nine-a; article one-
2 b, chapter twenty-one; section four, article five-a,
3 chapter twenty-one; section four, article fifteen, chapter
4 twenty-nine; and article eleven, chapter thirty-one, all of
5 the code of West Virginia, one thousand nine hundred
6 thirty-one, as amended, are hereby repealed.

CHAPTER 150

(H. B. 2235—By Delegates Love and Wallace)

[Passed February 12, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article one, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the continuation of the rural resources division, now named and known as the marketing and development division.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-3a. Rural resources division continued.

1 Pursuant to the provisions of section four, article ten,
 2 chapter four of this code, the rural resources division
 3 which has been known as the marketing and develop-
 4 ment division since one thousand nine hundred eighty-
 5 seven, shall continue to exist until the first day of July,
 6 one thousand nine hundred ninety-two, to allow for the
 7 completion of an audit by the joint committee on
 8 government operations.

CHAPTER 151

(H. B. 2225—By Delegates J. Martin and Wallace)

[Passed February 12, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-one-a, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state soil conservation committee.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21A. SOIL CONSERVATION DISTRICTS.

§19-21A-4. State soil conservation committee.

1 (a) There is hereby established, to serve as an agency
2 of the state and to perform the functions conferred upon
3 it in this article, the state soil conservation committee.
4 The committee shall consist of seven members. The
5 following shall serve, *ex officio*, as members of the
6 committee: The director of the state cooperative exten-
7 sion service; the director of the state agricultural
8 experiment station; the director of the department of
9 natural resources; and the state commissioner of
10 agriculture, who shall be chairman of the committee.

11 The governor shall appoint as additional members of
12 the committee three representative citizens. The term of
13 members thus appointed shall be four years, except that
14 of the first members so appointed, one shall be ap-
15 pointed for a term of two years, one for a term of three
16 years, and one for a term of four years. In the event of
17 a vacancy, appointment shall be for the unexpired term.

18 The committee may invite the secretary of agriculture
19 of the United States of America to appoint one person
20 to serve with the committee as an advisory member.

21 The committee shall keep a record of its official
22 actions, shall adopt a seal, which seal shall be judicially
23 noticed, and may perform such acts, hold such public
24 hearings and promulgate such rules and regulations as
25 may be necessary for the execution of its functions under
26 this article.

27 (b) The state soil conservation committee may employ
28 an administrative officer and such technical experts and
29 such other agents and employees, permanent and
30 temporary, as it may require, and shall determine their
31 qualifications, duties and compensation. The committee
32 may call upon the attorney general of the state for such

33 legal services as it may require. It shall have authority
34 to delegate to its chairman, to one or more of its
35 members, or to one or more agents or employees, such
36 powers and duties as it may deem proper. The commit-
37 tee is empowered to secure necessary and suitable office
38 accommodations, and the necessary supplies and equip-
39 ment. Upon request of the committee, for the purpose
40 of carrying out any of its functions, the supervising
41 officer of any state agency, or of any state institution of
42 learning shall, insofar as may be possible, under
43 available appropriations, and having due regard to the
44 needs of the agency to which the request is directed,
45 assign or detail to the committee, members of the staff
46 or personnel of such agency or institution of learning,
47 and make such special reports, surveys or studies as the
48 committee may request.

49 (c) A member of the committee shall hold office so
50 long as he shall retain the office by virtue of which he
51 shall be serving on the committee. A majority of the
52 committee shall constitute a quorum, and the concur-
53 rence of a majority in any matter within their duties
54 shall be required for its determination. The chairman
55 and members of the committee shall receive no compen-
56 sation for their services on the committee, but shall be
57 entitled to expenses, including traveling expenses,
58 necessarily incurred in the discharge of their duties on
59 the committee. The committee shall provide for the
60 execution of surety bonds for all employees and officers
61 who shall be entrusted with funds or property; shall
62 provide for the keeping of a full and accurate public
63 record of all proceedings and of all resolutions, regula-
64 tions and orders issued or adopted; and shall provide for
65 an annual audit of the accounts of receipts and
66 disbursements.

67 (d) In addition to the duties and powers hereinafter
68 conferred upon the state soil conservation committee, it
69 shall have the following duties and powers:

70 (1) To offer such assistance as may be appropriate to
71 the supervisors of soil conservation districts, organized
72 as provided hereinafter, in the carrying out of any of
73 their powers and programs;

74 (2) To keep the supervisors of each of the several
75 districts, organized under the provisions of this article,
76 informed of the activities and experience of all other
77 districts organized hereunder, and to facilitate an
78 interchange of advice and experience between such
79 districts and cooperation between them;

80 (3) To coordinate the programs of the several soil
81 conservation districts organized hereunder so far as this
82 may be done by advice and consultation;

83 (4) To secure the cooperation and assistance of the
84 United States and any of its agencies, and of agencies
85 of this state, in the work of such districts;

86 (5) To disseminate information throughout the state
87 concerning the activities and programs of the soil
88 conservation districts organized hereunder, and to
89 encourage the formation of such districts in areas where
90 their organization is desirable;

91 (6) To accept and receive donations, gifts, contribu-
92 tions, grants and appropriations in money, services,
93 materials or otherwise, from the United States or any
94 of its agencies, from the state of West Virginia, or from
95 other sources, and to use or expend such money,
96 services, materials or other contributions in carrying out
97 the policy and provisions of this article, including the
98 right to allocate such money, services or materials in
99 part to the various soil conservation districts created by
100 this article in order to assist them in carrying on their
101 operations;

102 (7) To obtain options upon and to acquire by purchase,
103 exchange, lease, gift, grant, bequest, devise or other-
104 wise, any property, real or personal, or rights or
105 interests therein; to maintain, administer, operate and
106 improve any properties acquired, to receive and retain
107 income from such property and to expend such income
108 as required for operation, maintenance, administration
109 or improvement of such properties or in otherwise
110 carrying out the purposes and provisions of this article;
111 and to sell, lease or otherwise dispose of any of its
112 property or interests therein in furtherance of the
113 purposes and the provisions of this article. Money

114 received from the sale of land acquired in the small
115 watershed program shall be deposited in the special
116 account of the state soil conservation committee and
117 expended as herein provided.

118 Pursuant to the provisions of section four, article ten,
119 chapter four of this code, the state soil conservation
120 committee shall continue to exist until the first day of
121 July, one thousand nine hundred ninety-two, to allow for
122 the completion of an audit by the joint committee on
123 government operations.

CHAPTER 152

(H. B. 2243—By Delegates Flanigan and Love)

[Passed February 12, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eight, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the West Virginia oil and gas conservation commission.

Be it enacted by the Legislature of West Virginia:

That section four, article eight, 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 8. OIL AND GAS CONSERVATION.

§22-8-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

1 (a) There is hereby continued as provided for in
2 subsection (h) of this section, the "West Virginia Oil and
3 Gas Conservation Commission" which shall be composed
4 of five members. The commissioner of the department
5 of energy and the director for the division of oil and gas

6 shall be members of the commission ex officio. The
7 remaining three members of the commission shall be
8 appointed by the governor, by and with the advice and
9 consent of the Senate. Of the three members appointed
10 by the governor, one shall be an independent producer
11 and at least one shall be a public member not engaged
12 in full-time employment in an activity under the
13 jurisdiction of the public service commission or the
14 federal energy regulatory commission. As soon as
15 practical after appointment of the members of the
16 commission, the governor shall call a meeting of the
17 commission to be convened at the state capitol for the
18 purpose of organizing and electing a chairman.

19 (b) The members of the commission appointed by the
20 governor shall be appointed for overlapping terms of six
21 years each, except that the original appointments shall
22 be for terms of two, four and six years, respectively.
23 Each member appointed by the governor shall serve
24 until his successor has been appointed and qualified.
25 Members may be appointed by the governor to serve any
26 number of terms. The members of the commission
27 appointed by the governor, before performing any duty
28 hereunder, shall take and subscribe to the oath required
29 by section 5, article IV of the constitution of West
30 Virginia. Vacancies in the membership appointed by the
31 governor shall be filled by appointment by him for the
32 unexpired term of the member whose office shall be
33 vacant and such appointment shall be made by the
34 governor within sixty days of the occurrence of such
35 vacancy. Any member appointed by the governor may
36 be removed by the governor in case of incompetency,
37 neglect of duty, gross immorality or malfeasance in
38 office.

39 (c) The commission shall meet at such times and
40 places as shall be designated by the chairman. The
41 chairman may call a meeting of the commission at any
42 time, and he shall call a meeting of the commission upon
43 the written request of two members or upon the written
44 request of the oil and gas conservation commissioner.
45 Notification of each meeting shall be given in writing
46 to each member by the chairman at least five days in

47 advance of the meeting. Any three members, one of
48 which may be the chairman, shall constitute a quorum
49 for the transaction of any business as herein provided
50 for. A majority of the commission shall be required to
51 determine any issue brought before it.

52 (d) Each member of the commission appointed by the
53 governor shall receive thirty-five dollars per diem not
54 to exceed one hundred days per calendar year while
55 actually engaged in the performance of his duties as a
56 member of the commission. Each member of the
57 commission shall also be reimbursed for all reasonable
58 and necessary expenses actually incurred in the perfor-
59 mance of his duties as a member of the commission.

60 (e) The commission shall appoint the oil and gas
61 conservation commissioner, fix his salary within avail-
62 able funds, and advise him regarding his duties and
63 authority under this article and consult with him prior
64 to his reaching any final decisions and entering orders
65 hereunder. However, the commissioner has full and
66 final authority under this article with the commission
67 serving in an advisory capacity to him. The commis-
68 sioner shall possess a degree from an accredited college
69 or university in petroleum engineering or geology and
70 must be a registered professional engineer with partic-
71 ular knowledge and experience in the oil and gas
72 industry.

73 (f) The oil and gas commissioner is hereby empowered
74 and it shall be his duty to execute and carry out,
75 administer and enforce the provisions of this article in
76 the manner provided herein. Subject to the provisions
77 of section three of this article, the commissioner shall
78 have jurisdiction and authority over all persons and
79 property necessary therefor. The commissioner is
80 authorized to make such investigation of records and
81 facilities as he deems proper. In the event of a conflict
82 between the duty to prevent waste and the duty to
83 protect correlative rights, the commissioner's duty to
84 prevent waste shall be paramount. He shall serve as
85 secretary of the oil and gas conservation commission.

86 (g) Without limiting his general authority, the com-
87 missioner shall have specific authority to:

88 (1) Regulate the spacing of deep wells;

89 (2) Make and enforce reasonable rules and regulations
90 and orders reasonably necessary to prevent waste,
91 protect correlative rights, govern the practice and
92 procedure before the commissioner and otherwise
93 administer the provisions of this article;

94 (3) Issue subpoenas for the attendance of witnesses
95 and subpoenas duces tecum for the production of any
96 books, records, maps, charts, diagrams and other
97 pertinent documents, and administer oaths and affirma-
98 tions to such witnesses, whenever, in the judgment of the
99 commissioner, it is necessary to do so for the effective
100 discharge of his duties under the provisions of this
101 article; and

102 (4) Serve as technical advisor regarding oil and gas
103 to the Legislature, its members and committees, to the
104 director for the division of oil and gas, to the department
105 of energy and to any other agency of state government
106 having responsibility related to the oil and gas industry.

107 Pursuant to the provisions of section four, article ten,
108 chapter four of this code, the oil and gas conservation
109 commission shall continue to exist until the first day of
110 July, one thousand nine hundred ninety-three, to allow
111 for the completion of an audit by the joint committee on
112 government operations.

CHAPTER 153

(H. B. 2228—By Delegates Flanigan and Schadler)

[Passed February 12, 1991; 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 continuation of 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 AND INSTITUTIONS.

§25-1-2. Reestablishment of division; findings.

1 Pursuant to the provisions of section four, article ten,
 2 chapter four of this code, the division of corrections shall
 3 continue to exist until the first day of July, one thousand
 4 nine hundred ninety-four, to allow for the completion of
 5 an audit by the joint committee on government opera-
 6 tions.

CHAPTER 154

(H. B. 2144—By Delegates Love and Schadler)

[Passed February 19, 1991; 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, relating to continuation of the state geological and economic survey.

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 to read as follows:

ARTICLE 2. GEODETIC AND GEOLOGICAL SURVEY.

§29-2-4. State geological and economic survey; director.

1 Pursuant to the provisions of section four, article ten,
 2 chapter four of this code, the state geological and
 3 economic survey shall continue to exist until the first
 4 day of July, one thousand nine hundred ninety-six, to
 5 allow for the completion of an audit by the joint
 6 committee on government operations. The governor
 7 shall appoint as director of the survey a geologist of
 8 established reputation. The director may employ such
 9 assistants and employees as he may deem necessary. He

10 shall also determine the compensation of all persons
11 employed by the survey, and may remove them at
12 pleasure.

13 The director may set such reasonable fees as may be
14 necessary to recover additional costs incurred in
15 performing geological and analytical analyses. These
16 fees shall be deposited in the state treasury in a special
17 revenue account, to be known as the "Geological and
18 Analytical Services Fund." The director is hereby
19 authorized to expend such funds, as are appropriated by
20 the Legislature, from this fund for the purpose of
21 defraying said costs.

CHAPTER 155

(S. B. 100—By Senators Spears and Brackenrich)

[Passed March 7, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a, relating to placing the division of personnel under sunset review as provided in article ten, chapter four of this code.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-5a. Termination of division.

1 The division of personnel shall be terminated by the
2 provisions of article ten, chapter four of this code on the
3 first day of July, one thousand nine hundred ninety-
4 seven, unless sooner terminated or unless continued and
5 reestablished pursuant to that article.

CHAPTER 156

(S. B. 97—By Senators Spears, Brackenrich, Hawse and J. Manchin)

[Passed February 11, 1991; 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, relating to continuation of 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 to read as follows:

ARTICLE 20. WOMEN'S COMMISSION.

***§29-20-1. Creation; membership; appointment and terms of members; organization; reimbursement for expenses.**

1 The West Virginia commission on the status of women
2 is hereby abolished, and there is hereby created within
3 the office of the governor the West Virginia women's
4 commission, to consist of seventeen members, six of
5 whom shall be ex officio members, not entitled to vote:
6 The attorney general, the state superintendent of
7 schools, the commissioner of labor, the commissioner of
8 human services, the director of the human rights
9 commission and the director of the division of personnel.
10 Each ex officio member may designate one representa-
11 tive employed by his or her department to meet with the
12 commission in his or her absence. The governor shall
13 appoint the additional eleven members, by and with the
14 advice and consent of the Senate, from among the
15 citizens of the state. The governor shall designate the
16 chairman and vice chairman of the commission and the
17 commission may elect such other officers as it deems
18 necessary. The members shall serve a term beginning
19 the first day of July, one thousand nine hundred seventy-
20 seven, three to serve for a term of one year, four to serve
21 for a term of two years, and the remaining four to serve

* Clerk's Note: This section was also amended by H. B. 2809 (Chapter 173), which passed subsequent to this act.

22 for a term of three years. The successors of the members
23 initially appointed as provided herein shall be appointed
24 for a term of three years each in the same manner as
25 the members initially appointed under this article,
26 except that any person appointed to fill a vacancy
27 occurring prior to the expiration of the term for which
28 his or her predecessor was appointed shall be appointed
29 for the remainder of such term. Each member shall
30 serve until the appointment and qualification of his or
31 her successor.

32 No member may receive any salary for his or her
33 services, but each may be reimbursed for actual and
34 necessary expenses incurred in the performance of his
35 or her duties out of funds received by the commission
36 under section four of this article, except that in the event
37 the expenses are paid, or are to be paid, by a third party,
38 the members shall not be reimbursed by the
39 commission.

40 Pursuant to the provisions of section four, article ten,
41 chapter four of this code, the West Virginia women's
42 commission shall continue to exist until the first day of
43 July, one thousand nine hundred ninety-two, to allow for
44 the completion of an audit by the joint committee on
45 government operations.

CHAPTER 157

(H. B. 2146—By Delegates Flanigan and Love)

[Passed February 19, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the state lottery commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. STATE LOTTERY ACT.**§29-22-26. Termination of state lottery commission.**

1 Pursuant to the provisions of section four, article ten,
2 chapter four of this code, the state lottery commission
3 shall continue to exist until the first day of July, one
4 thousand nine hundred ninety-two, to allow for the
5 completion of an audit by the joint committee on
6 government operations.

CHAPTER 158

(H. B. 2213—By Delegates Love and J. Martin)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article four, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the family law masters system.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.**§48A-4-12. Termination of family law masters system by law.**

1 Pursuant to the provisions of section four, article ten,
2 chapter four of this code, the family law masters system
3 shall continue to exist until the first day of July, one
4 thousand nine hundred ninety-two, to allow for the
5 completion of an audit by the joint committee on
6 government operations.

CHAPTER 159

(S. B. 579—By Senator Sharpe)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections nine-a, thirteen and thirty-nine, article three, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections three, five, eight, nine, ten, twelve, fifteen, seventeen, eighteen, nineteen, twenty-two, twenty-six, twenty-eight and forty of said article, all relating to surface coal mining generally; repealing provisions providing for two acre exemptions, repealing the pilot program for growing of grapes; repealing temporary power to grant permits pending primacy approval; amending definitions; reducing probationary period for surface-mining reclamation supervisors and inspectors; relating to approval of a successor in interest to a transfer of a permit; requiring requests for extensions of permits be timely made; increasing minimum tonnage for small operator assistance; correcting a cross reference; measures to avoid acid or other toxic mine drainage; amending notification requirements for blasting; variances for reclamation requirements, termination of permits not commenced within three years, underground workings, extensions; durability testing for durable rock; variances, promulgation of rules; correcting cross reference; safety of citizens on inspections; mandatory notices of violations; extension of abatement periods; civil penalties; suspension of permits; requests for informal conferences or formal hearings; time for decisions on temporary relief requests; completeness and accuracy of permit applications and burden of proof; deletion of limitations on ownership or control on revocation or forfeiture of a permit; permit revisions, requirements; providing that certain operations are not exempt from article; relating to areas unsuitable for mining, right to petition; surface mining operations not subject to article; special permits, removal of coal refuse piles; and permitting authority of commissioner.

Be it enacted by the Legislature of West Virginia:

That sections nine-a, thirteen and thirty-nine, article three, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that sections three, five, eight, nine, ten, twelve, fifteen, seventeen, eighteen, nineteen, twenty-two, twenty-six, twenty-eight and forty of said article be amended and reenacted, all to read as follows:

ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

- §22A-3-3. Definitions.
- §22A-3-5. Surface-mining reclamation supervisors and inspectors; appointment and qualifications; salary.
- §22A-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.
- §22A-3-9. Permit application requirements and contents.
- §22A-3-10. Reclamation plan requirements.
- §22A-3-12. General environmental protection performance standards for surface mining; variances.
- §22A-3-15. Inspections; monitoring; right of entry; inspection of records; identification signs; progress maps.
- §22A-3-17. Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the board; prosecution; injunctive relief.
- §22A-3-18. Approval; denial; revision and prohibition of permit.
- §22A-3-19. Permit revision and renewal requirements; incidental boundary revisions; requirements for transfer; assignment and sale of permit rights; and operator reassignment.
- §22A-3-22. Designation of areas unsuitable for surface mining; petition for removal of designation; prohibition of surface mining on certain areas; exceptions; taxation of minerals underlying land designated unsuitable.
- §22A-3-26. Surface-mining operations not subject to article.
- §22A-3-28. Special permits for reclamation of existing abandoned coal processing waste piles.
- §22A-3-40. Consolidation of permitting, enforcement and rule-making authority for surface-mining operations; national pollutant discharge elimination system; effective date of section.

§22A-3-3. Definitions.

- 1 As used in this article, unless used in a context that
- 2 clearly requires a different meaning, the term:
- 3 (a) "Adequate treatment" means treatment of water
- 4 by physical, chemical or other approved methods in a

5 manner so that the treated water shall not violate the
6 effluent limitations or cause a violation of the water
7 quality standards established for the river, stream or
8 drainway into which such water is released.

9 (b) "Affected area" means, when used in the context
10 of surface-mining activities, all land and water resour-
11 ces within the permit area which are disturbed or
12 utilized during the term of the permit in the course of
13 surface-mining and reclamation activities. "Affected
14 area" means, when used in the context of underground
15 mining activities, all surface land and water resources
16 affected during the term of the permit: (1) By surface
17 operations or facilities incident to underground mining
18 activities; or (2) by underground operations.

19 (c) "Adjacent areas" means, for the purpose of permit
20 application, renewal, revision, review and approval,
21 those land and water resources, contiguous to or near
22 a permit area, upon which surface-mining and reclama-
23 tion operations conducted within a permit area during
24 the life of such operations may have an impact.
25 "Adjacent areas" means, for the purpose of conducting
26 surface-mining and reclamation operations, those land
27 and water resources contiguous to or near the affected
28 area upon which surface-mining and reclamation
29 operations conducted within a permit area during the
30 life of such operations may have an impact.

31 (d) "Applicant" means any person who has or should
32 have applied for any permit pursuant to this article.

33 (e) "Approximate original contour" means that surface
34 configuration achieved by the backfilling and grading
35 of the disturbed areas so that the reclaimed area,
36 including any terracing or access roads, closely resem-
37 bles the general surface configuration of the land prior
38 to mining and blends into and complements the drain-
39 age pattern of the surrounding terrain, with all
40 highwalls and spoil piles eliminated: *Provided*, That
41 water impoundments may be permitted pursuant to
42 subdivision (8), subsection (b), section twelve of this
43 article: *Provided, however*, That minor deviations may
44 be permitted in order to minimize erosion and sedimen-

45 tation, retain moisture to assist revegetation, or to direct
46 surface runoff.

47 (f) "Assessment officer" means an employee of the
48 department, other than a surface-mining reclamation
49 supervisor, inspector or inspector-in-training, appointed
50 by the commissioner to issue proposed penalty assess-
51 ments and to conduct informal conferences to review
52 notices, orders and proposed penalty assessments.

53 (g) "Breakthrough" means the release of water which
54 has been trapped or impounded, or the release of air into
55 any underground cavity, pocket or area as a result of
56 surface-mining operations.

57 (h) "Coal processing wastes" means earth materials
58 which are or have been combustible, physically unstable
59 or acid-forming or toxic-forming, which are wasted or
60 otherwise separated from product coal, and slurried or
61 otherwise transported from coal processing plants after
62 physical or chemical processing, cleaning or concentrat-
63 ing of coal.

64 (i) "Commissioner" means the commissioner of the
65 department of energy or his or her authorized agent.

66 (j) "Department" means the department of energy.

67 (k) "Director" means the director of the division of
68 mines and minerals.

69 (l) "Disturbed area" means an area where vegetation,
70 topsoil or overburden has been removed or placed by
71 surface-mining operations, and reclamation is
72 incomplete.

73 (m) "Division" means the division of mines and
74 minerals of the department of energy.

75 (n) "Imminent danger to the health or safety of the
76 public" means the existence of such condition or
77 practice, or any violation of a permit or other require-
78 ment of this article, which condition, practice or
79 violation could reasonably be expected to cause substan-
80 tial physical harm or death to any person outside the
81 permit area before such condition, practice or violation
82 can be abated. A reasonable expectation of death or

83 serious injury before abatement exists if a rational
84 person, subjected to the same conditions or practices
85 giving rise to the peril, would not expose himself to the
86 danger during the time necessary for the abatement.

87 (o) "Minerals" means clay, coal, flagstone, gravel,
88 limestone, manganese, sand, sandstone, shale, iron ore
89 and any other metal or metallurgical ore.

90 (p) "Operation" means those activities conducted by an
91 operator who is subject to the jurisdiction of this article.

92 (q) "Operator" means any person who is granted or
93 who should obtain a permit to engage in any activity
94 covered by this article and any rule promulgated
95 hereunder and includes any person who engages in
96 surface mining or surface mining and reclamation
97 operations, or both. The term shall also be construed in
98 a manner consistent with the federal program pursuant
99 to Public Law 95-87.

100 (r) "Permit" means a permit to conduct surface-
101 mining operations pursuant to this article.

102 (s) "Permit area" means the area of land indicated on
103 the approved proposal map submitted by the operator
104 as part of his application showing the location of
105 perimeter markers and monuments and shall be readily
106 identifiable by appropriate markers on the site.

107 (t) "Permittee" means a person holding a permit
108 issued under this article.

109 (u) "Person" means any individual, partnership, firm,
110 society, association, trust, corporation, other business
111 entity or any agency, unit or instrumentality of federal,
112 state or local government.

113 (v) "Prime farmland" has the same meaning as that
114 prescribed by the United States secretary of agriculture
115 on the basis of such factors as moisture availability,
116 temperature regime, chemical balance, permeability,
117 surface layer composition, susceptibility to flooding and
118 erosion characteristics, and which historically have been
119 used for intensive agricultural purposes and as pub-
120 lished in the federal register.

121 (w) "Surface mine", "surface mining" or "surface-
122 mining operations" means:

123 (1) Activities conducted on the surface of lands for the
124 removal of coal, or, subject to the requirements of
125 section fourteen of this article, surface operations and
126 surface impacts incident to an underground coal mine,
127 including the drainage and discharge therefrom. Such
128 activities include: Excavation for the purpose of
129 obtaining coal, including, but not limited to, such
130 common methods as contour, strip, auger, mountaintop
131 removal, box cut, open pit and area mining; the uses of
132 explosives and blasting; reclamation; in situ distillation
133 or retorting, leaching or other chemical or physical
134 processing; the cleaning, concentrating or other process-
135 ing or preparation and loading of coal for commercial
136 purposes at or near the mine site; and

137 (2) The areas upon which the above activities occur or
138 where such activities disturb the natural land surface.
139 Such areas shall also include any adjacent land, the use
140 of which is incidental to any such activities; all lands
141 affected by the construction of new roads or the
142 improvement or use of existing roads to gain access to
143 the site of such activities and for haulage; and excava-
144 tions, workings, impoundments, dams, ventilation
145 shafts, entryways, refuse banks, dumps, stockpiles,
146 overburden piles, spoil banks, culm banks, tailings,
147 holes or depressions, repair areas, storage areas,
148 processing areas, shipping areas and other areas upon
149 which are sited structures, facilities, or other property
150 or materials on the surface, resulting from or incident
151 to such activities: *Provided*, That such activities do not
152 include the extraction of coal incidental to the extraction
153 of other minerals where coal does not exceed sixteen and
154 two-thirds percent of the tonnage of minerals removed
155 for purposes of commercial use or sale, or coal prospect-
156 ing subject to section seven of this article.

157 (x) "Underground mine" means the surface effects
158 associated with the shaft, slopes, drifts or inclines
159 connected with excavations penetrating coal seams or
160 strata and the equipment connected therewith which

161 contribute directly or indirectly to the mining, prepa-
162 ration or handling of coal.

163 (y) "Significant, imminent environmental harm to
164 land, air or water resources" means the existence of any
165 condition or practice, or any violation of a permit or
166 other requirement of this article, which condition,
167 practice or violation could reasonably be expected to
168 cause significant and imminent environmental harm to
169 land, air or water resources. The term "environmental
170 harm" means any adverse impact on land, air or water
171 resources, including, but not limited to, plant, wildlife
172 and fish, and the environmental harm is imminent if a
173 condition or practice exists which is causing such harm
174 or may reasonably be expected to cause such harm at
175 any time before the end of the abatement time set by
176 the commissioner. An environmental harm is significant
177 if that harm is appreciable and not immediately
178 repairable.

**§22A-3-5. Surface-mining reclamation supervisors and
inspectors; appointment and qualifications;
salary.**

1 The commissioner shall determine the number of
2 surface-mining reclamation supervisors and inspectors
3 needed to carry out the purposes of this article and
4 appoint them as such. All such appointees shall be
5 qualified civil service employees, but no person shall be
6 eligible for such appointment until he or she has served
7 in a probationary status for a period of six months to
8 the satisfaction of the commissioner.

9 Every surface-mining reclamation supervisor shall be
10 paid not less than thirty thousand dollars per year.
11 Every surface-mining reclamation inspector shall be
12 paid not less than twenty-five thousand dollars per year.

**§22A-3-8. Prohibition of surface mining without a per-
mit; permit requirements; successor in inter-
est; duration of permits; proof of insurance;
termination of permits; permit fees.**

1 No person may engage in surface-mining operations
2 unless such person has first obtained a permit from the
3 commissioner in accordance with the following:

4 (a) Within two months after the secretary of the
5 interior approves a permanent state program for West
6 Virginia, all surface-mining operators shall file an
7 application for a permit or modification of a valid
8 existing permit or underground opening approval
9 relating to those lands to be mined eight months after
10 that approval.

11 (b) No later than eight months after the secretary's
12 approval of a permanent state program for West
13 Virginia, no person may engage in or carry out, on lands
14 within this state, any surface-mining operations unless
15 such person has first obtained a permit from the
16 commissioner: *Provided*, That those persons conducting
17 such operations under a permit or underground opening
18 approval issued in accordance with section 502 (c) of
19 Public Law 95-87, and in compliance therewith, may
20 conduct such operations beyond such period if an
21 application for a permit or modification of a valid
22 existing permit or underground opening approval was
23 filed within two months after the secretary's approval,
24 and the administrative decision pertaining to the
25 granting or denying of such permit has not been made
26 by the commissioner.

27 (c) All permits issued pursuant to the requirements of
28 this article shall be issued for a term not to exceed five
29 years: *Provided*, That if the applicant demonstrates that
30 a specified longer term is reasonably needed to allow the
31 applicant to obtain necessary financing for equipment
32 and the opening of the operation, and if the application
33 is full and complete for such specified longer term, the
34 commissioner may extend a permit for such longer
35 term: *Provided, however*, That subject to the prior
36 approval of the commissioner, with such approval being
37 subject to the provisions of subsection (c), section
38 eighteen of this article, a successor in interest to a
39 permittee who applies for a new permit, or transfer of
40 a permit, within thirty days of succeeding to such
41 interest, and who is able to obtain the bond coverage of
42 the original permittee, may continue surface-mining
43 and reclamation operations according to the approved
44 mining and reclamation plan of the original permittee

45 until such successor's permit application or application
46 for transfer is granted or denied.

47 (d) Proof of insurance shall be required on an annual
48 basis.

49 (e) A permit shall terminate if the permittee has not
50 commenced the surface-mining operations covered by
51 such permit within three years of the date the permit
52 was issued: *Provided*, That the commissioner may grant
53 reasonable extensions of time upon a timely showing
54 that such extensions are necessary by reason of litigation
55 precluding such commencement, or threatening sub-
56 stantial economic loss to the permittee, or by reason of
57 conditions beyond the control and without the fault or
58 negligence of the permittee: *Provided, however*, That
59 with respect to coal to be mined for use in a synthetic
60 fuel facility or specific major electric generating
61 facility, the permittee shall be deemed to have com-
62 menced surface-mining operations at such time as the
63 construction of the synthetic fuel or generating facility
64 is initiated.

65 (f) Each application for a new surface-mining permit
66 filed pursuant to this article shall be accompanied by
67 a fee of one thousand dollars. All permit fees and
68 renewal fees provided for in this section or elsewhere in
69 this article shall be collected by the commissioner and
70 deposited with the treasurer of the state of West
71 Virginia to the credit of the operating permit fees fund
72 and shall be used, upon requisition of the commissioner,
73 for the administration of this article.

74 (g) Prior to the issuance of any permit, the commis-
75 sioner of energy shall ascertain from the commissioner
76 of labor compliance with section fourteen, article five,
77 chapter twenty-one of this code. Upon issuance of the
78 permit, the commissioner of energy shall forward a copy
79 to the commissioner of labor, who shall assure continued
80 compliance under such permit.

§22A-3-9. Permit application requirements and contents.

1 (a) The surface-mining permit application shall
2 contain:

3 (1) The names and addresses of: (A) The permit
4 applicant; (B) the owner of record of the property,
5 surface and mineral, to be mined; (C) the holders of
6 record of any leasehold interest in the property; (D) any
7 purchaser of record of the property under a real estate
8 contract; (E) the operator, if he is a person different
9 from the applicant; and (F) if any of these are business
10 entities other than a single proprietor, the names and
11 addresses of the principals, officers and resident agent;

12 (2) The names and addresses of the owners of record
13 of all surface and subsurface areas contiguous to any
14 part of the proposed permit area: *Provided*, That all
15 residents living on property contiguous to the proposed
16 permit area shall be notified by the applicant, by
17 registered or certified mail, of such application on or
18 before the first day of publication of the notice provided
19 for in subdivision (6) of this subsection;

20 (3) A statement of any current surface-mining permits
21 held by the applicant in the state and the permit
22 number and each pending application;

23 (4) If the applicant is a partnership, corporation,
24 association or other business entity, the following where
25 applicable: The names and addresses of every officer,
26 partner, resident agent, director or person performing
27 a function similar to a director, together with the names
28 and addresses of any person owning of record ten
29 percent or more of any class of voting stock of the
30 applicant; and a list of all names under which the
31 applicant, officer, director, partner or principal share-
32 holder previously operated a surface-mining operation
33 in the United States within the five-year period
34 preceding the date of submission of the application;

35 (5) A statement of whether the applicant, or any
36 officer, partner, director, principal shareholder of the
37 applicant, any subsidiary, affiliate or persons controlled
38 by or under common control with the applicant, has ever
39 been an officer, partner, director or principal share-
40 holder in a company which has ever held a federal or
41 state mining permit which in the five-year period prior
42 to the date of submission of the application has been

43 permanently suspended or revoked or has had a mining
44 bond or similar security deposited in lieu of bond
45 forfeited and, if so, a brief explanation of the facts
46 involved;

47 (6) A copy of the applicant's advertisement to be
48 published in a newspaper of general circulation in the
49 locality of the proposed permit area at least once a week
50 for four successive weeks. The advertisement shall
51 contain in abbreviated form the information required by
52 this section including the ownership and map of the
53 tract location and boundaries of the proposed site so that
54 the proposed operation is readily locatable by local
55 residents, the location of the office of the division of
56 energy where the application is available for public
57 inspection and stating that written protests will be
58 accepted by the commissioner until a certain date which
59 shall be at least thirty days after the last publication of
60 the applicant's advertisement;

61 (7) A description of the type and method of surface-
62 mining operation that exists or is proposed, the engi-
63 neering techniques used or proposed, and the equipment
64 used or proposed to be used;

65 (8) The anticipated starting and termination dates of
66 each phase of the surface-mining operation and the
67 number of acres of land to be affected;

68 (9) A description of the legal documents upon which
69 the applicant bases his legal right to enter and conduct
70 surface-mining operations on the proposed permit area
71 and whether that right is the subject of pending court
72 litigation: *Provided*, That nothing in this article may be
73 construed as vesting in the commissioner the jurisdic-
74 tion to adjudicate property-rights disputes;

75 (10) The name of the watershed and location of the
76 surface stream or tributary into which surface and pit
77 drainage will be discharged;

78 (11) A determination of the probable hydrologic
79 consequences of the mining and reclamation operations,
80 both on and off the mine site, with respect to the
81 hydrologic regime, quantity and quality of water in

82 surface and ground water systems, including the
83 dissolved and suspended solids under seasonal flow
84 conditions and the collection of sufficient data for the
85 mine site and surrounding areas so that an assessment
86 can be made by the commissioner of the probable
87 cumulative impacts of all anticipated mining in the area
88 upon the hydrology of the area, and particularly upon
89 water availability: *Provided*, That this determination
90 shall not be required until such time as hydrologic
91 information on the general area prior to mining is made
92 available from an appropriate federal or state agency or,
93 if existing and in the possession of the applicant, from
94 the applicant: *Provided, however*, That the permit
95 application shall not be approved until the information
96 is available and is incorporated into the application;

97 (12) Accurate maps to an appropriate scale clearly
98 showing: (A) The land to be affected as of the date of
99 application; (B) the area of land within the permit area
100 upon which the applicant has the legal right to enter
101 and conduct surface-mining operations; and (C) all types
102 of information set forth on enlarged topographical maps
103 of the United States geological survey of a scale of
104 1:24,000 or larger, including all man-made features and
105 significant known archaeological sites existing on the
106 date of application. In addition to other things specified
107 by the commissioner, the map shall show the boundary
108 lines and names of present owners of record of all
109 surface areas abutting the proposed permit area and the
110 location of all structures within one thousand feet of the
111 proposed permit area;

112 (13) Cross-section maps or plans of the proposed
113 affected area, including the actual area to be mined,
114 prepared by or under the direction of and certified by
115 a person approved by the commissioner, showing
116 pertinent elevation and location of test borings or core
117 samplings, where required by the commissioner, and
118 depicting the following information: (A) The nature and
119 depth of the various strata or overburden; (B) the
120 location of subsurface water, if encountered, and its
121 quality; (C) the nature and thickness of any coal or rider
122 seams above the seam to be mined; (D) the nature of the

123 stratum immediately beneath the coal seam to be mined;
124 (E) all mineral crop lines and the strike and dip of the
125 coal to be mined, within the area of land to be affected;
126 (F) existing or previous surface-mining limits; (G) the
127 location and extent of known workings of any under-
128 ground mines, including mine openings to the surface;
129 (H) the location of any significant aquifers; (I) the
130 estimated elevation of the water table; (J) the location
131 of spoil, waste or refuse areas and topsoil preservation
132 areas; (K) the location of all impoundments for waste or
133 erosion control; (L) any settling or water treatment
134 facility or drainage system; (M) constructed or natural
135 drainways and the location of any discharges to any
136 surface body of water on the area of land to be affected
137 or adjacent thereto; and (N) adequate profiles at
138 appropriate cross sections of the anticipated final
139 surface configuration that will be achieved pursuant to
140 the operator's proposed reclamation plan;

141 (14) A statement of the result of test borings or core
142 samples from the permit area, including: (A) Logs of the
143 drill holes; (B) the thickness of the coal seam to be mined
144 and analysis of the chemical and physical properties of
145 the coal; (C) the sulfur content of any coal seam; (D)
146 chemical analysis of potentially acid or toxic forming
147 sections of the overburden; and (E) chemical analysis of
148 the stratum lying immediately underneath the coal to
149 be mined: *Provided*, That the provisions of this subdi-
150 vision may be waived by the commissioner with respect
151 to the specific application by a written determination
152 that such requirements are unnecessary;

153 (15) For those lands in the permit application which
154 a reconnaissance inspection suggests may be prime
155 farmlands, a soil survey shall be made or obtained
156 according to standards established by the secretary of
157 agriculture in order to confirm the exact location of such
158 prime farmlands;

159 (16) A reclamation plan as presented in section ten of
160 this article;

161 (17) Information pertaining to coal seams, test
162 borings, core samplings or soil samples as required by

163 this section shall be made available to any person with
164 an interest which is or may be adversely affected:
165 *Provided*, That information which pertains only to the
166 analysis of the chemical and physical properties of the
167 coal, except information regarding mineral or elemental
168 content which is potentially toxic to the environment,
169 shall be kept confidential and not made a matter of
170 public record;

171 (18) When requested by the commissioner, the clima-
172 tological factors that are peculiar to the locality of the
173 land to be affected, including the average seasonal
174 precipitation, the average direction and velocity of
175 prevailing winds, and the seasonal temperature ranges;
176 and

177 (19) Other information that may be required by rules
178 and regulations reasonably necessary to effectuate the
179 purposes of this article.

180 (b) If the commissioner finds that the probable total
181 annual production at all locations of any coal surface-
182 mining operator will not exceed three hundred thousand
183 tons, the determination of probable hydrologic conse-
184 quences and the statement of the result of test borings
185 or core samplings shall, upon the written request of the
186 operator, be performed by a qualified public or private
187 laboratory designated by the commissioner and a
188 reasonable cost of the preparation of such determination
189 and statement shall be assumed by the division from
190 funds provided by the United States department of the
191 interior pursuant to Public Law 95-87.

192 (c) Before the first publication of the applicant's
193 advertisement, each applicant for a surface-mining
194 permit shall file, except for that information pertaining
195 to the coal seam itself, a copy of the application for
196 public inspection in the nearest office of the division of
197 energy as specified in the applicant's advertisement.

198 (d) Each applicant for a permit shall be required to
199 submit to the commissioner as a part of the permit
200 application a certificate issued by an insurance company
201 authorized to do business in this state covering the
202 surface-mining operation for which the permit is sought,

203 or evidence that the applicant has satisfied state self-
204 insurance requirements. The policy shall provide for
205 personal injury and property damage protection in an
206 amount adequate to compensate any persons damaged
207 as a result of surface coal mining and reclamation
208 operations, including use of explosives, and entitled to
209 compensation under the applicable provisions of state
210 law. The policy shall be maintained in full force and
211 effect during the terms of the permit or any renewal,
212 including the length of all reclamation operations.

213 (e) Each applicant for a surface-mining permit shall
214 submit to the commissioner as part of the permit
215 application a blasting plan where explosives are to be
216 used, which shall outline the procedures and standards
217 by which the operator will meet the provisions of the
218 blasting performance standards.

219 (f) The applicant shall file as part of his permit
220 application a schedule listing all notices of violation,
221 bond forfeitures, permit revocations, cessation orders or
222 permanent suspension orders resulting from a violation
223 of Public Law 95-87, this article or any law or regulation
224 of the United States or any department or agency of any
225 state pertaining to air or environmental protection
226 received by the applicant in connection with any
227 surface-mining operation during the three-year period
228 prior to the date of application, and indicating the final
229 resolution of any notice of violation, forfeiture, revoca-
230 tion, cessation or permanent suspension.

231 (g) Within five working days of receipt of an appli-
232 cation for a permit, the commissioner shall notify the
233 operator in writing, stating whether the application is
234 complete and whether the operator's advertisement may
235 be published. If the application is not complete, the
236 commissioner shall state in writing why the application
237 is incomplete.

§22A-3-10. Reclamation plan requirements.

1 (a) Each reclamation plan submitted as part of a
2 surface-mining permit application shall include, in the
3 degree of detail necessary to demonstrate that reclama-
4 tion required by this article can be accomplished, a

5 statement of:

6 (1) The identification of the lands subject to surface
7 mining over the estimated life of these operations and
8 the size, sequence and timing of the operations for which
9 it is anticipated that individual permits for mining will
10 be sought;

11 (2) The condition of the land to be covered by the
12 permit prior to any mining, including: (A) The uses
13 existing at the time of the application and, if such land
14 has a history of previous mining, the uses which
15 preceded any mining; (B) the capability of the land prior
16 to any mining to support a variety of uses, giving
17 consideration to soil and foundation characteristics,
18 topography and vegetation cover and, if applicable, a
19 soil survey prepared pursuant to subdivision (15),
20 subsection (a), section nine of this article; and (C) the
21 best information available on the productivity of the
22 land prior to mining, including appropriate classifica-
23 tion as prime farmlands, and the average yield of food,
24 fiber, forage or wood products from such lands obtained
25 under high levels of management;

26 (3) The use which is proposed to be made of the land
27 following reclamation, including a discussion of the
28 utility and capacity of the reclaimed land to support a
29 variety of alternative uses and the relationship of such
30 use to existing land use policies and plans, and the
31 comments of any owner of the surface, other state
32 agencies and local governments, which would have to
33 initiate, implement, approve or authorize the proposed
34 use of the land following reclamation;

35 (4) A detailed description of how the proposed
36 postmining land use is to be achieved and the necessary
37 support activities which may be needed to achieve the
38 proposed land use;

39 (5) The engineering techniques proposed to be used in
40 mining and reclamation and a description of the major
41 equipment; a plan for the control of surface water
42 drainage and of water accumulation; a plan where
43 appropriate, for backfilling, soil stabilization and
44 compacting, grading, revegetation and a plan for soil

45 reconstruction, replacement and stabilization pursuant
46 to the performance standards in subdivision (7), subsec-
47 tion (b), section twelve of this article for those food,
48 forage and forest lands identified therein; and a
49 statement as to how the operator plans to comply with
50 each of the applicable requirements set out in section
51 twelve or fourteen of this article;

52 (6) A detailed estimated timetable for the accomplish-
53 ment of each major step in the reclamation plan;

54 (7) The consideration which has been given to conduct-
55 ing surface-mining operations in a manner consistent
56 with surface owner plans and applicable state and local
57 land use plans and programs;

58 (8) The steps to be taken to comply with applicable
59 air and water quality laws and regulations and any
60 applicable health and safety standards;

61 (9) The consideration which has been given to devel-
62 oping the reclamation plan in a manner consistent with
63 local physical environmental and climatological
64 conditions;

65 (10) All lands, interests in lands or options on such
66 interests held by the applicant or pending bids on
67 interests in lands by the applicant, which lands are
68 contiguous to the area to be covered by the permit;

69 (11) A detailed description of the measures to be taken
70 during the surface-mining and reclamation process to
71 assure the protection of: (A) The quality of surface and
72 ground water systems, both on-and off-site, from
73 adverse effects of the surface-mining operation; (B) the
74 rights of present users to such water; and (C) the
75 quantity of surface and ground water systems, both on-
76 and off-site, from adverse effects of the surface-mining
77 operation or to provide alternative sources of water
78 where such protection of quantity cannot be assured;

79 (12) The results of tests borings which the applicant
80 has made at the area to be covered by the permit, or
81 other equivalent information and data in a form
82 satisfactory to the commissioner, including the location
83 of subsurface water, and an analysis of the chemical

84 properties, including acid forming properties of the
85 mineral and overburden: *Provided*, That information
86 which pertains only to the analysis of the chemical and
87 physical properties of the coal, except information
88 regarding such mineral or elemental contents which are
89 potentially toxic in the environment, shall be kept
90 confidential and not made a matter of public record;

91 (13) The consideration which has been given to
92 maximize the utilization and conservation of the solid
93 fuel resource being recovered so that re-affecting the
94 land in the future can be minimized; and

95 (14) Such other requirements as the commissioner
96 may prescribe by regulation.

97 (b) The reclamation plan shall be available to the
98 public for review except for those portions thereof
99 specifically exempted in subsection (a) of this section.

§22A-3-12. General environmental protection performance standards for surface mining; variances.

1 (a) Any permit issued by the commissioner pursuant
2 to this article to conduct surface-mining operations shall
3 require that such surface-mining operations will meet
4 all applicable performance standards of this article and
5 other requirements as the commissioner shall
6 promulgate.

7 (b) The following general performance standards shall
8 be applicable to all surface mines and shall require the
9 operation as a minimum to:

10 (1) Maximize the utilization and conservation of the
11 solid fuel resource being recovered to minimize re-affect-
12 ing the land in the future through surface mining;

13 (2) Restore the land affected to a condition capable of
14 supporting the uses which it was capable of supporting
15 prior to any mining, or higher or better uses of which
16 there is reasonable likelihood so long as the use or uses
17 do not present any actual or probable hazard to public
18 health or safety or pose any actual or probable threat
19 of water diminution or pollution, and the permit

20 applicants' declared proposed land use following
21 reclamation is not deemed to be impractical or unreas-
22 onable, inconsistent with applicable land use policies
23 and plans, involves unreasonable delay in implementa-
24 tion, or is violative of federal, state or local law;

25 (3) Except as provided in subsection (c) of this section,
26 with respect to all surface mines, backfill, compact
27 where advisable to ensure stability or to prevent
28 leaching of toxic materials, and grade in order to restore
29 the approximate original contour: *Provided*, That in
30 surface mining which is carried out at the same location
31 over a substantial period of time where the operation
32 transects the coal deposit, and the thickness of the coal
33 deposits relative to the volume of the overburden is large
34 and where the operator demonstrates that the over-
35 burden and other spoil and waste materials at a
36 particular point in the permit area or otherwise
37 available from the entire permit area is insufficient,
38 giving due consideration to volumetric expansion, to
39 restore the approximate original contour, the operator,
40 at a minimum, shall backfill, grade and compact, where
41 advisable, using all available overburden and other spoil
42 and waste materials to attain the lowest practicable
43 grade, but not more than the angle of repose, to provide
44 adequate drainage and to cover all acid-forming and
45 other toxic materials, in order to achieve an ecologically
46 sound land use compatible with the surrounding region:
47 *Provided, however*, That in surface mining where the
48 volume of overburden is large relative to the thickness
49 of the coal deposit and where the operator demonstrates
50 that due to volumetric expansion the amount of over-
51 burden and other spoil and waste materials removed in
52 the course of the mining operation is more than
53 sufficient to restore the approximate original contour,
54 the operator shall, after restoring the approximate
55 contour, backfill, grade and compact, where advisable,
56 the excess overburden and other spoil and waste
57 materials to attain the lowest grade, but not more than
58 the angle of repose, and to cover all acid-forming and
59 other toxic materials, in order to achieve an ecologically
60 sound land use compatible with the surrounding region
61 and, such overburden or spoil shall be shaped and

62 graded in such a way as to prevent slides, erosion and
63 water pollution and is revegetated in accordance with
64 the requirements of this article: *Provided further*, That
65 the commissioner shall promulgate rules and regula-
66 tions governing variances to the requirements for return
67 to approximate original contour or highwall elimination
68 and where adequate material is not available from
69 surface-mining operations permitted after the effective
70 date of this article for: (A) Underground mining
71 operations existing prior to the third day of August, one
72 thousand nine hundred seventy-seven, or (B) for areas
73 upon which surface mining prior to the first day of July,
74 one thousand nine hundred seventy-seven, created
75 highwalls;

76 (4) Stabilize and protect all surface areas, including
77 spoil piles, affected by the surface-mining operation to
78 effectively control erosion and attendant air and water
79 pollution;

80 (5) Remove the topsoil from the land in a separate
81 layer, replace it on the backfill area, or if not utilized
82 immediately, segregate it in a separate pile from other
83 spoil and, when the topsoil is not replaced on a backfill
84 area within a time short enough to avoid deterioration
85 of the topsoil, maintain a successful vegetative cover by
86 quick growing plants or by other similar means in order
87 to protect topsoil from wind and water erosion and keep
88 it free of any contamination by other acid or toxic
89 material: *Provided*, That if topsoil is of insufficient
90 quantity or of poor quality for sustaining vegetation, or
91 if other strata can be shown to be more suitable for
92 vegetation requirements, then the operator shall re-
93 move, segregate and preserve in a like manner such
94 other strata which is best able to support vegetation;

95 (6) Restore the topsoil or the best available subsoil
96 which is best able to support vegetation;

97 (7) Ensure that all prime farmlands are mined and
98 reclaimed in accordance with the specifications for soil
99 removal, storage, replacement and reconstruction
100 established by the United States secretary of agriculture
101 and the soil conservation service pertaining thereto. The

102 operator, as a minimum, shall be required to: (A)
103 Segregate the A horizon of the natural soil, except
104 where it can be shown that other available soil materials
105 will create a final soil having a greater productive
106 capacity, and if not utilized immediately, stockpile this
107 material separately from other spoil, and provide
108 needed protection from wind and water erosion or
109 contamination by other acid or toxic material; (B)
110 segregate the B horizon of the natural soil, or underly-
111 ing C horizons or other strata, or a combination of such
112 horizons or other strata that are shown to be both
113 texturally and chemically suitable for plant growth and
114 that can be shown to be equally or more favorable for
115 plant growth than the B horizon, in sufficient quantities
116 to create in the regraded final soil a root zone of
117 comparable depth and quality to that which existed in
118 the natural soil, and if not utilized immediately,
119 stockpile this material separately from other spoil and
120 provide needed protection from wind and water erosion
121 or contamination by other acid or toxic material; (C)
122 replace and regrade the root zone material described in
123 subparagraph (B) above with proper compaction and
124 uniform depth over the regraded spoil material; and (D)
125 redistribute and grade in a uniform manner the surface
126 soil horizon described in subparagraph (A) above;

127 (8) Create, if authorized in the approved surface-
128 mining and reclamation plan and permit, permanent
129 impoundments of water on mining sites as part of
130 reclamation activities in accordance with regulations
131 promulgated by the commissioner;

132 (9) Where augering is the method of recovery, seal all
133 auger holes with an impervious and noncombustible
134 material in order to prevent drainage except where the
135 commissioner determines that the resulting impound-
136 ment of water in such auger holes may create a hazard
137 to the environment or the public welfare and safety:
138 *Provided*, That the commissioner may prohibit augering
139 if necessary to maximize the utilization, recoverability
140 or conservation of the mineral resources or to protect
141 against adverse water quality impacts;

142 (10) Minimize the disturbances to the prevailing

143 hydrologic balance at the mine site and in associated off-
144 site areas and to the quality and quantity of water in
145 surface and ground water systems both during and after
146 surface-mining operations and during reclamation by:
147 (A) Avoiding acid or other toxic mine drainage by such
148 measures as, but not limited to: (i) Preventing or
149 removing water from contact with toxic producing
150 deposits; (ii) treating drainage to reduce toxic content
151 which adversely affects downstream water upon being
152 released to water courses; and (iii) casing, sealing or
153 otherwise managing boreholes, shafts and wells and
154 keep acid or other toxic drainage from entering ground
155 and surface waters; (B) conducting surface-mining
156 operations so as to prevent to the extent possible, using
157 the best technology currently available, additional
158 contributions of suspended solids to streamflow or
159 runoff outside the permit area, but in no event shall
160 contributions be in excess of requirements set by
161 applicable state or federal law; (C) constructing an
162 approved drainage system pursuant to subparagraph
163 (B) of this subdivision prior to commencement of
164 surface-mining operations, such system to be certified
165 by a person approved by the commissioner to be
166 constructed as designed and as approved in the recla-
167 mation plan; (D) avoiding channel deepening or enlarg-
168 ement in operations requiring the discharge of water
169 from mines; (E) unless otherwise authorized by the
170 commissioner, cleaning out and removing temporary or
171 large settling ponds or other siltation structures after
172 disturbed areas are revegetated and stabilized, and
173 depositing the silt and debris at a site and in a manner
174 approved by the commissioner; (F) restoring recharge
175 capacity of the mined area to approximate premining
176 conditions; and (G) such other actions as the commis-
177 sioner may prescribe;

178 (11) With respect to surface disposal of mine wastes,
179 tailings, coal processing wastes and other wastes in
180 areas other than the mine working excavations, stabilize
181 all waste piles in designated areas through construction
182 in compacted layers, including the use of noncombust-
183 ible and impervious materials if necessary, and assure
184 the final contour of the waste pile will be compatible

185 with natural surroundings and that the site will be
186 stabilized and revegetated according to the provisions of
187 this article;

188 (12) Design, locate, construct, operate, maintain,
189 enlarge, modify and remove or abandon, in accordance
190 with standards and criteria developed pursuant to
191 subsection (f) of this section, all existing and new coal
192 mine waste piles consisting of mine wastes, tailings, coal
193 processing wastes or other liquid and solid wastes, and
194 used either temporarily or permanently as dams or
195 embankments;

196 (13) Refrain from surface mining within five hundred
197 feet of any active and abandoned underground mines in
198 order to prevent breakthroughs and to protect health or
199 safety of miners: *Provided*, That the commissioner shall
200 permit an operator to mine near, through or partially
201 through an abandoned underground mine or closer to an
202 active underground mine if: (A) The nature, timing and
203 sequencing of the approximate coincidence of specific
204 surface-mine activities with specific underground mine
205 activities are coordinated jointly by the operators
206 involved and approved by the commissioner; and (B)
207 such operations will result in improved resource
208 recovery, abatement of water pollution or elimination of
209 hazards to the health and safety of the public: *Provided*,
210 *however*, That any breakthrough which does occur shall
211 be sealed;

212 (14) Ensure that all debris, acid-forming materials,
213 toxic materials or materials constituting a fire hazard
214 are treated or buried and compacted, or otherwise
215 disposed of in a manner designed to prevent contami-
216 nation of ground or surface waters, and that contingency
217 plans are developed to prevent sustained combustion:
218 *Provided*, That the operator shall remove or bury all
219 metal, lumber, equipment and other debris resulting
220 from the operation before grading release;

221 (15) Ensure that explosives are used only in accor-
222 dance with existing state and federal law and the
223 regulations promulgated by the commissioner, which
224 shall include provisions to: (A) Provide adequate

225 advance written notice to local governments and
226 residents who might be affected by the use of the
227 explosives by publication of the planned blasting
228 schedule in a newspaper of general circulation in the
229 locality and by mailing a copy of the proposed blasting
230 schedule to every resident living within one-half mile of
231 the proposed blasting site: *Provided*, That this notice
232 shall suffice as daily notice to residents or occupants of
233 the areas; (B) maintain for a period of at least three
234 years and make available for public inspection, upon
235 written request, a log detailing the location of the blasts,
236 the pattern and depth of the drill holes, the amount of
237 explosives used per hole and the order and length of
238 delay in the blasts; (C) limit the type of explosives and
239 detonating equipment, the size, the timing and fre-
240 quency of blasts based upon the physical conditions of
241 the site so as to prevent: (i) Injury to persons; (ii) damage
242 to public and private property outside the permit area;
243 (iii) adverse impacts on any underground mine; and (iv)
244 change in the course, channel or availability of ground
245 or surface water outside the permit area; (D) require
246 that all blasting operations be conducted by persons
247 certified by the director of the division of mines and
248 minerals; and (E) provide that upon written request of
249 a resident or owner of a man-made dwelling or structure
250 within one-half mile of any portion of the permit area,
251 the applicant or permittee shall conduct a preblasting
252 survey or other appropriate investigation of the struc-
253 tures and submit the results to the commissioner and a
254 copy to the resident or owner making the request. The
255 area of the survey shall be determined by the commis-
256 sioner in accordance with regulations promulgated by
257 him;

258 (16) Ensure that all reclamation efforts proceed in an
259 environmentally sound manner and as contemporane-
260 ously as practicable with the surface-mining operations.
261 Time limits shall be established by the commissioner
262 requiring backfilling, grading and planting to be kept
263 current: *Provided*, That where surface-mining opera-
264 tions and underground mining operations are proposed
265 on the same area, which operations must be conducted
266 under separate permits, the commissioner may grant a

267 variance from the requirement that reclamation efforts
268 proceed as contemporaneously as practicable to permit
269 underground mining operations prior to reclamation:

270 (A) If the commissioner finds in writing that:

271 (i) The applicant has presented, as part of the permit
272 application, specific, feasible plans for the proposed
273 underground mining operations;

274 (ii) The proposed underground mining operations are
275 necessary or desirable to assure maximum practical
276 recovery of the mineral resource and will avoid multiple
277 disturbance of the surface;

278 (iii) The applicant has satisfactorily demonstrated that
279 the plan for the underground mining operations con-
280 forms to requirements for underground mining in the
281 jurisdiction and that permits necessary for the under-
282 ground mining operations have been issued by the
283 appropriate authority;

284 (iv) The areas proposed for the variance have been
285 shown by the applicant to be necessary for the imple-
286 menting of the proposed underground mining
287 operations;

288 (v) No substantial adverse environmental damage,
289 either on-site or off-site, will result from the delay in
290 completion of reclamation as required by this article;
291 and

292 (vi) Provisions for the off-site storage of spoil will
293 comply with subdivision (22), subsection (b) of this
294 section;

295 (B) If the commissioner has promulgated specific
296 regulations to govern the granting of such variances in
297 accordance with the provisions of this subparagraph and
298 has imposed such additional requirements as he deems
299 necessary;

300 (C) If variances granted under the provisions of this
301 paragraph are reviewed by the commissioner not more
302 than three years from the date of issuance of the permit:
303 *Provided*, That the underground mining permit shall
304 terminate if the underground operations have not

305 commenced within three years of the date the permit
306 was issued, unless extended as set forth in subsection (e),
307 section eight of this article; and

308 (D) If liability under the bond filed by the applicant
309 with the commissioner pursuant to subsection (b),
310 section eleven of this article shall be for the duration of
311 the underground mining operations and until the
312 requirements of subsection (g), section eleven and
313 section twenty-three of this article have been fully
314 complied with.

315 (17) Ensure that the construction, maintenance and
316 postmining conditions of access and haulroads into and
317 across the site of operations will control or prevent
318 erosion and siltation, pollution of water, damage to fish
319 or wildlife or their habitat, or public or private
320 property: *Provided*, That access roads constructed for
321 and used to provide infrequent service to surface
322 facilities, such as ventilators or monitoring devices, shall
323 be exempt from specific construction criteria provided
324 adequate stabilization to control erosion is achieved
325 through alternative measures;

326 (18) Refrain from the construction of roads or other
327 access ways up a stream bed or drainage channel or in
328 proximity to the channel so as to significantly alter the
329 normal flow of water;

330 (19) Establish on the regraded areas, and all other
331 lands affected, a diverse, effective and permanent
332 vegetative cover of the same seasonal variety native to
333 the area of land to be affected or of a fruit, grape or
334 berry producing variety suitable for human consump-
335 tion and capable of self-regeneration and plant succes-
336 sion at least equal in extent of cover to the natural
337 vegetation of the area, except that introduced species
338 may be used in the revegetation process where desirable
339 or when necessary to achieve the approved postmining
340 land use plan;

341 (20) Assume the responsibility for successful revege-
342 tation, as required by subdivision (19) of this subsection,
343 for a period of not less than five growing seasons, as
344 defined by the commissioner, after the last year of

345 augmented seeding, fertilizing, irrigation or other work
346 in order to assure compliance with subdivision (19) of
347 this subsection: *Provided*, That when the commissioner
348 issues a written finding approving a long-term agricul-
349 tural postmining land use as a part of the mining and
350 reclamation plan, the commissioner may grant excep-
351 tion to the provisions of subdivision (19) of this subsec-
352 tion: *Provided, however*, That when the commissioner
353 approves an agricultural postmining land use, the
354 applicable five growing seasons of responsibility for
355 revegetation shall commence at the date of initial
356 planting for such agricultural postmining land use;

357 (21) Protect off-site areas from slides or damage
358 occurring during surface-mining operations and not
359 deposit spoil material or locate any part of the opera-
360 tions or waste accumulations outside the permit area:
361 *Provided*, That spoil material may be placed outside the
362 permit area, if approved by the commissioner, after a
363 finding that environmental benefits will result from
364 such;

365 (22) Place all excess spoil material resulting from
366 surface-mining activities in such a manner that: (A)
367 Spoil is transported and placed in a controlled manner
368 in position for concurrent compaction and in a way as
369 to assure mass stability and to prevent mass movement;
370 (B) the areas of disposal are within the bonded permit
371 areas and all organic matter shall be removed imme-
372 diately prior to spoil placements; (C) appropriate surface
373 and internal drainage system or diversion ditches are
374 used to prevent spoil erosion and movement; (D) the
375 disposal area does not contain springs, natural water
376 courses or wet weather seeps, unless lateral drains are
377 constructed from the wet areas to the main underdrains
378 in a manner that filtration of the water into the spoil
379 pile will be prevented; (E) if placed on a slope, the spoil
380 is placed upon the most moderate slope among those
381 upon which, in the judgment of the commissioner, the
382 spoil could be placed in compliance with all the
383 requirements of this article, and shall be placed, where
384 possible, upon, or above, a natural terrace, bench or
385 berm, if placement provides additional stability and

386 prevents mass movement; (F) where the toe of the spoil
387 rests on a downslope, a rock toe buttress, of sufficient
388 size to prevent mass movement, is constructed; (G) the
389 final configuration is compatible with the natural
390 drainage pattern and surroundings and suitable for
391 intended uses; (H) design of the spoil disposal area is
392 certified by a qualified registered professional engineer
393 in conformance with professional standards; and (I) all
394 other provisions of this article are met: *Provided*, That
395 where the excess spoil material consists of at least eighty
396 percent, by volume, sandstone, limestone or other rocks
397 that do not slake in water and will not degrade to soil
398 material, the commissioner may approve alternate
399 methods for disposal of excess spoil material, including
400 fill placement by dumping in a single lift, on a site
401 specific basis: *Provided, however*, That the services of a
402 qualified registered professional engineer experienced
403 in the design and construction of earth and rockfill
404 embankment are utilized: *Provided further*, That such
405 approval shall not be unreasonably withheld if the site
406 is suitable;

407 (23) Meet such other criteria as are necessary to
408 achieve reclamation in accordance with the purposes of
409 this article, taking into consideration the physical,
410 climatological and other characteristics of the site;

411 (24) To the extent possible, using the best technology
412 currently available, minimize disturbances and adverse
413 impacts of the operation on fish, wildlife and related
414 environmental values, and achieve enhancement of these
415 resources where practicable; and

416 (25) Retain a natural barrier to inhibit slides and
417 erosion on permit areas where outcrop barriers are
418 required: *Provided*, That constructed barriers may be
419 allowed where: (A) Natural barriers do not provide
420 adequate stability; (B) natural barriers would result in
421 potential future water quality deterioration; and (C)
422 natural barriers would conflict with the goal of maxi-
423 mum utilization of the mineral resource: *Provided*,
424 *however*, That at a minimum, the constructed barrier
425 must be of sufficient width and height to provide
426 adequate stability and the stability factor must equal or

427 exceed that of the natural outcrop barrier: *Provided*
428 *further*, That where water quality is paramount, the
429 constructed barrier must be composed of impervious
430 material with controlled discharge points.

431 (c) (1) The commissioner may prescribe procedures
432 pursuant to which he may permit surface-mining
433 operations for the purposes set forth in subdivision (3)
434 of this subsection.

435 (2) Where an applicant meets the requirements of
436 subdivisions (3) and (4) of this subsection, a permit
437 without regard to the requirement to restore to approx-
438 imate original contour set forth in subsection (b) or (d)
439 of this section may be granted for the surface mining
440 of coal where the mining operation will remove an entire
441 coal seam or seams running through the upper fraction
442 of a mountain, ridge or hill, except as provided in
443 subparagraph (A), subdivision (4) of this subsection, by
444 removing all of the overburden and creating a level
445 plateau or a gently rolling contour with no highwalls
446 remaining, and capable of supporting postmining uses
447 in accordance with the requirements of this subsection.

448 (3) In cases where an industrial, commercial, wood-
449 land, agricultural, residential or public use is proposed
450 for the postmining use of the affected land, the commis-
451 sioner may grant a permit for a surface-mining
452 operation of the nature described in subdivision (2) of
453 this subsection where: (A) The proposed postmining land
454 use is deemed to constitute an equal or better use of the
455 affected land, as compared with premining use; (B) the
456 applicant presents specific plans for the proposed
457 postmining land use and appropriate assurances that
458 the use will be: (i) Compatible with adjacent land uses;
459 (ii) practicable with respect to achieving the proposed
460 use; (iii) supported by commitments from public
461 agencies where appropriate; (iv) practicable with
462 respect to private financial capability for completion of
463 the proposed use; (v) planned pursuant to a schedule
464 attached to the reclamation plan so as to integrate the
465 mining operation and reclamation with the postmining
466 land use; and (vi) designed by a person approved by the
467 commissioner in conformance with standards estab-

468 lished to assure the stability, drainage and configuration
469 necessary for the intended use of the site; (C) the
470 proposed use would be compatible with adjacent land
471 uses, and existing state and local land use plans and
472 programs; (D) the commissioner provides the county
473 commission of the county in which the land is located
474 and any state or federal agency which the commissioner,
475 in his discretion, determines to have an interest in the
476 proposed use, an opportunity of not more than sixty days
477 to review and comment on the proposed use; and (E) all
478 other requirements of this article will be met.

479 (4) In granting any permit pursuant to this subsection,
480 the commissioner shall require that: (A) A natural
481 barrier be retained to inhibit slides and erosion on
482 permit areas where outcrop barriers are required:
483 *Provided*, That constructed barriers may be allowed
484 where: (i) Natural barriers do not provide adequate
485 stability; (ii) natural barriers would result in potential
486 future water quality deterioration; and (iii) natural
487 barriers would conflict with the goal of maximum
488 utilization of the mineral resource: *Provided, however*,
489 That, at a minimum, the constructed barrier must be
490 sufficient width and height to provide adequate stability
491 and the stability factor must equal or exceed that of the
492 natural outcrop barrier: *Provided further*, That where
493 water quality is paramount, the constructed barrier
494 must be composed of impervious material with controlled
495 discharge points; (B) the reclaimed area is stable;
496 (C) the resulting plateau or rolling contour drains
497 inward from the outcrops except at specific points; (D)
498 no damage will be done to natural watercourses; (E)
499 spoil will be placed on the mountaintop bench as is
500 necessary to achieve the planned postmining land use:
501 *And provided further*, That all excess spoil material not
502 retained on the mountaintop shall be placed in accordance
503 with the provisions of subdivision (22), subsection
504 (b) of this section; and (F) ensure stability of the spoil
505 retained on the mountaintop and meet the other
506 requirements of this article.

507 (5) All permits granted under the provisions of this
508 subsection shall be reviewed not more than three years

509 from the date of issuance of the permit; unless the
510 applicant affirmatively demonstrates that the proposed
511 development is proceeding in accordance with the terms
512 of the approved schedule and reclamation plan.

513 (d) In addition to those general performance standards
514 required by this section, when surface mining occurs on
515 slopes of twenty degrees or greater, or on such lesser
516 slopes as may be defined by regulation after consider-
517 ation of soil and climate, no debris, abandoned or
518 disabled equipment, spoil material or waste mineral
519 matter will be placed on the natural downslope below
520 the initial bench or mining cut: *Provided*, That soil or
521 spoil material from the initial cut of earth in a new
522 surface-mining operation may be placed on a limited
523 specified area of the downslope below the initial cut if
524 the permittee can establish to the satisfaction of the
525 commissioner that the soil or spoil will not slide and that
526 the other requirements of this section can still be met.

527 (e) The commissioner may promulgate rules that
528 permit variances from the approximate original contour
529 requirements of this section: *Provided*, That the wa-
530 tershed control of the area is improved: *Provided*,
531 *however*, That complete backfilling with spoil material
532 shall be required to completely cover the highwall,
533 which material will maintain stability following mining
534 and reclamation.

535 (f) The commissioner shall promulgate regulations for
536 the design, location, construction, maintenance, opera-
537 tion, enlargement, modification, removal and abandon-
538 ment of new and existing coal mine waste piles. In
539 addition to engineering and other technical specifica-
540 tions, the standards and criteria developed pursuant to
541 this subsection must include provisions for review and
542 approval of plans and specifications prior to construc-
543 tion, enlargement, modification, removal or abandon-
544 ment; performance of periodic inspections during
545 construction; issuance of certificates of approval upon
546 completion of construction; performance of periodic
547 safety inspections; and issuance of notices and orders for
548 required remedial or maintenance work or affirmative
549 action: *Provided*, That whenever the commissioner finds

550 that any coal processing waste pile constitutes an
551 imminent danger to human life, he may, in addition to
552 all other remedies and without the necessity of obtaining
553 the permission of any person prior or present who
554 operated or operates a pile or the landowners involved,
555 enter upon the premises where any such coal processing
556 waste pile exists and may take or order to be taken such
557 remedial action as may be necessary or expedient to
558 secure the coal processing waste pile and to abate the
559 conditions which cause the danger to human life:
560 *Provided, however,* That the cost reasonably incurred in
561 any remedial action taken by the commissioner under
562 this subsection may be paid for initially by funds
563 appropriated to the department of energy for these
564 purposes, and the sums so expended shall be recovered
565 from any responsible operator or landowner, individu-
566 ally or jointly, by suit initiated by the attorney general
567 at the request of the commissioner. For purposes of this
568 subsection "operates" or "operated" means to enter upon
569 a coal processing waste pile, or part thereof, for the
570 purpose of disposing, depositing, dumping coal process-
571 ing wastes thereon or removing coal processing waste
572 therefrom, or to employ a coal processing waste pile for
573 retarding the flow of or for the impoundment of water.

**§22A-3-15. Inspections; monitoring; right of entry; in-
spection of records; identification signs;
progress maps.**

1 (a) The commissioner shall cause to be made such
2 inspections of surface-mining operations as are neces-
3 sary to effectively enforce the requirements of this
4 article and for such purposes the commissioner or his
5 authorized representative shall without advance notice
6 and upon presentation of appropriate credentials: (A)
7 Have the right of entry to, upon or through surface-
8 mining operations or any premises in which any records
9 required to be maintained under subdivision (1),
10 subsection (b) of this section are located; and (B) at
11 reasonable times and without delay, have access to and
12 copy any records and inspect any monitoring equipment
13 or method of operation required under this article.

14 (b) For the purpose of enforcement under this article,

15 in the administration and enforcement of any permit
16 under this article, or for determining whether any
17 person is in violation of any requirement of this article:

18 (1) The commissioner shall, at a minimum, require
19 any operator to: (A) Establish and maintain appropriate
20 records; (B) make monthly reports to the department;
21 (C) install, use and maintain any necessary monitoring
22 equipment or methods consistent with subdivision (11),
23 subsection (a), section nine of this article; (D) evaluate
24 results in accordance with such methods, at such
25 locations, intervals and in such manner as the commis-
26 sioner shall prescribe; and (E) provide such other
27 information relative to surface-mining operations as the
28 commissioner deems reasonable and necessary; and

29 (2) For those surface-mining operations which remove
30 or disturb strata that serve as aquifers which signifi-
31 cantly ensure the hydrologic balance of water use either
32 on or off the mining site, the commissioner shall require
33 that: (A) Monitoring sites be established to record the
34 quantity and quality of surface drainage above and
35 below the mine site as well as in the potential zone of
36 influence; (B) monitoring sites be established to record
37 level, amount and samples of ground water and aquifers
38 potentially affected by the surface mining and also
39 below the lowermost mineral seam to be mined; (C)
40 records or well logs and borehole data be maintained;
41 and (D) monitoring sites be established to record
42 precipitation. The monitoring data collection and
43 analysis required by this section shall be conducted
44 according to standards and procedures set forth by the
45 commissioner in order to assure their reliability and
46 validity.

47 (c) All surface-mining operations shall be inspected at
48 least once every thirty days. Such inspections shall be
49 made on an irregular basis without prior notice to the
50 operator or his agents or employees, except for neces-
51 sary on-site meetings with the operator. The inspections
52 shall include the filing of inspection reports adequate to
53 enforce the requirements, terms and purposes of this
54 article.

55 (d) Each permittee shall maintain at the entrances to
56 the surface-mining operations a clearly visible monu-
57 ment which sets forth the name, business address and
58 telephone number of the permittee and the permit
59 number of the surface-mining operations.

60 (e) Copies of any records, reports, inspection materials
61 or information obtained under this article by the
62 commissioner shall be made immediately available to
63 the public at central and sufficient locations in the
64 county, multicounty or state area of mining so that they
65 are conveniently available to residents in the areas of
66 mining unless specifically exempted by this article.

67 (f) Within thirty days after service of a copy of an
68 order of the commissioner upon an operator by regis-
69 tered or certified mail, the operator shall furnish to the
70 commissioner five copies of a progress map prepared by
71 or under the supervision of a person approved by the
72 commissioner showing the disturbed area to the date of
73 such map. Such progress map shall contain information
74 identical to that required for both the proposed and final
75 maps required by this article, and shall show in detail
76 completed reclamation work as required by the commis-
77 sioner. Such progress map shall include a geologic
78 survey sketch showing the location of the operation,
79 shall be properly referenced to a permanent landmark,
80 and shall be within such reasonable degree of accuracy
81 as may be prescribed by the commissioner. If no land
82 has been disturbed by operations during the preceding
83 year, the operator shall notify the commissioner of that
84 fact.

85 (g) Whenever on the basis of available information,
86 including reliable information from any person, the
87 commissioner has cause to believe that any person is in
88 violation of this article, any permit condition or any
89 regulation promulgated under this article, the commis-
90 sioner shall immediately order state inspection of the
91 surface-mining operation at which the alleged violation
92 is occurring unless the information is available as a
93 result of a prior state inspection. The commissioner shall
94 notify any person who supplied such reliable informa-
95 tion when the state inspection will be carried out. Such

96 person may accompany the inspector during the inspec-
97 tion.

**§22A-3-17. Notice of violation; procedure and actions;
enforcement; permit revocation and bond
forfeiture; civil and criminal penalties;
appeals to the board; prosecution;
injunctive relief.**

1 (a) If any of the requirements of this article, rules and
2 regulations promulgated pursuant thereto or permit
3 conditions have not been complied with, the commis-
4 sioner shall cause a notice of violation to be served upon
5 the operator or his duly authorized agent. A copy of the
6 notice shall be handed to the operator or his duly
7 authorized agent in person or served by certified mail
8 addressed to the operator at the permanent address
9 shown on the application for a permit. The notice shall
10 specify in what respects the operator has failed to
11 comply with this article, rules and regulations or permit
12 conditions and shall specify a reasonable time for
13 abatement of the violation not to exceed thirty days. If
14 the operator has not abated the violation within the time
15 specified in the notice, or any reasonable extension
16 thereof, not to exceed sixty days, the commissioner shall
17 order the cessation of the operation or the portion
18 thereof causing the violation, unless the operator
19 affirmatively demonstrates that compliance is unattai-
20 nable due to conditions totally beyond the control of the
21 operator. If a violation is not abated within the time
22 specified or any extension thereof, or any cessation order
23 is issued, a mandatory civil penalty of not less than
24 seven hundred fifty dollars per day per violation shall
25 be assessed. A cessation order shall remain in effect
26 until the commissioner determines that the violation has
27 been abated or until modified, vacated or terminated by
28 the commissioner or by a court. In any cessation order
29 issued under this subsection, the commissioner shall
30 determine the steps necessary to abate the violation in
31 the most expeditious manner possible and shall include
32 the necessary measures in the order.

33 (b) If the commissioner determines that a pattern of
34 violations of any requirement of this article or any

35 permit condition exists or has existed, as a result of the
36 operator's lack of reasonable care and diligence, or that
37 the violations are willfully caused by the operator, the
38 commissioner shall immediately issue an order directing
39 the operator to show cause why the permit should not
40 be suspended or revoked and giving the operator thirty
41 days in which to request a public hearing. If a hearing
42 is requested, the commissioner shall inform all inter-
43 ested parties of the time and place of the hearing. Any
44 hearing under this section shall be recorded and subject
45 to the provisions of chapter twenty-nine-a of this code.
46 Within sixty days following the public hearing, the
47 commissioner shall issue and furnish to the permittee
48 and all other parties to the hearing a written decision,
49 and the reasons therefor, concerning suspension or
50 revocation of the permit. Upon the operator's failure to
51 show cause why the permit should not be suspended or
52 revoked, the commissioner shall immediately suspend or
53 revoke the operator's permit. If the permit is revoked,
54 the commissioner shall initiate procedures in accordance
55 with rules promulgated by the commissioner to forfeit
56 the operator's bond, or other security posted pursuant
57 to section eleven of this article, and give notice to the
58 attorney general, who shall collect the forfeiture without
59 delay: *Provided*, That the entire proceeds of such
60 forfeiture shall be deposited with the treasurer of the
61 state of West Virginia to the credit of the special
62 reclamation fund. All forfeitures collected prior to the
63 effective date of this article shall be deposited in the
64 special reclamation fund and shall be expended back
65 upon the areas for which the bond was posted: *Provided*,
66 *however*, That any excess therefrom shall remain in the
67 special reclamation fund.

68 (c) Any person engaged in surface-mining operations
69 who violates any permit condition or who violates any
70 other provision of this article or rules and regulations
71 promulgated pursuant thereto may also be assessed a
72 civil penalty. The penalty shall not exceed five thousand
73 dollars. Each day of continuing violation may be deemed
74 a separate violation for purposes of penalty assessments.
75 In determining the amount of the penalty, consideration
76 shall be given to the operator's history of previous

77 violations at the particular surface-mining operation,
78 the seriousness of the violation, including any irrepar-
79 able harm to the environment and any hazard to the
80 health or safety of the public, whether the operator was
81 negligent, and the demonstrated good faith of the
82 operator charged in attempting to achieve rapid
83 compliance after notification of the violation.

84 (d) (1) Upon the issuance of a notice or order pursuant
85 to this section, the assessment officer shall, within thirty
86 days, set a proposed penalty assessment and notify the
87 operator in writing of such proposed penalty assessment.
88 The proposed penalty assessment must be paid in full
89 within thirty days of receipt or, if the operator wishes
90 to contest either the amount of the penalty or the fact
91 of violation, an informal conference with the assessment
92 officer may be requested within fifteen days or a formal
93 hearing before the reclamation board of review may be
94 requested within thirty days. The notice of proposed
95 penalty assessment shall advise the operator of the right
96 to an informal conference and a formal hearing pursu-
97 ant to this section. When an informal conference is
98 requested, the operator shall have fifteen days from
99 receipt of the assessment officer's decision to request a
100 formal hearing before the board.

101 (A) When an informal conference is held, the assess-
102 ment officer shall have authority to affirm, modify or
103 vacate the notice, order or proposed penalty assessment.

104 (B) When a formal hearing is requested, the amount
105 of the proposed penalty assessment shall be forwarded
106 to the commissioner for placement in an escrow account.
107 Formal hearings shall be of record and subject to the
108 provisions of article five, chapter twenty-nine-a of this
109 code. Following the hearing the board shall affirm,
110 modify or vacate the notice, order or proposed penalty
111 assessment and, when appropriate, incorporate an
112 assessment order requiring that the assessment be paid.

113 (2) Civil penalties owed under this section may be
114 recovered by the commissioner in the circuit court of
115 Kanawha County. Civil penalties collected under this
116 article shall be deposited with the treasurer of the state
117 of West Virginia to the credit of the special reclamation

118 fund established in section eleven of this article. If,
119 through the administrative or judicial review of the
120 proposed penalty it is determined that no violation
121 occurred or that the amount of the penalty should be
122 reduced, the commissioner shall within thirty days
123 remit the appropriate amount to the person, with
124 interest at the rate of six percent or at the prevailing
125 United States department of the treasury rate, whi-
126 chever is greater. Failure to forward the money to the
127 commissioner within thirty days shall result in a waiver
128 of all legal rights to contest the violation or the amount
129 of the penalty.

130 (e) Any person having an interest which is or may be
131 adversely affected by any order of the commissioner or
132 the board may file an appeal only in accordance with
133 the provisions of article four, chapter twenty-two of this
134 code, within thirty days after receipt of the order.

135 (f) The filing of an appeal or a request for an informal
136 conference or formal hearing provided for in this section
137 shall not stay execution of the order appealed from.
138 Pending completion of the investigation and conference
139 or hearing required by this section, the applicant may
140 file with the commissioner a written request that the
141 commissioner grant temporary relief from any notice or
142 order issued under section sixteen or seventeen of this
143 article, together with a detailed statement giving
144 reasons for granting such relief. The commissioner shall
145 issue an order or decision granting or denying such
146 relief expeditiously: *Provided*, That where the applicant
147 requests relief from an order for cessation of surface-
148 mining and reclamation operations, the decision on the
149 request shall be issued within five days of its receipt.
150 The commissioner may grant such relief, under such
151 conditions as he may prescribe if:

152 (1) All parties to the proceedings have been notified
153 and given an opportunity to be heard on a request for
154 temporary relief;

155 (2) The person requesting the relief shows that there
156 is a substantial likelihood that he will prevail on the
157 merits in the final determination of the proceedings;

158 (3) The relief will not adversely affect the public
159 health or safety or cause significant imminent environ-
160 mental harm to land, air or water resources; and

161 (4) The relief sought is not the issuance of a permit
162 where a permit has been denied, in whole or in part,
163 by the commissioner.

164 (g) Any person who willfully and knowingly violates
165 a condition of a permit issued pursuant to this article
166 or regulations promulgated pursuant thereto, or fails or
167 refuses to comply with any order issued under said
168 article and regulations or any order incorporated in a
169 final decision issued by the commissioner, is guilty of a
170 misdemeanor, and, upon conviction thereof, shall be
171 fined not less than one hundred dollars nor more than
172 ten thousand dollars, or imprisoned in the county jail not
173 more than one year, or both fined and imprisoned.

174 (h) Whenever a corporate operator violates a condition
175 of a permit issued pursuant to this article, regulations
176 promulgated pursuant thereto, or any order incorpo-
177 rated in a final decision issued by the commissioner, any
178 director, officer or agent of the corporation who willfully
179 and knowingly authorized, ordered or carried out the
180 failure or refusal, shall be subject to the same civil
181 penalties, fines and imprisonment that may be imposed
182 upon a person under subsections (c) and (g) of this
183 section.

184 (i) Any person who knowingly makes any false
185 statement, representation or certification, or knowingly
186 fails to make any statement, representation or certifica-
187 tion in any application, petition, record, report, plan or
188 other document filed or required to be maintained
189 pursuant to this article or regulations promulgated
190 pursuant thereto, is guilty of a misdemeanor, and, upon
191 conviction thereof, shall be fined not less than one
192 hundred dollars nor more than ten thousand dollars, or
193 imprisoned in the county jail not more than one year,
194 or both fined and imprisoned.

195 (j) Whenever any person: (A) Violates or fails or
196 refuses to comply with any order or decision issued by
197 the commissioner under this article; or (B) interferes

198 with, hinders or delays the commissioner in carrying out
199 the provisions of this article; or (C) refuses to admit the
200 commissioner to the mine; or (D) refuses to permit
201 inspection of the mine by the commissioner; or (E)
202 refuses to furnish any reasonable information or report
203 requested by the commissioner in furtherance of the
204 provisions of this article; or (F) refuses to permit access
205 to, and copying of, such records as the commissioner
206 determines necessary in carrying out the provisions of
207 this article; or (G) violates any other provisions of this
208 article, the regulations promulgated pursuant thereto,
209 or the terms and conditions of any permit, the commis-
210 sioner, the attorney general or the prosecuting attorney
211 of the county in which the major portion of the permit
212 area is located may institute a civil action for relief,
213 including a permanent or temporary injunction, res-
214 training order or any other appropriate order, in the
215 circuit court of Kanawha County or any court of
216 competent jurisdiction to compel compliance with and
217 enjoin such violations, failures or refusals. The court or
218 the judge thereof may issue a preliminary injunction in
219 any case pending a decision on the merits of any
220 application filed without requiring the filing of a bond
221 or other equivalent security.

222 (k) Any person who shall, except as permitted by law,
223 willfully resist, prevent, impede or interfere with the
224 commissioner or any of his agents in the performance
225 of duties pursuant to this article is guilty of a misde-
226 meanor, and, upon conviction thereof, shall be punished
227 by a fine of not more than five thousand dollars or by
228 imprisonment for not more than one year, or both.

§22A-3-18. Approval, denial, revision and prohibition of permit.

1 (a) Upon the receipt of a complete surface-mining
2 application or significant revision or renewal thereof,
3 including public notification and an opportunity for a
4 public hearing, the commissioner shall grant, require
5 revision of, or deny the application for a permit within
6 sixty days and notify the applicant in writing of his
7 decision. The applicant for a permit, or revision of a
8 permit, has the burden of establishing that the applica-

9 tion is in compliance with all the requirements of this
10 article and the rules promulgated hereunder.

11 (b) No permit or significant revision of a permit may
12 be approved unless the applicant affirmatively demon-
13 strates and the commissioner finds in writing on the
14 basis of the information set forth in the application or
15 from information otherwise available which shall be
16 documented in the approval and made available to the
17 applicant that:

18 (1) The permit application is accurate and complete
19 and that all the requirements of this article and
20 regulations thereunder have been complied with;

21 (2) The applicant has demonstrated that reclamation
22 as required by this article can be accomplished under
23 the reclamation plan contained in the permit
24 application;

25 (3) The assessment of the probable cumulative impact
26 of all anticipated mining in the area on the hydrologic
27 balance, as specified in section nine of this article, has
28 been made by the commissioner and the proposed
29 operation has been designed to prevent material damage
30 to the hydrologic balance outside the permit area;

31 (4) The area proposed to be mined is not included
32 within an area designated unsuitable for surface mining
33 pursuant to section twenty-two of this article or is not
34 within an area under administrative study by the
35 commissioner for such designation; and

36 (5) In cases where the private mineral estate has been
37 severed from the private surface estate, the applicant
38 has submitted: (A) The written consent of the surface
39 owner to the extraction of coal by surface mining; or (B)
40 a conveyance that expressly grants or reserves the right
41 to extract the coal by surface mining; or (C) if the
42 conveyance does not expressly grant the right to extract
43 coal by surface mining, the surface-subsurface legal
44 relationship shall be determined in accordance with
45 applicable law: *Provided*, That nothing in this article
46 shall be construed to authorize the commissioner to
47 adjudicate property rights disputes.

48 (c) Where information available to the department
49 indicates that any surface-mining operation owned or
50 controlled by the applicant is currently in violation of
51 this article or other environmental laws or regulations,
52 the permit shall not be issued until the applicant
53 submits proof that such violation has been corrected or
54 is in the process of being corrected to the satisfaction
55 of the commissioner or the department or agency which
56 has jurisdiction over the violation, and no permit may
57 be issued to any applicant after a finding by the
58 commissioner, after an opportunity for hearing, that the
59 applicant or the operator specified in the application
60 controls or has controlled mining operations with a
61 demonstrated pattern of willful violations of this article
62 of such nature and duration with such irreparable
63 damage to the environment as to indicate an intent not
64 to comply with the provisions of this article: *Provided,*
65 That if the commissioner finds that the applicant is or
66 has been affiliated with, or managed or controlled by,
67 or is or has been under the common control of, other
68 than as an employee, a person who has had a surface-
69 mining permit revoked or bond or other security
70 forfeited for failure to reclaim lands as required by the
71 laws of this state, he shall not issue a permit to the
72 applicant: *Provided, however,* That subject to the
73 discretion of the commissioner and based upon a petition
74 for reinstatement, permits may be issued to any
75 applicant if: (1) After the revocation or forfeiture, the
76 operator whose permit has been revoked or bond
77 forfeited shall have paid into the special reclamation
78 fund any additional sum of money determined by the
79 commissioner to be adequate to reclaim the disturbed
80 area; (2) the violations which resulted in the revocation
81 or forfeiture have not caused irreparable damage to the
82 environment; and (3) the commissioner is satisfied that
83 the petitioner will comply with this article.

84 (d) (1) In addition to finding the application in
85 compliance with subsection (b) of this section, if the area
86 proposed to be mined contains prime farmland, the
87 commissioner may, pursuant to regulations promul-
88 gated hereunder, grant a permit to mine on prime
89 farmland if the operator affirmatively demonstrates

90 that he has the technological capability to restore such
91 mined area, within a reasonable time, to equivalent or
92 higher levels of yield as nonmined prime farmland in
93 the surrounding area under equivalent levels of manage-
94 ment, and can meet the soil reconstruction standards in
95 subdivision (7), subsection (b), section twelve of this
96 article. Except for compliance with subsection (b) of this
97 section, the requirements of subdivision (1) of this
98 subsection shall apply to all permits issued after the
99 third day of August, one thousand nine hundred seventy-
100 seven.

101 (2) Nothing in this subsection shall apply to any
102 permit issued prior to the third day of August, one
103 thousand nine hundred seventy-seven, or to any revisions
104 or renewals thereof, or to any existing surface-mining
105 operations for which a permit was issued prior to said
106 date.

107 (e) If the commissioner finds that the overburden on
108 any part of the area of land described in the application
109 for a permit is such that experience in the state with
110 a similar type of operation upon land with similar
111 overburden shows that one or more of the following
112 conditions cannot feasibly be prevented: (1) Substantial
113 deposition of sediment in stream beds; (2) landslides; or
114 (3) acid-water pollution, the commissioner may delete
115 such part of the land described in the application upon
116 which such overburden exists.

**§22A-3-19. Permit revision and renewal requirements;
incidental boundary revisions; require-
ments for transfer; assignment and sale of
permit rights; and operator reassignment.**

1 (a) (1) Any valid permit issued pursuant to this article
2 shall carry with it the right of successive renewal upon
3 expiration with respect to areas within the boundaries
4 of the existing permit. The holders of the permit may
5 apply for renewal and the renewal shall be issued:
6 *Provided*, That on application for renewal, the burden
7 shall be on the opponents of renewal, unless it is
8 established that and written findings by the commis-
9 sioner are made that: (A) The terms and conditions of

10 the existing permit are not being satisfactorily met:
11 *Provided, however,* That if the permittee is required to
12 modify operations pursuant to mining or reclamation
13 requirements which become applicable after the origi-
14 nal date of permit issuance, the permittee shall be
15 provided an opportunity to submit a schedule allowing
16 a reasonable period to comply with such revised
17 requirements; (B) the present surface-mining operation
18 is not in compliance with the applicable environmental
19 protection standards of this article; (C) the renewal
20 requested substantially jeopardizes the operator's
21 continuing responsibility on existing permit areas; (D)
22 the operator has not provided evidence that the perfor-
23 mance bond in effect for said operation will continue in
24 effect for any renewal requested as required pursuant
25 to section eleven of this article; or (E) any additional
26 revised or updated information as required pursuant to
27 rules and regulations promulgated by the commissioner
28 has not been provided.

29 (2) If an application for renewal of a valid permit
30 includes a proposal to extend the surface-mining
31 operation beyond the boundaries authorized in the
32 existing permit, that portion of the application for
33 renewal which addresses any new land area is subject
34 to the full standards of this article, which includes, but
35 is not limited to: (A) Adequate bond; (B) a map showing
36 the disturbed area and facilities; and (C) a reclamation
37 plan.

38 (3) Any permit renewal shall be for a term not to
39 exceed the period of time for which the original permit
40 was issued. Application for permit renewal shall be
41 made at least one hundred twenty days prior to the
42 expiration of the valid permit.

43 (4) Any renewal application for an active permit shall
44 be on forms prescribed by the commissioner and shall
45 be accompanied by a filing fee of two thousand dollars.
46 The application shall contain such information as the
47 commissioner requires pursuant to rule or regulation.

48 (b) (1) During the term of the permit, the permittee
49 may submit to the commissioner an application for a

50 revision of the permit, together with a revised reclama-
51 tion plan.

52 (2) An application for a significant revision of a
53 permit shall be subject to all requirements of this article
54 and regulations promulgated pursuant thereto.

55 (3) Any extension to an area already covered by the
56 permit, except incidental boundary revisions, shall be
57 made by application for another permit. If the permittee
58 desires to add the new area to his or her existing permit
59 in order to have existing areas and new areas under one
60 permit, the commissioner may so amend the original
61 permit: *Provided*, That the application for the new area
62 is subject to all procedures and requirements applicable
63 to applications for original permits under this article.

64 (c) The commissioner shall review outstanding per-
65 mits of a five-year term before the end of the third year
66 of the permit. Other permits shall be reviewed within
67 the time established by regulations. The commissioner
68 may require reasonable revision or modification of the
69 permit following review: *Provided*, That such revision or
70 modification shall be based upon written findings and
71 shall be preceded by notice to the permittee of an
72 opportunity for hearing.

73 (d) No transfer, assignment or sale of the rights
74 granted under any permit issued pursuant to this article
75 shall be made without the prior written approval of the
76 commissioner.

**§22A-3-22. Designation of areas unsuitable for surface
mining; petition for removal of designa-
tion; prohibition of surface mining on
certain areas; exceptions; taxation of min-
erals underlying land designated
unsuitable.**

1 (a) The commissioner shall establish a planning
2 process to enable objective decisions based upon compe-
3 tent and scientifically sound data and information as to
4 which, if any, land areas of this state are unsuitable for
5 all or certain types of surface-mining operations
6 pursuant to the standards set forth in subdivisions (1)
7 and (2) of this subsection: *Provided*, That such designa-

8 tion shall not prevent prospecting pursuant to section
9 seven of this article on any area so designated.

10 (1) Upon petition pursuant to subsection (b) of this
11 section, the commissioner shall designate an area as
12 unsuitable for all or certain types of surface-mining
13 operations, if it determines that reclamation pursuant to
14 the requirements of this article is not technologically
15 and economically feasible.

16 (2) Upon petition pursuant to subsection (b) of this
17 section, a surface area may be designated unsuitable for
18 certain types of surface-mining operations, if the
19 operations: (A) Conflict with existing state or local land
20 use plans or programs; (B) affect fragile or historic
21 lands in which the operations could result in significant
22 damage to important historic, cultural, scientific and
23 aesthetic values and natural systems; (C) affect renew-
24 able resource lands, including significant aquifers and
25 aquifer recharge areas, in which the operations could
26 result in a substantial loss or reduction of long-range
27 productivity of water supply, food or fiber products; or
28 (D) affect natural hazard lands in which the operations
29 could substantially endanger life and property. Such
30 lands to include lands subject to frequent flooding and
31 areas of unstable geology.

32 (3) The commissioner shall develop a process which
33 includes: (A) The review of surface-mining lands; (B) a
34 data base and an inventory system which will permit
35 proper evaluation of the capacity of different land areas
36 of the state to support and permit reclamation of
37 surface-mining operations; (C) a method for implement-
38 ing land use planning decisions concerning surface-
39 mining operations; and (D) proper notice and opportun-
40 ities for public participation, including a public hearing
41 prior to making any designation or redesignation
42 pursuant to this section.

43 (4) Determinations of the unsuitability of land for
44 surface mining, as provided for in this section, shall be
45 integrated as closely as possible with present and future
46 land use planning and regulation processes at federal,
47 state and local levels.

48 (5) The requirements of this section shall not apply to
49 lands on which surface-mining operations were being
50 conducted on the third day of August, one thousand nine
51 hundred seventy-seven, or under a permit issued
52 pursuant to this article, or where substantial legal and
53 financial commitments in the operations were in
54 existence prior to the fourth day of January, one
55 thousand nine hundred seventy-seven.

56 (b) Any person having an interest which is or may be
57 adversely affected shall have the right to petition the
58 commissioner to have an area designated as unsuitable
59 for surface-mining operations or to have such a designa-
60 tion terminated. The petition shall contain allegations
61 of fact with supporting evidence which would tend to
62 establish the allegations. After receipt of the petition,
63 the commissioner shall immediately begin an adminis-
64 trative study of the area specified in the petition. Within
65 ten months after receipt of the petition, the commis-
66 sioner shall hold a public hearing in the locality of the
67 affected area after appropriate notice and publication of
68 the date, time and location of the hearing. After the
69 commissioner or any person having an interest which is
70 or may be adversely affected has filed a petition and
71 before the hearing required by this subsection, any
72 person may intervene by filing allegations of fact with
73 supporting evidence which would tend to establish the
74 allegations. Within sixty days after the hearing, the
75 commissioner shall issue and furnish to the petitioner
76 and any other party to the hearing, a written decision
77 regarding the petition and the reasons therefor. In the
78 event that all the petitioners stipulate agreement prior
79 to the requested hearing and withdraw their request,
80 the hearing need not be held.

81 (c) Prior to designating any land areas as unsuitable
82 for surface-mining operations, the commissioner shall
83 prepare a detailed statement on: (1) The potential coal
84 resources of the area; (2) the demand for the coal
85 resources; and (3) the impact of the designation on the
86 environment, the economy and the supply of coal.

87 (d) After the third day of August, one thousand nine
88 hundred seventy-seven, and subject to valid existing

89 rights, no surface-mining operations, except those which
90 existed on that date, shall be permitted:

91 (1) On any lands in this state within the boundaries
92 of units of the national park system, the national wildlife
93 refuge systems, the national system of trails, the
94 national wilderness preservation system, the wild and
95 scenic rivers system, including study rivers designated
96 under section five-a of the wild and scenic rivers act,
97 and national recreation areas designated by act of
98 Congress;

99 (2) Which will adversely affect any publicly owned
100 park or places included in the national register of
101 historic sites, or national register of natural landmarks
102 unless approved jointly by the commissioner and the
103 federal, state or local agency with jurisdiction over the
104 park, the historic site or natural landmark;

105 (3) Within one hundred feet of the outside right-of-way
106 line on any public road, except where mine access roads
107 or haulage roads join such right-of-way line, and except
108 that the commissioner may permit the roads to be
109 relocated or the area affected to lie within one hundred
110 feet of the road if, after public notice and an opportunity
111 for a public hearing in the locality, the commissioner
112 makes a written finding that the interests of the public
113 and the landowners affected thereby will be protected;

114 (4) Within three hundred feet from any occupied
115 dwelling, unless waived by the owner thereof, or within
116 three hundred feet of any public building, school,
117 church, community or institutional building, public
118 park, or within one hundred feet of a cemetery; or

119 (5) On any federal lands within the boundaries of any
120 national forest: *Provided*, That surface coal mining
121 operations may be permitted on the lands if the
122 secretary of the interior finds that there are no
123 significant recreational, timber, economic or other
124 values which may be incompatible with the surface-
125 mining operations: *Provided, however*, That the surface
126 operations and impacts are incident to an underground
127 coal mine.

128 (e) Notwithstanding any other provision of this code,
129 the coal underlying any lands designated unsuitable for
130 surface-mining operations under any provisions of this
131 article or underlying any land upon which mining is
132 prohibited by any provisions of this article shall be
133 assessed for taxation purposes according to their value
134 and the Legislature hereby finds that the coal has no
135 value for the duration of the designation or prohibition
136 unless suitable for underground mining not in violation
137 of this article: *Provided*, That the owner of the coal shall
138 forthwith notify the proper assessing authorities if the
139 designation or prohibition is removed so that the coal
140 may be reassessed.

§22A-3-26. Surface-mining operations not subject to article.

1 The provisions of this article do not apply to any of
2 the following activities:

3 (a) The extraction of coal by a landowner for his own
4 noncommercial use from land owned or leased by him.

5 (b) The extraction of coal as an incidental part of
6 federal, state, county, municipal or other local govern-
7 ment-financed highway or other construction: *Provided*,
8 That the provisions of the construction contract require
9 the furnishing of a suitable bond which provides for
10 reclamation, wherever practicable, of the area affected
11 by such extraction.

§22A-3-28. Special permits for reclamation of existing abandoned coal processing waste piles.

1 (a) Except where exempted by section twenty-six of
2 this article, it shall hereafter be unlawful for any person
3 to engage in surface mining as defined in this article
4 as an incident to the development of land for commer-
5 cial, residential, industrial or civic use without having
6 first obtained from the commissioner a permit therefor
7 as provided in section eight of this article, unless a
8 special permit therefor shall have been first obtained
9 from the commissioner as provided in this section.

10 Application for a special permit to engage in surface
11 mining as an incident to the development of land for

12 commercial, residential, industrial or civic use shall be
13 made in writing on forms prescribed by the commis-
14 sioner and shall be signed and verified by the applicant.
15 The application shall be accompanied by:

16 (1) A site preparation plan, prepared and certified by
17 or under the supervision of a person approved by the
18 commissioner, showing the tract of land which the
19 applicant proposes to develop for commercial, residen-
20 tial, industrial or civic use; the probable boundaries and
21 areas of the coal deposit to be mined and removed from
22 said tract of land incident to the proposed commercial,
23 residential, industrial or civic use thereof; and such
24 other information as prescribed by the commissioner;

25 (2) A development plan for the proposed commercial,
26 residential, industrial or civic use of said land;

27 (3) The name of owner of the surface of the land to
28 be developed;

29 (4) The name of owner of the coal to be mined incident
30 to the development of the land;

31 (5) A reasonable estimate of the number of acres of
32 coal that would be mined as a result of the proposed
33 development of said land: *Provided*, That in no event
34 may such number of acres to be mined, excluding
35 roadways, exceed five acres; and

36 (6) Such other information as the commissioner may
37 require to satisfy and assure the commissioner that the
38 surface mining under special permit is incidental or
39 secondary to the proposed commercial, residential,
40 industrial or civic use of said land.

41 (b) There shall be attached to the application for the
42 special permit a certificate of insurance certifying that
43 the applicant has in force a public liability insurance
44 policy issued by an insurance company authorized to do
45 business in this state affording personal injury protec-
46 tion in accordance with subsection (d), section nine of
47 this article.

48 The application for the special permit shall also be
49 accompanied by a bond, or cash or collateral securities

50 or certificates of the same type, in the form as pres-
51 cribed by the commissioner and in the minimum
52 amount of two thousand dollars per acre, for a maxi-
53 mum disturbance of five acres.

54 The bond shall be payable to the state of West
55 Virginia and conditioned that the applicant shall
56 complete the site preparation for the proposed commer-
57 cial, residential, industrial or civic use of said land. At
58 the conclusion of the site preparation, in accordance
59 with the site preparation plan submitted with the
60 application, the bond conditions shall be satisfied and
61 the bond and any cash, securities or certificates
62 furnished with said bond may be released and returned
63 to the applicant. The filing fee for the special permit
64 shall be five hundred dollars. The special permit shall
65 be valid until work permitted is completed.

66 (c) The purpose of this section is to vest jurisdiction
67 in the commissioner, where the surface mining is
68 incidental or secondary to the preparation of land for
69 commercial, residential, industrial or civic use and
70 where, as an incident to such preparation of land,
71 minerals must be removed, including, but not limited to,
72 the building and construction of railroads, shopping
73 malls, factory and industrial sites, residential and
74 building sites and recreational areas. Anyone who has
75 been issued a special permit shall not be issued an
76 additional special permit on the same or adjacent tract
77 of land unless satisfactory evidence has been submitted
78 to the commissioner that such permit is necessary to
79 subsequent development or construction. As long as the
80 operator complies with the purpose and provisions of
81 this section, the other sections of this article shall not
82 be applicable to the operator holding a special permit:
83 *Provided*, That the commissioner shall promulgate
84 regulations establishing applicable performance stand-
85 ards for operations permitted under this section.

86 (d) The commissioner may, in the exercise of his sound
87 discretion, when not in conflict with the purposes and
88 findings of this article and to bring about a more
89 desirable land use or to protect the public and the
90 environment, issue a special permit solely for the

91 removal of existing abandoned coal processing waste
92 piles. The commissioner shall promulgate specific
93 regulations for such operations: *Provided*, That a bond
94 and a reclamation plan shall be required for such
95 operations.

**§22A-3-40. Consolidation of permitting, enforcement and
rule-making authority for surface-mining
operations; national pollutant discharge
elimination system; effective date of
section.**

1 (a) Notwithstanding any provisions of this chapter to
2 the contrary, all powers, duties and responsibilities of
3 the chief of the division of water resources under article
4 five-a, chapter twenty of this code with respect to all
5 coal mines, preparation plants and all refuse and waste
6 therefrom subject to said article five-a, chapter twenty
7 of this code are hereby transferred to the commissioner.
8 The commissioner has authority to issue, amend,
9 transfer, renew or revoke all permits required under
10 article five-a, chapter twenty of this code with respect
11 to all coal mines, preparation plants and all refuse and
12 waste therefrom subject to said article five-a. Each
13 permit application shall be accompanied by a filing fee
14 of five hundred dollars and each renewal application
15 shall be accompanied by a filing fee of one hundred
16 dollars. The procedures for issuance, amendment,
17 transferal, renewal and revocation of such permits shall
18 be governed by regulations promulgated pursuant to
19 subsection (b) of this section. The commissioner shall
20 consolidate the various permit programs under article
21 five-a, chapter twenty of this code and article three of
22 this chapter applicable to all coal mines, preparation
23 plants and all refuse and waste therefrom. All provi-
24 sions of article five-a, chapter twenty of this code
25 heretofore applicable to coal mines, preparation plants
26 and all refuse and waste therefrom shall be continued
27 under this section.

28 (b) Notwithstanding any provisions of this chapter to
29 the contrary, the commissioner has authority to promul-
30 gate rules and regulations necessary or proper to
31 implement the provisions of article five-a, chapter

32 twenty of this code with respect to all coal mines,
33 preparation plants and all refuse and waste therefrom,
34 except that the water resources board shall have the sole
35 authority pursuant to section three-a, article five-a,
36 chapter twenty of this code to promulgate rules and
37 regulations setting standards of water quality applica-
38 ble to the waters of the state. To the extent feasible, the
39 commissioner shall promulgate rules and regulations
40 consolidating the various regulatory programs under
41 this chapter applicable to all coal mines, preparation
42 plants and all refuse and waste therefrom. The promul-
43 gation of such rules and regulations shall be governed
44 by the provisions of this article.

45 (c) Notwithstanding any provisions of this chapter to
46 the contrary, the commissioner has authority to enforce
47 and shall enforce the rules and regulations promulgated
48 under this article by the commissioner and the rules and
49 regulations of the water resources board setting water
50 quality standards for the waters of the state as they
51 apply to all coal mines, preparation plants and all refuse
52 and waste therefrom. Rules and regulations adopted by
53 the commissioner, pursuant to the requirements of
54 article five-a, chapter twenty of this code shall be
55 enforceable by the commissioner under the provisions of
56 sections seventeen and nineteen, article five-a, chapter
57 twenty of this code, as though the regulations were
58 promulgated by the water resources board: *Provided,*
59 That the commissioner's authority to enforce such rules
60 and regulations under article five-a, chapter twenty of
61 this code shall not preclude the commissioner or any
62 person from invoking the remedies otherwise provided
63 by article three of this chapter and shall not preclude
64 the commissioner from enforcing the provisions of this
65 article.

66 (d) Notwithstanding any provisions of this chapter to
67 the contrary, any permit of the commissioner issued
68 pursuant to subsection (a) of this section, or any order
69 issued under article five-a, chapter twenty of this code,
70 or for the purpose of implementing the "national
71 pollutant discharge elimination system" established
72 under the federal clean water act, shall be appealable

73 only to the state water resources board and such appeal
74 shall be governed by the provisions of section fifteen,
75 article five-a, chapter twenty of this code.

76 (e) This section shall become effective upon a procla-
77 mation by the governor stating that final approval of the
78 partial transfer of the national pollutant discharge
79 elimination system established under the federal clean
80 water act contemplated by this section has been given
81 by the administrator of the United States environmental
82 protection agency.

CHAPTER 160

(Com. Sub. for H. B. 2076—By Delegates Flanigan and Carper)

[Passed March 9, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article thirteen-d, chapter eleven of said code, by adding thereto a new section, designated section three-d, all relating to directing the office of community and industrial development to study and promote the development of a coal-based synthetic fuel industry; and creating a credit against tax for investment in new industrial facilities for producing coal-based liquids used to produce synthetic motor fuel and synthetic special fuel.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5B. Economic Development Act of 1985.

11. Taxation.

CHAPTER 5B.
ECONOMIC DEVELOPMENT ACT OF 1985.

**ARTICLE 2. OFFICE OF COMMUNITY AND INDUSTRIAL
DEVELOPMENT.**

§5B-2-2a. General powers of the office.

1 The office of community and industrial development
2 shall have the authority and duty to:

3 (1) Promote and encourage the location and develop-
4 ment of new business in the state and the maintenance
5 and expansion of existing business;

6 (2) Investigate and study conditions affecting West
7 Virginia business, industry and commerce; collect and
8 disseminate information, and engage in technical
9 studies, scientific investigations, statistical research and
10 educational activities necessary or useful for the proper
11 execution of the powers and duties of the department;

12 (3) Plan and develop an effective economic informa-
13 tion service that will directly assist business, education
14 and labor and also encourage businesses outside the
15 state to use industrial office facilities, professional,
16 labor, financial and recreational facilities, services and
17 products from within the state;

18 (4) Encourage and develop commerce with other
19 states and nations and devise methods of removing trade
20 barriers that hamper the free flow of commerce between
21 this and other states and nations and for these purposes
22 cooperate with governmental, quasi-public and private
23 organizations in formulating and promoting the adop-
24 tion of compacts and agreements helpful to commerce
25 and labor;

26 (5) Conduct or encourage research designed to further
27 new and more extensive uses of the natural, human,
28 professional, technical and other resources of the state
29 with a view to the development of new products,
30 industrial processes, services and markets;

31 (6) Compile periodically a census of business and
32 industry in the state, in cooperation with other agencies,

33 and analyze and publish the information in such form
34 as to be most valuable to business and industry;

35 (7) Study long-range trends and developments in the
36 industries, commerce and economic health of the state,
37 and analyze the reasons underlying such trends; study
38 costs and other factors affecting successful operation
39 and location of businesses within the state;

40 (8) Initiate, promote and conduct, or cause to be
41 conducted, research designed to further new and more
42 extensive uses and consumption of natural and other
43 resources and their byproducts; and for such purposes,
44 to enter into contracts and agreements with research
45 laboratories maintained by educational or endowed
46 institutions in this state;

47 (9) Study and promote the development of a coal-based
48 synthetic fuel industry in West Virginia and investigate
49 and propose to the Legislature statutory initiatives
50 which would encourage such development;

51 (10) Establish as an independent entity at West
52 Virginia University in cooperation with and involving
53 other West Virginia colleges and universities a center
54 for economic research. The center shall be under the
55 control and supervision of a director, who shall be
56 appointed by the president of West Virginia University.
57 The center shall employ such staff economists or
58 statisticians, such research assistants and secretaries,
59 each of whom shall serve on a part-time basis and may
60 be members of the faculty or staff of West Virginia
61 University or any other college or university in the state.
62 In addition, the center may employ student interns;

63 (11) The center shall provide the governor's office of
64 community and industrial development, the commis-
65 sioner of tourism and parks and the Legislature with an
66 analysis of the quality of economic data pertaining to
67 West Virginia. The center shall recommend ways to
68 obtain additional information necessary to better
69 understand the state's economy and to devise better
70 economic development strategies. The center is directed
71 to establish priorities and coordinate its economic
72 research functions with the governor and the Legisla-

73 ture. To accomplish this purpose the advisory board
74 created for the institute of public affairs in section one,
75 article twenty-six-b, chapter eighteen of this code, shall
76 serve as the advisory board to the center. The director
77 of the center shall serve as the chairman of the advisory
78 board. The center shall publish results of its research,
79 maintain a comprehensive library with supporting
80 computer data bases and shall, upon request, provide a
81 review of the economy and major policy issues to the
82 joint committee on government and finance;

83 (12) During its first year of operation, the center shall
84 include in its research topics the desirability of estab-
85 lishing a detailed gross state products series, modeled
86 after the national income and products accounts and the
87 desirability of constructing a periodic input/output table
88 for the state. It shall review the quality of current
89 statistics relating to employment and prices and
90 statistics relating to poverty and the distribution of
91 income and wealth. The center may study the feasibility
92 of, and, based upon such study, establish a West
93 Virginia econometric model project;

94 (13) Where deficiencies are found in existing data
95 sources, the center shall publish conclusions regarding
96 the benefits to be derived from gathering additional or
97 better information and shall make operational recom-
98 mendations on the best possible methods for obtaining
99 the desired information;

100 (14) The director of the center or members of its staff
101 shall meet on a regular basis with the director of the
102 governor's office of community and industrial develop-
103 ment, the commissioner of tourism and parks, other
104 officials of the department and members of the Legis-
105 lature to provide the results of its research and to
106 provide policy advice and analysis;

107 (15) The center shall develop and maintain an
108 inventory of research efforts of universities and colleges
109 and other institutions or businesses within the state and
110 a register of scientific and technological research
111 facilities in the state. That function may be performed
112 by contract with the center for education and research

113 with industry of the board of regents;

114 (16) The governor's office of community and industrial
115 development shall assist, promote, encourage, develop
116 and advance economic prosperity and employment
117 throughout this state by fostering the expansion of
118 exports of manufactured goods and services to foreign
119 purchasers and the investment of capital by foreign
120 countries in this state;

121 (17) The governor's office of community and industrial
122 development shall cooperate and act in conjunction with
123 other organizations, public and private, the objects of
124 which are the promotion and advancement of export
125 trade and foreign investment activities in the state of
126 West Virginia;

127 (18) The governor's office of community and industrial
128 development shall consider establishing a source of
129 funding credit guarantees and insurance to support
130 export development not otherwise available to West
131 Virginia small and medium sized businesses;

132 (19) The governor's office of community and industrial
133 development shall develop a strategic plan for the
134 economic development of the state, its regions and
135 specific industries including tourism, manufacturing,
136 timber, agriculture and other rural development, coal,
137 oil, gas and other extractive resources, retail, service,
138 distribution and small businesses. Such a plan shall
139 emphasize a coordinated effort of the public and private
140 sector toward balanced growth for the state. Such plan
141 shall include, but is not limited to, the following:

142 (A) Assessing the state's economic strengths and
143 weaknesses;

144 (B) Developing and recommending short, interme-
145 diate and long-term economic goals and plans, together
146 with options;

147 (C) Identifying barriers to economic growth and
148 diversification in the state;

149 (D) Recommending implementation procedures and
150 options utilizing and maximizing existing public and

151 private mechanism;

152 (E) Fostering and supporting scientific and technologi-
153 cal research in this state in cooperation with the federal
154 government, the various offices and divisions of the
155 department of commerce and other state and local
156 governmental agencies, educational institutions, non-
157 profit institutions and organizations, business enter-
158 prises and others concerned with scientific and techno-
159 logical research development;

160 (F) Developing a program to attract investment in
161 research and development in high technology industries;

162 (G) Conducting a series of studies to determine the
163 feasibility of constructing natural gas transmission
164 lines, electric power generating facilities and coal
165 processing plants to be owned, either in whole or in part,
166 or to be operated, either in whole or in part, by the state
167 of West Virginia; and

168 (H) Maintaining a library of research materials,
169 including computer data bases, to accomplish the goals
170 of the division.

CHAPTER 11. TAXATION.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION AND REVITALIZATION AND FOR RESEARCH AND DEVELOPMENT PROJECTS.

§11-13D-3d. Amount of credit allowed and application of credit for qualified investment in a new industrial facility for producing coal-based liquids used to produce synthetic motor fuel or synthetic special fuel.

1 (a) *Credit allowed.* — There shall be allowed to eligible
2 taxpayers which have made qualified investment of at
3 least forty million dollars in a new industrial facility for
4 producing coal-based liquids used to produce synthetic
5 motor fuel or synthetic special fuel a credit against the
6 taxes imposed by articles twenty-three and twenty-four
7 of this chapter for qualified investment in a new
8 industrial facility for producing coal-based liquids used
9 to produce synthetic motor fuel or synthetic special fuel.

10 The amount of credit shall be determined as hereinafter
11 provided in this section. Taxpayers who have not placed
12 at least forty million dollars of qualified investment in
13 service or use over a period of one year or less in a new
14 industrial facility used to produce synthetic motor fuel
15 or synthetic special fuel shall not be entitled to credit
16 under this section.

17 (b) *Credit amount for qualified investment purchased*
18 *and placed in service or use in a new industrial facility*
19 *for producing coal-based liquids used to produce synthetic*
20 *motor fuel or synthetic special fuel, after the thirtieth day*
21 *of June, one thousand nine hundred ninety-one. — For*
22 *property purchased or leased by an eligible taxpayer*
23 *and placed in service or use after the thirtieth day of*
24 *June, one thousand nine hundred ninety-one, as part of*
25 *a new industrial facility for producing coal-based*
26 *liquids used to produce synthetic motor fuel or synthetic*
27 *special fuel the amount of allowable credit shall be equal*
28 *to one hundred percent of the qualified investment (as*
29 *determined under section four of this article), and shall*
30 *reduce that portion of the taxpayer's business franchise*
31 *tax under article twenty-three of this chapter, which is*
32 *attributable to and the direct result of the taxpayer's*
33 *qualified investment, and that portion of the taxpayer's*
34 *corporation net income tax under article twenty-four of*
35 *this chapter, which is attributable to and the direct*
36 *result of the taxpayer's qualified investment; subject to*
37 *the following conditions and limitations:*

38 (1) The total amount of credit allowable to all persons
39 claiming credit under this section shall not exceed ten
40 million dollars during any fiscal year of this state. If and
41 to the extent credit is claimed under this section in
42 excess of ten million dollars in any fiscal year of this
43 state the amount in excess of ten million dollars is lost.
44 In determining which taxpayer or taxpayers loses credit
45 under this subdivision (1), the loss of credit shall apply
46 first to qualified investment property most recently
47 placed in service or use, going backwards in time, until
48 the tax commissioner determines that the total amount
49 of credit allowed under this section is not in excess of
50 ten million dollars.

51 (2) The qualified investment must result in the
52 creation of at least ten new jobs.

53 (3) If, during any taxable year of the ten year tax
54 credit allowance period, the average number of em-
55 ployees of the taxpayer, for the then current taxable
56 year, employed in positions created because of and
57 directly attributable to the qualified investment prop-
58 erty is less than ten, the credit allowance for that
59 taxable year is forfeited.

60 (4) Tax year time limitations for application of credit;
61 credit forfeiture.

62 (A) The amount of this credit allowable shall be
63 applied over a time period of up to ten tax years.

64 (B) This credit shall first be applied against tax
65 liabilities in the manner specified in subdivision (2) of
66 this subsection (b), beginning with the tax year during
67 which the qualified investment was first placed in
68 service or use in this state by the eligible taxpayer.

69 (C) Any amount of this credit remaining after
70 application of this credit against tax as specified in
71 paragraph (B) of this subdivision (1) shall then be
72 applied against the tax liabilities in the manner
73 specified in subdivision (2) of this subsection (b) for the
74 tax year immediately succeeding the tax year during
75 which the qualified investment was first placed in
76 service or use in this state and for each succeeding tax
77 year thereafter up through the ninth tax year subse-
78 quent to the first tax year in which the qualified
79 investment property was first placed in service or use.

80 (D) Any amount of this credit remaining after
81 application of this credit against tax as specified in
82 paragraph (B) and then paragraph (C) of this subdivi-
83 sion shall be forfeited and shall not carry forward to any
84 subsequent tax year.

85 (E) No carryback of credit to a prior tax year shall
86 be allowed.

87 (5) Tax liability percentage offset limitations.

88 (A) This credit for qualified investment in a new

89 industrial facility for producing coal-based liquids used
90 to produce synthetic motor fuel or synthetic special fuel
91 shall first be applied to reduce the annual West Virginia
92 business franchise tax liability imposed under article
93 twenty-three of this chapter for the tax year by an
94 amount such that this credit, in combined application
95 with all other applicable credits allowable under articles
96 thirteen-c, thirteen-d and thirteen-e, of this chapter and
97 under chapter five-e of this code and all other tax credits
98 provided in this code, shall not reduce the annual
99 business franchise tax liability for such tax year below
100 fifty percent of the amount of the annual tax liability
101 which would otherwise be imposed for such tax year in
102 the absence of this credit and all credits against such
103 tax, except the credits set forth in section seventeen,
104 article twenty-three of this chapter.

105 (B) After application of this credit against business
106 franchise tax as provided in paragraph (A) of this
107 subdivision (5), the remaining credit for qualified
108 investment in a new industrial facility for producing
109 coal-based liquids used to produce synthetic motor fuel
110 or synthetic special fuel (if any) shall then be applied
111 to reduce the annual West Virginia corporation net
112 income tax liability imposed under article twenty-four
113 of this chapter for the tax year by an amount such that
114 this credit in combined application with all other
115 applicable credits allowable under articles thirteen-c,
116 thirteen-d, thirteen-f and thirteen-g of this chapter and
117 under sections ten, eleven, eleven-a, twelve, twenty-two
118 and twenty-three-a, article twenty-four of this chapter
119 and under chapters five-e and eighteen-b of this code
120 and all other tax credits provided in this code, shall not
121 reduce the annual corporation net income tax liability
122 for such tax year below fifty percent of the amount of
123 the annual tax liability which would otherwise be
124 imposed for such tax year in the absence of this credit
125 and all other credits against tax, except the credits set
126 forth in sections nine and nine-a, article twenty-four of
127 this chapter.

128 (C) After application of this credit against business
129 franchise tax under paragraph (A) of this subdivision

130 (5), and then against corporation net income tax under
131 paragraph (B) of this subdivision (5), the remaining
132 credit for qualified investment in a new industrial
133 facility for producing coal-based liquids used to produce
134 synthetic motor fuel or synthetic special fuel (if any)
135 shall then be applied to further reduce the annual West
136 Virginia business franchise tax liability imposed under
137 article twenty-three of this chapter for the tax year by
138 an amount such that this credit shall not reduce the
139 annual business franchise tax liability for such tax year
140 below ten percent of the amount of the annual tax
141 liability which would otherwise be imposed for such tax
142 year in the absence of this credit and all other credits
143 against such tax, except the credits set forth in section
144 seventeen, article twenty-three of this chapter.

145 (D) After application of this credit against business
146 franchise tax under paragraph (A) of this subdivision (5)
147 and then against corporation net income tax under
148 paragraph (B) of this subdivision (5), and then against
149 business franchise tax under paragraph (C) of this
150 subdivision (5), the remaining credit for qualified
151 investment in new industrial facility for producing coal-
152 based liquids used to produce synthetic motor fuel or
153 synthetic special fuel (if any) shall then be applied to
154 further reduce the annual West Virginia corporation net
155 income tax liability imposed under article twenty-four
156 of this chapter for the tax year by an amount such that
157 this credit shall not reduce the annual corporation net
158 income tax liability for such tax year below ten percent
159 of the amount of the annual tax liability which would
160 otherwise be imposed for such tax year in the absence
161 of this credit and all other credits against such tax,
162 except the credits set forth in sections nine and nine-a,
163 article twenty-four of this chapter.

164 (c) *Application for credit required.* —

165 (1) *Application required.* — No credit shall be allowed
166 or applied under this section for any investment in any
167 new industrial facility for producing coal-based liquids
168 used to produce synthetic motor fuel or synthetic special
169 fuel until the person asserting a claim for the allowance
170 of credit under this article makes written application to

171 the tax commissioner for allowance of credit as provided
172 in this section and receives written certification of its
173 claim from the tax commissioner. An application for
174 credit shall be filed, in such form as the tax commis-
175 sioner shall prescribe, prior to the date when qualified
176 investment property is first placed in service or use, and
177 all information required by such form shall be provided.
178 No credit shall be taken by a taxpayer applicant or
179 prospective applicant pursuant to this section until
180 certification has been issued by the tax commissioner.

181 (2) *Failure to file.* — The failure to timely apply for
182 certification under this subsection (c) shall result in
183 forfeiture of the credit otherwise allowable under this
184 section.

185 (d) *Definitions.* — For purposes of this section:

186 (1) “Synthetic motor fuel” means any product suitable
187 for use in an internal combustion engine except special
188 fuel as defined in this section, containing at least ten
189 percent coal-based liquids blended to meet
190 specifications.

191 (2) “Synthetic special fuel” means special fuel contain-
192 ing at least ten percent coal-based liquids blended to
193 meet specifications.

194 (e) *Report by the governor’s office of community and*
195 *industrial development.* — The governor’s office of
196 community and industrial development shall produce a
197 report to the Legislature to be presented during the
198 regular legislative session of one thousand nine hundred
199 ninety-two. Such report shall state the identity of
200 taxpayers who have received this credit and shall
201 contain an analysis of the expansion and growth of
202 facilities in this state producing coal-based liquids used
203 to produce synthetic fuels, the expansion of commerce
204 resulting from the creation of this credit, and the
205 number of jobs created as a result of this credit. The
206 report of the governor’s office of community and
207 industrial development shall not directly or indirectly
208 reveal the amount of credit available to any particular
209 taxpayer or taxpayer return information other than the
210 names and addresses of taxpayers.

CHAPTER 161

(Com. Sub. for S. B. 93—By Senator Wooton)

[Passed March 9, 1991; to effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article eighteen, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section thirteen-a, all relating to the hotel occupancy tax; requirement of filing annual reports by convention and visitor's bureaus; proceeds of the tax; application of the tax; providing that convention and visitor's bureaus may be located in a region as well as a municipality or county; adding to permissible expenditures by municipalities and counties; providing for allocation of funds where a convention and visitor's bureau is not located in a municipality, county or region; providing for allocation of funds by a municipality where more than one convention and visitor's bureau is located in a municipality, county or region; and defining certain terms.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-13a. Annual reports by convention and visitor's bureaus.

§7-18-14. Proceeds of tax; application of proceeds.

§7-18-13a. Annual reports by convention and visitor's bureaus.

1 Each year, on or before the fifteenth day of August,
 2 every convention and visitor's bureau which receives any
 3 appropriation of hotel occupancy tax from one or more
 4 counties or municipalities shall file with each such
 5 county or municipality a statement, including an income
 6 statement and balance sheet, showing all amounts of
 7 hotel occupancy tax appropriated to the convention and

8 visitor's bureau and all expenditures of hotel occupancy
9 tax made by the convention and visitor's bureau for the
10 prior fiscal year.

§7-18-14. Proceeds of tax; application of proceeds.

1 (a) *Application of proceeds.* — The net proceeds of the
2 tax collected and remitted to the taxing authority
3 pursuant to this article shall be deposited into the
4 general revenue fund of such municipality or county
5 commission and, after appropriation thereof, shall be
6 expended only as provided in subsections (b) and (c) of
7 this section.

8 (b) *Required expenditures.* — At least fifty percent of
9 the net revenue receivable during the fiscal year by a
10 county or a municipality pursuant to this article shall
11 be expended in the following manner for the promotion
12 of conventions and tourism:

13 (1) *Municipalities.* — If a convention and visitor's
14 bureau is located within the municipality, county or
15 region, the governing body of such municipality shall
16 appropriate the percentage required by this subsection
17 (b) to that bureau. If a convention and visitor's bureau
18 is not located within such municipality, county or
19 region, then the percentage appropriation required by
20 this subsection (b) shall be appropriated as follows:

21 (i) Any hotel located within such municipality, county
22 or region may apply to such municipality for an
23 appropriation to such hotel of a portion of the tax
24 authorized by this article and collected by such hotel
25 and remitted to such municipality, for uses directly
26 related to the promotion of tourism and travel, including
27 advertising, salaries, travel, office expenses, publica-
28 tions and similar expenses. The portion of such tax
29 allocable to such hotel shall not exceed seventy-five
30 percent of that portion of such tax collected and
31 remitted by such hotel which is required to be expended
32 pursuant to subsection (b) of this section: *Provided*, That
33 prior to appropriating any moneys to such hotel such
34 municipality shall require the submission of, and give
35 approval to, a budget setting forth the proposed uses of
36 such moneys.

37 (ii) If there is more than one convention and visitor's
38 bureau located within a municipality, county or region,
39 the city council may allocate the tax authorized by this
40 article to one or more of such bureaus in such portion
41 as the city council in its sole discretion determines.

42 (iii) The balance of net revenue required to be
43 expended by subsection (b) of this section shall be
44 appropriated to the regional travel council serving the
45 area in which the municipality is located.

46 (2) *Counties.* — If a convention and visitor's bureau is
47 located within a county or region, the county commission
48 shall appropriate the percentage required by this
49 subsection (b) to that convention and visitor's bureau. If
50 a convention and visitor's bureau is not located within
51 such county or region, then the percentage appropria-
52 tion required by this subsection (b) shall be approp-
53 riated as follows:

54 (i) Any hotel located within such county or region may
55 apply to such county for an appropriation to such hotel
56 of a portion of the tax authorized by this article and
57 collected by such hotel and remitted to such county, for
58 uses directly related to the promotion of tourism and
59 travel, including advertising, salaries, travel, office
60 expenses, publications and similar expenses. The portion
61 of such tax allocable to such hotel shall not exceed
62 seventy-five percent of that portion of such tax collected
63 and remitted by such hotel which is required to be
64 expended pursuant to subsection (b) of this section:
65 *Provided,* That prior to appropriating any moneys to
66 such hotel such county shall require the submission of,
67 and give approval to, a budget setting forth the proposed
68 uses of such moneys.

69 (ii) If there is more than one convention and visitor's
70 bureau located within a county or region, the county
71 commission may allocate the tax authorized by this
72 article to one or more of such bureaus in such portion
73 as the county commission in its sole discretion
74 determines.

75 (iii) The balance of net revenue required to be
76 expended by subsection (b) of this section shall be

77 appropriated to the regional travel council serving the
78 area in which the county is located.

79 (3) *Legislative finding.* — The Legislature hereby finds
80 that the support of convention and visitor's bureaus,
81 hotels and regional travel councils is a public purpose
82 for which funds may be expended. Local convention and
83 visitor's bureaus, hotels and regional travel councils
84 receiving funds under this subsection (b) may expend
85 such funds for the payment of administrative expenses,
86 and for the direct or indirect promotion of conventions
87 and tourism, and for any other uses and purposes
88 authorized by subdivisions (1) and (2) of this subsection
89 (b).

90 (c) *Permissible expenditures.* — After making the
91 appropriation required by subsection (b) of this section,
92 the remaining portion of the net revenues receivable
93 during the fiscal year by such county or municipality,
94 pursuant to this article, may be expended for one or
95 more of the purposes set forth in this subsection, but for
96 no other purpose. The purposes for which expenditures
97 may be made pursuant to this subsection are as follows:

98 (1) The planning, construction, reconstruction, estab-
99 lishment, acquisition, improvement, renovation, exten-
100 sion, enlargement, equipment, maintenance, repair and
101 operation of publicly owned convention facilities includ-
102 ing, but not limited to, arenas, auditoriums, civic centers
103 and convention centers;

104 (2) The payment of principal or interest or both on
105 revenue bonds issued to finance such convention
106 facilities;

107 (3) The promotion of conventions;

108 (4) The construction, operation or maintenance of
109 public parks, tourist information centers and recreation
110 facilities (including land acquisition);

111 (5) The promotion of the arts;

112 (6) Historic sites; or

113 (7) Beautification projects.

114 (d) *Definitions.* — For purposes of this section, the
115 following terms are defined:

116 (1) *Convention and visitor's bureau and visitor's and*
117 *convention bureau.* — “Convention and visitor's bureau”
118 and “visitor's and convention bureau” are interchange-
119 able, and either shall mean a nonstock, nonprofit
120 corporation with a full-time staff working exclusively to
121 promote tourism and to attract conventions, conferences
122 and visitors to the municipality, county or region in
123 which such convention and visitor's bureau or visitor's
124 and convention bureau is located or engaged in business
125 within.

126 (2) *Convention center.* — “Convention center” means a
127 convention facility owned by the state, a county, a
128 municipality or other public entity or instrumentality
129 and shall include all facilities, including armories,
130 commercial, office, community service and parking
131 facilities, and publicly owned facilities constructed or
132 used for the accommodation and entertainment of
133 tourist and visitors, constructed in conjunction with the
134 convention center and forming reasonable appurtenan-
135 ces thereto.

136 (3) *Fiscal year.* — “Fiscal year” means the year
137 beginning the first day of July and ending the thirtieth
138 day of June of the next calendar year.

139 (4) *Net proceeds.* — “Net proceeds” means the gross
140 amount of tax collections less the amount of tax lawfully
141 refunded.

142 (5) *Promotion of the arts.* — “Promotion of the arts”
143 means activity to promote public appreciation and
144 interest in one or more of the arts. It includes the
145 promotion of music for all types, the dramatic arts,
146 dancing, painting and the creative arts through shows,
147 exhibits, festivals, concerts, musicals and plays.

148 (6) *Recreational facilities.* — “Recreational facilities”
149 means and includes any public park, parkway, play-
150 ground, public recreation center, athletic field, sports
151 arena, stadium, skating rink or arena, golf course,
152 tennis courts and other park and recreation facilities,

153 whether of a like or different nature, that are owned by
154 a county or municipality.

155 (7) *Region*. — “Region” means an area consisting of
156 one or more counties that have agreed by contract to
157 fund a convention and visitor’s bureau to promote those
158 counties.

159 (8) *Regional travel council*. — “Regional travel council”
160 means a nonstock, nonprofit corporation, with a full-
161 time staff working exclusively to promote tourism and
162 to attract conventions, conferences and visitors to the
163 region of this state served by the regional travel council.

164 (9) *Historic site*. — “Historic site” means any site listed
165 on the United States national register of historic places,
166 or listed by a local historical landmarks commission,
167 established under state law, when such sites are owned
168 by a city, a county or a nonprofit historical association,
169 and are open from time to time to accommodate visitors.

CHAPTER 162

(Com. Sub. for S. B. 316—By Senators Chafin, Jones, Craigo, Wagner,
Holliday, Heck, Pritt and Chernenko)

[Passed March 7, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-s, relating to exceptions to confidentiality of taxpayer information; and disclosure of certain taxpayer information.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-5s. Disclosure of certain taxpayer information.

1 (a) *Purpose.* — The Legislature hereby recognizes the
2 importance of confidentiality of taxpayer information as
3 a protection of taxpayers' privacy rights and to enhance
4 voluntary compliance with the tax law. The Legislature
5 also recognizes the citizens' right to accountable and
6 efficient state government. To accomplish these ends,
7 the Legislature hereby creates certain exceptions to the
8 general principle of confidentiality of taxpayer
9 information.

10 (b) *Exceptions to confidentiality.* —

11 (1) Notwithstanding any provision in this code to the
12 contrary, the tax commissioner shall publish in the state
13 register the name and address of every taxpayer, and
14 the amount, by category, of any credit asserted on a tax
15 return under articles thirteen-c, thirteen-d, thirteen-e,
16 thirteen-f, thirteen-g and thirteen-h of this chapter and
17 article one, chapter five-e of this code for any tax year
18 beginning on or after the first day of July, one thousand
19 nine hundred ninety-one. The categories by dollar
20 amount of credit received shall be as follows:

- 21 (A) More than \$1.00, but not more than \$50,000;
22 (B) More than \$50,000, but not more than \$100,000;
23 (C) More than \$100,000, but not more than \$250,000;
24 (D) More than \$250,000, but not more than \$500,000;
25 (E) More than \$500,000, but not more than \$1,000,000;
26 (F) More than \$1,000,000.

27 (2) Notwithstanding any provision in this code to the
28 contrary, the tax commissioner shall publish in the state
29 register the following information regarding any
30 compromise of a pending civil tax case that occurs on
31 or after the effective date of this section in which the
32 tax commissioner is required to seek the written
33 recommendation of the attorney general and the
34 attorney general has not recommended acceptance of
35 such compromise or when the tax commissioner com-

36 promises any civil tax case for an amount that is more
37 than two hundred fifty thousand dollars less than the
38 assessment of tax owed made by the tax commis-
39 sioner:

40 (A) The names and addresses of taxpayers that are
41 parties to such compromise;

42 (B) A summary of such compromise;

43 (C) Any written advice or recommendation rendered
44 by the attorney general regarding such compromise;
45 and

46 (D) Any written advice or recommendation rendered
47 by the tax commissioner's staff.

48 Under no circumstances may the tax return of the
49 taxpayer nor any other information which would
50 otherwise be confidential under any other provisions of
51 law be disclosed pursuant to the provisions of this
52 subsection.

53 (3) Notwithstanding any provision in this code to the
54 contrary, the tax commissioner may disclose any
55 relevant return information to the prosecuting attorney
56 for the county in which venue lies for a criminal tax
57 offense when there is reasonable cause, based upon and
58 substantiated by such information, to believe that a
59 criminal tax law has been or is being violated.

60 (4) Notwithstanding any provision in this code to the
61 contrary, the tax commissioner may enter into written
62 exchange of information agreements with the commis-
63 sioners of labor, employment security and workers'
64 compensation to disclose and receive return information:
65 *Provided*, That the tax commissioner may promulgate
66 rules pursuant to chapter twenty-nine-a of this code
67 regarding further agencies with which written ex-
68 change of information agreements may be sought:
69 *Provided, however*, That the tax commissioner may not
70 promulgate emergency rules regarding further agencies
71 with which written exchange of information agreements
72 may be sought. Such agreements shall be published in
73 the state register and shall only be for the purpose of

74 facilitating premium collection, tax collection and
75 facilitating licensure requirements directly enforced,
76 administered or collected by the respective agencies.
77 The provisions of this subsection shall not be construed
78 to preclude or limit disclosure of tax information
79 authorized by other provisions of this code. Any
80 confidential return information so disclosed shall
81 remain confidential in the hands of such other division
82 to the extent provided by section five-d of this article
83 and by other applicable federal or state laws.

84 (c) *Tax expenditure reports.* — Beginning on the
85 fifteenth day of January, one thousand nine hundred
86 ninety-two and every fifteenth day of January thereaf-
87 ter, the governor shall submit to the president of the
88 Senate and the speaker of the House of Delegates a tax
89 expenditure report. Such report shall expressly identify
90 all tax expenditures. Within three-years cycles, such
91 reports shall be considered together to analyze all tax
92 expenditures by describing the annual revenue loss and
93 benefits of the tax expenditure based upon information
94 available to the tax commissioner. For purposes of this
95 section, the term “tax expenditure” shall mean a
96 provision in the tax laws administered under this
97 article, including, but not limited to, exclusions,
98 deductions, tax preferences, credits and deferrals
99 designed to encourage certain kinds of activities or to
100 aid taxpayers in special circumstances: *Provided*, That
101 the tax commissioner shall promulgate rules setting
102 forth the procedure by which he or she will compile such
103 reports and setting forth a priority for the order in
104 which the reports will be compiled according to type of
105 tax expenditure.

106 (d) *Federal and state return information confidential.*
107 — Notwithstanding any other provisions of this section
108 or of this code, no return information made available to
109 the tax commissioner by the Internal Revenue Service
110 or department or agency of any other state may be
111 disclosed to another person in any manner inconsistent
112 with the provisions of Section 6103 of the Internal
113 Revenue Code of 1986, as amended, or of such other
114 states’ confidentiality laws.

CHAPTER 163

(Com. Sub. for S. B. 527—By Senators Withers, Wagner and Blatnik)

[Passed March 9, 1991: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the additional tax on the severance, extraction and production of coal; and providing that in computing the additional tax for benefit of counties and municipalities that the tax commissioner not apply credits against said additional tax.

Be it enacted by the Legislature of West Virginia:

That section six, 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-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules and regulations; creation of special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; creating special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

- 1 (a) *Additional coal severance tax.* — Upon every
- 2 person exercising the privilege of engaging or continu-
- 3 ing within this state in the business of severing coal, or

4 preparing coal (or both severing and preparing coal), for
5 sale, profit or commercial use, there is hereby imposed
6 an additional severance tax, the amount of which shall
7 be equal to the value of the coal severed or prepared (or
8 both severed and prepared), against which the tax
9 imposed by section three of this article is measured as
10 shown by the gross proceeds derived from the sale
11 thereof by the producer, multiplied by thirty-five one
12 hundredths of one percent. The tax imposed by this
13 subsection shall be in addition to the tax imposed by
14 section three of this article, and this additional tax is
15 hereinafter in this section referred to as the "additional
16 tax on coal".

17 (b) This additional tax on coal is imposed pursuant to
18 the provisions of section six-a, article ten of the West
19 Virginia constitution. Seventy-five percent of the net
20 proceeds of this additional tax on coal shall, after
21 appropriation thereof by the Legislature, be distributed
22 by the state treasurer in the manner hereinafter
23 specified, to the various counties of this state in which
24 the coal upon which this additional tax is imposed was
25 located at the time it was severed from the ground.
26 Those counties are hereinafter in this section referred
27 to as the "coal-producing counties". The remaining
28 twenty-five percent of the net proceeds of this additional
29 tax on coal shall be distributed, after appropriation,
30 among all the counties and municipalities of this state
31 in the manner hereinafter specified.

32 (c) Such additional tax on coal shall be due and
33 payable, reported and remitted as elsewhere provided in
34 this article for the tax imposed by said section three of
35 this article, and all of the enforcement and other
36 provisions of this article shall apply to such additional
37 tax. In addition to the reports and other information
38 required under the provisions of this article and the
39 tonnage reports required to be filed under the provisions
40 of section seventy-two, article two, chapter twenty-two
41 of this code, the tax commissioner is hereby granted
42 plenary power and authority to promulgate reasonable

43 rules and regulations requiring the furnishing by
44 producers of such additional information as may be
45 necessary to compute the allocation required under the
46 provisions of subsection (f) of this section. The tax
47 commissioner is also hereby granted plenary power and
48 authority to promulgate such other reasonable rules and
49 regulations as may be necessary to implement the
50 provisions of this section: *Provided*, That notwithstand-
51 ing any language contained in this code to the contrary,
52 the gross amount of additional tax on coal collected
53 under this article shall be paid over and distributed
54 without the application of any credits against the tax
55 imposed by this section.

56 (d) In order to provide a procedure for the distribution
57 of seventy-five percent of the net proceeds of such
58 additional tax on coal to such coal-producing counties,
59 there is hereby created in the state treasurer's office a
60 special fund to be known as the "county coal revenue
61 fund"; and in order to provide a procedure for the
62 distribution of the remaining twenty-five percent of the
63 net proceeds of such additional tax on coal to all counties
64 and municipalities of the state, without regard to coal
65 having been produced therein, there is also hereby
66 created in the state treasurer's office a special fund to
67 be known as the "all counties and municipalities revenue
68 fund".

69 Seventy-five percent of the net proceeds of such
70 additional tax on coal shall be deposited in the "county
71 coal revenue fund" and twenty-five percent of such net
72 proceeds shall be deposited in the "all counties and
73 municipalities revenue fund", from time to time, as such
74 proceeds are received by the tax commissioner. The
75 moneys in such funds shall, after appropriation thereof
76 by the Legislature, be distributed to the respective
77 counties and municipalities entitled thereto in the
78 manner set forth in subsection (e) of this section.

79 (e) The moneys in the "county coal revenue fund" and
80 the moneys in the "all counties and municipalities
81 revenue fund" shall be allocated among and distributed

82 quarterly to the counties and municipalities entitled
83 thereto by the state treasurer in the manner hereinafter
84 specified. On or before each distribution date, the state
85 treasurer shall determine the total amount of moneys in
86 each fund which will be available for distribution to the
87 respective counties and municipalities entitled thereto
88 on that distribution date. The amount to which a coal-
89 producing county is entitled from the "county coal
90 revenue fund" shall be determined in accordance with
91 subsection (f) of this section, and the amount to which
92 every county and municipality shall be entitled from the
93 "all counties and municipalities revenue fund" shall be
94 determined in accordance with subsection (g) of this
95 section. After determining as set forth in subsection (f)
96 and subsection (g) of this section the amount each county
97 and municipality is entitled to receive from the respec-
98 tive fund or funds, a warrant of the state auditor for the
99 sum due to such county or municipality shall issue and
100 a check drawn thereon making payment of such sum
101 shall thereafter be distributed to such county or
102 municipality.

103 (f) The amount to which a coal-producing county is
104 entitled from the "county coal revenue fund" shall be
105 determined by: (1) Dividing the total amount of moneys
106 in such fund then available for distribution by the total
107 number of tons of coal mined in this state during the
108 preceding quarter; and (2) multiplying the quotient thus
109 obtained by the number of tons of coal removed from
110 the ground in such county during the preceding quarter.

111 (g) The amount to which each county and municipality
112 shall be entitled from the "all counties and municipal-
113 ities revenue fund" shall be determined in accordance
114 with the provisions of this subsection. For purposes of
115 this subsection "population" shall mean the population
116 as determined by the most recent decennial census taken
117 under the authority of the United States:

118 (1) The treasurer shall first apportion the total amount
119 of moneys available in the "all counties and municipal-
120 ities revenue fund" by multiplying the total amount in

121 such fund by the percentage which the population of
122 each county bears to the total population of the state.
123 The amount thus apportioned for each county shall be
124 the county's "base share".

125 (2) Each county's "base share" shall then be subdivi-
126 ded into two portions. One portion shall be determined
127 by multiplying the "base share" by that percentage
128 which the total population of all unincorporated areas
129 within the county bears to the total population of the
130 county, and the other portion shall be determined by
131 multiplying the "base share" by that percentage which
132 the total population of all municipalities within the
133 county bears to the total population of the county. The
134 former portion shall be paid to the county and the latter
135 portion shall be the "municipalities' portion" of the
136 county's "base share". The percentage of such latter
137 portion to which each municipality in the county is
138 entitled shall be determined by multiplying the total of
139 such latter portion by the percentage which the
140 population of each municipality within the county bears
141 to the total population of all municipalities within the
142 county.

143 (h) All counties and municipalities shall create a "coal
144 severance tax revenue fund" which shall be the deposi-
145 tory for moneys distributed to any county or municipal-
146 ity under the provisions of this section, from either or
147 both special funds. Moneys in such "coal severance tax
148 revenue funds", in compliance with subsection (i), may
149 be expended by the county commission or governing
150 body of the municipality for such public purposes as the
151 county commission or governing body shall determine to
152 be in the best interest of the people of its respective
153 county or municipality: *Provided*, That in counties with
154 population in excess of two hundred thousand at least
155 seventy-five percent of such funds received from the
156 county coal revenue fund shall be apportioned to, and
157 expended within the coal-producing area or areas of the
158 county, said coal-producing areas of each county to be
159 determined generally by the state tax commissioner:

160 *Provided, however,* That a line item budgeted amount
161 from the current levy estimated for a county shall be
162 funded at one hundred percent of the preceding year's
163 expenditure from the county general fund prior to the
164 use of coal severance tax revenue fund moneys for the
165 same general purpose: *Provided further,* That said coal
166 severance tax revenue fund moneys shall not be
167 budgeted for personal services in an amount to exceed
168 one fourth of the total funds available in such fund.

169 (i) On or before the twenty-eighth day of March, one
170 thousand nine hundred eighty-six, and each twenty-
171 eighth day of March thereafter, each county commission
172 or governing body of a municipality receiving such
173 revenue shall submit to the tax commissioner on forms
174 provided by the tax commissioner a special budget,
175 detailing how such revenue is to be spent during the
176 subsequent fiscal year. Such budget shall be followed in
177 expending such revenue unless a subsequent budget is
178 approved by the state tax commissioner. All unexpended
179 balances remaining in said special fund at the close of
180 a fiscal year shall be reappropriated to the budget for
181 the subsequent fiscal year. Such reappropriation shall
182 be entered as an amendment to the new budget and
183 submitted to the tax commissioner on or before the
184 fifteenth day of July of the current budget year.

185 (j) On or before the fifteenth day of December, one
186 thousand nine hundred eighty-six, and each fifteenth
187 day of December thereafter, the tax commissioner shall
188 deliver to the clerk of the Senate and the clerk of the
189 House of Delegates a consolidated report of the special
190 budgets, created by subsection (i) of this section, for all
191 county commissions and municipalities as of the
192 fifteenth day of July of the current year.

193 (k) The state tax commissioner shall retain for the
194 benefit of the state from the additional taxes on coal
195 collected the amount of thirty-five thousand dollars
196 annually as a fee for the administration of such
197 additional tax by the tax commissioner.

CHAPTER 164

(Com. Sub. for S. B. 173—Originating in the Committee on Finance)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, six and seven, article thirteen-d, chapter eleven 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 three-c and five-b; and to amend and reenact sections two and nine, article fifteen of said chapter, all relating to the creation of a credit against the West Virginia business franchise tax and the West Virginia corporation net income tax for qualified investment of two million dollars or more in a management information services facility when such qualified investment is purchased, or leased, and placed in service or use over a period of not more than three hundred sixty-five days; setting forth legislative findings and purpose; defining terms; prescribing amount of credit allowed, application of credit, investment period limitations subject to extension by subsequent legislative amendment; limiting time during which qualified investment for a management information services facility may be purchased and placed in service or use and for which credit will be available, to the period from the first day of April, one thousand nine hundred ninety-one, to the thirty-first day of March, one thousand nine hundred ninety-three, inclusive; providing tax year time limitations for application of credit over a ten-year period; providing for forfeiture of unused credit; providing that no carryback of credit to prior years shall be allowed; providing tax liability percentage offset limitations; limiting the amount of annual credit which any taxpayer or controlled group may take in any taxable year to a maximum of one million dollars; requiring an application for credit be filed with the tax commissioner; providing a penalty for failure to file an application for credit with the tax commissioner; defining qualified investment for a management information services facility, with applica-

tion of percentages of the cost of property purchased to be determined in accordance with useful life or applicable lease term thereof; prescribing the manner for determination of the cost of property purchased or leased for management information services facilities in the case of trade-ins, damaged, destroyed or stolen property, rental property, property purchased for multiple use, self-constructed property, and providing specific exclusions for investment in certain properties; providing for forfeiture of unused tax credits; providing for redetermination of credit in the case of premature disposition or cessation of use of property; providing for transfer of eligible investment to successors; requiring disclosure of the names and addresses of persons receiving the credit and the amount thereof by a bracketed amount category; requiring a report to be made to the Legislature during the regular legislative session of one thousand nine hundred ninety-two by the governor's office of community and industrial development analyzing the performance of the management information services facility credit and identifying the taxpayers taking the credit; providing for a change in the form of business of taxpayers holding qualified investment property relating to credit; providing for transfer or sale of qualified investment property to successors and acquisition of the amount of credit that remains available for successors in business, and allocation of annual credit between the transferor and the transferee in the year during which qualified investment property is transferred to a successor business; and creating a consumers sales and service tax exemption and use tax exemption for purchases directly used or consumed in operation of management information services facilities that qualifies for tax credit under section three-c, article thirteen-d of said chapter; and defining terms.

Be it enacted by the Legislature of West Virginia:

That sections one, two, six and seven, article thirteen-d, 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 two

new sections, designated sections three-c and five-b, and that sections two and nine, article fifteen of said chapter be amended and reenacted, all to read as follows:

Article

13D. Business and Occupation Tax Credit for Industrial Expansion and Revitalization, for Research and Development Projects, Certain Housing Developments and Management Information Services Facilities.

15. Consumers Sales Tax.

ARTICLE 13D. BUSINESS AND OCCUPATION TAX CREDIT FOR INDUSTRIAL EXPANSION AND REVITALIZATION, FOR RESEARCH AND DEVELOPMENT PROJECTS, CERTAIN HOUSING DEVELOPMENTS AND MANAGEMENT INFORMATION SERVICES FACILITIES.

§11-13D-1. Legislative findings and purpose.

§11-13D-2. Definitions.

§11-13D-3c. Amount of credit allowed and application of credit for qualified investment in a management information services facility.

§11-13D-3b. Qualified investment for a management information services facility.

§11-13D-6. Forfeiture of unused tax credits, redetermination of credit required.

§11-13D-7. Transfer of eligible investment to successors.

§11-13D-1. Legislative findings and purpose.

1 The Legislature finds that the encouragement of the
2 location of new industry in this state; the expansion,
3 growth and revitalization of existing industrial facilities
4 in this state; the conduct of research and development
5 in this state, for purposes of expanding markets for sales
6 and uses of this state's natural resources and industrial
7 products, the construction of residential housing and the
8 creation or expansion of management information
9 services facilities are all in the public interest and
10 promote the general welfare of the people of this state.

11 In order to encourage capital investment in this state
12 and thereby increase employment and economic devel-
13 opment, there is hereby provided a tax credit for
14 industrial expansion and revitalization in this state, for
15 certain research and development related expenditures
16 in this state, for certain housing and development
17 related expenditures in this state and for the creation

18 or expansion of certain management information
19 services facilities in this state.

§11-13D-2. Definitions.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in
3 article thirteen of this chapter, unless a different
4 meaning is clearly required by the context of its use or
5 by definition in this article.

6 (b) For purpose of this article, the term:

7 (1) "Eligible investment" means that amount deter-
8 mined under either section four of this article, for
9 investment in a new or expanded or revitalized indus-
10 trial facility, or under section five of this article, in the
11 case of an eligible research and development project,
12 under section five-a for a qualified housing development
13 project, or under section five-b for a management
14 information services facility.

15 (2) Eligible taxpayer.

16 (A) "Eligible taxpayer" means an industrial taxpayer
17 who purchases new property for the purpose of indus-
18 trial expansion, or for the purpose of revitalizing an
19 existing industrial facility in this state; or a taxpayer
20 who purchases property or services, or both, for the
21 purpose of conducting an eligible research and develop-
22 ment project in this state or for the purpose of construct-
23 ing a qualified housing development project in this state.

24 (B) An eligible taxpayer for purposes of the manage-
25 ment information services facility credit means a
26 taxpayer fulfilling the requirements of paragraph (C) or
27 (D) of this subdivision which has purchased, or leased,
28 and placed into service or use in a management
29 information services facility, qualified investment, as
30 defined under section five-b of this article, of two million
31 dollars or more over a time period of not more than
32 three hundred sixty-five consecutive days and which
33 operates such management information services facility,
34 without regard to whether such taxpayer is an indus-
35 trial taxpayer or engages in an industrial business or
36 operates an industrial facility as herein defined.

37 (C) An eligible taxpayer for purposes of the manage-
38 ment information services facility credit is a person or
39 entity which had no operations and owned or leased no
40 property in West Virginia during the five-year period
41 prior to the creation of the management information
42 services facility in West Virginia, and which is not a
43 successor in business to any person or entity which had
44 operations or owned or leased property in West Virginia
45 during the five-year period prior to the creation of the
46 management information services facility in West
47 Virginia.

48 A person or entity shall not constitute an eligible
49 taxpayer for purposes of the management information
50 services facility credit if any related person (as defined
51 in Section 267(b) of the Internal Revenue Code of 1986,
52 as amended) had operations or owned or leased property
53 in West Virginia during the five-year period prior to the
54 creation of the management information services facility
55 in West Virginia or if any such related person is a
56 successor in business to any person or entity which had
57 operations or owned or leased property in West Virginia
58 during the five-year period prior to the creation of the
59 management information services facility in West
60 Virginia.

61 (D) Notwithstanding paragraph (C) of this subdivi-
62 sion, a person, entity, successor in business which would
63 otherwise not constitute an eligible taxpayer under
64 paragraph (C) of this subdivision may nevertheless
65 constitute an eligible taxpayer for purposes of this
66 management information services facility credit if such
67 person, entity, successor places qualified investment into
68 service or use in West Virginia for the purpose of
69 establishing in this state a management information
70 services facility that is new to West Virginia and which
71 services do not include any management information
72 services previously conducted by such person, entity,
73 successor, or a related person (as defined in Section
74 267(b) of the Internal Revenue Code of 1986, as
75 amended) in West Virginia, or if such person, entity or
76 successor places qualified investment into service or use
77 in West Virginia in a management information services

78 facility for the purpose of consolidating or relocating
79 significant existing national, regional or international
80 management information services operations in West
81 Virginia, and such consolidation or relocation results in
82 the placement of at least two million dollars of qualified
83 investment into service or use in West Virginia within
84 the time periods described in paragraph (B) of this
85 subdivision, and such consolidation or relocation results
86 in the relocation of significant management information
87 services operations into West Virginia which did not
88 previously exist in West Virginia, and the taxpayer
89 otherwise constitutes an eligible taxpayer under such
90 paragraph (B). For purposes of this section, the term
91 "regional" means an area including more than one state
92 or portions of more than one state of the United States.

93 (3) "Eligible research and development project" means
94 a research and development project engaged in or
95 conducted within this state, by a person who is engaged
96 in this state in the business of producing natural
97 resources or in an industrial business when such
98 research and development project is conducted for
99 purposes relating to the technical, economic, financial,
100 engineering or marketing aspects of expanding markets
101 for, and increasing sales of, this state's natural resource
102 products, or industrial products, or both.

103 (4) "Industrial business" means any privilege taxable
104 under section two-b or two-m, article thirteen of this
105 chapter, and includes a manufacturing service taxable
106 under section two-h of said article: *Provided*, That on
107 and after the first day of July, one thousand nine
108 hundred eighty-seven, the term "industrial business"
109 shall mean the business of manufacturing, compounding
110 or preparing tangible personal property for sale, profit
111 or commercial use, the business of generating electric
112 power, and the business of providing a manufacturing
113 service, which were taxable, respectively, under sections
114 two-b, two-m and two-h, article thirteen of this chapter,
115 on the first day of January, one thousand nine hundred
116 eighty-five.

117 (5) "Industrial facility" means any factory, mill, plant,
118 refinery, warehouse, buildings or complex of buildings

119 located within this state, including the land on which it
120 is located, and all machinery, equipment and other real
121 and tangible personal property located at or within such
122 facility used in connection with the operation of such
123 facility in an industrial business.

124 (6) "Industrial revitalization" means capital invest-
125 ment in an industrial facility located in this state to
126 replace or modernize buildings, equipment, machinery
127 and other tangible personal property used in connection
128 with the operation of such facility in an industrial
129 business of the taxpayer, including the acquisition of
130 any real property necessary to the industrial
131 revitalization.

132 (7) "Industrial expansion" means capital investment in
133 a new or expanded industrial facility in this state.

134 (8) "Industrial taxpayer" means any person subject to
135 business and occupation taxes under article thirteen of
136 this chapter, exercising any privilege taxable under
137 section two-b or two-m of said article thirteen, or
138 providing a manufacturing service taxable under
139 section two-h of said article thirteen: *Provided*, That on
140 and after the first day of July, one thousand nine
141 hundred eighty-seven, "industrial taxpayer" shall mean
142 any person subject to tax under section two-m, article
143 thirteen of this chapter; or any person subject to tax
144 under article thirteen-a or twenty-three of this chapter
145 engaging in any activity that was taxable under section
146 two-b, article thirteen of this chapter, on the first day
147 of January, one thousand nine hundred eighty-five; or
148 any person taxable under article twenty-three of this
149 chapter providing a manufacturing service that was
150 taxable under section two-h, article thirteen of this
151 chapter on the first day of January, one thousand nine
152 hundred eighty-five.

153 (9) "Management information services facility" means
154 a building, or any part thereof, or a complex of
155 buildings, or any part thereof, including the machinery
156 and equipment located therein, that is exclusively
157 dedicated to providing management information servi-
158 ces to the owner or operator thereof or to another person.

159 (10) "Management information services" means, and is
160 limited to, data processing, data storage, data recovery
161 and backup, programming recovery and backup,
162 telecommunications, computation and computer process-
163 ing, computer programming, electronic information,
164 and data management activities, or any combination of
165 such activities, when such activity, or activities, is not
166 subject to regulation by the West Virginia public service
167 commission and such activity, or activities, is for the
168 purpose of managing, planning for, organizing or
169 operating, any industrial or commercial business, or any
170 enterprise, facility or facilities of an industrial or
171 commercial business, whether such industrial or
172 commercial business or enterprise, facility or facilities
173 of an industrial or commercial business is located within
174 or without this state and without regard to whether such
175 industrial or commercial business, or enterprise, facility
176 or facilities of an industrial or commercial business is
177 owned by the provider of the management information
178 services or by a "related person", as defined in Section
179 267(b) of the Internal Revenue Code of 1986, as
180 amended.

181 (11) "Manufacturing service" means a privilege that
182 would be taxable under section two-b, article thirteen
183 of this chapter, if title to the raw materials used in the
184 manufacturing process was vested in the taxpayer
185 exercising the privilege taxable under section two-h of
186 said article thirteen.

187 (12) Subject to subdivision (15) below, "property
188 purchased for an eligible research and development
189 project" means real property, and improvements
190 thereto, and tangible personal property, but only if such
191 real or personal property is constructed or purchased on
192 or after the first day of July, one thousand nine hundred
193 eighty-five, for use as a component part of an eligible
194 research and development project which is located
195 within this state on or after the first day of July, one
196 thousand nine hundred eighty-five. This term includes
197 only tangible personal property with respect to which
198 depreciation or amortization, in lieu of depreciation, is
199 allowable in determining the personal income tax or

200 corporation net income tax liability of the purchaser
201 under article twenty-one or twenty-four of this chapter.
202 Property acquired by written lease for a term of ten
203 years or longer, if used as a component part of an
204 eligible research and development project, shall be
205 included within this definition.

206 (13) Subject to subdivision (15) below, "property
207 purchased for industrial expansion" means real prop-
208 erty, and improvements thereto, and tangible personal
209 property, but only if such property was constructed, or
210 purchased, on or after the first day of July, one thousand
211 nine hundred sixty-nine, for use as a component part of
212 a new or expanded industrial facility as defined in
213 subdivision (5) of this subsection located within this
214 state. This term includes only tangible personal prop-
215 erty with respect to which depreciation, or amortization
216 in lieu of depreciation, is allowable in determining the
217 personal income tax or corporation net income tax
218 liability of the industrial taxpayer under articles
219 twenty-one or twenty-four of this chapter, and has a
220 useful life, at the time such property is placed in service
221 or use in this state, of four years or more. Property
222 acquired by written lease, for a primary term of ten
223 years or longer, if used as a component part of a new
224 or expanded industrial facility, shall be included within
225 this definition.

226 (14) Subject to subdivision (15) below, "property
227 purchased for industrial revitalization" means real
228 property, and improvements thereto, and new tangible
229 personal property, but only if such property was
230 constructed, or purchased, on or after the first day of
231 July, one thousand nine hundred eighty-one, for use as
232 a component part of an ongoing industrial facility as
233 defined in subdivision (5) of this subsection located
234 within this state. This term includes only tangible
235 personal property with respect to which depreciation is
236 allowable in determining the personal income tax or
237 corporation net income tax liability of the industrial
238 taxpayer under article twenty-one or twenty-four of this
239 chapter, and has a useful life at the time the property
240 is placed in service or use in this state of four years or

241 more. Property acquired by written lease for a primary
242 term of ten years or longer, if used as a component part
243 of an industrial revitalization, shall be included within
244 this definition.

245 (15) "Property purchased for industrial expansion",
246 "property purchased for industrial revitalization",
247 "property purchased for an eligible research and
248 development project", "property purchased for a
249 qualified housing development project" and "property
250 purchased or leased for a management information
251 services facility" shall not include:

252 (A) Repair costs including materials used in the
253 repair, unless for federal income tax purposes, the cost
254 of the repair must be capitalized and not expensed;

255 (B) Motor vehicles licensed by the department of
256 motor vehicles;

257 (C) Airplanes;

258 (D) Off-premise transportation equipment;

259 (E) Property which is primarily used outside this
260 state; and

261 (F) Property which is acquired incident to the
262 purchase of the stock or assets of an industrial taxpayer,
263 which property was or had been used by the seller in
264 his industrial business in this state, or which property
265 was previously designated "property purchased for
266 industrial expansion", or "property purchased for
267 industrial revitalization", or "property purchased for an
268 eligible research and development project", or "property
269 purchased for a qualified housing development project",
270 and used to qualify for business and occupation tax
271 credit for industrial expansion or revitalization, or for
272 an eligible research and development project, or for a
273 qualified housing development project, or property
274 which was subject to or gave rise to the management
275 information services facility credit in the hands of the
276 transferor, except that successors in business shall have
277 successor credit available pursuant to section seven of
278 this article.

279 (16) Subject to subdivision (15) above, property
280 purchased for a qualified housing development project
281 means real property, and improvements thereto, and
282 tangible personal property incorporated into real
283 property, whether or not attached thereto, but only if
284 such real or tangible personal property was constructed,
285 or purchased, on or after the first day of July, one
286 thousand nine hundred eighty-six, for use as a compo-
287 nent part of a housing development project, as defined
288 in section five-a of this article, located within this state.

289 (17) Subject to subdivision (15) above, "property
290 purchased or leased for a management information
291 services facility" means tangible personal property
292 purchased from a West Virginia vendor in West
293 Virginia or leased through or from a West Virginia
294 vendor for a primary lease term of three years or more.
295 For purposes of this section the term "tangible personal
296 property" shall include prewritten or "canned" compu-
297 ter software, "custom" software and computer program-
298 ming services which result in the production of custom
299 software: *Provided*, That the term "property purchased
300 or leased for a management information services
301 facility" shall not include:

302 (A) Land or building or any part thereof whether
303 leased or purchased;

304 (B) Natural resources in place;

305 (C) Property, the cost or consideration for which
306 cannot be quantified with any reasonable degree of
307 accuracy at the time such property is placed in service
308 or use;

309 (D) Property purchased or leased or placed in service
310 or use prior to the first day of April, one thousand nine
311 hundred ninety-one, or property purchased or leased or
312 placed in service or use after the thirty-first day of
313 March, one thousand nine hundred ninety-three; or

314 (E) Property purchased for use in a management
315 information services facility when such property is not
316 purchased for the purpose of either:

317 (i) Expanding an existing management information

318 services facility in West Virginia pursuant to a reloca-
319 tion or consolidation of significant national, regional or
320 international management information services opera-
321 tion to West Virginia; or

322 (ii) Establishing in this state a management informa-
323 tion services facility that is new to West Virginia.

324 (18) Property shall be deemed to have been purchased
325 prior to a specified date only if:

326 (A) The physical construction, reconstruction or
327 erection of the property was begun prior to the specified
328 date, or such property was constructed, reconstructed,
329 erected or acquired pursuant to a written contract as
330 existing and binding on the taxpayer prior to the
331 specified date;

332 (B) The machinery or equipment was owned by the
333 taxpayer prior to the specified date or was acquired by
334 the taxpayer pursuant to a binding purchase contract
335 which was in effect prior to such date; or

336 (C) In the case of leased property, there was a binding
337 written lease or contract to lease identifiable property
338 in effect prior to the specified date.

339 (19) "Taxpayer" means any person taxable under
340 article thirteen of this chapter: *Provided*, That on and
341 after the first day of July, one thousand nine hundred
342 eighty-seven, "taxpayer" shall mean any person taxable
343 under article thirteen, thirteen-a or twenty-three of this
344 chapter.

**§11-13D-3c. Amount of credit allowed and application of
credit for qualified investment in a man-
agement information services facility.**

1 (a) *Credit allowed.* — There shall be allowed to eligible
2 taxpayers a credit against the taxes imposed by articles
3 twenty-three and twenty-four of this chapter for
4 qualified investment in a management information
5 services facility. The amount of credit shall be deter-
6 mined as hereinafter provided in this section.

7 (b) *Investment period limitations subject to extension*
8 *upon legislative amendment.* — It is the finding of the

9 Legislature that certain tax credits heretofore enacted
10 have not effectively fulfilled the intended legislative
11 purpose of increasing employment and economic growth
12 and development in this state. Therefore, the time
13 period over which qualified investment property may be
14 purchased or leased and placed in service or use by
15 eligible taxpayers at a management information servi-
16 ces facility is expressly limited, for purposes of this
17 credit, to two years under paragraph (C), subdivision
18 (17), subsection (b), section two of this article, subsection
19 (c) of this section, and paragraph (B), subdivision (6),
20 subsection (c), section five-b of this article. If the
21 Legislature subsequently finds that this credit for a
22 management information services facility effectively
23 fulfills the legislative purpose for which it was enacted,
24 the Legislature may, in its discretion, extend, by
25 statutory amendment, the time period over which
26 qualified investment may be purchased, or leased, and
27 placed in service or use.

28 (c) *Credit amount for qualified investment purchased*
29 *and placed in service or use in a management informa-*
30 *tion services facility after the thirty-first day of March,*
31 *one thousand nine hundred ninety-one and prior to the*
32 *first day of April, one thousand nine hundred ninety-*
33 *three. — For property purchased or leased by an eligible*
34 *taxpayer and placed in service or use after the thirty-*
35 *first day of March, one thousand nine hundred ninety-*
36 *one, and prior to the first day of April, one thousand*
37 *nine hundred ninety-three, for use as a component part*
38 *of a management information services facility, the*
39 *amount of allowable credit shall be equal to one hundred*
40 *percent of the qualified investment, as determined*
41 *under section five-b of this article, and shall reduce the*
42 *business franchise tax under article twenty-three of this*
43 *chapter and the corporation net income tax under*
44 *article twenty-four of this chapter, subject to the*
45 *following conditions and limitations:*

46 (1) *Tax year time limitations for application of credit,*
47 *credit forfeiture. —*

48 (A) The amount of this credit allowable shall be
49 applied over a time period of up to ten tax years.

50 (B) This credit shall first be applied against the tax
51 liabilities in the manner specified in subdivision (2) of
52 this subsection (c) beginning with the tax year during
53 which the qualified investment was first placed in
54 service or use in this state by the eligible taxpayer.

55 (C) Any amount of this credit remaining after
56 application of this credit against tax as specified in
57 paragraph (B) of this subdivision (1) shall then be
58 applied against the tax liabilities in the manner
59 specified in subdivision (2) of this subsection (c) for the
60 tax year immediately succeeding the tax year during
61 which the qualified investment was first placed in
62 service or use in this state and for each succeeding tax
63 year thereafter up through the ninth tax year subse-
64 quent to the first tax year in which the qualified
65 investment property was first placed in service or use.

66 (D) Any amount of this credit remaining after
67 application of this credit against tax as specified in
68 paragraph (B) and then paragraph (C) of this subdivi-
69 sion shall be forfeited and shall not carry forward to any
70 subsequent tax year.

71 (E) No carryback of credit to a prior tax year shall
72 be allowed.

73 (2) *Tax liability percentage offset limitations.* —

74 (A) This credit for qualified investment in a manage-
75 ment information services facility shall first be applied
76 to reduce the annual West Virginia business franchise
77 tax liability imposed under article twenty-three of this
78 chapter for the tax year by an amount such that this
79 credit, in combined application with all other applicable
80 credits allowable under articles thirteen-c, thirteen-d
81 and thirteen-e of this chapter and under chapter five-
82 e of this code and all other tax credits provided in this
83 code, shall not reduce the annual business franchise tax
84 liability for such tax year below fifty percent of the
85 amount of the annual tax liability which would other-
86 wise be imposed for such tax year in the absence of this
87 credit and all credits against such tax, except the credits
88 set forth in section seventeen, article twenty-three of this
89 chapter.

90 (B) After application of this credit against business
91 franchise tax as provided in paragraph (A) of this
92 subdivision (2), remaining credit for qualified invest-
93 ment in a management information services facility, if
94 any, shall then be applied to reduce the annual West
95 Virginia corporation net income tax liability imposed
96 under article twenty-four of this chapter for the tax year
97 by an amount such that this credit in combined
98 application with all other applicable credits allowable
99 under articles thirteen-c, thirteen-d, thirteen-f and
100 thirteen-g of this chapter and under sections ten, eleven,
101 eleven-a, twelve, twenty-two and twenty-three-a, article
102 twenty-four of this chapter and under chapters five-e
103 and eighteen-b of this code and all other tax credits
104 provided in this code, shall not reduce the annual
105 corporation net income tax liability for such tax year
106 below fifty percent of the amount of the annual tax
107 liability which would otherwise be imposed for such tax
108 year in the absence of this credit and all other credits
109 against tax, except the credits set forth in sections nine
110 and nine-a, article twenty-four of this chapter.

111 (C) After application of this credit against business
112 franchise tax under paragraph (A) of this subdivision
113 (2), and then against corporation net income tax under
114 paragraph (B) of this subdivision (2); remaining credit
115 for qualified investment in a management information
116 services facility, if any, shall then be applied to further
117 reduce the annual West Virginia business franchise tax
118 liability imposed under article twenty-three of this
119 chapter for the tax year by an amount such that this
120 credit shall not reduce the annual business franchise tax
121 liability for such tax year below ten percent of the
122 amount of the annual tax liability which would other-
123 wise be imposed for such tax year in the absence of this
124 credit and all other credits against such tax, except the
125 credits set forth in section seventeen, article twenty-
126 three of this chapter.

127 (D) After application of this credit against business
128 franchise tax under paragraph (A) of this subdivision (2)
129 and then against corporation net income tax under
130 paragraph (B) of this subdivision (2), and then against

131 business franchise tax under paragraph (C) of this
132 subdivision (2); remaining credit for qualified invest-
133 ment in a management information services facility, if
134 any, shall then be applied to further reduce the annual
135 West Virginia corporation net income tax liability
136 imposed under article twenty-four of this chapter for the
137 tax year by an amount such that this credit shall not
138 reduce the annual corporation net income tax liability
139 for such tax year below ten percent of the amount of the
140 annual tax liability which would otherwise be imposed
141 for such tax year in the absence of this credit and all
142 other credits against such tax, except the credits set
143 forth in sections nine and nine-a, article twenty-four of
144 this chapter.

145 (d) *Maximum annual credit allowance.* — (1) Notwith-
146 standing any other provision of this section, no taxpayer
147 may take or apply more than one million dollars of this
148 credit against all taxes, in the aggregate, against which
149 this credit may apply in any taxable year, and no related
150 person or persons as defined in Section 267(b) of the
151 Internal Revenue Code of 1986, as amended, may, in the
152 aggregate, take or apply more than one million dollars
153 of this credit against all taxes, in the aggregate, against
154 which this credit may apply in any taxable year.

155 (2) Notwithstanding any other provision of this
156 section, the total amount of credit certified under
157 subsection (e) for all taxpayers shall not exceed five
158 million dollars per year. The tax commissioner shall
159 allocate this credit to eligible taxpayers in the order that
160 such taxpayers are certified under subsection (e) of this
161 section: *Provided*, That no taxpayer or any related
162 person to such taxpayer (as amended in section 267(b)
163 of the Internal Revenue Code of 1986, as amended), shall
164 be allocated more than five million dollars.

165 (e) *Certification of credit required.* —

166 (1) *Application required.* — No credit shall be allowed
167 or applied under this section for any investment in any
168 management information services facility until the
169 person asserting a claim for the allowance of credit
170 under this article makes written application to the tax

171 commissioner for allowance of credit as provided in this
172 section and receives written certification of its claim
173 from the tax commissioner. An application for credit
174 shall be filed, in such form as the tax commissioner shall
175 prescribe, prior to the first date when qualified
176 investment property is first placed in service or use, and
177 whether such property will be placed in service during
178 the same tax year or over a period of two or more
179 successive tax years. All information required by such
180 form shall be provided. No credit shall be taken by a
181 taxpayer applicant or prospective applicant pursuant to
182 this section and the exemption from tax set forth under
183 subsection (nn), section nine, article fifteen of this
184 chapter shall not be available to a taxpayer applicant
185 or prospective applicant until certification has been
186 issued by the tax commissioner.

187 (2) *Failure to file.* — The failure to timely apply for
188 certification under this subsection (e) shall result in the
189 forfeiture of the credit otherwise allowable under this
190 section.

191 (f) *Forfeiture for reductions of employment.* —

192 (1) With the annual return for the tax imposed by
193 article twenty-three of this chapter filed for the taxable
194 year in which the qualified investment is first placed in
195 service or use in this state, and for each succeeding
196 taxable year thereafter during which the taxpayer seeks
197 to apply this credit against tax, the taxpayer shall file
198 a statement with the tax commissioner certifying that
199 no West Virginia jobs have been lost or terminated and
200 no decrease of working hours or layoffs of employees
201 holding West Virginia jobs have resulted from the
202 making of the qualified investment upon which this
203 credit is based or from the establishment or operation
204 of the management information services facility upon
205 which this credit is based.

206 (2) The taxpayer shall forfeit all annual credit
207 otherwise available under this section during any year
208 when West Virginia jobs have been lost or terminated
209 or decreases of working hours or layoffs of employees
210 holding West Virginia jobs have occurred as a result of

211 the making of the qualified investment upon which this
212 credit is based or the establishment or operation of the
213 management information services facility upon which
214 this credit is based, and the exemption from tax set
215 forth in subsection (nn), section nine, article fifteen of
216 this chapter shall not be available to the taxpayer
217 during such year of forfeiture.

218 (3) The tax commissioner shall conduct such audits or
219 reviews of each taxpayer in any year a credit is asserted
220 under this section to verify the accuracy of a taxpayer's
221 statement certifying that no West Virginia jobs have
222 been lost or terminated and that no decrease of working
223 hours or layoffs of employees holding West Virginia jobs
224 have resulted from the making of qualified investments
225 upon which this credit is based or from the establish-
226 ment or operation of the management information
227 services facility upon which this credit is based. Such
228 audits shall also verify that all other requirements
229 applicable to the allowance under a credit under this
230 section continue to be met by the taxpayer.

231 (g) *Information disclosure.* — Providing that such
232 disclosure can be made without directly or indirectly
233 revealing the amount of credit available to any partic-
234 ular taxpayer or taxpayer return information other than
235 the name and address of the taxpayer, and notwith-
236 standing any other provision of this code to the contrary,
237 the tax commissioner shall publish in the state register
238 the name and address of every taxpayer receiving this
239 credit allowed under this section by the thirty-first day
240 of December, one thousand nine hundred ninety-two,
241 and annually thereafter by the thirty-first day of
242 December of each year. The tax commissioner shall
243 publish in the state register the amount of the credit
244 asserted, by amount category, for each taxpayer
245 asserting such credit. The categories by dollar amount
246 of credit received shall be as follows:

- 247 (1) More than \$1.00 but not more than \$50,000;
248 (2) More than \$50,000 but not more than \$100,000;
249 (3) More than \$100,000 but not more than \$250,000;

250 (4) More than \$250,000 but not more than \$500,000;
251 and

252 (5) More than \$500,000 but not more than \$1,000,000.

253 (h) *Report by the governor's office of community and*
254 *industrial development.* — The governor's office of
255 community and industrial development shall produce a
256 report to the Legislature to be presented during the
257 regular legislative session of one thousand nine hundred
258 ninety-two. Such report shall state the identity of
259 taxpayers who have received this management informa-
260 tion services facility credit, and shall contain an analysis
261 of the expansion and growth of management informa-
262 tion services facilities in the state of West Virginia, the
263 expansion of commerce resulting from the creation of
264 this credit, and the number of jobs created as a result
265 of this credit. The report of the governor's office of
266 community and industrial development shall not di-
267 rectly or indirectly reveal the amount of credit available
268 to any particular taxpayer or taxpayer return informa-
269 tion other than the names and addresses of taxpayers.

§11-13D-5b. Qualified investment for a management information services facility.

1 (a) *General.* — The qualified investment in property
2 purchased or leased for use as a component part of a
3 management information services facility shall be the
4 applicable percentage of the cost of each property
5 purchased for a management information services
6 facility, which is placed in service or use in this state,
7 by the eligible taxpayer during the tax year as deter-
8 mined under this section.

9 (b) *Applicable percentage.* — For the purposes of
10 subsection (a), the applicable percentage for any
11 property shall be determined under the following table:

12	If useful life or applicable	The applicable
13	lease term is:	percentage is:
14	3 yrs. or more but less than 6 yrs.	33-1/3%
15	6 yrs. or more but less than 8 yrs.	66-2/3%
16	8 yrs. or more	100%

17 The useful life of any property for purposes of this
18 section shall be the actual economic useful life deter-
19 mined as of the date such property is first placed in
20 service or use in this state by the taxpayer, determined
21 for financial accounting purposes in accordance with
22 generally accepted principles of accounting.

23 (c) *Cost.* — For purposes of subsection (a), the cost of
24 each property purchased for a management information
25 services facility shall be the fair market value or the
26 actual cost, whichever is less, and in no event shall the
27 cost exceed the fair market value, furthermore the cost
28 shall be determined under the following rules:

29 (1) *Trade-ins.* — Cost shall not include the value of
30 property given in trade or exchange for the property
31 purchased for a management information services
32 facility.

33 (2) *Damaged, destroyed or stolen property.* — If
34 property is damaged or destroyed by fire, flood, storm
35 or other casualty, or is stolen, then the cost of replace-
36 ment property shall not include any insurance proceeds
37 received in compensation for the loss.

38 (3) *Rental property.* — The cost of tangible personal
39 property acquired by lease for a primary lease term of
40 three or more years shall be seventy-five percent of the
41 rent reserved for the shorter of:

42 (A) The first ten years of the primary lease term; or

43 (B) The primary lease term.

44 Such cost of leased tangible personal property shall
45 then be multiplied by the applicable percentage deter-
46 mined under subsection (b) of this section based upon
47 the shorter of the first ten years of the primary lease
48 term or the primary lease term in order to determine
49 qualified investment in such leased property.

50 (4) *Property purchased for multiple use.* — Investment
51 in property purchased for use in a management
52 information services facility together with some other
53 use shall not qualify for purposes of this credit.

54 (5) *Self-constructed property.* — In the case of self-

55 constructed property, the cost thereof shall be the
56 amount properly charged to the capital account for
57 purposes of depreciation for federal income tax
58 purposes.

59 (6) *Specific exclusions.* —

60 (A) Investment in land or buildings, whether pur-
61 chased or leased, shall not qualify for purposes of this
62 management information services facility credit.

63 (B) Investment by purchase or lease in natural
64 resources in place; and investment by purchase or lease
65 in property, the cost or consideration for which cannot
66 be quantified with any reasonable degree of accuracy at
67 the time such property is placed in service or use, shall
68 not qualify for purposes of this management information
69 services facility credit.

70 (C) Investment in property purchased, or leased, or
71 placed in service or use prior to the first day of April,
72 one thousand nine hundred ninety-one, or after the
73 thirty-first day of March, one thousand nine hundred
74 ninety-three, shall not qualify for purposes of this
75 management information services facility credit.

76 (D) Investment in property not purchased, or leased,
77 either for the purpose of expanding an existing manage-
78 ment information services facility in West Virginia
79 pursuant to a national, regional or international
80 relocation or consolidation of significant management
81 information services in West Virginia; or for the
82 purpose of establishing in this state a management
83 information services facility that is new to West
84 Virginia, shall not qualify for purposes of this manage-
85 ment information services facility credit.

**§11-13D-6. Forfeiture of unused tax credits, redetermi-
nation of credit required.**

1 (a) *Disposition of property or cessation of use.* — If
2 during any taxable year, property with respect to which
3 a tax credit has been allowed under this article:

4 (1) Is disposed of prior to the end of its useful life, as
5 determined under section four, five, five-a or five-b of
6 this article; or

7 (2) Ceases to be used in the new or expanded or
8 revitalized industrial business, or in the eligible
9 research and development project, or in the qualified
10 housing development project, or in a management
11 information services facility of the taxpayer in this state
12 prior to the end of its useful life, as determined under
13 said section four, five, five-a or five-b, then the unused
14 portion of the credit allowed for such property shall be
15 forfeited for the taxable year and all ensuing years.
16 Additionally, except when the property is damaged or
17 destroyed by fire, flood, storm or other casualty, or is
18 stolen, the taxpayer shall redetermine the amount of
19 credit allowed in all earlier years by reducing the
20 applicable percentage of cost of such property allowed
21 under said section four, five-a or five-b, to correspond
22 with the percentage of cost allowable for the period of
23 time that the property was actually used in this state
24 in the industrial business or management information
25 services business of the taxpayer. The taxpayer shall
26 then file a reconciliation statement with its annual
27 business franchise tax return for the year in which the
28 forfeiture occurs and pay any additional taxes owed due
29 to reduction of the amount of credit allowable for such
30 earlier years, plus interest and any applicable penalties:
31 *Provided*, That on and after the first day of July, one
32 thousand nine hundred eighty-seven, the phrase "taxes
33 imposed by article twelve-a or thirteen, or both, of this
34 chapter" shall mean "taxes imposed by articles thirteen,
35 thirteen-a and twenty-three of this chapter or any one
36 or combination of such articles of this chapter".

37 (b) *Cessation of operation of industrial facility or*
38 *eligible research and development project, qualified*
39 *housing development project or management information*
40 *services facility. — If during any taxable year, the*
41 *taxpayer ceases operation of an industrial facility or a*
42 *management information services facility in this state,*
43 *or of an eligible research and development project, or*
44 *a qualified housing development project, for which*
45 *credit was allowed under this article, or article thirteen-*
46 *c of this chapter prior to its repeal, before expiration*

47 of the useful life of the property with respect to which
48 tax credit has been allowed under this article or article
49 thirteen-c of this chapter prior to its repeal, then the
50 unused portion of the allowed credit shall be forfeited
51 for the taxable year and all ensuing years. Additionally,
52 except when the cessation is due to fire, flood, storm or
53 other casualty, the taxpayer shall redetermine the
54 amount of credit allowed in earlier years by reducing
55 the applicable percentage of cost of such property
56 allowed under section four, five, five-a or five-b, to
57 correspond with the percentage of cost allowable for the
58 period of time that the property was actually used in
59 this state in the industrial business or management
60 information services business of the taxpayer. The
61 taxpayer shall then file a reconciliation statement with
62 its annual business franchise tax return for the year in
63 which the forfeiture occurs and pay any additional taxes
64 owed due to reduction of the amount of credit allowable
65 for such earlier years, plus interest and any applicable
66 penalties: *Provided*, That on and after the first day of
67 July, one thousand nine hundred eighty-seven, the
68 phrase "taxes imposed by article twelve-a or thirteen, or
69 both, of this chapter" shall mean "taxes imposed by
70 articles thirteen, thirteen-a and twenty-three of this
71 chapter, or any one or combination of such articles of
72 this chapter".

§11-13D-7. Transfer of eligible investment to successors.

1 (a) *Mere change in form of business.* — Property shall
2 not be treated as disposed of under section six of this
3 article by reason of a mere change in the form of
4 conducting the business as long as the property is
5 retained in a similar industrial business or management
6 information services business activity in this state and
7 the taxpayer retains a controlling interest in the
8 successor business. In this event, the successor business
9 shall be allowed to claim the amount of credit still
10 available with respect to the industrial facility or
11 facilities transferred or to the eligible research and
12 development project or management information servi-
13 ces facility, and the taxpayer (transferor) shall not be
14 required to redetermine the amount of credit allowed in
15 earlier years.

16 (b) *Transfer or sale to successor.* — Provided that the
17 tax commissioner gives prior approval for a transfer or
18 sale, property shall not be treated as disposed of under
19 section six by reason of any transfer or sale to a
20 successor business which continues to operate the
21 industrial facility or management information services
22 facility in this state. Upon transfer or sale, the successor
23 shall acquire the amount of credit that remains avail-
24 able under this article for each taxable year subsequent
25 to the taxable year of the transferor during which the
26 transfer occurred, and, for the year of transfer, an
27 amount of annual credit for such year in the same
28 proportion as the number of days remaining in the
29 transferor's taxable year bears to the total number of
30 days in such taxable year, and the taxpayer (transferor)
31 shall not be required to redetermine the amount of
32 credit allowed in earlier years. In determining whether
33 or not to approve a disposition pursuant to this subsec-
34 tion, the tax commissioner shall take into account the
35 legislative findings and purpose contained in section one
36 of this article in making such decision.

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-2. Definitions.

§11-15-9. Exemptions.

§11-15-2. Definitions.

1 For the purpose of this article:

2 (a) "Persons" means any individual, partnership,
3 association, corporation, state or its political subdivi-
4 sions or agency of either, guardian, trustee, committee,
5 executor or administrator.

6 (b) "Tax commissioner" means the state tax
7 commissioner.

8 (c) "Gross proceeds" means the amount received in
9 money, credits, property or other consideration from
10 sales and services within this state, without deduction
11 on account of the cost of property sold, amounts paid for
12 interest or discounts or other expenses whatsoever.
13 Losses shall not be deducted, but any credit or refund
14 made for goods returned may be deducted.

15 (d) "Sale", "sales" or "selling" includes any transfer of
16 the possession or ownership of tangible personal
17 property for a consideration, including a lease or rental,
18 when the transfer or delivery is made in the ordinary
19 course of the transferor's business and is made to the
20 transferee or his agent for consumption or use or any
21 other purpose.

22 (e) "Vendor" means any person engaged in this state
23 in furnishing services taxed by this article or making
24 sales of tangible personal property.

25 (f) "Ultimate consumer" or "consumer" means a
26 person who uses or consumes services or personal
27 property.

28 (g) "Business" includes all activities engaged in or
29 caused to be engaged in with the object of gain or
30 economic benefit, direct or indirect, and all activities of
31 the state and its political subdivisions which involve
32 sales of tangible personal property or the rendering of
33 services when those service activities compete with or
34 may compete with the activities of other persons.

35 (h) "Tax" includes all taxes, interest and penalties
36 levied hereunder.

37 (i) "Service" or "selected service" includes all nonpro-
38 fessional activities engaged in for other persons for a
39 consideration, which involve the rendering of a service
40 as distinguished from the sale of tangible personal
41 property, but shall not include contracting, personal
42 services or the services rendered by an employee to his
43 employer or any service rendered for resale.

44 (j) "Purchaser" means a person who purchases
45 tangible personal property or a service taxed by this
46 article.

47 (k) "Personal service" includes those:

48 (1) Compensated by the payment of wages in the
49 ordinary course of employment; and

50 (2) Rendered to the person of an individual without,
51 at the same time, selling tangible personal property,
52 such as nursing, barbering, shoe shining, manicuring

53 and similar services.

54 (l) "Taxpayer" means any person liable for the tax
55 imposed by this article.

56 (m) "Drugs" includes all sales of drugs or appliances
57 to a purchaser, upon prescription of a physician or
58 dentist and any other professional person licensed to
59 prescribe.

60 (n) (1) "Directly used or consumed" in the activities of
61 manufacturing, transportation, transmission, communi-
62 cation or the production of natural resources means used
63 or consumed in those activities or operations which
64 constitute an integral and essential part of such
65 activities, as contrasted with and distinguished from
66 those activities or operations which are simply inciden-
67 tal, convenient or remote to such activities.

68 (2) Uses of property or consumption of services which
69 constitute direct use or consumption in the activities of
70 manufacturing, transportation, transmission, communi-
71 cation or the production of natural resources includes
72 only:

73 (A) In the case of tangible personal property, physical
74 incorporation of property into a finished product
75 resulting from manufacturing production or the produc-
76 tion of natural resources;

77 (B) Causing a direct physical, chemical or other
78 change upon property undergoing manufacturing
79 production or production of natural resources;

80 (C) Transporting or storing property undergoing
81 transportation, communication, transmission, manufac-
82 turing production or production of natural resources;

83 (D) Measuring or verifying a change in property
84 directly used in transportation, communication, trans-
85 mission, manufacturing production or production of
86 natural resources;

87 (E) Physically controlling or directing the physical
88 movement or operation of property directly used in
89 transportation, communication, transmission, manufac-
90 turing production or production of natural resources;

- 91 (F) Directly and physically recording the flow of
92 property undergoing transportation, communication,
93 transmission, manufacturing production or production
94 of natural resources;
- 95 (G) Producing energy for property directly used in
96 transportation, communication, transmission, manufac-
97 turing production or production of natural resources;
- 98 (H) Facilitating the transmission of gas, water, steam
99 or electricity from the point of their diversion to
100 property directly used in transportation, communica-
101 tion, transmission, manufacturing production or produc-
102 tion of natural resources;
- 103 (I) Controlling or otherwise regulating atmospheric
104 conditions required for transportation, communication,
105 transmission, manufacturing production or production
106 of natural resources;
- 107 (J) Serving as an operating supply for property
108 undergoing transmission, manufacturing production or
109 production of natural resources, or for property directly
110 used in transportation, communication, transmission,
111 manufacturing production or production of natural
112 resources;
- 113 (K) Maintenance or repair of property directly used
114 in transportation, communication, transmission, manu-
115 facturing production or production of natural resources;
- 116 (L) Storage, removal or transportation of economic
117 waste resulting from the activities of manufacturing,
118 transportation, communication, transmission or the
119 production of natural resources;
- 120 (M) Pollution control or environmental quality or
121 protection activity directly relating to the activities of
122 manufacturing, transportation, communication, trans-
123 mission or the production of natural resources and
124 personnel, plant, product or community safety or
125 security activity directly relating to the activities of
126 manufacturing, transportation, communication, trans-
127 mission or the production of natural resources; or
- 128 (N) Otherwise be used as an integral and essential

129 part of transportation, communication, transmission,
130 manufacturing production or production of natural
131 resources.

132 (3) Uses of property or services which would not
133 constitute direct use or consumption in the activities of
134 manufacturing, transportation, transmission, communi-
135 cation or the production of natural resources includes,
136 but are not limited to:

137 (A) Heating and illumination of office buildings;

138 (B) Janitorial or general cleaning activities;

139 (C) Personal comfort of personnel;

140 (D) Production planning, scheduling of work, or
141 inventory control;

142 (E) Marketing, general management, supervision,
143 finance, training, accounting and administration; or

144 (F) An activity or function incidental or convenient to
145 transportation, communication, transmission, manufac-
146 turing production or production of natural resources,
147 rather than an integral and essential part of such
148 activities.

149 (o) "Contracting".

150 (1) *In general.* — "Contracting" means and includes
151 the furnishing of work, or both materials and work, for
152 another (by a sole contractor, general contractor, prime
153 contractor or subcontractor) in fulfillment of a contract
154 for the construction, alteration, repair, decoration or
155 improvement of a new or existing building or structure,
156 or any part thereof, or for removal or demolition of a
157 building or structure, or any part thereof, or for the
158 alteration, improvement or development of real
159 property.

160 (2) *Form of contract not controlling.* — An activity that
161 falls within the scope of the definition of contracting
162 shall constitute contracting regardless of whether such
163 contract governing the activity is written or verbal and
164 regardless of whether it is in substance or form a lump
165 sum contract, a cost-plus contract, a time and materials

166 contract, whether or not open-ended, or any other kind
167 of construction contract.

168 (3) *Special rules.* — For purposes of this definition:

169 (A) The term “structure” includes, but is not limited
170 to, everything built up or composed of parts joined
171 together in some definite manner and attached or
172 affixed to real property, or which adds utility to real
173 property or any part thereof, or which adds utility to
174 a particular parcel of property and is intended to
175 remain there for an indefinite period of time.

176 (B) The term “alteration” means, and is limited to,
177 alterations which are capital improvements to a build-
178 ing or structure or to real property.

179 (C) The term “repair” means, and is limited to, repairs
180 which are capital improvements to a building or
181 structure or to real property.

182 (D) The term “decoration” means, and is limited to,
183 decorations which are capital improvements to a
184 building or structure or to real property.

185 (E) The term “improvement” means, and is limited to,
186 improvements which are capital improvements to a
187 building or structure or to real property.

188 (F) The term “capital improvement” means improve-
189 ments that are affixed to or attached to and become a
190 part of a building or structure or the real property or
191 which add utility to real property or any part thereof
192 and that last, or are intended to be relatively permanent.
193 As used herein, “relatively permanent” means lasting at
194 least a year or longer in duration without the necessity
195 for regularly scheduled recurring service to maintain
196 such capital improvement. “Regular recurring service”
197 means regularly scheduled service intervals of less than
198 one year.

199 (G) Contracting does not include the furnishing of
200 work, or both materials and work in the nature of
201 hookup, connection, installation or other services if such
202 service is incidental to the retail sale of tangible
203 personal property from the service provider’s inventory:

204 *Provided*, That such hookup, connection or installation
205 of the foregoing is incidental to the sale of the same and
206 performed by the seller thereof or performed in
207 accordance with arrangements made by the seller
208 thereof. Examples of transactions that are excluded
209 from the definition of contracting pursuant hereto
210 include, but are not limited to, the sale of wall-to-wall
211 carpeting and the installation of wall-to-wall carpeting,
212 the sale, hookup and connection of mobile homes,
213 window air conditioning units, dishwashers, clothing
214 washing machines or dryers, other household applian-
215 ces, drapery rods, window shades, venetian blinds,
216 canvas awnings, free standing industrial or commercial
217 equipment and other similar items of tangible personal
218 property. Repairs made to the foregoing are within the
219 definition of contracting if such repairs involve perman-
220 ently affixing to or improving real property or some-
221 thing attached thereto which extends the life of the real
222 property or something affixed thereto or allows or is
223 intended to allow such real property or thing perman-
224 ently attached thereto to remain in service for a year
225 or longer.

226 (p) "Manufacturing" means a systematic operation or
227 integrated series of systematic operations engaged in as
228 a business or segment of a business which transforms
229 or converts tangible personal property by physical,
230 chemical or other means into a different form, compo-
231 sition or character from that in which it originally
232 existed.

233 (q) "Transportation" means the act or process of
234 conveying, as a commercial enterprise, passengers or
235 goods from one place or geographical location to another
236 place or geographical location.

237 (r) "Transmission" means the act or process of causing
238 liquid, natural gas or electricity to pass or be conveyed
239 from one place or geographical location to another place
240 or geographical location through a pipeline or other
241 medium for commercial purposes.

242 (s) "Communication" means all telephone, radio, light,
243 light wave, radio telephone, telegraph and other

244 communication or means of communication, whether
245 used for voice communication, computer data transmis-
246 sion or other encoded symbolic information transfers
247 and shall include commercial broadcast radio, commer-
248 cial broadcast television and cable television.

249 (t) "Production of natural resources" means the
250 performance, by either the owner of the natural
251 resources or another, of the act or process of exploring,
252 developing, severing, extracting, reducing to possession
253 and loading for shipment for sale, profit or commercial
254 use of any natural resource products and any reclama-
255 tion, waste disposal or environmental activities asso-
256 ciated therewith.

257 (u) "Management information services facility" means
258 a building, or any part thereof, or a complex of
259 buildings, or any part thereof, including the machinery
260 and equipment located therein, that is exclusively
261 dedicated to providing management information servi-
262 ces to the owner or operator thereof or to another person.

263 (v) "Management information services" means, and is
264 limited to, data processing, data storage, data recovery
265 and backup, programming recovery and backup,
266 telecommunications, computation and computer process-
267 ing, computer programming, electronic information,
268 and data management activities, or any combination of
269 such activities, when such activity, or activities, is not
270 subject to regulation by the West Virginia public service
271 commission and such activity, or activities, is for the
272 purpose of managing, planning for, organizing, or
273 operating, any industrial or commercial business, or any
274 enterprise, facility or facilities of an industrial or
275 commercial business, whether such industrial or
276 commercial business or enterprise, facility or facilities
277 of an industrial or commercial business is located within
278 or without this state and without regard to whether such
279 industrial or commercial business, or enterprise, facility
280 or facilities of an industrial or commercial business is
281 owned by the provider of the management information
282 services or by a "related person", as defined in Section
283 267(b) of the Internal Revenue Code of 1986, as
284 amended.

§11-15-9. Exemptions.

1 The following sales and services are exempt:

2 (a) Sales of gas, steam and water delivered to
3 consumers through mains or pipes, and sales of
4 electricity;

5 (b) Sales of textbooks required to be used in any of
6 the schools of this state or in any institution in this state
7 which qualifies as a nonprofit or educational institution
8 subject to the West Virginia department of education
9 and the arts; board of trustees of the university system
10 of West Virginia, or the board of directors for colleges
11 located in this state;

12 (c) Sales of property or services to the state, its
13 institutions or subdivisions, governmental units, institu-
14 tions or subdivisions of other states: *Provided*, That the
15 law of such other state provides the same exemption to
16 governmental units or subdivisions of this state and to
17 the United States, including agencies of federal, state or
18 local governments for distribution in public welfare or
19 relief work;

20 (d) Sales of vehicles which are titled by the division
21 of motor vehicles and which are subject to the tax
22 imposed by section four, article three, chapter seven-
23 teen-a of this code, or like tax;

24 (e) Sales of property or services to churches and bona
25 fide charitable organizations who make no charge
26 whatsoever for the services they render: *Provided*, That
27 the exemption herein granted shall apply only to
28 services, equipment, supplies, food for meals and
29 materials directly used or consumed by these organiza-
30 tions, and shall not apply to purchases of gasoline or
31 special fuel;

32 (f) Sales of tangible personal property or services to
33 a corporation or organization which has a current
34 registration certificate issued under article twelve of
35 this chapter is exempt from federal income taxes under
36 section 501(c)(3) or (c)(4) of the Internal Revenue Code
37 of 1986, as amended, and is:

38 (1) A church or a convention or association of churches
39 as defined in section 170 of the Internal Revenue Code
40 of 1986, as amended;

41 (2) An elementary or secondary school which main-
42 tains a regular faculty and curriculum and has a
43 regularly enrolled body of pupils or students in attend-
44 ance at the place in this state where its educational
45 activities are regularly carried on;

46 (3) A corporation or organization which annually
47 receives more than one half of its support from any
48 combination of gifts, grants, direct or indirect charita-
49 ble contributions, or membership fees;

50 (4) An organization which has no paid employees and
51 its gross income from fund raisers, less reasonable and
52 necessary expenses incurred to raise such gross income
53 (or the tangible personal property or services purchased
54 with such net income), is donated to an organization
55 which is exempt from income taxes under section
56 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,
57 as amended;

58 (5) A youth organization, such as the Girl Scouts of
59 the United States of America, the Boy Scouts of
60 America, or the YMCA Indian Guide/Princess Pro-
61 gram, and the local affiliates thereof, which is organized
62 and operated exclusively for charitable purposes and
63 has as its primary purpose the nonsectarian character
64 development and citizenship training of its members;

65 (6) For purposes of this subsection:

66 (A) The term "support" includes, but is not limited to:

67 (i) Gifts, grants, contributions or membership fees;

68 (ii) Gross receipts from fund raisers which include
69 receipts from admissions, sales of merchandise, perfor-
70 mance of services or furnishing of facilities in any
71 activity which is not an unrelated trade or business
72 within the meaning of section 513 of the Internal
73 Revenue Code of 1986, as amended;

74 (iii) Net income from unrelated business activities,
75 whether or not such activities are carried on regularly

76 as a trade or business;

77 (iv) Gross investment income as defined in section
78 509(e) of the Internal Revenue Code of 1986, as
79 amended;

80 (v) Tax revenues levied for the benefit of a corporation
81 or organization either paid to or expended on behalf of
82 such organization; and

83 (vi) The value of services or facilities (exclusive of
84 services or facilities generally furnished to the public
85 without charge) furnished by a governmental unit
86 referred to in section 170(c)(1) of the Internal Revenue
87 Code of 1986, as amended, to an organization without
88 charge. This term does not include any gain from the
89 sale or other disposition of property which would be
90 considered as gain from the sale or exchange of a capital
91 asset, or the value of an exemption from any federal,
92 state or local tax or any similar benefit;

93 (B) The term "charitable contribution" means a
94 contribution or gift to or for the use of a corporation or
95 organization, described in section 170(c)(2) of the
96 Internal Revenue Code of 1986, as amended;

97 (C) The term "membership fee" does not include any
98 amounts paid for tangible personal property or specific
99 services rendered to members by the corporation or
100 organization; or

101 (7) The exemption allowed by this subsection (f) does
102 not apply to sales of gasoline or special fuel or to sales
103 of tangible personal property or services to be used or
104 consumed in the generation of unrelated business
105 income as defined in section 513 of the Internal Revenue
106 Code of 1986, as amended. The provisions of this
107 subsection as amended by this act shall apply to sales
108 made after the thirtieth day of June, one thousand nine
109 hundred eighty-nine: *Provided*, That the exemption
110 herein granted shall apply only to services, equipment,
111 supplies and materials used or consumed in the activ-
112 ities for which such organizations qualify as tax exempt
113 organizations under the Internal Revenue Code by these
114 organizations and shall not apply to purchases of

115 gasoline or special fuel;

116 (g) Sales of property or services to persons engaged
117 in this state in the business of manufacturing, transpor-
118 tation, transmission, communication or in the produc-
119 tion of natural resources: *Provided*, That the exemption
120 herein granted shall apply only to services, machinery,
121 supplies and materials directly used or consumed in the
122 businesses or organizations named above, and shall not
123 apply to purchases of gasoline or special fuel: *Provided*,
124 *however*, That on and after the first day of July, one
125 thousand nine hundred eighty-seven, the exemption
126 provided in this subsection shall apply only to services,
127 machinery, supplies and materials directly used or
128 consumed in the activities of manufacturing, transpor-
129 tation, transmission, communication or the production of
130 natural resources in the businesses or organizations
131 named above and shall not apply to purchases of
132 gasoline or special fuel;

133 (h) An isolated transaction in which any taxable
134 service or any tangible personal property is sold,
135 transferred, offered for sale or delivered by the owner
136 thereof or by his representative for the owner's account,
137 such sale, transfer, offer for sale or delivery not being
138 made in the ordinary course of repeated and successive
139 transactions of like character by such owner or on his
140 account by such representative: *Provided*, That nothing
141 contained herein may be construed to prevent an owner
142 who sells, transfers or offers for sale tangible personal
143 property in an isolated transaction through an auction-
144 eer from availing himself or herself of the exemption
145 provided herein, regardless where such isolated sale
146 takes place. The tax commissioner may adopt such
147 legislative rule pursuant to chapter twenty-nine-a of this
148 code as he deems necessary for the efficient administra-
149 tion of this exemption;

150 (i) Sales of tangible personal property or of any
151 taxable services rendered for use or consumption in
152 connection with the commercial production of an
153 agricultural product the ultimate sale of which will be
154 subject to the tax imposed by this article or which would
155 have been subject to tax under this article: *Provided*,

156 That sales of tangible personal property and services to
157 be used or consumed in the construction of or permanent
158 improvement to real property and sales of gasoline and
159 special fuel shall not be exempt;

160 (j) Sales of tangible personal property to a person for
161 the purpose of resale in the form of tangible personal
162 property: *Provided*, That sales of gasoline and special
163 fuel by distributors and importers shall be taxable
164 except when the sale is to another distributor for resale:
165 *Provided, however*, That sales of building materials or
166 building supplies or other property to any person
167 engaging in the activity of contracting, as defined in this
168 article, which is to be installed in, affixed to or
169 incorporated by such person or his agent into any real
170 property, building or structure shall not be exempt
171 under this subsection, except that sales of tangible
172 personal property to a person engaging in the activity
173 of contracting pursuant to a written contract with the
174 United States, this state, or with a political subdivision
175 thereof, or with a public corporation created by the
176 Legislature or by another governmental entity pursuant
177 to an act of the Legislature, for a building or structure,
178 or improvement thereto, or other improvement to real
179 property that is or will be owned and used by the
180 governmental entity for a governmental or proprietary
181 purpose, who incorporates such property in such
182 building, structure or improvement shall, with respect
183 to such tangible personal property, nevertheless be
184 deemed to be the vendor of such property to the
185 governmental entity and any person seeking to qualify
186 for and assert this exception must do so pursuant to such
187 legislative rules and regulations as the tax commissioner
188 may promulgate and upon such forms as the tax
189 commissioner may prescribe. A subcontractor who,
190 pursuant to a written subcontract with a prime contrac-
191 tor who qualifies for this exception, provides equipment,
192 or materials, and labor to such a prime contractor shall
193 be treated in the same manner as the prime contractor
194 is treated with respect to the prime contract under this
195 exception and the legislative rules and regulations
196 promulgated by the tax commissioner: *Provided further*,
197 That the exemption for government contractors in the

198 preceding proviso shall expire on the first day of
199 October, one thousand nine hundred ninety, subject to
200 the transition rules set forth in section eight-c of this
201 article;

202 (k) Sales of property or services to nationally char-
203 tered fraternal or social organizations for the sole
204 purpose of free distribution in public welfare or relief
205 work: *Provided*, That sales of gasoline and special fuel
206 shall be taxable;

207 (l) Sales and services, fire fighting or station house
208 equipment, including construction and automotive,
209 made to any volunteer fire department organized and
210 incorporated under the laws of the state of West
211 Virginia: *Provided*, That sales of gasoline and special
212 fuel shall be taxable;

213 (m) Sales of newspapers when delivered to consumers
214 by route carriers;

215 (n) Sales of drugs dispensed upon prescription and
216 sales of insulin to consumers for medical purposes;

217 (o) Sales of radio and television broadcasting time,
218 preprinted advertising circulars and newspaper and
219 outdoor advertising space for the advertisement of goods
220 or services;

221 (p) Sales and services performed by day-care centers;

222 (q) Casual and occasional sales of property or services
223 not conducted in a repeated manner or in the ordinary
224 course of repetitive and successive transactions of like
225 character by a corporation or organization which is
226 exempt from tax under subsection (f) of this section on
227 its purchases of tangible personal property or services:

228 (1) For purposes of this subsection, the term "casual
229 and occasional sales not conducted in repeated manner
230 or in the ordinary course of repetitive and successive
231 transactions of like character" means sales of tangible
232 personal property or services at fund raisers sponsored
233 by a corporation or organization which is exempt, under
234 subsection (f) of this section, from payment of the tax
235 imposed by this article on its purchases, when such fund

236 raisers are of limited duration and are held no more
237 than six times during any twelve-month period and
238 limited duration means no more than eighty-four
239 consecutive hours;

240 (2) The provisions of this subsection (q), as amended
241 by this article, shall apply to sales made after the
242 thirtieth day of June, one thousand nine hundred eighty-
243 nine;

244 (r) Sales of property or services to a school which has
245 approval from the board of trustees of the university
246 system of West Virginia or the board of directors of the
247 state college system to award degrees, which has its
248 principal campus in this state, and which is exempt
249 from federal and state income taxes under section
250 501(c)(3) of the Internal Revenue Code of 1986, as
251 amended: *Provided*, That sales of gasoline and special
252 fuel shall be taxable;

253 (s) Sales of mobile homes to be utilized by purchasers
254 as their principal year-round residence and dwelling:
255 *Provided*, That these mobile homes shall be subject to
256 tax at the three percent rate;

257 (t) Sales of lottery tickets and materials by licensed
258 lottery sales agents and lottery retailers authorized by
259 the state lottery commission, under the provisions of
260 article twenty-two, chapter twenty-nine of this code;

261 (u) Leases of motor vehicles titled pursuant to the
262 provisions of article three, chapter seventeen-a of this
263 code to lessees for a period of thirty or more consecutive
264 days. This exemption shall apply to leases executed on
265 or after the first day of July, one thousand nine hundred
266 eighty-seven, and to payments under long-term leases
267 executed before such date, for months thereof beginning
268 on or after such date;

269 (v) Notwithstanding the provisions of subsection (g) of
270 this section or any provisions of this article to the
271 contrary, sales of property and services to persons
272 subject to tax under article thirteen, thirteen-a or
273 thirteen-b of this chapter: *Provided*, That the exemption
274 herein granted shall apply both to property or services

275 directly or not directly used or consumed in the conduct
276 of privileges which are subject to tax under such articles
277 but shall not apply to purchases of gasoline or special
278 fuel;

279 (w) Sales of propane to consumers for poultry house
280 heating purposes, with any seller to such consumer who
281 may have prior paid such tax in his price, to not pass
282 on the same to the consumer, but to make application
283 and receive refund of such tax from the tax commis-
284 sioner, pursuant to rules and regulations which shall be
285 promulgated by the tax commissioner; and notwith-
286 standing the provisions of section eighteen of this article
287 or any other provisions of such article to the contrary;

288 (x) Any sales of tangible personal property or services
289 purchased after the thirtieth day of September, one
290 thousand nine hundred eighty-seven, and lawfully paid
291 for with food stamps pursuant to the federal food stamp
292 program codified in 7 United States Code, §2011, et seq.,
293 as amended, or with drafts issued through the West
294 Virginia special supplemental food program for women,
295 infants and children codified in 42 United States Code,
296 §1786;

297 (y) Sales of tickets for activities sponsored by elemen-
298 tary and secondary schools located within this state;

299 (z) Sales of electronic data processing services and
300 related software: *Provided*, That for the purposes of this
301 subsection (z) "electronic data processing services"
302 means: (1) The processing of another's data, including
303 all processes incident to processing of data such as
304 keypunching, keystroke verification, rearranging or
305 sorting of previously documented data for the purpose
306 of data entry or automatic processing, and changing the
307 medium on which data is sorted, whether these pro-
308 cesses are done by the same person or several persons;
309 and (2) providing access to computer equipment for the
310 purpose of processing data or examining or acquiring
311 data stored in or accessible to such computer equipment;

312 (aa) Tuition charged for attending educational
313 summer camps;

314 (bb) Sales of building materials or building supplies
315 or other property to an organization qualified under
316 section 501(c)(3) or (c)(4) of the Internal Revenue Code
317 of 1986, as amended, which are to be installed in, affixed
318 to or incorporated by such organization or its agent into
319 real property, or into a building or structure which is
320 or will be used as permanent low-income housing,
321 transitional housing, emergency homeless shelter,
322 domestic violence shelter or emergency children and
323 youth shelter if such shelter is owned, managed,
324 developed or operated by an organization qualified
325 under section 501(c)(3) or (c)(4) of the Internal Revenue
326 Code of 1986, as amended;

327 (cc) Dispensing of services performed by one corpora-
328 tion for another corporation when both corporations are
329 members of the same controlled group. Control means
330 ownership, directly or indirectly, of stock possessing
331 fifty percent or more of the total combined voting power
332 of all classes of the stock of a corporation entitled to vote
333 or ownership, directly or indirectly, of stock possessing
334 fifty percent or more of the value of the corporation;

335 (dd) Food for the following shall be exempt:

336 (1) Food purchased or sold by public or private
337 schools, school sponsored student organizations, or
338 school sponsored parent-teacher associations to students
339 enrolled in such school or to employees of such school
340 during normal school hours; but not those sales of food
341 made to the general public;

342 (2) Food purchased or sold by a public or private
343 college or university or by a student organization
344 officially recognized by such college or university to
345 students enrolled at such college or university when
346 such sales are made on a contract basis so that a fixed
347 price is paid for consumption of food products for a
348 specific period of time without respect to the amount of
349 food product actually consumed by the particular
350 individual contracting for the sale and no money is paid
351 at the time the food product is served or consumed;

352 (3) Food purchased or sold by a charitable or private
353 nonprofit organization, a nonprofit organization or a

354 governmental agency under a program to provide food
355 to low-income persons at or below cost;

356 (4) Food sold in an occasional sale by a charitable or
357 nonprofit organization including volunteer fire depart-
358 ments and rescue squads, if the purpose of the sale is
359 to obtain revenue for the functions and activities of the
360 organization and the revenue so obtained is actually
361 expended for that purpose;

362 (5) Food sold by any religious organization at a social
363 or other gathering conducted by it or under its auspices,
364 if the purpose in selling the food is to obtain revenue
365 for the functions and activities of the organization and
366 the revenue obtained from selling the food is actually
367 used in carrying on such functions and activities:
368 *Provided*, That purchases made by such organizations
369 shall not be exempt as a purchase for resale;

370 (ee) Sales of food by little leagues, midget football
371 leagues, youth football or soccer leagues and similar
372 types of organizations, including scouting groups and
373 church youth groups, if the purpose in selling the food
374 is to obtain revenue for the functions and activities of
375 the organization and the revenues obtained from selling
376 the food is actually used in supporting or carrying on
377 functions and activities of the groups: *Provided*, That
378 such purchases made by such organizations shall not be
379 exempt as a purchase for resale;

380 (ff) Charges for room and meals by fraternities and
381 sororities to their members: *Provided*, That such
382 purchases made by a fraternity or sorority shall not be
383 exempt as a purchase for resale;

384 (gg) Sales of or charges for the transportation of
385 passengers in interstate commerce;

386 (hh) Sales of tangible personal property or services to
387 any person which this state is prohibited from taxing
388 under the laws of the United States or under the
389 constitution of this state;

390 (ii) Sales of tangible personal property or services to
391 any person who claims exemption from the tax imposed
392 by this article or article fifteen-a of this chapter

393 pursuant to the provisions of any other chapter of this
394 code;

395 (jj) Charges for the services of opening and closing a
396 burial lot;

397 (kk) Sales of livestock, poultry or other farm products
398 in their original state by the producer thereof or a
399 member of the producer's immediate family who is not
400 otherwise engaged in making retail sales of tangible
401 personal property; and sales of livestock sold at public
402 sales sponsored by breeder's or registry associations or
403 livestock auction markets: *Provided*, That the exemp-
404 tions allowed by this subsection shall apply to sales
405 made on or after the first day of July, one thousand nine
406 hundred ninety, and may be claimed without presenting
407 or obtaining exemption certificates: *Provided, however*,
408 That the farmer shall maintain adequate records;

409 (ll) Sales of motion picture films to motion picture
410 exhibitors for exhibition if the sale of tickets or the
411 charge for admission to the exhibition of the film is
412 subject to the tax imposed by this article and sales of
413 coin-operated video arcade machines, or video arcade
414 games, to a person engaged in the business of providing
415 such machines to the public for a charge upon which the
416 tax imposed by this article is remitted to the tax
417 commissioner: *Provided*, That the exemption provided in
418 this subsection shall apply to sales made on or after the
419 first day of July, one thousand nine hundred ninety, and
420 may be claimed by presenting to the seller a properly
421 executed exemption certificate;

422 (mm) Sales of aircraft repair, remodeling and main-
423 tenance services when such services are to an aircraft
424 operated by a certified or licensed carrier of persons or
425 property, or by a governmental entity, or to an engine
426 or other component part of an aircraft operated by a
427 certificated or licensed carrier of persons or property,
428 or by a governmental entity and sales of tangible
429 personal property that is permanently affixed or
430 permanently attached as a component part of an aircraft
431 owned or operated by a certificated or licensed carrier
432 of persons or property, or by a governmental entity, as

433 part of the repair, remodeling or maintenance service
434 and sales of machinery, tools, or equipment, directly
435 used or consumed exclusively in the repair, remodeling,
436 or maintenance of aircraft, aircraft engines, or aircraft
437 component parts, for a certificated or licensed carrier
438 of persons or property, or for a governmental entity; and

439 (nn) Sales of tangible personal property and services
440 to a person entitled to claim the tax credit for invest-
441 ment in certain management information services
442 facilities allowed under section three-c, article thirteen-
443 d of this chapter, pursuant to the issuance of a manage-
444 ment information services tax credit certification by the
445 tax commissioner in accordance with subsection (e),
446 section three-c, article thirteen-d of this chapter, when
447 such property or services are directly used or consumed
448 by the purchaser in the operation of the management
449 information services facility, as defined in section two
450 of this article for which credit is allowed under section
451 three-c, article thirteen-d of this chapter. Tangible
452 personal property, or services, directly used or con-
453 sumed in the operation of a management information
454 services facility includes only: (1) Computer processing
455 and telecommunications equipment; (2) data storage and
456 input/output devices; (3) disaster recovery services; (4)
457 supplies; (5) application, telecommunication and operat-
458 ing system software; (6) repair and maintenance of any
459 of the aforesaid items; and (7) other tangible personal
460 property or services directly used or consumed in the
461 operation of a management information services facility:
462 *Provided*, That the property is purchased or leased after
463 the thirty-first day of March, one thousand nine hundred
464 ninety-one. This exemption shall not apply to tangible
465 personal property, or services, that are not directly used
466 or consumed in the operation of a management informa-
467 tion services facility, or to gasoline or special fuel:
468 *Provided, however*, That nothing in this paragraph shall
469 be construed to limit, exclude or preclude the applica-
470 tion or availability of any other exemption set forth in
471 this section, or elsewhere in this code, which might
472 otherwise apply to any sale of tangible personal property
473 or services.

CHAPTER 165

(S. B. 592—By Senator Jones)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections eight-a, eight-b, eight-c, eight-e and eight-f, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections twenty-three-a, twenty-three-b, twenty-three-c, twenty-three-e and twenty-three-f, article twenty-four of said chapter, all relating to requiring certification by the West Virginia division of culture and history for historic preservation tax credit against personal income tax and corporation net income tax; removing fee authorization for the state tax department; providing for a credit carryforward and carryback; extending the grandfather clause in the sunset provision to applications for certification by the United States secretary of the interior filed prior to the sunset date; and extending the sunset date until the year one thousand nine hundred ninety-four.

Be it enacted by the Legislature of West Virginia:

That sections eight-a, eight-b, eight-c, eight-e and eight-f, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections twenty-three-a, twenty-three-b, twenty-three-c, twenty-three-e and twenty-three-f, article twenty-four of said chapter be amended and reenacted, all to read as follows:

Article

- 21. Personal Income Tax.
- 24. Corporation Net Income Tax.

ARTICLE 21. PERSONAL INCOME TAX.

- §11-21-8a. Credit for qualified rehabilitated building investment.
- §11-21-8b. Definitions.
- §11-21-8c. Procedures.
- §11-21-8e. Carryback, carryforward.
- §11-21-8f. Termination of credit by law.

§11-21-8a. Credit for qualified rehabilitated buildings investment.

1 A credit against the tax imposed by the provisions of
2 this article shall be allowed as follows:

3 *Certified historic structures.* — For certified historic
4 structures, the credit is equal to ten percent of qualified
5 rehabilitation expenditures as defined in §47(c)(2), Title
6 26 of the United States Code, as amended. This credit
7 is available for both residential and nonresidential
8 buildings located in this state, that are reviewed by the
9 West Virginia division of culture and history and
10 designated by the national park service, United States
11 department of the interior as “certified historic struc-
12 tures,” and further defined as a “qualified rehabilitated
13 building,” as defined under §47(c)(1), Title 26 of the
14 United States Code, as amended.

§11-21-8b. Definitions.

1 (a) “Certified historic structure” means any building
2 located in this state that is listed individually in the
3 national register of historic places or located in a
4 registered historic district, reviewed by the West
5 Virginia division of culture and history, and certified by
6 the national park service as being of historic signifi-
7 cance to the district.

8 (b) “Certified rehabilitation” means any rehabilitation
9 of a certified historic building that is reviewed by the
10 West Virginia division of culture and history, and
11 certified by the national park service as being consistent
12 with the historic character of the property and, where
13 applicable, the district in which it is located.

14 (c) “Historic district” means any district that is listed
15 in the national register of historic places or designated
16 under a state or local statute which has been certified
17 as containing criteria which will substantially achieve
18 the purpose of preserving and rehabilitating buildings
19 of significance to the district and which is certified as
20 substantially meeting all of the requirements for listing
21 of districts in the national register of historic places.

22 (d) “Historic preservation certification application”

23 means the application forms published by the national
24 park service, United States department of the interior,
25 Parts 1, 2 and 3, form No. 10-168.

26 (e) "Secretary of the interior standards" means
27 standards and guidelines adopted and published by the
28 national park service, United States department of the
29 interior, for rehabilitation of historic properties.

30 (f) "State historic preservation officer" means the state
31 official designated by the governor pursuant to provi-
32 sions in the national historic preservation act of 1966,
33 as amended and further defined in section six, article
34 one, chapter twenty-nine of this code.

§11-21-8c. Procedures.

1 Application and processing procedures for provisions
2 of this section shall be the same as any required under
3 provisions of Title 36 of the Code of Federal Regulations,
4 Part 67, and Title 26 of the Code of Federal Regulations,
5 Part 1. Successful completion of a historic preservation
6 certification application automatically qualifies the
7 applicant to be considered for tax credits under this
8 section.

9 Successful certification by the national park service of
10 a rehabilitation of a building that results in such
11 building being a "qualified rehabilitated building"
12 within the meaning of §47(c)(1), Title 26 of the United
13 States Code, and amendments thereto, automatically
14 qualifies the applicant for tax credits under this section.
15 The state historic preservation officer's role in the
16 application procedure shall be identical to that in Title
17 36 of the Code of Federal Regulations, Part 67, and Title
18 26 of the Code of Federal Regulations, Part 1.

§11-21-8e. Carryback, carryforward.

1 Any unused portion of the credit for qualified
2 rehabilitated buildings investment authorized by section
3 eight-a of this article which may not be taken in the
4 taxable year to which the credit applies shall qualify for
5 carryback and carryforward treatment subject to the
6 identical general provisions under §39, Title 26 of the
7 United States Code, as amended: *Provided*, That the

8 amount of such credit taken in a taxable year shall in
9 no event exceed the tax liability due for the taxable
10 year.

§11-21-8f. Termination of credit by law.

1 The tax credit allowed by this section shall be
2 terminated on the thirty-first day of December, one
3 thousand nine hundred ninety-four, unless review of the
4 tax credit shall be undertaken pursuant to the provi-
5 sions of sections nine, ten and eleven, article ten, chapter
6 four of this code: *Provided*, That for those rehabilitation
7 projects for which a completed Part 2 (Description of
8 Rehabilitation) of the historic preservation certification
9 application was filed with the West Virginia division of
10 culture and history prior to that date and subsequently
11 approved in accordance with section eight-c of this
12 article, the credit shall continue to be allowed pursuant
13 to this article.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-23a. Credit for qualified rehabilitated buildings investment.

§11-24-23b. Definitions.

§11-24-23c. Procedures.

§11-24-23e. Carryback, carryforward.

§11-24-23f. Termination of credit by law.

§11-24-23a. Credit for qualified rehabilitated buildings investment.

1 A credit against the tax imposed by the provisions of
2 this article shall be allowed as follows:

3 *Certified historic structures.* — For certified historic
4 structures, the credit is equal to ten percent of qualified
5 rehabilitation expenditures as defined in §47(c)(2), Title
6 26 of the United States Code, as amended. This credit
7 is available for both residential and nonresidential
8 buildings located in this state that are reviewed by the
9 West Virginia division of culture and history and
10 designated by the national park service, United States
11 department of the interior as “certified historic build-
12 ing”, and further defined as a “qualified rehabilitated
13 building”, as defined under §47(c)(1), Title 26, of the
14 United States Code, as amended.

§11-24-23b. Definitions.

1 (a) "Certified historic structure" means any building
2 located in this state that is listed individually in the
3 national register of historic places or located in a
4 registered historic district, reviewed by the West
5 Virginia division of culture and history and certified by
6 the national park service as being of historic signifi-
7 cance to the district.

8 (b) "Certified rehabilitation" means any rehabilitation
9 of a certified historic structure that is reviewed by the
10 West Virginia division of culture and history, and
11 certified by the national park service as being consistent
12 with the historic character of the property and, where
13 applicable, the district in which it is located.

14 (c) "Historic district" means any district that is listed
15 in the national register of historic places or designated
16 under a state or local statute which has been certified
17 as containing criteria which will substantially achieve
18 the purpose of preserving and rehabilitating buildings
19 of significance to the district and which is certified as
20 substantially meeting all of the requirements for listing
21 of districts in the national register of historic places.

22 (d) "Historic preservation certification application"
23 means application forms published by the national park
24 service, United States department of the interior, Parts
25 1, 2 and 3, form No. 10-168.

26 (e) "Secretary of the interior standards" means
27 standards and guidelines adopted and published by the
28 national park service, United States department of the
29 interior, for rehabilitation of historic properties.

30 (f) "State historic preservation officer" means the state
31 official designated by the governor pursuant to provi-
32 sions in the national historic preservation act of 1966,
33 as amended and further defined in section six, article
34 one, chapter twenty-nine of this code.

§11-24-23c. Procedures.

1 Application and processing procedures for provisions
2 of this section shall be the same as any required under

3 provisions of Title 36 of the Code of Federal Regulations,
4 Part 67, and Title 26 of the Code of Federal Regulations,
5 Part 1. Successful completion of a historic preservation
6 certification application shall automatically qualify the
7 applicant to be considered for tax credits under this
8 section.

9 Successful certification by the national park service of
10 a rehabilitation of a building that results in such
11 building being a "qualified rehabilitated building"
12 within the meaning of §47(c)(1), Title 26 of the United
13 States Code, and amendments thereto, shall automati-
14 cally qualify the applicant for tax credits under this
15 section. The state historic preservation officer's role in
16 the application procedure shall be identical to that in
17 Title 36 of the Code of Federal Regulations, Part 67, and
18 Title 26 of the Code of Federal Regulations, Part 1.

§11-24-23e. Carryback, carryforward.

1 Any unused portion of the credit for qualified
2 rehabilitated buildings investment authorized by section
3 twenty-three-a of this article which may not be taken in
4 the taxable year to which the credit applies shall qualify
5 for carryback and carryforward treatment subject to
6 the identical general provisions under §39, Title 26 of
7 the United States Code, as amended: *Provided*, That the
8 amount of such credit taken in a taxable year shall in
9 no event exceed the tax liability due for the taxable
10 year.

§11-24-23f. Termination of credit by law.

1 The tax credit allowed by section twenty-three-a of
2 this article shall be terminated on the thirty-first day
3 of December, one thousand nine hundred ninety-four,
4 unless review of the tax credit shall be undertaken
5 pursuant to the provisions of sections nine, ten and
6 eleven, article ten, chapter four of this code: *Provided*,
7 That for those rehabilitation projects for which a
8 completed Part 2 (Description of Rehabilitation) of the
9 historic preservation certification application was filed
10 with the West Virginia division of culture and history
11 prior to that date and subsequently approved in
12 accordance with section twenty-three-c of this article,
13 the credit shall continue to be allowed pursuant to this
14 article.

CHAPTER 166

(S. B. 310—By Senators Burdette, Mr. President, and Boley,
[By Request of the Executive])

[Passed February 18, 1991; 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 for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-nine; preserving the prior law; 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 shall have the same
2 meaning as when used in a comparable context in the
3 laws of the United States relating to income taxes,
4 unless a different meaning is clearly required. Any
5 reference in this article to the laws of the United States
6 shall mean the provisions of the Internal Revenue Code
7 of 1986, as amended, and such other provisions of the
8 laws of the United States as relate to the determination
9 of income for federal income tax purposes. All amend-
10 ments made to the laws of the United States prior to
11 the first day of January, one thousand nine hundred
12 ninety-one, shall be given effect in determining the taxes
13 imposed by this article for any taxable year beginning
14 the first day of January, one thousand nine hundred
15 ninety, or thereafter, but no amendment to the laws of
16 the United States made on or after the first day of January,

17 one thousand nine hundred ninety-one, shall be given
18 effect.

19 (b) *Effective date.* — The amendments to this section
20 enacted in the year one thousand nine hundred ninety-
21 one shall be retroactive and shall apply to taxable years
22 beginning on or after the first day of January, one
23 thousand nine hundred ninety, to the extent allowable
24 under federal income tax law. With respect to taxable
25 years that begin prior to the first day of January, one
26 thousand nine hundred ninety, prior law shall be fully
27 preserved.

CHAPTER 167

(S. B. 632—Originating in the Committee on Finance)

[Passed March 8, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and five, article twenty-three, 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 five-a, twenty-seven and twenty-eight; to amend and reenact sections three-a and seven, article twenty-four of said chapter; to further amend said article by adding thereto two new sections, designated sections seven-b and twenty-four; and to amend article two, chapter thirty-one-a by adding thereto a new section, designated section fifteen, all relating to imposing the business franchise tax and corporation net income tax on out-of-state financial organizations engaging in certain activities in this state; defining the term "financial organization" and amending the terms "business income" and "commercial domicile"; providing credit for franchise tax and income tax paid to another state; and requiring corporations and partnerships doing business or owning or maintaining property in this state to file a notice of business activities report required by the commissioner of banking to prepare a report to the governor, Legislature and tax commissioner.

Be it enacted by the Legislature of West Virginia:

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

Chapter

11. Taxation.

31A. Banks and Banking.

CHAPTER 11. TAXATION.

Article

23. Business Franchise Tax.

24. Corporation Net Income Tax.

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-3. Meaning of terms; specific terms defined.

§11-23-5. Apportionment of tax base.

§11-23-5a. Special apportionment rules — Financial organizations.

§11-23-27. Credit for franchise tax paid to another state.

§11-23-28. Notice of business activities report.

§11-23-3. Meaning of terms; specific terms defined.

1 (a) *General.* — When used in this article, or in the
 2 administration of this article, terms defined in this
 3 section shall have the meanings ascribed to them herein
 4 unless a different meaning is clearly required by either
 5 the context in which the term is used, or by specific
 6 definition in this article.

7 (b) *Terms defined.* —

8 (1) *Business income.* — The term “business income”
 9 means income arising from transactions and activity in
 10 the regular course of the taxpayer’s trade or business
 11 and includes income from tangible and intangible
 12 property if the acquisition, management and disposition

13 of the property or the rendering of services in connection
14 therewith constitute integral parts of the taxpayer's
15 regular trade or business operations.

16 (2) *Capital*. — The term "capital" of a taxpayer shall
17 mean:

18 (A) *Corporations*. — In the case of a corporation,
19 except an electing small business corporation, the
20 average of the beginning and ending year balances of
21 the sum of the following entries from Schedule L of
22 Federal Form 1120, prepared following generally
23 accepted accounting principles and as filed by the
24 taxpayer with the Internal Revenue Service for the
25 taxable year:

26 (i) The value of all common stock and preferred stock
27 of the taxpayer;

28 (ii) The amount of paid-in or capital surplus;

29 (iii) The amount of retained earnings, appropriated
30 and unappropriated; and

31 (iv) Less the cost of treasury stock.

32 (B) *S Corporations*. — In the case of an electing small
33 business corporation, the average of the beginning and
34 ending year balances of the sum of the following entries
35 from Schedule L of Federal Form 1120S, prepared
36 following generally accepted accounting principles and
37 as filed by the taxpayer with the Internal Revenue
38 Service for the taxable year:

39 (i) The value of all common stock and preferred stock
40 of the taxpayer;

41 (ii) The amount of paid-in or capital surplus;

42 (iii) Retained earnings, appropriated and
43 unappropriated;

44 (iv) The amount of shareholders' undistributed taxable
45 income;

46 (v) The amount of the accumulated adjustments
47 account;

48 (vi) The amount of the other adjustments account; and

49 (vii) Less the cost of treasury stock.

50 (C) *Partnerships.* — In the case of a partnership, the
51 average of the beginning and ending year balances of
52 the value of partner's capital accounts from Schedule L
53 of Federal Form 1065, prepared following accepted
54 accounting principles and as filed by the taxpayer with
55 the Internal Revenue Service for the taxable year.

56 (D) *Additional items in capital.* — The term "capital"
57 for purposes of this article shall include such adjust-
58 ments thereto as the tax commissioner deems necessary
59 to properly reflect capital and such additional items
60 from the accounts of the taxpayer as the tax commis-
61 sioner may by regulation prescribe, which fairly
62 represent the net equity of the taxpayer as defined in
63 accordance with generally accepted accounting
64 principles.

65 (E) *Allowance for certain government obligations and*
66 *obligations secured by residential property.* — As to both
67 corporations and partnerships, capital shall be multip-
68 lied by a fraction equal to one minus a fraction:

69 (i) The numerator of which is the average of the
70 monthly beginning and ending account balances during
71 the taxable year (account balances to be determined at
72 cost in the same manner that such obligations, invest-
73 ments and loans are reported on Schedule L of the
74 Federal Form 1120 or Federal Form 1065) of the
75 following:

76 (I) Obligations and securities of the United States, or
77 of any agency, authority, commission or instrumentality
78 of the United States and any other corporation or entity
79 created under the authority of the United States
80 Congress for the purpose of implementing or furthering
81 an objective of national policy;

82 (II) Obligations of this state and any political subdivi-
83 sion of this state;

84 (III) Investments or loans primarily secured by
85 mortgages, or deeds of trust, on residential property
86 located in this state and occupied by nontransients; and

87 (IV) Loans primarily secured by a lien or security
88 agreement on residential property in the form of a
89 mobile home, modular home or double-wide, located in
90 this state and occupied by nontransients.

91 (ii) The denominator of which is the average of the
92 monthly beginning and ending account balances of the
93 total assets of the taxpayer as shown on Schedule L of
94 Federal Form 1120, as filed by the taxpayer with the
95 Internal Revenue Service or, in the case of partnerships,
96 Schedule L of Federal Form 1065, as filed by the
97 taxpayer with the Internal Revenue Service.

98 (3) *Commercial domicile.* — The term “commercial
99 domicile” means the principal place from which the
100 trade or business of the taxpayer is directed or man-
101 aged: *Provided*, That the commercial domicile of a
102 financial organization, which is subject to regulation as
103 such, shall be at the place designated as its principal
104 office with its regulating authority.

105 (4) *Commissioner or tax commissioner.* — The terms
106 “commissioner” or “tax commissioner” are used inter-
107 changeably herein and mean the tax commissioner of
108 the state of West Virginia, or his delegate.

109 (5) *Compensation.* — The term “compensation” means
110 wages, salaries, commissions and any other form of
111 remuneration paid to employees for personal services.

112 (6) *Corporation.* — The term “corporation” includes
113 any corporations, S corporation, joint-stock company
114 and any association or other organization which is
115 taxable as a corporation under federal income tax laws
116 or the income tax laws of this state.

117 (7) *Delegate.* — The term “delegate” in the phrase “or
118 his delegate”, when used in reference to the tax
119 commissioner, means any officer or employee of the
120 state tax department duly authorized by the tax
121 commissioner directly, or indirectly by one or more
122 redelegations of authority, to perform the functions
123 mentioned or described in this article or regulations
124 promulgated thereunder.

125 (8) *Doing business.* — The term “doing business”

126 means any activity of a corporation or partnership
127 which enjoys the benefits and protection of the govern-
128 ment and laws of this state, except the activity of
129 agriculture and farming, which shall mean the produc-
130 tion of food, fiber and woodland products (but not
131 timbering activity) by means of cultivation, tillage of the
132 soil and by the conduct of animal, livestock, dairy,
133 apiary, equine or poultry husbandry, horticulture, or
134 any other plant or animal production and all farm
135 practices related, usual or incidental thereto, including
136 the storage, packing, shipping and marketing, but not
137 including any manufacturing, milling or processing of
138 such products by persons other than the producer
139 thereof.

140 The activity of agriculture and farming shall mean
141 such activity, as above defined, occurring on not less
142 than five acres of land and the improvements thereon,
143 used in the production of the aforementioned activities,
144 and shall mean the production of at least one thousand
145 dollars of products per annum through the conduct of
146 such principal business activities as set forth in section
147 ten, article one-a, chapter eleven of this code.

148 (9) *Domestic corporation.* — The term “domestic
149 corporation” means a corporation organized under the
150 laws of this state, and certain corporations organized
151 under the laws of the state of Virginia before the
152 twentieth day of June, one thousand eight hundred
153 sixty-three. Every other corporation is a foreign
154 corporation.

155 (10) *Federal Form 1120.* — The term “Federal Form
156 1120” means the annual federal income tax return of
157 any corporation made pursuant to the United States
158 Internal Revenue Code of 1986, as amended, or in
159 successor provisions of the laws of the United States, in
160 respect to the taxable income of a corporation, and filed
161 with the federal Internal Revenue Service. In the case
162 of a corporation that elects to file a federal income tax
163 return as part of an affiliated group, but files as a
164 separate corporation under this article, then as to such
165 corporation Federal Form 1120 means its pro forma
166 Federal Form 1120.

167 (11) *Federal Form 1065*. — The term “Federal Form
168 1065” means the annual federal income tax return of a
169 partnership made pursuant to Section 6031 of the
170 United States Internal Revenue Code of 1986, as
171 amended or renumbered, or in successor provisions of
172 the laws of the United States, in respect to the taxable
173 income of a partnership, and filed with the federal
174 Internal Revenue Service.

175 (12) *Fiduciary*. — The term “fiduciary” means, and
176 includes, a guardian, trustee, executor, administrator,
177 receiver, conservator or any person acting in any
178 fiduciary capacity for any person.

179 (13) *Financial organization*. — The term “financial
180 organization” means:

181 (A) A holding company or a subsidiary thereof. As
182 used in this section “holding company” means a
183 corporation registered under the federal bank holding
184 company act of 1956 or registered as a savings and loan
185 holding company other than a diversified savings and
186 loan holding company (as defined in section 408(a)(1)(F)
187 of the federal national housing act (12 U.S.C.
188 1730(a)(1)(F));

189 (B) A regulated financial corporation or a subsidiary
190 thereof. As used in this section “regulated financial
191 corporation” means:

192 (1) An institution, the deposits, shares or accounts of
193 which are insured under the federal deposit insurance
194 act, or by the federal savings and loan insurance
195 corporation;

196 (2) An institution that is a member of a federal home
197 loan bank;

198 (3) Any other bank or thrift institution incorporated
199 or organized under the laws of a state that is engaged
200 in the business of receiving deposits;

201 (4) A credit union incorporated and organized under
202 the laws of this state;

203 (5) A production credit association organized under 12
204 U.S.C. 2071;

205 (6) A corporation organized under 12 U.S.C. 611
206 through 631 (an edge act corporation); or

207 (7) A federal or state agency or branch of a foreign
208 bank (as defined in 12 U.S.C. 3101); or

209 (C) A corporation which derives more than fifty
210 percent of its gross business income from one or more
211 of the following activities:

212 (1) Making, acquiring, selling or servicing loans or
213 extensions of credit. Loans and extensions of credit
214 include:

215 (I) Secured or unsecured consumer loans;

216 (II) Installment obligations;

217 (III) Mortgages or other loans secured by real estate
218 or tangible personal property;

219 (IV) Credit card loans;

220 (V) Secured and unsecured commercial loans of any
221 type; and

222 (VI) Loans arising in factoring.

223 (2) Leasing or acting as an agent, broker or advisor
224 in connection with leasing real and personal property
225 that is the economic equivalent of an extension of credit
226 (as defined by the Federal Reserve Board in 12 C.F.R.
227 225.25(b)(5)).

228 (3) Operating a credit card business.

229 (4) Rendering estate or trust services.

230 (5) Receiving, maintaining or otherwise handling
231 deposits.

232 (6) Engaging in any other activity with an economic
233 effect comparable to those activities described in item
234 (1), (2), (3), (4) or (5) of this subparagraph.

235 (14) *Fiscal year*. — The term “fiscal year” means an
236 accounting period of twelve months ending on any day
237 other than the last day of December, and on the basis
238 of which the taxpayer is required to report for federal
239 income tax purposes.

240 (15) *Includes and including.* — The terms “includes”
241 and “including” when used in a definition contained in
242 this article shall not be deemed to exclude other things
243 otherwise within the meaning of the term being defined.

244 (16) *Parent and subsidiary corporations.* — A corpo-
245 ration which owns on average during the taxable year
246 more than fifty percent of the stock of all classes of
247 another corporation is defined to be the “parent
248 corporation” and the corporation which is so owned by
249 the parent is defined to be a “subsidiary corporation”.

250 (17) *Partnership and partner.* — The term “partner-
251 ship” includes a syndicate, group, pool, joint venture or
252 other unincorporated organization through or by means
253 of which any business, financial operation or venture is
254 carried on, and which is not a trust or estate, a
255 corporation or a sole proprietorship or an unincorpor-
256 ated organization which under Section 761 of the
257 Internal Revenue Code of 1986, as amended, and is not
258 treated as a partnership for the taxable year for federal
259 income tax purposes. The term “partner” includes a
260 member in such a syndicate, group, pool, joint venture
261 or other unincorporated organization which is a
262 partnership.

263 (18) *Person.* — The term “person” includes any
264 corporation or partnership.

265 (19) *Pro forma return.* — The term “pro forma return”
266 when used in this article means the return which the
267 taxpayer would have filed with the Internal Revenue
268 Service had it not elected to file federally as part of a
269 consolidated group.

270 (20) *Sales.* — The term “sales” means all gross receipts
271 of the taxpayer that are “business income”, as defined
272 in this section.

273 (21) *State.* — The term “state” means a state of the
274 United States, the District of Columbia, the Common-
275 wealth of Puerto Rico, or any territory or possession of
276 the United States, and any foreign country or political
277 subdivision thereof.

278 (22) *Stock.* — The term “stock” includes shares in a

279 corporation, association or joint-stock company. It shall
280 not include nonvoting stock which is limited and
281 preferred as to dividends, or treasury stock. "Stock
282 owned by a corporation" shall include stock owned
283 directly by such corporation and stock which is subject
284 to an option to acquire stock.

285 (23) *Taxable year.* — The term "taxable year" means
286 the calendar year, or the fiscal year ending during such
287 calendar year, upon the basis of which tax liability is
288 computed under this article. "Taxable year" means, in
289 case of a return made for a fractional part of a year
290 (short taxable year) under the provisions of this article,
291 or under regulations promulgated by the tax commis-
292 sioner, the period for which such return is made.

293 (24) *Taxable in another state.* — The term "taxable in
294 another state" for purposes of apportionment under this
295 article, means a taxpayer who:

296 (A) Is subject to a net income tax, a franchise tax
297 measured by net income, a franchise tax for the
298 privilege of doing business or a corporate stock tax; or

299 (B) Would be subject to a net income tax if such other
300 state imposed such a tax.

301 (25) *Taxpayer.* — The term "taxpayer" means any
302 person (as defined in this section) subject to the tax
303 imposed by this article.

304 (26) *This code.* — The term "this code" means the code
305 of West Virginia, one thousand nine hundred thirty-one,
306 as amended.

307 (27) *This state.* — The term "this state" means the
308 state of West Virginia.

309 (28) *Treasury stock.* — The term "treasury stock"
310 means shares of a corporation which have been issued
311 and have been subsequently acquired by and belong to
312 such corporation, and have not been canceled or restored
313 to the status of authorized but unissued shares. Treasury
314 stock is deemed to be issued shares, but not outstanding
315 shares.

§11-23-5. Apportionment of tax base.

1 (a) A taxpayer subject to the tax imposed by this
2 article and also taxable in another state shall, for the
3 purposes of this tax, apportion its tax base to this state
4 by multiplying its tax base by a fraction, the numerator
5 of which is the sum of the property factor, plus the
6 payroll factor, plus two times the sales factor, all of
7 which shall be determined as hereinafter provided in
8 this section, and the denominator of which is four,
9 reduced by the number of factors, if any, having no
10 denominator, with the sales factor counting as two
11 factors.

12 (b) *Property factor.* — The property factor is a
13 fraction, the numerator of which is the average value
14 of the taxpayer's real and tangible personal property
15 owned or rented and used by it in this state during the
16 taxable year, and the denominator of which is the
17 average value of all real and tangible personal property
18 owned or rented by the taxpayer and used by it during
19 the taxable year, which is reported on Schedule L of
20 Federal Form 1120 (or 1065 for partnerships), plus the
21 average value of all real and tangible personal property
22 leased and used by the taxpayer during the taxable
23 year.

24 (c) *Value of property.* — Property owned by the
25 taxpayer shall be valued at its original cost, adjusted by
26 subsequent capital additions or improvements thereto
27 and partial disposition thereof, by reason of sale,
28 exchange, abandonment, etc.: *Provided,* That where
29 records of original cost are unavailable or cannot be
30 obtained without unreasonable expense, property shall
31 be valued at original cost as determined under regula-
32 tions of the tax commissioner. Property rented by the
33 taxpayer from others shall be valued at eight times the
34 net annual rental rate. Net annual rental rate is the
35 annual rental paid, directly or indirectly, by the
36 taxpayer, or for its benefit, in money or other consid-
37 eration for the use of the property and includes:

38 (1) Any amount payable for the use of real or tangible
39 personal property, or any part thereof, whether desig-
40 nated as a fixed sum of money or as a percentage of
41 sales, profits or otherwise.

42 (2) Any amount payable as additional rent or in lieu
43 of rents, such as interest, taxes, insurance, repairs or
44 any other items which are required to be paid by the
45 terms of the lease or other arrangement, not including
46 amounts paid as service charges, such as utilities,
47 janitor services, etc. If a payment includes rent and
48 other charges unsegregated, the amount of rent shall be
49 determined by consideration of the relative values of the
50 rent and the other items.

51 (d) *Movable property.* — The value of movable tangible
52 personal property used both within and without this
53 state shall be included in the numerator to the extent
54 of its utilization in this state. The extent of such
55 utilization shall be determined by multiplying the
56 original cost of such property by a fraction, the
57 numerator of which is the number of days of physical
58 location of the property in this state during the taxable
59 period, and the denominator of which is the number of
60 days of physical location of the property everywhere
61 during the taxable year. The number of days of physical
62 location of the property may be determined on a
63 statistical basis or by such other reasonable method
64 acceptable to the tax commissioner.

65 (e) *Leasehold improvements.* — Leasehold improve-
66 ments shall, for the purposes of the property factor, be
67 treated as property owned by the lessee regardless of
68 whether the lessee is entitled to remove the improve-
69 ments or the improvements revert to the lessor upon
70 expiration of the lease. Leasehold improvements shall be
71 included in the property factor at their original cost.

72 (f) *Average value of property.* — The average value of
73 property shall be determined by averaging the values
74 at the beginning and ending of the taxable year:
75 *Provided,* That the tax commissioner may require the
76 averaging of monthly values during the taxable year if
77 substantial fluctuations in the values of the property
78 exist during the taxable year, or where the property is
79 acquired after the beginning of the taxable year, or is
80 disposed of, or whose rental contract ceases, before the
81 end of the taxable year.

82 (g) *Payroll factor*. — The payroll factor is a fraction,
83 the numerator of which is the total compensation paid
84 in this state during the taxable year by the taxpayer,
85 and the denominator of which is the total compensation
86 paid by the taxpayer during the taxable year as shown
87 on the taxpayer's federal income tax return as filed with
88 the Internal Revenue Service, as reflected in the
89 schedule of wages and salaries and that portion of cost
90 of goods sold which reflects compensation, or as shown
91 on a pro forma return.

92 (h) *Compensation*. — The term "compensation" means
93 wages, salaries, commissions and any other form of
94 remuneration paid to employees for personal services.
95 Payments made to an independent contractor or to any
96 other person not properly classifiable as an employee
97 shall be excluded. Only the amounts paid directly to
98 employees shall be included in the payroll factor.
99 Amounts considered paid directly to employees include
100 the value of board, rent, housing, lodging and other
101 benefits or services furnished to employees by the
102 taxpayer in return for personal services, provided such
103 amounts constitute income to the recipient for federal
104 income tax purposes.

105 (i) *Employee*. — The term "employee" means:

106 (1) Any officer of a corporation; or

107 (2) Any individual who, under the usual common-law
108 rules applicable in determining the employer-employee
109 relationship, has the status of an employee.

110 (j) *Compensation paid in this state*. — Compensation
111 is paid in this state if:

112 (1) The employee's service is performed entirely
113 within the state;

114 (2) The employee's service is performed both within
115 and without the state, but the service performed without
116 the state is incidental to the individual's service within
117 the state. The word "incidental" means any service
118 which is temporary or transitory in nature, or which is
119 rendered in connection with an isolated transaction; or

120 (3) Some of the service is performed in the state and:

121 (A) The employee's base of operations or, if there is
122 no base of operations, the place from which the service
123 is directed or controlled is in the state; or

124 (B) The base of operations or the place from which the
125 service is directed or controlled is not in any state in
126 which some part of the service is performed, but the
127 employee's residence is in this state.

128 The term "base of operations" is the place of more or
129 less permanent nature from which the employee starts
130 his work and to which he customarily returns in order
131 to receive instructions from the taxpayer or communi-
132 cations from his customers or other persons or to
133 replenish stock or other materials, repair equipment, or
134 perform any other functions necessary to the exercise of
135 his trade or profession at some other point or points. The
136 term "place from which the service is directed or
137 controlled" refers to the place from which the power to
138 direct or control is exercised by the taxpayer.

139 (k) *Sales factor.* — The sales factor is a fraction, the
140 numerator of which is the gross receipts of the taxpayer
141 derived from transactions and activity in the regular
142 course of its trade or business in this state during the
143 taxable year (business income), less returns and allo-
144 wances. The denominator of the fraction shall be the
145 total gross receipts derived by the taxpayer from
146 transactions and activity in the regular course of its
147 trade or business during the taxable year (business
148 income), and reflected in its gross income reported and
149 as appearing on the taxpayer's Federal Form 1120 or
150 1065, and consisting of those certain pertinent portions
151 of the (gross income) elements set forth: *Provided,* That
152 if either the numerator or the denominator includes
153 interest or dividends from obligations of the United
154 States government which are exempt from taxation by
155 this state, the amount of such interest and dividends, if
156 any, shall be subtracted from the numerator or denom-
157 inator in which it is included.

158 (l) *Allocation of sales of tangible personal property.*—

159 (1) Sales of tangible personal property are in this state
160 if:

161 (i) The property is received in this state by the
162 purchaser, other than the United States government,
163 regardless of the f.o.b. point or other conditions of the
164 sale. In the case of delivery by common carrier or other
165 means of transportation, the place at which such
166 property is ultimately received after all transportation
167 has been completed shall be considered as the place at
168 which such property is received by the purchaser.
169 Direct delivery in this state, other than for purposes of
170 transportation, to a person or firm designated by the
171 purchaser, constitutes delivery to the purchaser in this
172 state, and direct delivery outside this state to a person
173 or firm designated by the purchaser does not constitute
174 delivery to the purchaser in this state, regardless of
175 where title passes or other conditions of sale; or

176 (ii) The property is shipped from an office, store,
177 warehouse, factory or other place of storage in this state
178 and the purchaser is the United States government.

179 (2) All other sales of tangible personal property
180 delivered or shipped to a purchaser within a state in
181 which the taxpayer is not taxed as defined in subsection
182 (b), section seven, article twenty-four of this chapter
183 shall be excluded from the denominator of the sales
184 factor.

185 (m) *Allocation of other sales.* — Sales, other than sales
186 of tangible personal property, are in this state if:

187 (1) The income-producing activity is performed in this
188 state;

189 (2) The income-producing activity is performed both
190 in and outside this state and a greater proportion of the
191 income-producing activity is performed in this state
192 than in any other state, based on costs of performance;
193 or

194 (3) The sale constitutes business income to the
195 taxpayer, or the taxpayer is a financial organization not
196 having its commercial domicile in this state, and in
197 either case the sale is a receipt described as attributable

198 to this state in section five-a of this article.

199 (n) *Income-producing activity*. — The term “income-
200 producing activity” applies to each separate item of
201 income and means the transactions and activity directly
202 engaged in by the taxpayer in the regular course of its
203 trade or business for the ultimate purpose of obtaining
204 gain or profit. Such activity does not include transac-
205 tions and activities performed on behalf of the taxpayer,
206 such as those conducted on its behalf by an independent
207 contractor. “Income-producing activity” includes, but is
208 not limited to, the following:

209 (1) The rendering of personal services by employees
210 with utilization of tangible and intangible property by
211 the taxpayer in performing a service;

212 (2) The sale, rental, leasing, licensing or other use of
213 real property;

214 (3) The sale, rental, leasing, licensing or other use of
215 tangible personal property; or

216 (4) The sale, licensing or other use of intangible
217 personal property. The mere holding of intangible
218 personal property is not, in itself, an income-producing
219 activity: *Provided*, That the conduct of the business of
220 a financial organization shall constitute an income-
221 producing activity.

222 (o) *Cost of performance*. — The term “cost of perfor-
223 mance” means direct costs determined in a manner
224 consistent with generally accepted accounting principles
225 and in accordance with accepted conditions or practices
226 in the trade or business of the taxpayer.

227 (p) *Other methods of allocation*. —

228 (1) *General*. — If the allocation and apportionment
229 provisions of subsection (a) do not fairly represent the
230 extent of the taxpayer’s business activities in this state,
231 the taxpayer may petition for, or the tax commissioner
232 may require, in respect to all or any part of the
233 taxpayer’s business activities, if reasonable:

234 (A) Separate accounting;

235 (B) The exclusion of one of the factors;

236 (C) The inclusion of one or more additional factors
237 which will fairly represent the taxpayer's business
238 activity in this state; or

239 (D) The employment of any other method to effectuate
240 an equitable allocation or apportionment of the taxpay-
241 er's tax base. Such petition shall be filed no later than
242 the due date of the annual return for the taxable year
243 for which the alternative method is requested, deter-
244 mined without regard to any extension of time for filing
245 such return, and the petition shall include a statement
246 of the petitioner's objections and of such alternative
247 method of allocation or apportionment as it believes to
248 be proper under the circumstances with such detail and
249 proof as the tax commissioner may require.

250 (2) *Burden of proof.* — In any proceeding before the
251 tax commissioner or in any court in which employment
252 of one of the methods of allocation or apportionment
253 provided for in subdivision (1) of this subsection is
254 sought, on the ground that the allocation and apportion-
255 ment provisions of subsection (a) do not fairly represent
256 the extent of the taxpayer's business activities in this
257 state, the burden of proof shall:

258 (A) If the tax commissioner seeks employment of one
259 of such methods, be on the tax commissioner; or

260 (B) If the taxpayer seeks employment of one of such
261 other methods, be on the taxpayer.

262 (3) Notwithstanding any other provisions of this
263 section, financial organizations shall use only the special
264 apportionment rules set forth in section five-a of this
265 article.

266 (q) *Effective date.* — The amendments to this section
267 made by this article shall apply to all taxable years
268 ending after the effective date of this article. The
269 provisions of paragraph (3), subsection (p) of this section
270 shall apply to all taxable years beginning on or after the
271 first day of January, one thousand nine hundred ninety-
272 one.

§11-23-5a. Special apportionment rules — Financial organizations.

1 (a) *General.* — The Legislature hereby finds that the
2 general formula set forth in section five of this article
3 for apportioning the tax base of corporations and
4 partnerships taxable in this state as well as in another
5 state is inappropriate for use by financial organizations
6 due to the particular characteristics of those organiza-
7 tions and the manner in which their business is
8 conducted. Accordingly, the general formula set forth in
9 section five of this article may not be used to apportion
10 the tax base of such financial organizations which shall
11 use only the apportionment formula and methods set
12 forth in this section.

13 (b) *Financial organizations with business activities*
14 *partially within and partially without this state.* — A
15 financial organization not having its commercial
16 domicile in this state shall apportion its tax base to this
17 state as provided in this subsection if it regularly
18 engages in business in this state.

19 (1) *Nexus presumptions and exclusions.* — A financial
20 organization is presumed to be regularly engaging in
21 business in this state if during any year it obtains or
22 solicits business with twenty or more persons within this
23 state, or if the sum of the value of its gross receipts
24 attributable to sources in this state equals or exceeds one
25 hundred thousand dollars. However, gross receipts from
26 the following types of property (as well as those contacts
27 with this state reasonably and exclusively required to
28 evaluate and complete the acquisition or disposition of
29 the property, the servicing of the property or the income
30 from it, the collection of income from the property, or
31 the acquisition or liquidation of collateral relating to the
32 property) shall not be a factor in determining whether
33 the owner is engaging in business in this state:

34 (A) An interest in a real estate mortgage investment
35 conduit, a real estate investment trust, or a regulated
36 investment company;

37 (B) An interest in a loan backed security representing
38 ownership or participation in a pool of promissory notes

39 or certificates of interest that provide for payments in
40 relation to payments or reasonable projections of
41 payments on the notes or certificates;

42 (C) An interest in a loan or other asset from which
43 the interest is attributed to a consumer loan, a commer-
44 cial loan or a secured commercial loan, and in which the
45 payment obligations were solicited and entered into by
46 a person that is independent, and not acting on behalf,
47 of the owner;

48 (D) An interest in the right to service or collect income
49 from a loan or other asset from which interest on the
50 loan is attributed as a loan described in the previous
51 paragraph, and in which the payment obligations were
52 solicited and entered into by a person that is independ-
53 ent, and not acting on behalf, of the owner; and

54 (E) Any amounts held in an escrow or trust account
55 with respect to property described above.

56 (2) *Definitions.* — For purposes of this subsection:

57 (A) “Deposit” means:

58 (i) The unpaid balance of money or its equivalent
59 received or held by a financial organization in the usual
60 course of business and for which it has given or it is
61 obligated to give credit, either conditionally or uncon-
62 ditionally, to a commercial, checking, savings, time or
63 thrift account whether or not advance notice is required
64 to withdraw the credit funds, or which is evidenced by
65 a certificate of deposit, thrift certificate, investment
66 certificate, or certificate of indebtedness, or other
67 similar name, or a check or draft drawn against a
68 deposit account and certified by the financial organiza-
69 tion, or a letter of credit or a traveler’s check on which
70 the financial organization is primarily liable: *Provided,*
71 That without limiting the generality of the term “money
72 or its equivalent”, any such account or instrument must
73 be regarded as evidencing the receipt of the equivalent
74 of money when credited or issued in exchange for checks
75 or drafts or for a promissory note upon which the person
76 obtaining any such credit or instrument is primarily or
77 secondarily liable or for a charge against a deposit

78 account or in settlement of checks, drafts or other
79 instruments forwarded to such bank for collection;

80 (ii) Trust funds received or held by such financial
81 organization, whether held in the trust department or
82 held or deposited in any other department of such
83 financial organization;

84 (iii) Money received or held by a financial organiza-
85 tion or the credit given for money or its equivalent
86 received or held by a financial organization in the usual
87 course of business for a special or specific purpose,
88 regardless of the legal relationship thereby established,
89 including, without being limited to, escrow funds, funds
90 held as security for an obligation due the financial
91 organization or other (including funds held as dealers
92 reserves) or for securities loaned by the financial
93 organization, funds deposited by a debtor to meet
94 maturing obligations, funds deposited as advance
95 payment on subscriptions to United States government
96 securities, funds held for distribution or purchase of
97 securities, funds held to meet its acceptances or letters
98 of credit, and withheld taxes: *Provided*, That there shall
99 not be included funds which are received by the
100 financial organization for immediate application to the
101 reduction of an indebtedness to the receiving financial
102 organization, or under condition that the receipt thereof
103 immediately reduces or extinguishes such an
104 indebtedness;

105 (iv) Outstanding drafts (including advice or authori-
106 zation to charge a financial organization's balance in
107 another such organization), cashier's checks, money
108 orders, or other officer's checks issued in the usual
109 course of business for any purpose, but not including
110 those issued in payment for services, dividends or
111 purchases or other costs or expenses of the financial
112 organization itself; and

113 (v) Money or its equivalent held as a credit balance
114 by a financial organization on behalf of its customer if
115 such entity is engaged in soliciting and holding such
116 balances in the regular course of its business.

117 (B) "Sales" means:

118 For purposes of apportionment, the "sales" of a
119 financial organization shall mean the gross receipts
120 described in the gross receipts factor in this subsection,
121 regardless of their source.

122 (3) *Commercial domicile -apportionment or credit.* —
123 Financial organizations which do not have their com-
124 mercial domicile in West Virginia shall use the appor-
125 tionment rules set forth in this section. Financial
126 organizations with their commercial domicile in West
127 Virginia may not apportion their tax base, but shall
128 allocate all capital to West Virginia without appor-
129 tionment: *Provided*, That any financial organizations with
130 their commercial domicile in West Virginia shall be
131 allowed the credit against their business franchise tax
132 liability as described in section twenty-seven of this
133 article.

134 (4) *Apportionment rules.* —

135 (A) *General method.* —

136 If a financial organization not having its commercial
137 domicile in this state is engaging in business both within
138 and without this state, the portion of its capital
139 attributable to such business, which is derived from
140 sources within this state, shall be determined by
141 apportionment in accordance with this subsection. The
142 apportioned capital shall be determined by multiplying
143 capital by the special gross receipts factor as defined in
144 this subsection. Neither the numerator nor the denom-
145 inator of the gross receipts factor shall include receipts
146 from obligations described in paragraphs (A), (B), (C)
147 and (D), subdivision (1), subsection (f), section six, article
148 twenty-four of this chapter.

149 (B) *Special gross receipts factor.* — The gross receipts
150 factor is a fraction, the numerator of which is the total
151 gross receipts of the taxpayer from sources within this
152 state during the taxable year and the denominator of
153 which is the total gross receipts of the taxpayer
154 wherever earned during the taxable year.

155 *Numerator.* — The numerator of the gross receipts
156 factor shall include, in addition to items otherwise

157 includable in the sales factor under section five of this
158 article, the following:

159 (i) Gross receipts from the lease or rental of real or
160 tangible personal property (whether as the economic
161 equivalent of an extension of credit or otherwise) if the
162 property is located in this state;

163 (ii) Interest income and other receipts from assets in
164 the nature of loans which are secured primarily by real
165 estate or tangible personal property if such security
166 property is located in this state. In the event that such
167 security property is also located in one or more other
168 states, such receipts shall be presumed to be from
169 sources within this state, subject to rebuttal based upon
170 factors described in rules to be promulgated by the tax
171 commissioner, including the factor that the proceeds of
172 any such loans were applied and used by the borrower
173 entirely outside of this state;

174 (iii) Interest income and other receipts from consumer
175 loans which are unsecured or are secured by intangible
176 property that are made to residents of this state,
177 whether at a place of business, by traveling loan officer,
178 by mail, by telephone or other electronic means or
179 otherwise;

180 (iv) Interest income and other receipts from commer-
181 cial loans and installment obligations which are unse-
182 cured or are secured by intangible property if and to
183 the extent that the borrower or debtor is a resident of
184 or is domiciled in this state: *Provided*, That such receipts
185 are presumed to be from sources in this state and such
186 presumption may be overcome by reference to factors
187 described in rules to be promulgated by the tax
188 commissioner, including the factor that the proceeds of
189 any such loans were applied and used by the borrower
190 entirely outside of this state;

191 (v) Interest income and other receipts from a financial
192 organization's syndication and participation loans,
193 under the rules set forth in items (i) through (iv) above;

194 (vi) Interest income and other receipts, including
195 service charges, from financial institution credit card

196 and travel and entertainment credit card receivables
197 and credit card holders' fees if the borrower or debtor
198 is a resident of this state or if the billings for any such
199 receipts are regularly sent to an address in this state;

200 (vii) Merchant discount income derived from financial
201 institution credit card holder transactions with a
202 merchant located in this state. In the case of merchants
203 located within and without this state, only receipts from
204 merchant discounts attributable to sales made from
205 locations within this state shall be attributed to this
206 state. It shall be presumed, subject to rebuttal, that the
207 location of a merchant is the address shown on the
208 invoice submitted by the merchant to the taxpayer;

209 (viii) Gross receipts from the performance of services
210 which are attributed to this state if:

211 (I) The service receipts are loan-related fees, including
212 loan servicing fees, and the borrower resides in this
213 state; except that, at the taxpayer's election, receipts
214 from loan-related fees which are either: (a) "Pooled" or
215 aggregated for collective financial accounting treat-
216 ment; or (b) manually written as nonrecurring extraor-
217 dinary charges to be processed directly to the general
218 ledger may either be attributed to a state based upon
219 the borrowers' residences or upon the ratio that total
220 interest sourced to that state bears to total interest from
221 all sources;

222 (II) The service receipts are deposit-related fees and
223 the depositor resides in this state, except that, at the
224 taxpayer's election, receipts from deposit-related fees
225 which are either: (a) "Pooled" or aggregated for
226 collective financial accounting treatment; or (b) manu-
227 ally written as nonrecurring extraordinary charges to
228 be processed directly to the general ledger may either
229 be attributed to a state based upon the depositors'
230 residences or upon the ratio that total deposits sourced
231 to that state bears to total deposits from all sources;

232 (III) The service receipt is a brokerage fee and the
233 account holder is a resident of this state;

234 (IV) The service receipts are fees related to estate or

235 trust services and the estate's decedent was a resident
236 of this state immediately before death; or the grantor
237 who either funded or established the trust is a resident
238 of this state; or

239 (V) The service receipt is associated with the perfor-
240 mance of any other service not identified above and the
241 service is performed for an individual resident of, or for
242 a corporation or other business domiciled in, this state
243 and the economic benefit of such service is received in
244 this state;

245 (ix) Gross receipts from the issuance of travelers
246 checks and money orders if such checks and money
247 orders are purchased in this state; and

248 (x) All other receipts not attributed by this rule to a
249 state in which the taxpayer is taxable shall be attributed
250 pursuant to the laws of the state of the taxpayer's
251 commercial domicile.

252 *Denominator.* — The denominator of the receipts
253 factor shall include all of the taxpayer's receipts from
254 transactions of the kind included in the numerator, but
255 without regard to their source or situs.

256 (c) *Method of filing.* — Financial organizations subject
257 to apportionment under subsection (b) of this section
258 shall file only separate tax returns, and may not file on
259 a consolidated or any other basis: *Provided,* That
260 financial organizations which are members of an
261 affiliated group may file on a consolidated basis if all
262 members of the affiliated group have their commercial
263 domicile in this state.

264 (d) *Effective date.* — The provisions of this section shall
265 apply to all taxable years beginning on or after the first
266 day of January, one thousand nine hundred ninety-one.

§11-23-27. Credit for franchise tax paid to another state.

1 Effective for taxable years beginning on or after the
2 first day of January, one thousand nine hundred ninety-
3 one, and notwithstanding any provisions of this code to
4 the contrary, any financial organization having its
5 commercial domicile in this state shall be allowed a

6 credit against the tax imposed by this article for any
7 taxable year for taxes paid to another state or political
8 subdivision thereof. That credit shall be equal in amount
9 to the lesser of:

10 (a) The taxes such financial organization shall actually
11 have paid, which payments were made on or before the
12 filing date of the annual return required by this article,
13 to any other state or political subdivision thereof, and
14 which tax was based upon or measured by the financial
15 organization's capital and was paid with respect to the
16 same taxable year; or

17 (b) The portion of the tax actually paid that the
18 financial organization would have paid if the rate of tax
19 imposed by this article is applied to the tax base
20 determined under the law of such other state or political
21 subdivision.

22 Any additional payments of such tax to other states,
23 or to political subdivisions thereof, by a financial
24 organization described in this section, and any refunds
25 of such taxes, made or received by such financial
26 organization with respect to the taxable year, but after
27 the due date of the annual return required by this
28 article for the taxable year, including any extensions,
29 shall likewise be accounted for in the taxable year in
30 which such additional payment is made or such refund
31 is received by the financial organization.

§11-23-28. Notice of business activities report.

1 (a) Except as provided by subsection (b) of this section,
2 for each taxable year every corporation and partnership
3 that carries on any business activity or owns or
4 maintains property in West Virginia for the taxable
5 year shall file a business activity report with the tax
6 commissioner. The report must be filed on or before the
7 fifteenth day of the fourth month after the end of the
8 corporation or partnership's taxable year. The filing of
9 a report shall not be a factor in determining whether
10 a corporation or partnership is subject to taxation by
11 this state.

12 (b) A corporation or partnership is not required to file

13 a report under this section if:

14 (1) During the taxable year for which a report is due,
15 the corporation or partnership is registered to engage
16 in business in West Virginia in accordance with the
17 provisions of article twelve of this chapter;

18 (2) A tax return was filed for that taxable year for
19 any of the taxes subject to the provisions of article ten,
20 chapter eleven of this code;

21 (3) The corporation or partnership is a type of
22 organization expressly exempted from taxation by West
23 Virginia or federal statute or regulation; or

24 (4) The activities or interests in property owned in this
25 state by the corporation or partnership consist solely of
26 activities or property expressly exempted from taxation
27 by West Virginia or federal statute or regulation.

28 (c) Until a report is filed in compliance with this
29 section, a corporation or partnership may not pursue in
30 the courts of this state any claim not relating to tax
31 liability:

32 (1) That arose under West Virginia law; or

33 (2) On a contract that is executed under West Virginia
34 law, if the claim arose or the contract was executed
35 before or during the taxable year for which a report
36 should have been filed. However, the court in which
37 such a claim is filed may allow the claim to be pursued
38 if the corporation or partnership:

39 (A) Establishes that it was not required to file a report
40 under subsection (b);

41 (B) Files a report for each year for which a report is
42 due;

43 (C) Files a tax return for each year for which a return
44 is due; or

45 (D) Provides adequate security, including a bond, in
46 an amount sufficient to cover all tax liabilities, includ-
47 ing additions to tax, penalties and interest.

48 (d) As used in this section, carrying on an activity or

49 maintaining property in West Virginia includes, but is
50 not limited to, any of the following:

51 (1) Maintaining an office or other place of business in
52 West Virginia;

53 (2) The presence of employees, agents, representatives
54 or independent contractors in West Virginia, if they are
55 conducting business on behalf of the corporation or
56 partnership, regardless of whether the individual or
57 person is residing or regularly stationed in West
58 Virginia;

59 (3) Owning or maintaining real property, tangible
60 personal property, or intangible property that is in West
61 Virginia; or

62 (4) Any activity of a financial organization described
63 in item (i), (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix) or (x)
64 of paragraph (B), subdivision (4), subsection (b), section
65 five-a of this article.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3a. Specific terms defined.

§11-24-7. Allocation and apportionment.

§11-24-7b. Special apportionment rules — Financial organizations.

§11-24-24. Credit for income tax paid to another state.

§11-24-3a. Specific terms defined.

1 For purposes of this article:

2 (1) *Business income*. — The term “business income”
3 means income arising from transactions and activity in
4 the regular course of the taxpayer’s trade or business
5 and includes income from tangible and intangible
6 property if the acquisition, management and disposition
7 of the property or the rendering of services in connection
8 therewith constitute integral parts of the taxpayer’s
9 regular trade or business operations.

10 (2) *Commercial domicile*. — The term “commercial
11 domicile” means the principal place from which the
12 trade or business of the taxpayer is directed or man-
13 aged: *Provided*, That the commercial domicile of a
14 financial organization, which is subject to regulation as
15 such, shall be at the place designated as its principal

16 office with its regulating authority.

17 (3) *Compensation.* — The term “compensation” means
18 wages, salaries, commissions and any other form of
19 remuneration paid to employees for personal services.

20 (4) *Corporation.* — The term “corporation” includes a
21 joint-stock company and any association or other
22 organization which is taxable as a corporation under the
23 federal income tax law.

24 (5) *Delegate.* — The term “delegate” in the phrase “or
25 his delegate”, when used in reference to the tax
26 commissioner, means any officer or employee of the
27 state tax department duly authorized by the tax
28 commissioner directly, or indirectly by one or more
29 redelegations of authority, to perform the functions
30 mentioned or described in this article or regulations
31 promulgated thereunder.

32 (6) *Domestic corporation.* — The term “domestic
33 corporation” means any corporation organized under the
34 laws of West Virginia and certain corporations organ-
35 ized under the laws of the state of Virginia before the
36 twentieth day of June, one thousand eight hundred
37 sixty-three. Every other corporation is a foreign
38 corporation.

39 (7) *Engaging in business.* — The term “engaging in
40 business” or “doing business” means any activity of a
41 corporation which enjoys the benefits and protection of
42 government and laws in this state.

43 (8) *Federal Form 1120.* — The term “Federal Form
44 1120” means the annual federal income tax return of
45 any corporation made pursuant to the United States
46 Internal Revenue Code of 1986, as amended, or in
47 successor provisions of the laws of the United States, in
48 respect to the federal taxable income of a corporation,
49 and filed with the federal Internal Revenue Service. In
50 the case of a corporation that elects to file a federal
51 income tax return as part of an affiliated group, but
52 files as a separate corporation under this article, then
53 as to such corporation Federal Form 1120 means its pro
54 forma Federal Form 1120.

55 (9) *Fiduciary*. — The term “fiduciary” means, and
56 includes, a guardian, trustee, executor, administrator,
57 receiver, conservator or any person acting in any
58 fiduciary capacity for any person.

59 (10) *Financial organization*. — The term “financial
60 organization” means:

61 (A) A holding company or a subsidiary thereof. As
62 used in this section “holding company” means a
63 corporation registered under the federal bank holding
64 company act of 1956 or registered as a savings and loan
65 holding company other than a diversified savings and
66 loan holding company (as defined in section 408(a)(1)(F)
67 of the federal national housing act (12 U.S.C.
68 1730(a)(1)(F));

69 (B) A regulated financial corporation or a subsidiary
70 thereof. As used in this section “regulated financial
71 corporation” means:

72 (1) An institution, the deposits, shares or accounts of
73 which are insured under the federal deposit insurance
74 act, or by the federal savings and loan insurance
75 corporation;

76 (2) An institution that is a member of a federal home
77 loan bank;

78 (3) Any other bank or thrift institution incorporated
79 or organized under the laws of a state that is engaged
80 in the business of receiving deposits;

81 (4) A credit union incorporated and organized under
82 the laws of this state;

83 (5) A production credit association organized under 12
84 U.S.C. 2071;

85 (6) A corporation organized under 12 U.S.C. 611
86 through 631 (an edge act corporation); or

87 (7) A federal or state agency or branch of a foreign
88 bank (as defined in 12 U.S.C. 3101); or

89 (C) A corporation which derives more than fifty
90 percent of its gross business income from one or more
91 of the following activities:

92 (1) Making, acquiring, selling or servicing loans or
93 extensions of credit. Loans and extensions of credit
94 include:

95 (I) Secured or unsecured consumer loans;

96 (II) Installment obligations;

97 (III) Mortgages or other loans secured by real estate
98 or tangible personal property;

99 (IV) Credit card loans;

100 (V) Secured and unsecured commercial loans of any
101 type; and

102 (VI) Loans arising in factoring.

103 (2) Leasing or acting as an agent, broker or advisor
104 in connection with leasing real and personal property
105 that is the economic equivalent of an extension of credit
106 (as defined by the Federal Reserve Board in 12 C.F.R.
107 225.25(b)(5)).

108 (3) Operating a credit card business.

109 (4) Rendering estate or trust services.

110 (5) Receiving, maintaining or otherwise handling
111 deposits.

112 (6) Engaging in any other activity with an economic
113 effect comparable to those activities described in item
114 (1), (2), (3), (4) or (5) of this subparagraph.

115 (11) *Fiscal year.* — The term “fiscal year” means an
116 accounting period of twelve months ending on any day
117 other than the last day of December, and on the basis
118 of which the taxpayer is required to report for federal
119 income tax purposes.

120 (12) *Includes and including.* — The terms “includes”
121 and “including” when used in a definition contained in
122 this article shall not be deemed to exclude other things
123 otherwise within the meaning of the term being defined.

124 (13) *Nonbusiness income.* — The term “nonbusiness
125 income” means all income other than business income.

126 (14) *Person.* — The term “person” is to be deemed

127 interchangeable with the term "corporation" in this
128 section.

129 (15) *Pro forma return.* — The term "pro forma return"
130 when used in this article means the return which the
131 taxpayer would have filed with the Internal Revenue
132 Service had it not elected to file federally as part of an
133 affiliated group.

134 (16) *Public utility.* — The term "public utility" means
135 any business activity to which the jurisdiction of the
136 public service commission of West Virginia extends
137 under section one, article two, chapter twenty-four of the
138 code of West Virginia.

139 (17) *Sales.* — The term "sales" means all gross receipts
140 of the taxpayer that are "business income", as defined
141 in this section.

142 (18) *State.* — The term "state" means any state of the
143 United States, the District of Columbia, the Common-
144 wealth of Puerto Rico, any territory or possession of the
145 United States, and any foreign country or political
146 subdivision thereof.

147 (19) *Taxable year.* — The term "taxable year" means
148 the taxable year for which the taxable income of the
149 taxpayer is computed under the federal income tax law.

150 (20) *Tax.* — The term "tax" includes, within its
151 meaning, interest and additions to tax, unless the
152 intention to give it a more limited meaning is disclosed
153 by the context.

154 (21) *Tax commissioner.* — The term "tax commis-
155 sioner" means the tax commissioner of the state of West
156 Virginia or his delegate.

157 (22) *Taxpayer.* — The term "taxpayer" means a
158 corporation subject to the tax imposed by this article.

159 (23) *This code.* — The term "this code" means the code
160 of West Virginia, one thousand nine hundred thirty-one,
161 as amended.

162 (24) *This state.* — The term "this state" means the
163 state of West Virginia.

164 (25) *West Virginia taxable income.* — The term “West
165 Virginia taxable income” means the taxable income of
166 a corporation as defined by the laws of the United States
167 for federal income tax purposes, adjusted, as provided
168 in section six of this article: *Provided*, That in the case
169 of a corporation having income from business activity
170 which is taxable without this state, its “West Virginia
171 taxable income” shall be such portion of its taxable
172 income as so defined and adjusted as is allocated or
173 apportioned to this state under the provisions of sections
174 seven and seven-b of this article.

§11-24-7. Allocation and apportionment.

1 (a) *General.* — Any taxpayer having income from
2 business activity which is taxable both in this state and
3 in another state shall allocate and apportion its net
4 income as provided in this section. For purposes of this
5 section, the term “net income” means the taxpayer’s
6 federal taxable income adjusted as provided in section
7 six.

8 (b) *“Taxable in another state” defined.* — For purposes
9 of allocation and apportionment of net income under this
10 section, a taxpayer is taxable in another state if:

11 (1) In that state the taxpayer is subject to a net income
12 tax, a franchise tax measured by net income, a franchise
13 tax for the privilege of doing business, or a corporation
14 stock tax; or

15 (2) That state has jurisdiction to subject the taxpayer
16 to a net income tax, regardless of whether, in fact, that
17 state does or does not subject the taxpayer to such tax.

18 (c) *Business activities entirely within West Virginia.*
19 — If the business activities of a taxpayer take place
20 entirely within this state, the entire net income of such
21 taxpayer is subject to the tax imposed by this article.
22 The business activities of a taxpayer shall be deemed to
23 have taken place in their entirety within this state if
24 such taxpayer is not “taxable in another state”:
25 *Provided*, That the business activities of a financial
26 organization having its commercial domicile in this
27 state shall be deemed to take place entirely in this state,

28 notwithstanding that such organization may be "taxable
29 in another state": *Provided, however,* That the income
30 from the business activities of a financial organization
31 not having its commercial domicile in this state shall be
32 apportioned according to the applicable provisions of
33 this article.

34 (d) *Business activities partially within and partially*
35 *without West Virginia; allocation of nonbusiness income.*
36 — If the business activities of a taxpayer take place
37 partially within and partially without this state and
38 such taxpayer is also taxable in another state, rents and
39 royalties from real or tangible personal property, capital
40 gains, interest, dividends or patent or copyright
41 royalties, to the extent that they constitute nonbusiness
42 income of the taxpayer, shall be allocated as provided
43 in subdivisions (1) through (4): *Provided,* That to the
44 extent such items constitute business income of the
45 taxpayer, they shall not be so allocated but they shall
46 be apportioned to this state according to the provisions
47 of subsection (e) of this section and to the applicable
48 provisions of section seven-b of this article.

49 (1) *Net rents and royalties.* —

50 (A) Net rents and royalties from real property located
51 in this state are allocable to this state.

52 (B) Net rents and royalties from tangible personal
53 property are allocable to this state:

54 (i) If and to the extent that the property is utilized in
55 this state; or

56 (ii) In their entirety if the taxpayer's commercial
57 domicile is in this state and the taxpayer is not
58 organized under the laws of or taxable in the state in
59 which the property is utilized.

60 (C) The extent of utilization of tangible personal
61 property in a state is determined by multiplying the
62 rents and royalties by a fraction, the numerator of which
63 is the number of days of physical location of the property
64 in the state during the rental or royalty period in the
65 taxable year and the denominator of which is the
66 number of days of physical location of the property

67 everywhere during all rental or royalty periods in the
68 taxable year. If the physical location of the property
69 during the rental or royalty period is unknown or
70 unascertainable by the taxpayer, tangible personal
71 property is utilized in the state in which the property
72 was located at the time the rental or royalty payer
73 obtained possession.

74 (2) *Capital gains.* —

75 (A) Capital gains and losses from sales of real
76 property located in this state are allocable to this state.

77 (B) Capital gains and losses from sales of tangible
78 personal property are allocable to this state if:

79 (i) The property had a situs in this state at the time
80 of the sale; or

81 (ii) The taxpayer's commercial domicile is in this state
82 and the taxpayer is not taxable in the state in which the
83 property had a situs.

84 (C) Capital gains and losses from sales of intangible
85 personal property are allocable to this state if the
86 taxpayer's commercial domicile is in this state.

87 (D) Gains pursuant to section 631 (a) and (b) of the
88 Internal Revenue Code of 1986, as amended, from sales
89 of natural resources severed in this state shall be
90 allocated to this state if they are nonbusiness income.

91 (3) *Interest and dividends are allocable to this state if*
92 *the taxpayer's commercial domicile is in this state.*

93 (4) *Patent and copyright royalties.* —

94 (A) Patent and copyright royalties are allocable to this
95 state:

96 (i) If and to the extent that the patent or copyright
97 is utilized by the payer in this state; or

98 (ii) If and to the extent that the patent or copyright
99 is utilized by the payer in a state in which the taxpayer
100 is not taxable and the taxpayer's commercial domicile
101 is in this state.

102 (B) A patent is utilized in a state to the extent that

103 it is employed in production, fabrication, manufacturing
104 or other processing in the state or to the extent that a
105 patented product is produced in the state. If the basis
106 of receipts from patent royalties does not permit
107 allocation to states or if the accounting procedures do
108 not reflect states of utilization, the patent is utilized in
109 the state in which the taxpayer's commercial domicile
110 is located.

111 (C) A copyright is utilized in a state to the extent that
112 printing or other publication originates in the state. If
113 the basis of receipts from copyright royalties does not
114 permit allocation to states or if the accounting proce-
115 dures do not reflect states of utilization, the copyright
116 is utilized in the state in which the taxpayer's commer-
117 cial domicile is located.

118 (5) *Corporate partner's distributive share.* —

119 (A) Persons carrying on business as partners in a
120 partnership, as defined in section 761 of the Internal
121 Revenue Code of 1986, as amended, are liable for income
122 tax only in their separate or individual capacities.

123 (B) A corporate partner's distributive share of income,
124 gain, loss, deduction or credit of a partnership shall be
125 modified as provided in section six of this article for
126 each partnership. Such distributive share shall then be
127 allocated and apportioned as provided in section seven
128 of this article, using the corporation's proportionate
129 share of the partnership's property, payroll and sales
130 factors. The sum of that portion of the distributive share
131 allocated and apportioned to this state shall then be
132 treated as distributive share allocated to this state; and
133 that portion of distributive share allocated or apporti-
134 oned outside this state shall be treated as distributive
135 share allocated outside this state, unless the taxpayer
136 requests or the tax commissioner, under subsection (h)
137 of this section requires that such distributive share be
138 treated differently.

139 (e) *Business activities partially within and partially*
140 *without this state; apportionment of business income.* —
141 All net income, after deducting those items specifically
142 allocated under subsection (d), shall be apportioned to

143 this state by multiplying such net income by a fraction,
144 the numerator of which is the property factor plus the
145 payroll factor plus two times the sales factor, and the
146 denominator of which is four, reduced by the number
147 of factors, if any, having no denominator.

148 (1) *Property factor.* — The property factor is a
149 fraction, the numerator of which is the average value
150 of the taxpayer's real and tangible personal property
151 owned or rented and used by it in this state during the
152 taxable year and the denominator of which is the
153 average value of all the taxpayer's real and tangible
154 personal property owned or rented and used by the
155 taxpayer during the taxable year, which is reported on
156 Schedule L Federal Form 1120, plus the average value
157 of all real and tangible personal property leased and
158 used by the taxpayer during the taxable year.

159 (2) *Value of property.* — Property owned by the
160 taxpayer shall be valued at its original cost, adjusted by
161 subsequent capital additions or improvements thereto
162 and partial disposition thereof, by reason of sale,
163 exchange, abandonment, etc.: *Provided,* That where
164 records of original cost are unavailable or cannot be
165 obtained without unreasonable expense, property shall
166 be valued at original cost as determined under regula-
167 tions of the tax commissioner. Property rented by the
168 taxpayer from others shall be valued at eight times the
169 annual rental rate. The term "net annual rental rate"
170 is the annual rental paid, directly or indirectly, by the
171 taxpayer, or for its benefit, in money or other consid-
172 eration for the use of property and includes:

173 (A) Any amount payable for the use of real or tangible
174 personal property, or any part thereof, whether desig-
175 nated as a fixed sum of money or as a percentage of
176 sales, profits or otherwise.

177 (B) Any amount payable as additional rent or in lieu
178 of rents, such as interest, taxes, insurance, repairs or
179 any other items which are required to be paid by the
180 terms of the lease or other arrangement, not including
181 amounts paid as service charges, such as utilities,
182 janitor services, etc. If a payment includes rent and

183 other charges unsegregated, the amount of rent shall be
184 determined by consideration of the relative values of the
185 rent and the other items.

186 (3) *Movable property.* — The value of movable tangible
187 personal property used both within and without this
188 state shall be included in the numerator to the extent
189 of its utilization in this state. The extent of such
190 utilization shall be determined by multiplying the
191 original cost of such property by a fraction, the
192 numerator of which is the number of days of physical
193 location of the property in this state during the taxable
194 period, and the denominator of which is the number of
195 days of physical location of the property everywhere
196 during the taxable year. The number of days of physical
197 location of the property may be determined on a
198 statistical basis or by such other reasonable method
199 acceptable to the tax commissioner.

200 (4) *Leasehold improvements.* — Leasehold improve-
201 ments shall, for purposes of the property factor, be
202 treated as property owned by the taxpayer regardless
203 of whether the taxpayer is entitled to remove the
204 improvements or the improvements revert to the lessor
205 upon expiration of the lease. Leasehold improvements
206 shall be included in the property factor at their original
207 cost.

208 (5) *Average value of property.* — The average value of
209 property shall be determined by averaging the values
210 at the beginning and ending of the taxable year:
211 *Provided,* That the tax commissioner may require the
212 averaging of monthly values during the taxable year if
213 substantial fluctuations in the values of the property
214 exist during the taxable year, or where property is
215 acquired after the beginning of the taxable year, or is
216 disposed of, or whose rental contract ceases, before the
217 end of the taxable year.

218 (6) *Payroll factor.* — The payroll factor is a fraction,
219 the numerator of which is the total compensation paid
220 in this state during the taxable year by the taxpayer for
221 compensation, and the denominator of which is the total
222 compensation paid by the taxpayer during the taxable

223 year, as shown on the taxpayer's federal income tax
224 return as filed with the Internal Revenue Service, as
225 reflected in the schedule of wages and salaries and that
226 portion of cost of goods sold which reflects compensa-
227 tion, or as shown on a pro forma return.

228 (7) *Compensation.* — The term “compensation” means
229 wages, salaries, commissions and any other form of
230 remuneration paid to employees for personal services.
231 Payments made to an independent contractor or to any
232 other person not properly classifiable as an employee
233 shall be excluded. Only amounts paid directly to
234 employees are included in the payroll factor. Amounts
235 considered as paid directly to employees include the
236 value of board, rent, housing, lodging and other benefits
237 or services furnished to employees by the taxpayer in
238 return for personal services, provided such amounts
239 constitute income to the recipient for federal income tax
240 purposes.

241 (8) *Employee.* — The term “employee” means:

242 (A) Any officer of a corporation; or

243 (B) Any individual who, under the usual common-law
244 rule applicable in determining the employer-employee
245 relationship, has the status of an employee.

246 (9) *Compensation.* — Compensation is paid or accrued
247 in this state if:

248 (A) The employee's service is performed entirely
249 within this state; or

250 (B) The employee's service is performed both within
251 and without this state, but the service performed
252 without the state is incidental to the individual's service
253 within this state. The word “incidental” means any
254 service which is temporary or transitory in nature, or
255 which is rendered in connection with an isolated
256 transaction; or

257 (C) Some of the service is performed in this state and:

258 (i) The employee's base of operations or, if there is no
259 base of operations, the place from which the service is
260 directed or controlled is in the state; or

261 (ii) The base of operations or the place from which the
262 service is directed or controlled is not in any state in
263 which some part of the service is performed, but the
264 employee's residence is in this state.

265 The term "base of operations" is the place of more or
266 less permanent nature from which the employee starts
267 his work and to which he customarily returns in order
268 to receive instructions from the taxpayer or communi-
269 cations from his customers or other persons or to
270 replenish stock or other materials, repair equipment, or
271 perform any other functions necessary to the exercise of
272 his trade or profession at some other point or points. The
273 term "place from which the service is directed or
274 controlled" refers to the place from which the power to
275 direct or control is exercised by the taxpayer.

276 (10) *Sales factor.* — The sales factor is a fraction, the
277 numerator of which is the gross receipts of the taxpayer
278 derived from transactions and activity in the regular
279 course of its trade or business in this state during the
280 taxable year (business income), less returns and allo-
281 wances. The denominator of the fraction shall be the
282 total gross receipts derived by the taxpayer from
283 transactions and activity in the regular course of its
284 trade or business during the taxable year (business
285 income), and reflected in its gross income reported and
286 as appearing on the taxpayer's Federal Form 1120, and
287 consisting of those certain pertinent portions of the
288 (gross income) elements set forth: *Provided*, That if
289 either the numerator or the denominator includes
290 interest or dividends from obligations of the United
291 States government which are exempt from taxation by
292 this state, the amount of such interest and dividends, if
293 any, shall be subtracted from the numerator or denom-
294 inator in which it is included.

295 (11) *Allocation of sales of tangible personal property.* —

296 (A) Sales of tangible personal property are in this
297 state if:

298 (i) The property is received in this state by the
299 purchaser, other than the United States government,
300 regardless of the f.o.b. point or other conditions of the

301 sale. In the case of delivery by common carrier or other
302 means of transportation, the place at which such
303 property is ultimately received after all transportation
304 has been completed shall be considered as the place at
305 which such property is received by the purchaser.
306 Direct delivery in this state, other than for purposes of
307 transportation, to a person or firm designated by the
308 purchaser, constitutes delivery to the purchaser in this
309 state, and direct delivery outside this state to a person
310 or firm designated by the purchaser does not constitute
311 delivery to the purchaser in this state, regardless of
312 where title passes or other conditions of sale; or

313 (ii) The property is shipped from an office, store,
314 warehouse, factory or other place of storage in this state
315 and the purchaser is the United States government.

316 (B) All other sales of tangible personal property
317 delivered or shipped to a purchaser within a state in
318 which the taxpayer is not taxed (as defined in subsection
319 (b) of this section) shall be excluded from the denom-
320 inator of the sales factor.

321 (12) *Allocation of other sales.* — Sales, other than sales
322 of tangible personal property are in this state if:

323 (A) The income-producing activity is performed in
324 this state; or

325 (B) The income-producing activity is performed both
326 in and outside this state and a greater proportion of the
327 income-producing activity is performed in this state
328 than in any other state, based on costs of performance;
329 or

330 (C) The sale constitutes business income to the
331 taxpayer, or the taxpayer is a financial organization not
332 having its commercial domicile in this state, and in
333 either case the sale is a receipt described as attributable
334 to this state in subsection (b), section seven-b of this
335 article.

336 (13) *Financial organizations and other taxpayers with*
337 *business activities partially within and partially without*

338 *this state.* — Notwithstanding anything contained in this
339 section to the contrary, in the case of financial organ-
340 izations and other taxpayers, not having their commer-
341 cial domicile in this state, the rules of this subsection
342 shall apply to the apportionment of income from their
343 business activities except as expressly otherwise pro-
344 vided in subsection (b), section seven-b of this article.

345 (f) *Income-producing activity.* — The term “income-
346 producing activity” applies to each separate item of
347 income and means the transactions and activity directly
348 engaged in by the taxpayer in the regular course of its
349 trade or business for the ultimate purpose of obtaining
350 gain or profit. Such activity does not include transac-
351 tions and activities performed on behalf of the taxpayer,
352 such as those conducted on its behalf by an independent
353 contractor. “Income-producing activity” includes, but is
354 not limited to, the following:

355 (1) The rendering of personal services by employees
356 with utilization of tangible and intangible property by
357 the taxpayer in performing a service;

358 (2) The sale, rental, leasing, licensing or other use of
359 real property;

360 (3) The sale, rental, leasing, licensing or other use of
361 tangible personal property; or

362 (4) The sale, licensing or other use of intangible
363 personal property.

364 The mere holding of intangible personal property is
365 not, in itself, an income-producing activity: *Provided,*
366 That the conduct of the business of a financial organ-
367 ization shall constitute an income-producing activity.

368 (g) *Cost of performance.* — The term “cost of perfor-
369 mance” means direct costs determined in a manner
370 consistent with generally accepted accounting principles
371 and in accordance with accepted conditions or practices
372 in the trade or business of the taxpayer.

373 (h) *Other methods of allocation and apportionment.* —

374 (1) *General.* — If the allocation and apportionment
375 provisions of subsections (d) and (e) of this section do not

376 fairly represent the extent of the taxpayer's business
377 activities in this state, the taxpayer may petition for or
378 the tax commissioner may require, in respect to all or
379 any part of the taxpayer's business activities, if
380 reasonable:

381 (A) Separate accounting;

382 (B) The exclusion of one or more of the factors;

383 (C) The inclusion of one or more additional factors
384 which will fairly represent the taxpayer's business
385 activity in this state; or

386 (D) The employment of any other method to effectuate
387 an equitable allocation or apportionment of the taxpay-
388 er's income. Such petition shall be filed no later than the
389 due date of the annual return for the taxable year for
390 which the alternative method is requested, determined
391 without regard to any extension of time for filing such
392 return, and the petition shall include a statement of the
393 petitioner's objections and of such alternative method of
394 allocation or apportionment as it believes to be proper
395 under the circumstances with such detail and proof as
396 the tax commissioner may require.

397 (2) *Alternative method for public utilities.* — If the
398 taxpayer is a public utility and if the allocation and
399 apportionment provisions of subsections (d) and (e) do
400 not fairly represent the taxpayer's business activities in
401 this state, the taxpayer may petition for, or the tax
402 commissioner may require, as an alternative to the other
403 methods provided for in paragraph (1) of this subsection,
404 the allocation and apportionment of the taxpayer's net
405 income in accordance with any system of accounts
406 prescribed by the public service commission of this state
407 pursuant to the provisions of section eight, article two,
408 chapter twenty-four of this code, provided the allocation
409 and apportionment provisions of such system of accounts
410 fairly represent the extent of the taxpayer's business
411 activities in this state for the purposes of the tax
412 imposed by this article.

413 (3) *Burden of proof.* — In any proceeding before the
414 tax commissioner or in any court in which employment

415 of one of the methods of allocation or apportionment
416 provided for in paragraph (1) or (2) of this subsection
417 is sought, on the ground that the allocation and
418 apportionment provisions of subsections (d) and (e) do
419 not fairly represent the extent of the taxpayer's business
420 activities in this state, the burden of proof shall:

421 (A) If the tax commissioner seeks employment of one
422 of such methods, be on the tax commissioner; or

423 (B) If the taxpayer seeks employment of one of such
424 other methods, be on the taxpayer.

§11-24-7b. Special apportionment rules — Financial organizations.

1 (a) *General.* — The Legislature hereby finds that the
2 general formula set forth in section seven of this article
3 for apportioning the business income of corporations
4 taxable in this state as well as in another state is
5 inappropriate for use by financial organizations due to
6 the particular characteristics of those organizations and
7 the manner in which their business is conducted.
8 Accordingly, the general formula set forth in section
9 seven of this article may not be used to apportion the
10 business income of such financial organizations, which
11 shall use only the apportionment formula and methods
12 set forth in this section.

13 (b) *Financial organizations with business activities*
14 *partially within and partially without this state.* — A
15 financial organization not having its commercial
16 domicile in this state shall apportion the business
17 income component of its federal taxable income (as
18 adjusted by section six of this article) to this state as
19 provided in this subsection if it regularly engages in
20 business in this state.

21 (1) *Nexus presumptions and exclusions.* — A financial
22 organization is presumed to be regularly engaging in
23 business in this state if during any year it obtains or
24 solicits business with twenty or more persons within this
25 state, or if the sum of the value of its gross receipts
26 attributable to sources in this state equals or exceeds one
27 hundred thousand dollars. However, gross receipts from

28 the following types of property (as well as those contacts
29 with this state reasonably and exclusively required to
30 evaluate and complete the acquisition or disposition of
31 the property, the servicing of the property or the income
32 from it, the collection of income from the property, or
33 the acquisition or liquidation of collateral relating to the
34 property) shall not be a factor in determining whether
35 the owner is engaging in business in this state:

36 (A) An interest in a real estate mortgage investment
37 conduit, a real estate investment trust or a regulated
38 investment company;

39 (B) An interest in a loan backed security representing
40 ownership or participation in a pool of promissory notes
41 or certificates of interest that provide for payments in
42 relation to payments or reasonable projections of
43 payments on the notes or certificates;

44 (C) An interest in a loan or other asset from which
45 the interest is attributed to a consumer loan, a commer-
46 cial loan or a secured commercial loan, and in which the
47 payment obligations were solicited and entered into by
48 a person that is independent, and not acting on behalf,
49 of the owner;

50 (D) An interest in the right to service or collect income
51 from a loan or other asset from which interest on the
52 loan is attributed as a loan described in the previous
53 paragraph, and in which the payment obligations were
54 solicited and entered into by a person that is independ-
55 ent, and not acting on behalf, of the owner; and

56 (E) Any amounts held in an escrow or trust account
57 with respect to property described above.

58 (2) *Definitions.* — For purposes of this subsection:

59 (A) "Deposit" means:

60 (i) The unpaid balance of money or its equivalent
61 received or held by a financial organization in the usual
62 course of business and for which it has given or it is
63 obligated to give credit, either conditionally or uncon-
64 ditionally, to a commercial, checking, savings, time or
65 thrift account whether or not advance notice is required

66 to withdraw the credit funds, or which is evidenced by
67 a certificate of deposit, thrift certificate, investment
68 certificate or certificate of indebtedness, or other similar
69 name, or a check or draft drawn against a deposit
70 account and certified by the financial organization, or
71 a letter of credit or a traveler's check on which the
72 financial organization is primarily liable: *Provided*,
73 That without limiting the generality of the term "money
74 or its equivalent", any such account or instrument must
75 be regarded as evidencing the receipt of the equivalent
76 of money when credited or issued in exchange for checks
77 or drafts or for a promissory note upon which the person
78 obtaining any such credit or instrument is primarily or
79 secondarily liable or for a charge against a deposit
80 account or in settlement of checks, drafts or other
81 instruments forwarded to such bank for collection;

82 (ii) Trust funds received or held by such financial
83 organization, whether held in the trust department or
84 held or deposited in any other department of such
85 financial organization;

86 (iii) Money received or held by a financial organiza-
87 tion or the credit given for money or its equivalent
88 received or held by a financial organization in the usual
89 course of business for a special or specific purpose,
90 regardless of the legal relationship thereby established,
91 including, without being limited to, escrow funds, funds
92 held as security for an obligation due the financial
93 organization or other (including funds held as dealers
94 reserves) or for securities loaned by the financial
95 organization, funds deposited by a debtor to meet
96 maturing obligations, funds deposited as advance
97 payment on subscriptions to United States government
98 securities, funds held for distribution or purchase of
99 securities, funds held to meet its acceptances or letters
100 of credit, and withheld taxes: *Provided*, That there shall
101 not be included funds which are received by the
102 financial organization for immediate application to the
103 reduction of an indebtedness to the receiving financial
104 organization, or under condition that the receipt thereof
105 immediately reduces or extinguishes such an
106 indebtedness;

107 (iv) Outstanding drafts (including advice or authori-
108 zation to charge a financial organization's balance in
109 another such organization), cashier's checks, money
110 orders or other officer's checks issued in the usual course
111 of business for any purpose, but not including those
112 issued in payment for services, dividends or purchases
113 or other costs or expenses of the financial organization
114 itself; and

115 (v) Money or its equivalent held as a credit balance
116 by a financial organization on behalf of its customer if
117 such entity is engaged in soliciting and holding such
118 balances in the regular course of its business.

119 (B) "Sales" means:

120 For purposes of apportionment, the "sales" of a
121 financial organization shall mean the gross receipts
122 described in the gross receipts factor in this subsection,
123 regardless of their source.

124 (3) *Commercial domicile — apportionment or credit.* —
125 Financial organizations which do not have their com-
126 mercial domicile in West Virginia shall use the appor-
127 tionment rules set forth in this section. Financial
128 organizations with their commercial domicile in West
129 Virginia may not apportion their business income, but
130 shall report all net income to West Virginia without
131 apportionment: *Provided*, That any financial organiza-
132 tions with their commercial domicile in West Virginia
133 shall be allowed the credit against their corporation net
134 income tax liability as described in section twenty-four
135 of this article.

136 (4) *Apportionment rules.* —

137 (A) *General method.* —

138 If a financial organization not having its commercial
139 domicile in this state is engaging in business both within
140 and without this state, the portion of its net income
141 arising from such business, which is derived from
142 sources within this state, shall be determined by
143 apportionment in accordance with this subsection. The
144 apportioned net income shall be determined by multip-
145 lying net income by the special gross receipts factor as

146 defined in this subsection. Neither the numerator nor
147 the denominator of the gross receipts factor shall
148 include receipts from obligations described in para-
149 graphs (A), (B), (C) and (D), subdivision (1), subsection
150 (f), section six of this article.

151 (B) *Special gross receipts factor.* — The gross receipts
152 factor is a fraction, the numerator of which is the total
153 gross receipts of the taxpayer from sources within this
154 state during the taxable year and the denominator of
155 which is the total gross receipts of the taxpayer
156 wherever earned during the taxable year.

157 *Numerator.* — The numerator of the gross receipts
158 factor shall include, in addition to items otherwise
159 includable in the sales factor under section seven of this
160 article, the following:

161 (i) Receipts from the lease or rental of real or tangible
162 personal property (whether as the economic equivalent
163 of an extension of credit or otherwise) if the property
164 is located in this state;

165 (ii) Interest income and other receipts from assets in
166 the nature of loans which are secured primarily by real
167 estate or tangible personal property if such security
168 property is located in the state. In the event that such
169 security property is also located in one or more other
170 states, such receipts shall be presumed to be from
171 sources within this state, subject to rebuttal based upon
172 factors described in rules to be promulgated by the tax
173 commissioner, including the factor that the proceeds of
174 any such loans were applied and used by the borrower
175 entirely outside of this state;

176 (iii) Interest income and other receipts from consumer
177 loans which are unsecured or are secured by intangible
178 property that are made to residents of this state,
179 whether at a place of business, by traveling loan officer,
180 by mail, by telephone or other electronic means or
181 otherwise;

182 (iv) Interest income and other receipts from commer-
183 cial loans and installment obligations which are unse-
184 cured or are secured by intangible property if and to

185 the extent that the borrower or debtor is a resident of
186 or is domiciled in this state: *Provided*, That such receipts
187 are presumed to be from sources in this state and such
188 presumption may be overcome by reference to factors
189 described in rules to be promulgated by the tax
190 commissioner, including the factor that the proceeds of
191 any such loans were applied and used by the borrower
192 entirely outside of this state;

193 (v) Interest income and other receipts from a financial
194 organization's syndication and participation in loans,
195 under the rules set forth in items (i) through (iv) above;

196 (vi) Interest income and other receipts, including
197 service charges, from financial institution credit card
198 and travel and entertainment credit card receivables
199 and credit card holders' fees if the borrower or debtor
200 is a resident of this state or if the billings for any such
201 receipts are regularly sent to an address in this state;

202 (vii) Merchant discount income derived from financial
203 institution credit card holder transactions with a
204 merchant located in this state. In the case of merchants
205 located within and without this state, only receipts from
206 merchant discounts attributable to sales made from
207 locations within this state shall be attributed to this
208 state. It shall be presumed, subject to rebuttal, that the
209 location of a merchant is the address shown on the
210 invoice submitted by the merchant to the taxpayer;

211 (viii) Receipts from the performance of services which
212 are attributed to this state if:

213 (I) The service receipts are loan-related fees, including
214 loan servicing fees, and the borrower resides in this
215 state, except that, at the taxpayer's election, receipts
216 from loan-related fees which are either: (a) "Pooled" or
217 aggregated for collective financial accounting treat-
218 ment; or (b) manually written as nonrecurring extraor-
219 dinary charges to be processed directly to the general
220 ledger may either be attributed to a state based upon
221 the borrowers' residences or upon the ratio that total
222 interest sourced to that state bears to total interest from
223 all sources;

224 (II) The service receipts are deposit-related fees and
225 the depositor resides in this state, except that, at the
226 taxpayer's election, receipts from deposit-related fees
227 which are either: (a) "Pooled" or aggregated for
228 collective financial accounting treatment; or (b) manu-
229 ally written as nonrecurring extraordinary charges to
230 be processed directly to the general ledger may either
231 be attributed to a state based upon the depositors'
232 residences or upon the ratio that total deposits sourced
233 to that state bears to total deposits from all sources;

234 (III) The service receipt is a brokerage fee and the
235 account holder is a resident of this state;

236 (IV) The service receipts are fees related to estate or
237 trust services and the estate's decedent was a resident
238 of this state immediately before death, or the grantor
239 who either funded or established the trust is a resident
240 of this state; or

241 (V) The service receipt is associated with the perfor-
242 mance of any other service not identified above and the
243 service is performed for an individual resident of, or for
244 a corporation or other business domiciled in, this state
245 and the economic benefit of such service is received in
246 this state;

247 (ix) Gross receipts from the issuance of travelers
248 checks and money orders if such checks and money
249 orders are purchased in this state; and

250 (x) All other receipts not attributed by this rule to a
251 state in which the taxpayer is taxable shall be attributed
252 pursuant to the laws of the state of the taxpayer's
253 commercial domicile.

254 *Denominator.* — The denominator of the gross receipts
255 factor shall include all of the taxpayer's gross receipts
256 from transactions of the kind included in the numerator,
257 but without regard to their source or situs.

258 (c) *Method of filing.* — Financial organizations subject
259 to apportionment under subsection (b) of this section
260 shall file only separate tax returns, and may not file on
261 a consolidated or any other basis: *Provided*, That
262 financial organizations which are members of an

263 affiliated group may file on a consolidated basis if all
264 members of the affiliated group have their commercial
265 domicile in this state.

266 (d) *Effective date.* — The provisions of this section shall
267 apply to all taxable years beginning on or after the first
268 day of January, one thousand nine hundred ninety-one.

§11-24-24. Credit for income tax paid to another state.

1 Effective for taxable years beginning on or after the
2 first day of January, one thousand nine hundred ninety-
3 one, and notwithstanding any provisions of this code to
4 the contrary, any financial organization, the business
5 activities of which take place, or are deemed to take
6 place, entirely within this state, shall be allowed a credit
7 against the tax imposed by this article for any taxable
8 year for taxes paid to another state or political subdivi-
9 sion thereof. That credit shall be equal in amount to
10 the lesser of:

11 (a) The taxes such financial organization shall actually
12 have paid, which payments were made on or before the
13 filing date of the annual return required by this article,
14 to any other state or political subdivision thereof, and
15 which tax was based upon or measured by the financial
16 organization's net income and was paid with respect to
17 the same taxable year; or

18 (b) The amount of such tax the financial organization
19 would have paid if the rate of tax imposed by this article
20 is applied to the tax base determined under the laws of
21 such other state or political subdivision.

22 Any additional payments of such tax to other states,
23 or to political subdivisions thereof, by a financial
24 organization described in this section, and any refunds
25 of such taxes, made or received by such financial
26 organization with respect to the taxable year, but after
27 the due date of the annual return required by this
28 article for the taxable year, including any extensions,
29 shall likewise be accounted for in the taxable year in
30 which such additional payment is made or such refund
31 is received by the financial organization.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 2. DEPARTMENT OF BANKING.**§31A-2-15. Report by the commissioner.**

1 On or before the fifteenth day of January, one
2 thousand nine hundred ninety-two and biennially
3 thereafter, the commissioner shall prepare a report to
4 be submitted to the governor, the president of the
5 Senate, the speaker of the House of Delegates and the
6 commissioner of the tax division. Such report shall
7 detail the effect on credit availability and cost of credit
8 to consumers within this state resulting from the
9 imposition of the business franchise tax provided for in
10 article twenty-three, chapter eleven of this code and the
11 corporation net income tax provided for in article
12 twenty-four, chapter eleven of this code on out-of-state
13 financial organizations engaging in the transaction of
14 business that was not taxed prior to the taxable year
15 beginning the first day of January, one thousand nine
16 hundred ninety-one.

CHAPTER 168

(S. B. 328—By Senators Burdette, Mr. President, and Boley.)
[By Request of the Executive]

[Passed February 18, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-a, article twenty-three, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three, article twenty-four of said chapter, relating to updating the meaning of certain terms used in the West Virginia business franchise tax act and the West Virginia corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes for taxable years beginning after the thirty-first day of December, one thousand nine hundred eighty-nine; preserving the prior law; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

Article

23. **Business Franchise Tax.**

24. **Corporation Net Income Tax.**

ARTICLE 23. BUSINESS FRANCHISE TAX.

§11-23-3a. Meaning of terms; general rule.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in the
3 laws of the United States relating to federal income
4 taxes, unless a different meaning is clearly required by
5 the context or by definition of this article. Any reference
6 in this article to the laws of the United States, or to the
7 Internal Revenue Code, or to the federal income tax law
8 shall mean the provisions of the laws of the United
9 States as related to the determination of income for
10 federal income tax purposes. All amendments made to
11 the laws of the United States prior to the first day of
12 January, one thousand nine hundred ninety-one, shall be
13 given effect in determining the taxes imposed by this
14 article for the tax period beginning the first day of
15 January, one thousand nine hundred ninety, and
16 thereafter, but no amendment to laws of the United
17 States made on or after the first day of January, one
18 thousand nine hundred ninety-one, shall be given effect.

19 (b) *Effective date.* — The amendments to this section
20 enacted in the year one thousand nine hundred ninety-
21 one shall be retroactive and shall apply to taxable years
22 beginning on or after the first day of January, one
23 thousand nine hundred ninety, to the extent allowable
24 under federal income tax law. With respect to taxable
25 years that begin prior to the first day of January, one
26 thousand nine hundred ninety, prior law shall be fully
27 preserved.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article shall have the same

2 meaning as when used in a comparable context in the
3 laws of the United States relating to federal income
4 taxes, unless a different meaning is clearly required by
5 the context or by definition in this article. Any reference
6 in this article to the laws of the United States shall mean
7 the provisions of the Internal Revenue Code of 1986, as
8 amended, and such other provisions of the laws of the
9 United States as relate to the determination of income
10 for federal income tax purposes. All amendments made
11 to the laws of the United States prior to the first day
12 of January, one thousand nine hundred ninety-one, shall
13 be given effect in determining the taxes imposed by this
14 article for any taxable year beginning the first day of
15 January, one thousand nine hundred ninety, and
16 thereafter, but no amendment to the laws of the United
17 States effective on or after the first day of January, one
18 thousand nine hundred ninety-one, shall be given any
19 effect.

20 (b) The term "Internal Revenue Code of 1986" means
21 the Internal Revenue Code of the United States enacted
22 by the "Federal Tax Reform Act of 1986" and includes
23 the provisions of law formerly known as the Internal
24 Revenue Code of 1954, as amended, and in effect when
25 the "Federal Tax Reform Act of 1986" was enacted, that
26 were not amended or repealed by the "Federal Tax
27 Reform Act of 1986". Except when inappropriate, any
28 references in any law, executive order, or other
29 document:

30 (1) To the Internal Revenue Code of 1954 shall include
31 reference to the Internal Revenue Code of 1986; and

32 (2) To the Internal Revenue Code of 1986 shall include
33 a reference to the provisions of law formerly known as
34 the Internal Revenue Code of 1954.

35 (c) *Effective date.* — The amendments to this section
36 enacted in the year one thousand nine hundred ninety-
37 one shall be retroactive and shall apply to taxable years
38 beginning on or after the first day of January, one
39 thousand nine hundred ninety, to the extent allowable
40 under federal income tax law. With respect to taxable
41 years that begin prior to the first day of January, one
42 thousand nine hundred ninety, prior law shall be fully
43 preserved.

CHAPTER 169

(S. B. 69—By Senators Spears and Felton)

[Passed March 7, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section one, article thirteen, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section two, article six, chapter twenty-nine of said code, all relating to extending the preference rating of veterans to veterans who have served in campaigns, expeditions or conflicts for which a campaign badge has been authorized and received; awarding five points to certain veterans; awarding an additional five points to certain other veterans; defining terms; and redefining the term "veteran".

Be it enacted by the Legislature of West Virginia:

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

Chapter

6. General Provisions Respecting Officers.

29. Miscellaneous Boards and Officers.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 13. PREFERENCE RATING OF VETERANS ON WRITTEN EXAMINATIONS ON NONPARTISAN MERIT BASIS.

§6-13-1. Preference rating of veterans on written examinations for positions in state departments filled under nonpartisan merit system.

1 For positions in any department or agency in which
2 positions are filled under civil service or any job
3 classification system, a preference of five points in
4 addition to the regular numerical score received on
5 examination shall be awarded to all veterans having
6 qualified for appointment by making a minimum

7 passing grade; and to all veterans awarded the purple
8 heart, or having a compensable service-connected
9 disability, as established by any proper veterans' bureau
10 or department of the federal government, an additional
11 five points shall be allowed.

12 For the purpose of this article, "veteran" shall mean
13 any person who has served in the armed forces of the
14 United States during the Spanish American War, World
15 War I, World War II, the Korean Conflict, the Southeast
16 Asian Conflict or in a campaign, expedition or conflict
17 for which a campaign badge has been authorized and
18 received by such person, and who has been honorably
19 discharged from such service.

20 Such awards shall be made for the benefit and
21 preference in appointment of all veterans who have
22 heretofore or who shall hereafter take such examina-
23 tions, but shall not operate to the detriment of any
24 person heretofore appointed to a position in such
25 department or agency.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

*§29-6-2. Definition of terms.

1 As used in this article, unless the context indicates
2 otherwise, the term:

3 (a) "Administrator" means any person who fills a
4 statutorily created position within or related to an
5 agency or board (other than a board member) and who
6 is designated by statute as commissioner, deputy
7 commissioner, assistant commissioner, director, cancel-
8 lor, chief, executive director, executive secretary,
9 superintendent, deputy superintendent or other admi-
10 nistrative title, however designated;

11 (b) "Agency" means any administrative unit of state
12 government, including any authority, board, bureau,
13 commission, committee, council, division, section or
14 office;

* Clerk's Note: This section was also amended by H. B. 2834 (Chapter 170), which passed subsequent to this act.

15 (c) "Appointing authority" means a person or group
16 of persons authorized by an agency to make appoint-
17 ments to positions in the classified or classified-exempt
18 service;

19 (d) "Board" means the state personnel board created
20 by section six of this article;

21 (e) "Class" or "class of positions" means a group of
22 positions sufficiently similar in duties, training, expe-
23 rience and responsibilities, as determined by specifica-
24 tions, that the same qualifications, the same title and the
25 same schedule of compensation and benefits may be
26 equitably applied to each position in the group;

27 (f) "Classification plan" means the plan by which
28 positions in the classified service and classified-exempt
29 service have been allocated by class;

30 (g) "Classified-exempt service" means an employee
31 whose position satisfies the definitions for "class" and
32 "classify" but who is not covered under the civil service
33 system or employed by the board of regents;

34 (h) "Classified service" means an employee whose job
35 satisfies the definitions for "class" and "classify" and
36 who is covered under the civil service system;

37 (i) "Classify" means to group all positions in classes
38 and to allocate every position to the appropriate class in
39 the classification plan;

40 (j) "Director" means the head of the division of
41 personnel as appointed by section seven of this article;

42 (k) "Council" means the state personnel advisory
43 council created in section nine-a of this article;

44 (l) "Division" means the division of personnel herein
45 created;

46 (m) "Policymaking position" means a position in which
47 the person occupying it: (1) Acts as an advisor to, or
48 formulates plans for the implementation of broad goals
49 for, an administrator or the governor; (2) is in charge
50 of a major administrative component of the agency; and
51 (3) reports directly and is directly accountable to an
52 administrator or the governor;

- 53 (n) "Position" means a particular job which has been
54 classified based on specifications;
- 55 (o) "Secretary" means the secretary of the department
56 of administration created in section two, article one,
57 chapter five-f of this code;
- 58 (p) "Specification" means a description of a class of
59 position which defines the class, provides examples of
60 work performed and the minimum qualifications
61 required for employment; and
- 62 (q) "Veteran" means any person who has served in the
63 armed forces of the United States of America during
64 World War I (April 6, 1917-November 11, 1918), World
65 War II (December 7, 1941-December 31, 1946), the
66 Korean Conflict (June 27, 1950-January 31, 1955), the
67 Vietnam Conflict (August 5, 1964-May 7, 1975), or in a
68 campaign, expedition or conflict for which a campaign
69 badge has been authorized and received by such person,
70 and who has received a discharge under honorable
71 conditions from such service.

CHAPTER 170

(Com. Sub. for H. B. 2834—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 8, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, four, five, six, nine and ten, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections forty-two and seventy-one, article twenty-one, chapter eleven; to further amend said article twenty-one by adding thereto three new sections, designated sections twelve-b, sixty-one and sixty-two; to amend and reenact section twelve, article twenty-four of said chapter eleven; to amend and reenact section one, article one-f, chapter fifteen; to amend and reenact section four, article three, chapter

seventeen-a; to amend and reenact sections one, two and three, article nineteen, chapter eighteen; to amend and reenact article two-c, chapter twenty-one-a; and to amend and reenact section two, article six, chapter twenty-nine, all relating to military service personnel; updating terms relating to the division of veterans affairs; increasing the salary for the director of the division of veterans affairs; exempting combat pay received for Desert Shield Service; providing a military incentive tax credit for personal income tax liability; extending time period for performing certain acts under tax statutes; providing benefits for individuals performing Desert Shield Services; providing rules for income tax liability for individuals while in active military service; authorizing the tax commissioner to execute an agreement with the secretary of the treasury for mandatory withholding of tax; providing a military incentive tax credit for corporate income tax liability; allowing a twenty-four day leave of absence for active military service for national guard or military reserve personnel; providing limited exemption from motor vehicle certificate of title for military personnel and dependents; continuing an appropriation for educational opportunities for children of deceased military personnel, including children of military personnel killed in any hostile action, defining children; providing the correct designation of the division of veterans affairs; enacting the Military Incentive Program Act of 1991; providing legislative intent and purpose of the Military Incentive Program Act; providing definitions to include national guard members and reserve members; providing guidelines for availability of tax credits; providing restrictions and limitations regarding tax credit; providing for administration of programs; amending definitions for purposes of the civil service system.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, five, six, nine and ten, article one, chapter nine-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections forty-two and seventy-one, article twenty-one, chapter eleven be amended and reenacted; that

said article twenty-one be further amended by adding thereto three new sections, designated sections twelve-b, sixty-one and sixty-two; that section twelve, article twenty-four of said chapter eleven be amended and reenacted; that section one, article one-f, chapter fifteen be amended and reenacted; that section four, article three, chapter seventeen-a be amended and reenacted; that sections one, two and three, article nineteen, chapter eighteen be amended and reenacted; that article two-c, chapter twenty-one-a be amended and reenacted; and that section two, article six, chapter twenty-nine be amended and reenacted, all to read as follows:

Chapter

- 9A. Veterans' Affairs.
- 11. Taxation.
- 15. Public Safety.
- 17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.
- 18. Education.
- 21A. Unemployment Compensation.
- 29. Miscellaneous Boards and Officers.

CHAPTER 9A. VETERANS' AFFAIRS.

ARTICLE 1. DIVISION OF VETERANS' AFFAIRS.

- §9A-1-1. Creation and general purposes.
- §9A-1-2. Veterans' council; administration of division.
- §9A-1-4. Duties and functions of veterans' council; appointment of director; term of office; removal.
- §9A-1-5. Compensation of director; veterans' affairs officers, assistants and employees; payment to veterans' council members; traveling expenses; meetings of veterans' council.
- §9A-1-6. Oaths.
- §9A-1-9. Duties of division.
- §9A-1-10. Powers and duties of director.

§9A-1-1. Creation and general purposes.

- 1 A state agency to be known as the "West Virginia
- 2 division of veterans' affairs" is hereby created and
- 3 established within the department of military affairs
- 4 and public safety for the purpose of aiding, assisting,
- 5 counseling and advising, and looking after the rights
- 6 and interests of, all persons known as veterans who have
- 7 served in the armed forces of the United States in the
- 8 army, navy, marine corps, air force or coast guard as

9 defined by the laws of the United States and whose
10 separation therefrom has been other than dishonorable
11 and who are citizens and residents of this state, and the
12 widows, dependents and orphans, who are or have
13 become citizens and residents of this state, or all persons
14 known as veterans who have served in the armed forces
15 of the United States in the army, navy, marine corps,
16 air force or coast guard as defined by the laws of the
17 United States and whose separation therefrom has been
18 other than dishonorable.

§9A-1-2. Veterans' council; administration of division.

1 There shall be a "veterans' council" which shall consist
2 of seven members who shall be citizens and residents of
3 this state, who have served in and been honorably
4 discharged or separated under honorable conditions
5 from the armed forces of the United States and whose
6 service was within a time of war as defined by the laws
7 of the United States, either Public Law No. 2 — 73rd
8 Congress or Public Law No. 346 — 78th Congress, and
9 any and all amendments thereto. At least one member
10 of the council shall be a veteran of World War II, at least
11 one member of the council shall be a veteran of the
12 Korean Conflict and at least two members of the council
13 shall be veterans of the Vietnam era. The members of
14 the veterans' council shall be selected with special
15 reference to their ability and fitness to effectuate the
16 purposes of this article.

17 After having conducted a performance and fiscal
18 audit through its joint committee on government
19 operations, pursuant to section nine, article ten, chapter
20 four of this code, the Legislature hereby finds and
21 declares that the veterans' council should be continued
22 and reestablished. Accordingly, notwithstanding the
23 provisions of section four, article ten, chapter four of this
24 code, the veterans' council shall continue to exist until
25 the first day of July, one thousand nine hundred ninety-
26 four.

27 The West Virginia division of veterans' affairs shall
28 be administered by a director, and such veterans' affairs
29 officers, assistants and employees as may be deemed
30 advisable.

§9A-1-4. Duties and functions of veterans' council; appointment of director; term of office; removal.

1 It shall be the duty and function of the veterans'
2 council to determine the general administrative policies
3 of the division, to select at their first meeting in each
4 fiscal year commencing on the first day of July a
5 chairman to serve one year, to promulgate such rules
6 and regulations as may be necessary, to examine into the
7 efficiency of the division from time to time, to exercise
8 general supervision over the operations of the division,
9 to advise the governor and the Legislature with respect
10 to legislation affecting the interests of veterans, their
11 widows, dependents and orphans, to make annual
12 reports to the governor respecting the service of the
13 division, and to prescribe the duties of the director. Such
14 director shall have the same eligibility and qualifica-
15 tions prescribed for members of the veterans' council.
16 The governor shall appoint a director for a term of six
17 years, by and with the advice and consent of the Senate.
18 Before making such appointment, the governor shall
19 request the council of the West Virginia division of
20 veterans' affairs to furnish a full and complete report
21 concerning the qualifications and suitability of the
22 proposed appointee. The director shall be subject to
23 removal by the governor for cause, but shall have upon
24 his own request an open hearing before the governor on
25 the complaints or charges lodged against him. The
26 action of the governor shall be final. The director ex
27 officio shall be the executive secretary of the veterans'
28 council, keep the minutes of each meeting, and be in
29 charge of all records of the division.

§9A-1-5. Compensation of director, veterans' affairs officers, assistants and employees; payment to veterans' council members; traveling expenses; meetings of veterans' council.

1 The director shall receive a salary of thirty-two
2 thousand dollars per annum and necessary traveling
3 expenses incident to the performance of his or her
4 duties. The salaries of the veterans' affairs officers,

5 assistants and employees shall be fixed by the veterans'
6 council. The members of the veterans' council shall
7 receive no salary, but each member shall receive twenty-
8 five dollars for each day actually in attendance at a
9 meeting and actual expenses and traveling expenses
10 incurred in the performance of duties as a council
11 member under this article. The requisition for such
12 expenses and traveling expenses shall be accompanied
13 by a sworn and itemized statement, which shall be filed
14 with the auditor and permanently preserved as a public
15 record. The veterans' council shall hold its initial
16 meeting on the call of the governor, and thereafter shall
17 meet on the call of its chairman, except as otherwise
18 provided. With the exception of the first three meetings
19 of the veterans' council, none of which shall be of a
20 duration longer than two weeks each, for organizational
21 purposes, the veterans' council shall meet not more than
22 once every two months at such times as may be
23 determined by and upon the call of the chairman for a
24 period of not more than two days, unless there should
25 be an emergency requiring a special meeting or for a
26 longer period and so declared and called by the governor
27 or by the chairman with the approval of the governor.
28 A majority of the members of the veterans' council shall
29 constitute a quorum for the conduct of official business.

§9A-1-6. Oaths.

1 The members of the veterans' council, the director,
2 and the veterans' affairs officers, shall take and
3 subscribe to the oath prescribed by article four, section
4 five of the state constitution, before entering on their
5 duties. Their oaths shall be filed with the secretary of
6 state.

§9A-1-9. Duties of division.

1 The division of veterans' affairs of West Virginia
2 shall:

3 (1) Assist veterans, their widows, dependents and
4 orphans within the state, in properly presenting their
5 claims before the United States veterans' administra-
6 tion, its administrator, or any federal agency, the state
7 of West Virginia, or any of the several states of the

8 United States, when the claims arise out of service with
9 the armed forces of the United States as defined in
10 section one of this article;

11 (2) Contact all veterans' organizations in this state
12 through their duly elected or appointive officers to
13 effectuate the purposes of this article and aid in the
14 efficiency of the operations of the division;

15 (3) Render all possible and proper advice, assistance
16 and counsel to veterans, their families, and their
17 widows, dependents and orphans, within the state, and
18 furnish them information on compensation, allowances,
19 pensions, insurance, rehabilitation, hospitalization,
20 education, vocational training, or refresher or retraining
21 courses in education or training, employment, loans or
22 aid for the purchase, acquisition or construction of
23 homes, farms, farm equipment and business property,
24 preference in the purchase of property and preference
25 in employment, as provided or may be provided by any
26 federal act, any federal agency, this state or other states;

27 (4) Make careful inquiry into all claims presented for
28 payment out of the state treasury from any appropria-
29 tion made for the benefit of veterans, their widows,
30 dependents and orphans.

§9A-1-10. Powers and duties of director.

1 The director shall be the executive and administrative
2 head of the division, and as such shall have the power
3 and duty, subject to the provisions of section four hereof,
4 to:

5 (a) Supervise and put into effect the purposes and
6 provisions of this article and the rules and regulations
7 for the government of the division;

8 (b) Prescribe methods pertaining to investigations and
9 reinvestigations of all claims, and to the rights and
10 interests of all veterans, their widows, dependents and
11 orphans;

12 (c) Prescribe uniform methods of keeping all records,
13 and case records of the veterans, their widows, depend-
14 ents and orphans;

15 (d) Sign and execute, in the name of the state by "West
16 Virginia division of veterans' affairs," and by and with
17 the consent of the veterans' council, any contract or
18 agreement with the federal government or its agencies,
19 other states, subdivisions of this state, corporations,
20 associations, partnerships or individuals;

21 (e) Supervise the fiscal affairs and responsibilities of
22 the division;

23 (f) Organize the division to comply with the require-
24 ments of this article and with the standards required by
25 any federal act or any federal agency;

26 (g) Establish such regional or area offices throughout
27 the state as may be necessary to promote efficiency and
28 economy in administration;

29 (h) Make such reports as will comply with the
30 requirements of any federal act or federal agency and
31 the provisions of this article;

32 (i) Cooperate with the federal and state governments
33 for the more effective attainment of the purposes of this
34 article;

35 (j) Keep a complete and accurate record of all
36 proceedings; record and file all contracts and agree-
37 ments, and assume responsibility for the custody and
38 preservation of all papers and documents pertaining to
39 his or her office and the division;

40 (k) Prepare for the veterans' council the annual
41 reports to the governor of the condition, operation and
42 functioning of the division;

43 (l) Exercise any other powers necessary and proper to
44 standardize the work; to expedite the service and
45 business; to assure fair consideration of the rights and
46 interests, and claims of veterans, their widows, depend-
47 ents and orphans, and to promote the efficiency of the
48 division;

49 (m) Invoke any legal, equitable or special remedies for
50 the enforcement of his orders or the provisions of this
51 article;

52 (n) Appoint the veterans' affairs officers and heads of
53 divisions of the division, and of regional or area offices,
54 and employ such assistants and employees as may be
55 necessary for the efficient operation of the division; and

56 (o) Delegate to all or any of his appointees, assistants
57 or employees all powers and duties vested in the
58 director, except the power to sign and execute contracts
59 and agreements, but the director shall be responsible for
60 the acts of such appointees, assistants and employees.

CHAPTER 11. TAXATION.

Article

21. Personal Income Tax.

24. Corporation Net Income Tax.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12b. Combat pay exempt.

§11-21-42. Military incentive tax credit.

§11-21-61. Extension of time for performing certain acts due to Desert Shield service.

§11-21-62. Income taxes of members of armed forces on death.

§11-21-71. Requirement of withholding tax from wages.

§11-21-12b. Combat pay exempt.

1 Combat pay received for Desert Shield service, as
2 defined in section sixty-one of this article, which is
3 exempt from federal income tax, under Section 112 of
4 the Internal Revenue code, shall be exempt from the tax
5 imposed by this article.

§11-21-42. Military incentive tax credit.

1 Every employer entitled to receive a tax credit against
2 his West Virginia personal income tax liability as
3 provided in article two-c, chapter twenty-one-a of this
4 code shall receive the credit for the period and in the
5 amount specified in said article two-c. The state tax
6 commissioner shall provide by appropriate rule or
7 regulation for the reporting, filing and application of
8 claims of the tax credit provided for in a manner in
9 conformity with the legislative purpose as declared in
10 section two, article two-c, chapter twenty-one-a of this
11 code.

§11-21-61. Extension of time for performing certain acts due to Desert Shield service.

1 (a) *General rule.* — For purposes of applying this
2 article and article ten of this chapter with respect to the
3 tax liability (including any interest, penalty, additional
4 amount, or addition to tax) of any individual who
5 performed Desert Shield services, the period during
6 which such individual performed such services, and the
7 next one hundred eighty days thereafter, shall be
8 disregarded in determining whether any of the acts
9 referred to in subsection (b) were performed within the
10 time prescribed therefor.

11 (b) *Time for performing certain acts postponed by*
12 *reason of Desert Shield service.* — Whenever the general
13 rule specified in subsection (a) applies, it shall apply to
14 determine:

15 Whether any of the following acts was performed
16 within the time prescribed therefor;

17 (A) Filing any return of income under this article
18 (except income tax withheld at source);

19 (B) Payment of any income tax due under this article
20 (except income tax withheld at source), or any install-
21 ment thereof or of any other liability to this state in
22 respect thereof;

23 (C) Filing a petition for reassessment or refund of any
24 tax administered under article ten of this chapter
25 (including any interest, penalty, additional amount or
26 addition to tax);

27 (D) Allowance of a credit or refund of any tax
28 administered under article ten of this chapter (including
29 any interest, penalty, additional amount or addition to
30 tax);

31 (E) Filing a claim for credit or refund of any tax
32 administered under article ten of this chapter (including
33 any interest, penalty, additional amount or addition to
34 tax);

35 (F) Appealing any appealable decision of the tax
36 commissioner to the courts of this state, or for appealing

37 to the supreme court of appeals a circuit court decision
38 affirming, in whole or in part, the decision of the tax
39 commissioner;

40 (G) Assessment of any tax (including any penalty,
41 additional amount or addition to tax);

42 (H) Giving or making any notice or demand for the
43 payment of any tax administered under article ten of
44 this chapter (including any interest, penalty, additional
45 amount or addition to tax), or with respect to any
46 liability to this state in respect of any such tax;

47 (I) Collection by the tax commissioner, by levy or
48 otherwise, of any liability in respect of any tax admin-
49 istered under article ten of this chapter;

50 (J) Bringing suit by any officer on behalf of this state,
51 in respect of any liability in respect of any tax admin-
52 istered under article ten of this chapter;

53 (K) Any other act required or permitted under article
54 nine or ten of this chapter or under any article of this
55 chapter administered under said article ten, or specified
56 in regulations promulgated under this section by the tax
57 commissioner, in conformity with the provisions of
58 article three, chapter twenty-nine-a of this code.

59 (c) *Treatment of individuals performing Desert Shield*
60 *services.*

61 (1) *In general.* — Any individual who performed
62 Desert Shield service shall be entitled to the benefits of
63 this section.

64 (2) *Desert Shield service.* — For purposes of this
65 section, the term “Desert Shield service” means any
66 service in a unit of the armed forces of the United States
67 (as defined in Section 7701(a)(15) of the Internal
68 Revenue Code of 1986) or in support of any such unit
69 if:

70 (A) Such service is performed in the area designated
71 by the President of the United States as the “Persian
72 Gulf Desert Shield Area”;

73 (B) Such service is performed during any portion of

74 the period beginning the second day of August, one
75 thousand nine hundred ninety, and ending on the date
76 on which any portion of the area referred to in
77 subparagraph (A) is designated a combat zone pursuant
78 to Section 112 of the Internal Revenue Code of 1986; or

79 (C) Such service is performed during any portion of
80 the period that there is in effect a designation by the
81 President of the United States that the "Persian Gulf
82 Desert Shield Area" is a combat zone, pursuant to
83 Section 112 of the Internal Revenue code.

84 (3) *Hospitalization.* — An individual shall be treated
85 as performing Desert Shield services during any period
86 of continuous qualified hospitalization attributable to an
87 injury received while performing Desert Shield service.
88 The term "qualified hospitalization" means:

89 (A) Any hospitalization outside the United States; and

90 (B) Any hospitalization inside the United States,
91 except that not more than five years of hospitalization
92 may be taken into account under this subparagraph (B);
93 and this subparagraph shall not apply for purposes of
94 applying this section with respect to the spouse of an
95 individual entitled to the benefits of subsection (a) of this
96 section.

97 (d) *Special rules.*

98 (1) *Application to spouse.* — The provisions of this
99 section shall apply to the spouse of any individual
100 entitled to the benefits of subsection (a). The preceding
101 sentence shall not cause this section to apply for any
102 spouse for any taxable year beginning more than two
103 years after the date designated by the President of the
104 United States, under Section 112 of the Internal
105 Revenue Code, as the date of termination of combatant
106 activities in the Persian Gulf Desert Shield area.

107 (2) *Missing status.* — The period of service referred
108 to in subsection (c) shall include the period during which
109 an individual entitled to benefits under subsection (a) is
110 in missing status, within the meaning of Section
111 6013(f)(3) of the Internal Revenue Code of 1986.

112 (e) *Exceptions.*

113 (1) *Jeopardy assessments or collection.* — Notwith-
114 standing the provisions of subsection (a), if the tax
115 commissioner determines that collection of the amount
116 of any tax would be jeopardized by delay, the provisions
117 of subsection (a) shall not operate to stay the assessment
118 of such amount, or the collection of such amount by levy
119 or otherwise as authorized by law. There shall be
120 excluded from any amount assessed or collected pursu-
121 ant to this subsection the amount of interest, penalty,
122 additional amount and addition to the tax, if any, in
123 respect of the period disregarded under subsection (a).

124 (2) *Action taken before ascertainment of rights to*
125 *benefits.* — The assessment or collection of any tax
126 administered under article ten of this chapter may be
127 made, begun or prosecuted in accordance with law,
128 without regard to the provisions of subsection (a), unless
129 prior to such assessment, collection, action or proceeding
130 it is ascertained that the person concerned is entitled to
131 the benefits of subsection (a).

132 (3) Notwithstanding the provisions of paragraphs (1)
133 and (2), the provision of this subsection shall be applied
134 in conformity with the Soldiers' and Sailors' Civil Relief
135 Act.

136 (f) *Effective Date.* — The provisions of this section shall
137 be retroactive to the second day of August, one thousand
138 nine hundred ninety.

§11-21-62. Income taxes of members of armed forces on death.

1 (a) *General rule.* — In the case of any individual who
2 dies while in active service as a member of the armed
3 forces of the United States, if such death occurred while
4 serving in a combat zone (as determined under Section
5 112 of the Internal Revenue Code of 1986) or as a result
6 of wounds, disease or injury incurred while so
7 serving:

8 (1) Any tax imposed by this article shall not apply
9 with respect to the taxable year in which falls the date
10 of his or her death, or with respect to any prior taxable

11 year ending on or after the first day he or she served
12 in a combat zone after the first day of August, one
13 thousand nine hundred ninety; and

14 (2) Any tax under this article for taxable years
15 preceding those specified in paragraph (1) which is
16 unpaid at the date of his or her death (including interest,
17 additions to tax and additional amounts) shall not be
18 assessed and if assessed the assessment shall be abated
19 and if the assessment has been collected, the amount
20 collected shall be credited or refunded as an
21 overpayment.

22 (b) *Individuals in missing status.* — For purposes of
23 this section, in the case of an individual who was in a
24 missing status within the meaning of Section
25 6013(f)(3)(A) of the Internal Revenue Code of 1986, the
26 date of such individual's death shall be treated as being
27 not earlier than the date on which a determination of
28 such individual's death is made under section 556, Title
29 37 of the United States Code. Subsection (a)(1) shall not
30 apply for any taxable year beginning more than two
31 years after the date designated under Section 112 of the
32 Internal Revenue code as the date of termination of
33 combatant activities in a combat zone.

34 (c) *Certain military or civilian employees of the United*
35 *States dying as a result of injuries sustained overseas.*

36 (1) *In general.* — In the case of any individual who dies
37 while a military or civilian employee of the United
38 States, if such death occurs as a result of wounds or
39 injury which were incurred while the individual was a
40 military or civilian employee of the United States and
41 which were incurred outside the United States in a
42 terroristic or military action, any tax imposed by this
43 article shall not apply:

44 (A) With respect to the taxable year in which falls the
45 date of such individual's death; and

46 (B) With respect to any prior taxable year in the
47 period beginning with the last taxable year ending
48 before the taxable year in which the wounds or injury
49 were incurred.

50 (2) *Terroristic or military action.* — For purposes of
51 paragraph (1), the term “terroristic or military action”
52 means any action which is terroristic or military action
53 for purposes of Section 692 of the Internal Revenue Code
54 of 1986.

55 (d) *Effective date.* — The provisions of this section shall
56 apply to taxable years beginning after the thirty-first
57 day of December, one thousand nine hundred ninety.

§11-21-71. Requirement of withholding tax from wages.

1 (a) *General.* — Every employer maintaining an office
2 or transacting business within this state and making
3 payment of any wage taxable under this article to a
4 resident or nonresident individual shall deduct and
5 withhold from such wages for each payroll period a tax
6 computed in such manner as to result, so far as
7 practicable, in withholding from the employee’s wages
8 during each calendar year an amount substantially
9 equivalent to the tax reasonably estimated to be due
10 under this article resulting from the inclusion in the
11 employee’s West Virginia adjusted gross income of his
12 wages received during such calendar year. The method
13 of determining the amount to be withheld shall be
14 prescribed by the tax commissioner, with due regard to
15 the West Virginia withholding exemption of the em-
16 ployee. This section shall not apply to payments by the
17 United States for service in the armed forces of the
18 United States: *Provided*, That the tax commissioner may
19 execute an agreement with the secretary of the treasury,
20 as provided in 5 United States Code, §5517, for the
21 mandatory withholding of tax under this section on pay
22 to members of the national guard while participating in
23 exercises or performing duty under 32 United States
24 Code, §502, and on pay to members of the ready reserve
25 while participating in scheduled drills or training
26 periods or serving on active duty for training under 10
27 United States Code, §270(a).

28 (b) *Withholding exemptions.* — For purposes of this
29 section:

30 (1) An employee shall be entitled to the same number
31 of West Virginia withholding exemptions as the number

32 of withholding exemptions to which he is entitled for
33 federal income tax withholding purposes. An employer
34 may rely upon the number of federal withholding
35 exemptions claimed by the employee, except where the
36 employee claims a higher number of West Virginia
37 withholding exemptions.

38 (2) With respect to any taxable year beginning after
39 the thirty-first day of December, one thousand nine
40 hundred eighty-six, the amount of each West Virginia
41 exemption shall be two thousand dollars whether the
42 individual is a resident or nonresident.

43 (c) *Exception for certain nonresidents.* — If the income
44 tax law of another state of the United States or of the
45 District of Columbia results in its residents being
46 allowed a credit under section forty sufficient to offset
47 all taxes required by this article to be withheld from the
48 wages of an employee, the tax commissioner may by
49 regulation relieve the employers of such employees from
50 the withholding requirements of this article with
51 respect to such employees.

52 (d) *Effective date.* — The provisions of this section, as
53 amended in the year one thousand nine hundred eighty-
54 seven, shall apply to all taxable years beginning after
55 the thirty-first day of December, one thousand nine
56 hundred eighty-six.

ARTICLE 24. CORPORATION NET INCOME TAX.

PART I.

DEFINITIONS, IMPOSITION OF TAX AND RATE, AND EXEMPTIONS.

§11-24-12. Military incentive tax credit.

1 Every employer entitled to receive a tax credit against
2 its West Virginia corporate income tax liability as
3 provided in article two-c, chapter twenty-one-a of this
4 code shall receive the credit for the period and in the
5 amount specified in said article two-c of this chapter.
6 The state tax commissioner shall provide by appropriate
7 rule or regulation for the reporting, filing and applica-
8 tion of claims for the tax credit provided for in a manner
9 in conformity with the legislative purpose as declared
10 in section two, article two-c, chapter twenty-one-a of this
11 code.

CHAPTER 15. PUBLIC SAFETY.**ARTICLE 1F. PRIVILEGES AND PROHIBITIONS.****§15-1F-1. Leave of absence for public officials and employees for drills, parades, etc.**

1 All officers and employees of the state, or subdivisions
2 or municipalities thereof, who shall be members of the
3 national guard or any military reserve unit of the
4 United States armed services, shall be entitled to leave
5 of absence from their respective offices or employments
6 without loss of pay, status or efficiency rating, on the
7 days during which they shall be engaged in drills,
8 parades or other duty, during business hours ordered by
9 proper authority, or for field training or active service
10 of the state for a maximum period of thirty days in any
11 one calendar year. The term "without loss of pay" means
12 that the officer or employee shall continue to receive his
13 normal salary or compensation, notwithstanding the fact
14 that such officer or employee may have received other
15 compensation from federal or state sources during the
16 same period. Benefits of this section shall accrue to
17 individuals ordered or called to active duty by the
18 president for twenty-four working days after they report
19 for active service.

**CHAPTER 17A.
MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE,
AND ANTITHEFT PROVISIONS.****ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.****§17A-3-4. Application for certificate of title; tax for
privilege of certification of title; penalty for
false swearing.**

1 (a) Certificates of registration of any vehicle or
2 registration plates therefor, whether original issues or
3 duplicates, shall not be issued or furnished by the
4 division of motor vehicles or any other officer charged
5 with the duty, unless the applicant therefor already has
6 received, or at the same time makes application for and

7 is granted, an official certificate of title of the vehicle.
8 The application shall be upon a blank form to be
9 furnished by the division of motor vehicles and shall
10 contain a full description of the vehicle, which descrip-
11 tion shall contain a manufacturer's serial or identifica-
12 tion number or other number as determined by the
13 commissioner and any distinguishing marks, together
14 with a statement of the applicant's title and of any liens
15 or encumbrances upon the vehicle, the names and
16 addresses of the holders of the liens and any other
17 information as the division of motor vehicles may
18 require. The application shall be signed and sworn to
19 by the applicant.

20 (b) A tax is hereby imposed upon the privilege of
21 effecting the certification of title of each vehicle in the
22 amount equal to five percent of the value of said motor
23 vehicle at the time of such certification. If the vehicle
24 is new, the actual purchase price or consideration to the
25 purchaser thereof is the value of the vehicle; if the
26 vehicle is a used or secondhand vehicle, the present
27 market value at time of transfer or purchase is the value
28 thereof for the purposes of this section: *Provided*, That
29 so much of the purchase price or consideration as is
30 represented by the exchange of other vehicles on which
31 the tax herein imposed has been paid by the purchaser
32 shall be deducted from the total actual price or
33 consideration paid for the vehicle, whether the same be
34 new or secondhand; if the vehicle is acquired through
35 gift, or by any manner whatsoever, unless specifically
36 exempted in this section, the present market value of the
37 vehicle at the time of the gift or transfer is the value
38 thereof for the purposes of this section. No certificate of
39 title for any vehicle shall be issued to any applicant
40 unless the applicant has paid to the division of motor
41 vehicles the tax imposed by this section which is five
42 percent of the true and actual value of said vehicle
43 whether the vehicle is acquired through purchase, by
44 gift or by any other manner whatsoever except gifts
45 between husband and wife or between parents and
46 children: *Provided, however*, That the husband or wife,
47 or the parents or children previously have paid the tax
48 on the vehicles so transferred to the state of West

49 Virginia: *Provided further*, That the division of motor
50 vehicles may issue a certificate of registration and title
51 to an applicant if the applicant provides sufficient proof
52 to the division of motor vehicles that the applicant has
53 paid the taxes and fees required by this section to a
54 motor vehicle dealership that has filed bankruptcy
55 proceedings in the United States bankruptcy court and
56 the taxes and fees so required to be paid by the
57 applicant have been impounded due to the bankruptcy
58 proceedings: *And provided further*, That the applicant
59 makes an affidavit of the same and assigns all rights to
60 claims for money the applicant may have against the
61 motor vehicle dealership to the division of motor
62 vehicles.

63 The tax imposed by this section does not apply to
64 vehicles to be registered as Class H vehicles, or Class
65 S vehicles, as defined in section one, article ten of this
66 chapter, which are used or to be used in interstate
67 commerce. Nor does the tax imposed by this section
68 apply to the titling of Class B, Class K or Class E
69 vehicles registered at a gross weight of fifty-five
70 thousand pounds or more, or to the titling of Class C or
71 Class L semitrailers, full trailers, pole trailers, and
72 converter gear: *Provided*, That, if an owner of a vehicle
73 has previously titled the vehicle at a declared gross
74 weight of fifty-five thousand pounds or more and title
75 was issued without the payment of the tax imposed by
76 this section, then before the owner may obtain registra-
77 tion for the vehicle at a gross weight less than fifty-five
78 thousand pounds, the owner must surrender to the
79 commissioner the exempted registration, the exempted
80 certificate of title, and pay the tax imposed by this
81 section based upon the current market value of the
82 vehicle: *Provided, however*, That notwithstanding the
83 provisions of section nine, article fifteen, chapter eleven
84 of this code, the exemption from tax under this section
85 for Class B, Class K or Class E vehicles in excess of fifty-
86 five thousand pounds and Class C or Class L semitrail-
87 ers, full trailers, pole trailers and converter gear shall
88 not subject the sale or purchase of said vehicles to the
89 consumers sales tax. The tax imposed by this section
90 does not apply to titling of vehicles by a registered

91 dealer of this state for resale only, nor does the tax
92 imposed by this section apply to titling of vehicles by
93 this state or any political subdivision thereof, or by any
94 volunteer fire department or duly chartered rescue or
95 ambulance squad organized and incorporated under the
96 laws of the state of West Virginia as a nonprofit
97 corporation for protection of life or property. The total
98 amount of revenue collected by reason of this tax shall
99 be paid into the state road fund and expended by the
100 commissioner of highways for matching federal funds
101 allocated for West Virginia. In addition to the tax, there
102 shall be a charge of five dollars for each original
103 certificate of title or duplicate certificate of title so
104 issued: *Provided further*, That this state or any political
105 subdivision thereof, or any volunteer fire department, or
106 duly chartered rescue squad, is exempt from payment
107 of such charge.

108 Such certificate is good for the life of the vehicle, so
109 long as the same is owned or held by the original holder
110 of such certificate, and need not be renewed annually,
111 or any other time, except as herein provided.

112 If, by will or direct inheritance, a person becomes the
113 owner of a motor vehicle and the tax herein imposed
114 previously has been paid, to the division of motor
115 vehicles, on that vehicle, he or she is not required to pay
116 such tax.

117 A person who has paid the tax imposed by this section
118 is not required to pay the tax a second time for the same
119 motor vehicle, but is required to pay a charge of five
120 dollars for the certificate of retitling of that motor vehicle,
121 except that the tax shall be paid by the person when the
122 title to the vehicle has been transferred either in this
123 or another state from such person to another person and
124 transferred back to such person.

125 (c) Notwithstanding any provisions of this code to the
126 contrary, the owners of trailers, semitrailers, recrea-
127 tional vehicles and other vehicles not subject to the
128 certificate of title tax prior to the enactment of this
129 chapter are subject to the privilege tax imposed by this
130 section: *Provided*, That the certification of title of any

131 recreational vehicle owned by the applicant on the
132 thirtieth day of June, one thousand nine hundred eighty-
133 nine, is not subject to the tax imposed by this section:
134 *Provided, however,* That mobile homes, house trailers,
135 modular homes and similar nonmotive propelled vehi-
136 cles, except recreational vehicles, susceptible of being
137 moved upon the highways but primarily designed for
138 habitation and occupancy, rather than for transporting
139 persons or property, or any vehicle operated on a
140 nonprofit basis and used exclusively for the transporta-
141 tion of mentally retarded or physically handicapped
142 children when the application for certificate of registra-
143 tion for such vehicle is accompanied by an affidavit
144 stating that such vehicle will be operated on a nonprofit
145 basis and used exclusively for the transportation of
146 mentally retarded and physically handicapped children,
147 are not subject to the tax imposed by this section, but
148 are taxable under the provisions of articles fifteen and
149 fifteen-a, chapter eleven of this code.

150 (d) Any person making any affidavit required under
151 any provision of this section, who knowingly swears
152 falsely, or any person who counsels, advises, aids or
153 abets another in the commission of false swearing, is on
154 the first offense guilty of a misdemeanor, and, upon
155 conviction thereof, shall be fined not more than five
156 hundred dollars or be imprisoned in the county jail for
157 a period not to exceed six months, or, in the discretion
158 of the court, both fined and imprisoned. For a second
159 or any subsequent conviction within five years any such
160 person is guilty of a felony, and, upon conviction thereof,
161 shall be fined not more than five thousand dollars or be
162 imprisoned in the penitentiary for not less than one year
163 nor more than five years or, in the discretion of the
164 court, fined and imprisoned.

165 (e) Notwithstanding any other provisions of this
166 section, military service personnel stationed outside
167 West Virginia, or their dependents who possess a motor
168 vehicle with valid registration, shall be exempt from the
169 provisions of this article for a period of nine months
170 from the date that such military service personnel
171 returns to this state or the date such military service

172 personnel's dependent returns to this state whichever is
173 later.

CHAPTER 18. EDUCATION.

ARTICLE 19. EDUCATIONAL OPPORTUNITIES FOR CHILDREN OF DECEASED SOLDIERS, SAILORS, MARINES AND AIRMEN.

§18-19-1. Appropriation to provide educational opportunities.

§18-19-2. Eligibility of applicant for benefits; application forms; preference.

§18-19-3. No tuition fees to be charged; how funds to be expended; cessation of allowances.

§18-19-1. Appropriation to provide educational opportunities.

1 For the purpose of providing educational opportunities
2 for the children of those who served in the army,
3 navy or marine corps of the United States during the
4 world war from April sixth, one thousand nine hundred
5 seventeen, to July second, one thousand nine hundred
6 twenty-one, or served in the armed forces of the United
7 States of America at any time between December first,
8 one thousand nine hundred forty-one, and the declara-
9 tion of peace by the Congress of the United States, or
10 served in the armed forces of the United States of
11 America at any time between June twenty-seventh, one
12 thousand nine hundred fifty, and January thirty-first,
13 one thousand nine hundred fifty-five, or served in the
14 armed forces of the United States of America at any
15 time between August fifth, one thousand nine hundred
16 sixty-four, and May seventh, one thousand nine hundred
17 seventy-five, all dates inclusive, and who were killed in
18 action or have died or may hereafter die from disease
19 or disability resulting from such war service, there shall
20 be appropriated from the state fund general revenue the
21 sum of at least five thousand dollars for each fiscal year
22 commencing July first and ending on June thirty of each
23 year of the next biennium to be used for the benefit of
24 such children while attending state education or
25 training institutions. This benefit also shall be given to
26 children of a service member killed during hostile
27 actions as defined by the agency administering this
28 section. The term "children" as used in this article shall
29 include any child of a veteran who has been legitimized

30 by operation of law prior to the veteran's demise.

§18-19-2. Eligibility of applicant for benefits; application forms; preference.

1 To be eligible for the benefits of this article, said
2 children must be at least sixteen and not more than
3 twenty-two years of age and have had their domiciles
4 in this state for at least twelve months preceding their
5 application for said benefits. Such application shall be
6 made to, and upon forms provided by, the West Virginia
7 division of veterans affairs, which division shall
8 determine the eligibility of those who make such
9 application and the yearly amount to be allotted each
10 applicant, which amount in the discretion of the division
11 may vary from year to year, but shall not exceed the
12 sum of five hundred dollars in any one year. In selecting
13 those to receive the benefits of this article, preference
14 shall be given those who are otherwise financially
15 unable to secure said educational opportunities and to
16 those whose parent was domiciled in this state during
17 the period of such parent's war service.

§18-19-3. No tuition fees to be charged; how funds to be expended; cessation of allowances.

1 No tuition fees shall be charged such applicants
2 attending any state education or training institution,
3 and the funds herein appropriated shall be expended by
4 said West Virginia division of veterans affairs only for
5 matriculation fees, board, room rent, books, supplies and
6 other necessary living expenses of such children. Said
7 division is charged with the duty of disbursing the funds
8 herein provided and shall draw its requisitions upon the
9 auditor for that purpose. In the discretion of said
10 division, such requisitions may be made payable to said
11 education or training institutions or to those furnishing
12 to said children board, room rent, books, supplies and
13 other necessary living expenses, the division being first
14 satisfied as to the correctness and amounts of such
15 expenditures. Should any child withdraw from any such
16 institution, all allowances to such child shall cease. No
17 member or employee of said division shall receive any

18 additional compensation for the services herein re-
19 quired.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 2C. MILITARY INCENTIVE PROGRAM.

§21A-2C-1. Short title.

§21A-2C-2. Declaration of legislative intent and purpose.

§21A-2C-3. Definitions.

§21A-2C-4. Tax credit; eligibility; amount.

§21A-2C-5. Restrictions and limitations regarding tax credit.

§21A-2C-6. Program administration.

§21A-2C-1. Short title.

1 This article shall be known and may be cited as the
2 "Military Incentive Program Act of 1991."

§21A-2C-2. Declaration of legislative intent and purpose.

1 The Legislature of West Virginia hereby recognizes
2 that disabled veterans and economically disadvantaged
3 veterans of the Vietnam era and of the Korean conflict,
4 members of the West Virginia national guard and the
5 reserve forces of the United States have made sacrifices
6 which merit preferential employment treatment in both
7 the public and private sectors. Economically disadvan-
8 taged and disabled veterans traditionally suffer a
9 disproportionately higher unemployment rate than that
10 of nonveterans of similar age and skills. Members of the
11 West Virginia national guard and reserve forces of the
12 United States who are called upon to leave their jobs to
13 perform military obligations are frequently placed in
14 conflict with their employers and as such are frequently
15 discriminated against by prospective employers. It is the
16 intent and purpose of the Legislature to encourage the
17 employment of these veterans and members of the guard
18 and reserve forces in the private sector by providing tax
19 credits for private sector employers who employ
20 economically disadvantaged Vietnam era and Korean
21 conflict veterans, disabled veterans, unemployed
22 members of the West Virginia national guard and
23 unemployed members of the reserve forces of the United
24 States generally.

§21A-2C-3. Definitions.

1 For the purposes of this article:

2 (a) "Active duty" means full-time duty in the armed
3 forces, other than duty for training in the reserves or
4 national guard. Any period of duty for training in the
5 reserves or national guard, including authorized travel,
6 during which an individual was disabled from a disease
7 or injury incurred or aggravated in line of duty, is
8 considered "active duty."

9 (b) "Economically disadvantaged" means a person
10 who:

11 (1) Receives, or is a member of a family which
12 receives, cash welfare payments under a federal, state
13 or local welfare program;

14 (2) Has, or is a member of a family which has,
15 received a total family income for the six months prior
16 to application which, in relation to family size, was not
17 in excess of the higher of:

18 (i) The poverty level determined in accordance with
19 criteria established by the federal office of management
20 and budget; or

21 (ii) Seventy percent of the lower living standard
22 income level;

23 (3) Is receiving food stamps pursuant to the food
24 stamp act of one thousand nine hundred seventy-seven;

25 (4) Is a foster child on behalf of whom state or local
26 government payments are made; or

27 (5) Is an adult handicapped individual whose own
28 income meets the requirements of subdivisions (1) and
29 (2) of this subsection, but who is a member of a family
30 whose income does not meet such requirements.

31 (c) "Korean conflict veteran" means a person who
32 served in the armed services of the United States at
33 least one day during the period of time beginning the
34 twenty-seventh day of June, one thousand nine hundred
35 fifty, and extending through the thirty-first day of
36 January, one thousand nine hundred fifty-five.

37 (d) "National guard member" means a member of any
38 component of the West Virginia national guard.

39 (e) "Reserve member" means a member of any
40 component of the reserve forces of the United States.

41 (f) "Veteran" means a member of the United States
42 armed forces who:

43 (1) Served on active duty for a period of more than
44 one hundred eighty days and was discharged or released
45 therefrom with other than a dishonorable discharge; or

46 (2) Was discharged or released from active duty
47 because of a service-connected disability.

48 (g) "Vietnam era veteran" means a person who served
49 in the armed services of the United States at least one
50 day during the period of time beginning the fifth day
51 of August, one thousand nine hundred sixty-four, and
52 extending through the seventh day of May, one thousand
53 nine hundred seventy-five.

§21A-2C-4. Tax credit; eligibility; amount.

1 (a) Each person, partnership or corporation which
2 employs an economically disadvantaged Vietnam era or
3 Korean conflict veteran or any disabled veteran, or an
4 unemployed member of the West Virginia national
5 guard or a member of the reserve forces of the United
6 States for a continuous period of one year, except as
7 otherwise provided in this article, shall be entitled to an
8 appropriate tax credit for each such individual so
9 employed. In the case of a person or partnership so
10 employing such individuals, the tax credit provided for
11 in this section shall be applied against the employer's
12 personal income tax liability. In the case of a corpora-
13 tion so employing such individuals, the tax credit
14 provided for in this section shall be applied against the
15 corporation's corporate net income tax liability. This tax
16 credit shall be nonassignable and may not exceed an
17 employer's total tax liability with respect to the specific
18 tax against which the tax credit is required to be
19 applied.

20 (b) The amount of the tax credit allowed under

21 subsection (a) of this section shall be an amount equal
22 to the following:

23 (1) For each economically disadvantaged Vietnam era
24 or Korean conflict veteran employed as described in
25 subsection (a), the amount of the tax credit allowed shall
26 be thirty percent of the employee's wage base. For the
27 purposes of this section, the employee's wage base is the
28 first five thousand dollars in wages or compensation
29 actually paid to the employee by the employer;

30 (2) For each disabled veteran employed as described
31 in subsection (a), the amount of the tax credit allowed
32 shall be a percentage equal to the percentage of
33 disability suffered by the veteran multiplied by the
34 employee's wage base. The employee's wage base is the
35 same as provided in subdivision (1) of this subsection.
36 The percentage of disability referred to in this subdivi-
37 sion means the percentage of compensation for service
38 connected disability as determined by the United States
39 department of veterans affairs; and

40 (3) For each member of the West Virginia national
41 guard or member of the reserve forces of the United
42 States employed as described in subsection (a), the
43 amount of the tax credit allowed shall be twenty-five
44 percent of the employee's wage base. For the purpose
45 of this section, the employee's wage base is the first five
46 thousand dollars in wages or compensation actually paid
47 to the employee by the employer.

§21A-2C-5. Restrictions and limitations regarding tax credit.

1 (a) An employer may not claim a tax credit provided
2 for in this article for any individual employed for less
3 than a continuous period of one year, unless:

4 (1) The individual voluntarily leaves employment with
5 the employer;

6 (2) The individual becomes totally disabled and unable
7 to continue his employment; or

8 (3) The individual is terminated for good cause shown.

9 In the event that the individual is employed for less.
10 than a one continuous year period due to circumstances

11 enumerated in subdivision (1), (2) or (3) above, the
12 employer shall be entitled to a partial tax credit in a
13 proportional amount corresponding to the ratio of the
14 time period during which the veteran was actually
15 employed to the one-year period required for a full tax
16 credit multiplied by the amount of the full tax which
17 would have accrued to the employer had the individual's
18 employment continued for a full year.

19 (b) An employer may not claim tax credit provided for
20 in this article for any individual who is employed and
21 displaces a person already employed. In addition, no tax
22 credit may be claimed for the employment of any
23 individual for whom the employer is receiving job
24 training payments from either the federal or state
25 government. Nothing in this section prohibits an
26 employer from receiving tax credits from both the
27 federal and state governments under similar targeted
28 jobs programs if the employer is otherwise qualified to
29 receive both.

***§21A-2C-6. Program administration.**

1 The program established by this article shall be
2 conducted primarily under the direction of the
3 employment services section of the bureau of employ-
4 ment programs or its successor agency and the West
5 Virginia national guard. Reserve forces units may also
6 verify through approved vouchers, eligibility of reserve
7 members to participate in this program. Each individ-
8 ual who qualifies under this article for participation in
9 this program shall be given, upon request, a voucher
10 certifying that the individual is eligible for participation
11 in the program described in this article. The voucher
12 shall be in a form prescribed by the commissioner of
13 employment programs and the adjutant general, and
14 they may conduct such investigations and collect such
15 data as they deem necessary to ensure that each
16 individual applying for the voucher is actually qualified
17 for participation in the program.

18 When an employer employs an eligible individual who
19 presents the voucher herein provided for, the employer

*Clerk's Note: This section was also amended by S. B. 132 (Chapter 16), which passed prior to this act.

20 shall submit the voucher along with basic information
21 to the issuing agency as may be required for participa-
22 tion in this program. Each year, the issuing agency shall
23 certify to the state tax commissioner a list of employers
24 who may be qualified to receive a tax credit under this
25 program. In order to receive the appropriate tax credit,
26 an employer must file for the tax credit provided for
27 under this article as required by section forty-two,
28 article twenty-one, chapter eleven of this code or by
29 section twelve, article twenty-four, chapter eleven of this
30 code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS

ARTICLE 6. CIVIL SERVICE SYSTEM.

*§29-6-2. Definition of terms.

1 As used in this article, unless the context indicates
2 otherwise, the term:

3 (a) "Administrator" means any person who fills a
4 statutorily created position within or related to an
5 agency or board (other than a board member) and who
6 is designated by statute as commissioner, deputy
7 commissioner, assistant commissioner, director, chancel-
8 lor, chief, executive director, executive secretary,
9 superintendent, deputy superintendent or other admi-
10 nistrative title, however designated;

11 (b) "Agency" means any administrative unit of state
12 government, including any authority, board, bureau,
13 commission, committee, council, division, section or
14 office;

15 (c) "Appointing authority" means a person or group
16 of persons authorized by an agency to make appoint-
17 ments to positions in the classified or classified-exempt
18 service;

19 (d) "Board" means the state personnel board created
20 by section six of this article;

21 (e) "Class" or "class of positions" means a group of
22 positions sufficiently similar in duties, training, exper-

*Clerk's Note: This section was also amended by S. B. 69 (Chapter 169), which passed prior to this act.

23 ience and responsibilities, as determined by specifica-
24 tions, that the same qualifications, the same title and the
25 same schedule of compensation and benefits may be
26 equitably applied to each position in the group;

27 (f) "Classification plan" means the plan by which
28 positions in the classified service and classified-exempt
29 service have been allocated by class;

30 (g) "Classified-exempt service" means an employee
31 whose position satisfies the definitions for "class" and
32 "classify" but who is not covered under the civil service
33 system or employed by the higher education governing
34 boards;

35 (h) "Classified service" means an employee whose job
36 satisfies the definitions for "class" and "classify" and
37 who is covered under the civil service system;

38 (i) "Classify" means to group all positions in classes
39 and to allocate every position to the appropriate class in
40 the classification plan;

41 (j) "Director" means the head of the division of
42 personnel as appointed by section seven of this article;

43 (k) "Council" means the state personnel advisory
44 council created in section nine-a of this article;

45 (l) "Division" means the division of personnel herein
46 created;

47 (m) "Policymaking position" means a position in which
48 the person occupying it (1) acts as an advisor to, or
49 formulates plans for the implementation of broad goals
50 for an administrator or the governor, (2) is in charge of
51 a major administrative component of the agency and (3)
52 reports directly and is directly accountable to an
53 administrator or the governor;

54 (n) "Position" means a particular job which has been
55 classified based on specifications;

56 (o) "Secretary" means the secretary of the department
57 of administration created in section two, article one,
58 chapter five-f of this code;

59 (p) "Specification" means a description of a class of
60 position which defines the class, provides examples of

61 work performed and the minimum qualifications
62 required for employment;

63 (q) "Veteran" means any person who has served in the
64 armed forces of the United States of America during
65 World War I (April 6, 1917-November 11, 1918), World
66 War II (December 7, 1941-December 31, 1946), the
67 Korean Conflict (June 27, 1950-January 31, 1955), the
68 Vietnam Conflict (August 5, 1964-May 7, 1975), or in a
69 campaign, expedition or conflict for which a campaign
70 badge has been authorized and received by such person,
71 and who has received a discharge under honorable
72 conditions from such service.

CHAPTER 171

(Com. Sub. for S. B. 443—By Senator Holliday)

[Passed March 9, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section twenty-two, article two, chapter three 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-two-a; to amend and reenact section one, article three, chapter seventeen of said code; and to amend and reenact section eight, article two, chapter seventeen-b of said code, all relating to the registration of voters; increasing motor vehicle registration fees; creating the combined voter registration and driver's license fund; specifying how the proceeds of such fund are to be expended; setting forth procedure for registration in the office of the clerk of the county commission; authorizing the clerk to change registration records; establishing duties of clerk during biennial checkups; removing the mandate that clerks establish certain temporary registration offices and the requirements therefor; permitting clerks to establish certain temporary registration offices; clerk to solicit public service advertising of registration offices; when clerk to cancel registrations; certification to the secretary of state; authorizing county commission to direct clerk to

increase availability of registration; requiring the division of motor vehicles and the department of public safety to provide voter registration forms to persons seeking a driver's license, a renewal or a correction thereof; authorizing employees of such division or department to administer oaths; when completed forms to be forwarded to appropriate county clerks; establishing the effective date of registration; authorizing the secretary of state to promulgate rules; requiring that fifty cents of every driver's license fee be paid into the combined voter registration and driver's license fund; and increasing the fee for the issuance of a driver's license by fifty cents.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article two, chapter three 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-two-a; that section one, article three, chapter seventeen of said code be amended and reenacted; and that section eight, article two, chapter seventeen-b of said code be amended and reenacted, all to read as follows:

Chapter

3. Elections.

17. Roads and Highways.

17B. Motor Vehicle Operators' and Chauffeurs' Licenses.

CHAPTER 3. ELECTIONS.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons; temporary registration offices.

§3-2-22a. Registration at driver's license facilities.

§3-2-22. Registration in clerk's office; cancellation of registrations of deceased persons; temporary registration offices.

1 The clerk or any deputy clerk of the county commis-
 2 sion shall register any qualified person as a voter. The
 3 clerk or deputy shall first require valid identification
 4 and proof of age, and inquire and attempt to establish

5 whether the voter resides within the limits of a
6 municipality using the map provided by the municipal-
7 ity in accordance with section five, article one of this
8 chapter. The clerk or deputy clerk shall have the person
9 registering fill in and complete the prescribed voter
10 registration form for county-state permanent registra-
11 tion. If the person resides within the limits of a
12 municipality for which a separate registration file is
13 kept, the clerk or deputy shall also have the person
14 complete the form for municipal registration. The
15 registrant shall sign the form or forms under oath or
16 affirmation. The clerk, upon proper proof, may alter,
17 amend, correct or cancel the registration record of any
18 voter. Such registration or alteration, amendment,
19 correction or cancellation of registration records shall be
20 carried on throughout the year.

21 During the biennial checkup period of every even-
22 numbered year, the clerk or deputy clerk shall visit
23 every public or private institution, excluding hospitals,
24 in which reside aged, infirm, disabled or chronically ill
25 persons, and every high school to register qualified
26 voters. The clerk may establish temporary registration
27 offices, to register qualified persons or to alter, amend,
28 correct or cancel such registration records. The clerk of
29 the county commission shall solicit public service
30 advertising of such registration offices and times on
31 radio, television and newspapers serving that county.

32 Within fifteen days following receipt of a death
33 certificate from the state or local registrar of vital
34 statistics or the publication in a newspaper of the county
35 of an obituary clearly identifying a deceased person by
36 name, residence and age, the clerk of the county
37 commission shall cancel the voter registration, if any, of
38 the person shown to be deceased by such certificate or
39 obituary.

40 Sixty days prior to a general election, the clerk of the
41 county commission shall review each death certificate
42 received and shall cancel the voter registration, if any,
43 of each deceased person whose voter registration has not
44 previously been canceled. By the forty-fifth day prior to
45 a general election each clerk of a county commission

46 shall certify to the secretary of state that he or she has
47 performed the duty required by this paragraph.

48 If found necessary, the county commission may order
49 and direct the clerk of the county commission to
50 maintain additional office hours in the evening or at
51 other proper times and places for accommodation of
52 voter registration.

§3-2-22a. Registration at driver's license facilities.

1 (a) Commencing on the first day of July, one thousand
2 nine hundred ninety-one, the division of motor vehicles
3 and the department of public safety shall provide each
4 qualified elector who applies in person for the issuance,
5 renewal or correction of any type of driver's license or
6 identification, in accordance with the provisions of
7 article two, chapter seventeen-b of this code, the
8 opportunity to complete a voter registration form
9 regardless of that person's voting precinct or county of
10 residence in the state.

11 (b) For purposes of this section, each employee
12 authorized by the division of motor vehicles or depart-
13 ment of public safety to provide voter registration forms
14 is hereby authorized to administer the oath prescribed
15 on the form.

16 (c) Completed voter registration forms received by the
17 division of motor vehicles or by the department of public
18 safety shall be forwarded to the secretary of state on a
19 weekly basis, and the secretary of state shall then
20 forward the registrations to the appropriate county
21 clerk's office on a weekly basis. Upon receipt of a voter
22 registration form, the county clerk shall determine if the
23 form meets the requirements for registration. If the
24 county clerk finds that the form meets the requirements
25 for registration, the registration shall be deemed to be
26 effective on the date that it was made at the division of
27 motor vehicles or department of public safety. If it does
28 not meet the requirements, the county clerk shall
29 immediately notify the applicant of the information
30 required and the registration shall be deemed to be
31 effective on the date that the additional information is
32 received by the county clerk.

33 (d) Fifty cents of each license fee collected pursuant
34 to the provisions of section one, article three, chapter
35 seventeen of this code shall be paid into the state
36 treasury to the credit of a special revenue fund to be
37 known as the "combined voter registration and driver's
38 licensing fund", which is hereby created. The moneys so
39 credited to such fund may be used by the secretary of
40 state solely for:

41 (1) Printing and distribution of combined driver's
42 license application and voter registration forms, or for
43 the printing of voter registration forms to be used in
44 conjunction with driver's license applications.

45 (2) Postage and mailing costs of returning completed
46 voter registrations to the appropriate state or county
47 election official.

48 (3) Postage and mailing costs incurred by the clerk of
49 the county commission for sending a receipt of voter
50 registration to each person who registers to vote using
51 the combined licensing and voter registration
52 procedure.

53 (4) Employment of personnel solely for the purpose of
54 issuing driver's licenses and offering voter registration
55 services or the payment of the portion of such personnel
56 costs apportioned to such duties.

57 (5) Start-up costs associated with preparing the
58 computer programming relating to increased licensing
59 fees and the collection thereof.

60 The secretary of state is authorized to expend or
61 distribute funds to the respective agencies and counties
62 for the reimbursement of actual costs incurred for the
63 purposes set forth in this subsection.

64 (e) The secretary of state may promulgate rules
65 pursuant to the provisions of chapter twenty-nine-a of
66 this code to provide for the administration of this
67 registration program.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 3. STATE ROAD FUND.

§17-3-1. What constitutes fund; payments into fund; use of money in fund.

1 There shall be a state road fund, which shall consist
2 of the proceeds of all state license taxes imposed upon
3 automobiles or other motor or steam driven vehicles; the
4 registration fees imposed upon all owners, chauffeurs,
5 operators and dealers in automobiles or other motor
6 driven vehicles; all sums of money which may be
7 donated to such fund; all proceeds derived from the sale
8 of state bonds issued pursuant to any resolution or act
9 of the Legislature carrying into effect the "Better Roads
10 Amendment" to the constitution of this state, adopted in
11 the month of November, one thousand nine hundred
12 sixty-four, except that the proceeds from the sale of
13 these bonds shall be kept in a separate and distinct
14 account in the state road fund; all moneys and funds
15 appropriated to it by the Legislature; and all moneys
16 allotted or appropriated by the federal government to
17 this state for road construction and maintenance
18 pursuant to any act of the Congress of the United States;
19 the proceeds of all taxes imposed upon and collected
20 from any person, firm or corporation and of all taxes
21 or charges imposed upon and collected from any county,
22 district or municipality for the benefit of such fund; the
23 proceeds of all judgments, decrees or awards recovered
24 and collected from any person, firm or corporation for
25 damages done to, or sustained by, any of the state roads
26 or parts thereof; all moneys recovered or received by
27 reason of the violation of any contract respecting the
28 building, construction or maintenance of any state road;
29 all penalties and forfeitures imposed, recovered or
30 received by reason thereof; and any and all other moneys
31 and funds appropriated to, imposed and collected for the
32 benefit of such fund, or collected by virtue of any statute
33 and payable to such fund: *Provided*, That notwithstanding
34 any provisions of this code to the contrary, fifty cents
35 of every license fee paid pursuant to the provisions of
36 subdivision (2), subsection (a), section eight, article two,
37 chapter seventeen-b of this code shall be paid to the
38 special fund established pursuant to the provisions of
39 subsection (d), section twenty-two-a, article two, chapter
40 three of this code.

41 When any money is collected from any of the sources
42 aforesaid, it shall be paid into the state treasury by the
43 officer whose duty it is to collect and account for the
44 same, and credited to the state road fund, and shall be
45 used only for the purposes named in this chapter, that
46 is to say: (a) To pay the principal and interest due on
47 all state bonds issued for the benefit of said fund, and
48 set aside and appropriated for that purpose; (b) to pay
49 the expenses of the administration of the road depart-
50 ment; and (c) to pay the cost of maintenance, construc-
51 tion, reconstruction and improvement of all state roads.

CHAPTER 17B. MOTOR VEHICLE OPERATORS' AND CHAUFFEURS' LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-8. Issuance and contents of licenses; fees.

1 (1) The division shall, upon payment of the required
2 fee, issue to every applicant qualifying therefor a
3 driver's license, or motorcycle-only license. Each license
4 shall contain a coded number assigned to the licensee,
5 the full name, date of birth, residence address, a brief
6 description and a color photograph of the licensee and
7 either a facsimile of the signature of the licensee or a
8 space upon which the signature of the licensee shall be
9 written with pen and ink immediately upon receipt of
10 the license. No license shall be valid until it has been
11 so signed by the licensee. A driver's license which is
12 valid for operation of a motorcycle shall contain a
13 motorcycle endorsement. The division shall use such
14 process or processes in the issuance of licenses that will,
15 insofar as possible, prevent any alteration, counterfeit-
16 ing, duplication, reproduction, forging or modification
17 of, or the superimposition of a photograph on, such
18 license.

19 (2) The fee for the issuance of a driver's license shall
20 be ten dollars and fifty cents. Fifty cents of each such
21 fee shall be deposited in the "combined voter registra-
22 tion and driver's licensing fund", established pursuant
23 to the provisions of section twenty-two-a, article two,
24 chapter three of this code. The one-time only additional

25 fee for adding a motorcycle endorsement to a driver's
26 license shall be five dollars. The fee for issuance of a
27 motorcycle-only license shall be ten dollars. The fees for
28 the motorcycle endorsement or motorcycle-only license
29 shall be paid into a special fund in the state treasury
30 known as the motorcycle safety fund as established in
31 section seven, article one-d of this chapter.

32 (3) The division of motor vehicles shall mark any
33 license which is reissued following a suspension of a
34 person's license to operate a motor vehicle in this state
35 with the type of violation for which the original license
36 was suspended and shall indicate the date of the
37 violation. For purposes of this section, any conviction
38 under the provisions of subsections (a) and (b) of the
39 prior enactment of section two, article five, chapter
40 seventeen-c of this code which offense was committed
41 within a period of five years immediately preceding the
42 effective date of the present section two, article five,
43 chapter seventeen-c of this code, shall be treated as a
44 violation to which this section is applicable and revoca-
45 tions based on such convictions shall be marked on
46 licenses which are hereafter issued.

CHAPTER 172

(S. B. 89—By Senators Hawse, Blatnik, Anderson and Minard)

[Passed February 25, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact section three, article eight, chapter sixty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to licenses; fees; general restrictions; and creating a West Virginia wine retailers license.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8. SALE OF WINES.

§60-8-3. Licenses; fees; general restrictions.

1 (a) Except as to farm wineries as defined by section
2 five-a, article one of this chapter, no person may engage
3 in business in the capacity of a distributor, retailer or
4 private wine restaurant without first obtaining a license
5 from the commissioner, nor shall a person continue to
6 engage in any such activity after his license has expired,
7 been suspended or revoked. No person may be licensed
8 simultaneously as a distributor and a retailer, as a
9 distributor and a private wine restaurant, or as a
10 retailer and a private wine restaurant.

11 (b) The commissioner shall collect an annual fee for
12 licenses issued under this article, as follows:

13 (1) Twenty-five hundred dollars per year for a
14 distributor's license and each separate warehouse or
15 other facility from which a distributor sells, transfers
16 or delivers wine shall be separately licensed and there
17 shall be collected with respect to each such location the
18 annual license fee of twenty-five hundred dollars as
19 herein provided.

20 (2) One hundred fifty dollars per year for a retailer's
21 license.

22 (3) Fifty dollars per year for a wine tasting license.

23 (4) Fifty dollars for each sales representative of or
24 employed by a licensed distributor.

25 (5) Two hundred fifty dollars per year for a private
26 wine restaurant license, and each separate restaurant
27 from which a licensee sells wine shall be separately
28 licensed and there shall be collected with respect to each
29 such location the annual license fee of two hundred fifty
30 dollars as herein provided.

31 (6) Twenty-five dollars per year for a West Virginia
32 wine retailers license, and each separate retail outlet
33 from which a West Virginia wine retailer sells West
34 Virginia wine shall be separately licensed and there
35 shall be collected with respect to each such location the
36 annual license fee of twenty-five dollars as herein
37 provided. The holder of such a license may sell no wines

38 except those produced by West Virginia farm wineries
39 as defined by section five-a, article one of this chapter.
40 Except for the amount of the license fee and the
41 restriction to sales of West Virginia wines, a West
42 Virginia wine retailer is subject to all other provisions
43 of this article which are applicable to a retailer as
44 defined in section two of this article.

45 (c) The license period shall begin on the first day of
46 July of each year and end on the thirtieth day of June
47 of the following year, and if granted for a less period,
48 the same shall be computed semiannually in proportion
49 to the remainder of the fiscal year.

50 (d) No retailer may be licensed as a private club as
51 provided by article seven of this chapter.

52 (e) No retailer may be licensed as a Class A retail
53 dealer in nonintoxicating beer as provided by article
54 sixteen, chapter eleven of this code: *Provided*, That a
55 delicatessen which is a grocery store as defined in
56 section two of this article and which is licensed as a
57 Class A retail dealer in nonintoxicating beer may be a
58 retailer under this article: *Provided, however*, That any
59 delicatessen licensed in both such capacities must
60 maintain average monthly sales exclusive of sales of
61 wine and nonintoxicating beer which exceed the average
62 monthly sales of nonintoxicating beer.

63 (f) A retailer under this article may also hold a wine
64 tasting license authorizing such retailer to serve
65 complimentary samples of wine in moderate quantities
66 for tasting. Such retailer shall organize a winetaster's
67 club, which has at least fifty duly elected or approved
68 dues paying members in good standing. Such club shall
69 meet on the retailer's premises not more than one time
70 per week and shall either meet at a time when the
71 premises are closed to the general public, or shall meet
72 in a separate segregated facility on the premises to
73 which the general public is not admitted. Attendance at
74 tastings shall be limited to duly elected or approved
75 dues paying members and their guests.

76 (g) A retailer who has more than one place of retail
77 business shall obtain a license for each separate retail

78 establishment. A retailer's license may be issued only to
79 the proprietor or owner of a bona fide grocery store or
80 wine specialty shop.

81 (h) The commissioner may issue a special license for
82 the retail sale of wine at any festival or fair which is
83 endorsed or sponsored by the governing body of a
84 municipality or a county commission. Such special
85 license shall be issued for a term of no longer than ten
86 consecutive days and the fee therefor shall be two
87 hundred fifty dollars regardless of the term of the
88 license unless the applicant is the manufacturer of said
89 wine on a farm winery as defined in section five-a,
90 article one of this chapter, in which event the fee shall
91 be twenty-five dollars. The application for such license
92 shall contain such information as the commissioner may
93 reasonably require and shall be submitted to the
94 commissioner at least thirty days prior to the first day
95 when wine is to be sold at such festival or fair. A farm
96 winery licensed under this subsection may exhibit,
97 conduct tastings, not to exceed a reasonable serving, and
98 may sell wine only for consumption off the premises of
99 such festival or fair. A special license issued other than
100 to a farm winery may be issued to a "wine club" as
101 defined hereinbelow. The festival or fair committee or
102 the governing body shall designate a person to organize
103 a club under a name which includes the name of the
104 festival or fair and the words "wine club". The license
105 shall be issued in the name of the wine club. A licensee
106 may not commence the sale of wine as provided for in
107 this subsection until the wine club has at least fifty dues
108 paying members who have been enrolled and to whom
109 membership cards have been issued. Thereafter, new
110 members may be enrolled and issued membership cards
111 at any time during the period for which the license is
112 issued. A wine club licensed under the provisions of this
113 subsection may sell wine only to its members, and in
114 portions not to exceed eight ounces per serving. Such
115 sales shall take place on premises or in an area cordoned
116 or segregated so as to be closed to the general public,
117 and the general public shall not be admitted to such
118 premises or area. A wine club licensee under the
119 provisions of this subsection shall be authorized to serve

120 complimentary samples of wine in moderate quantities
121 for tasting.

122 A license issued under the provisions of this subsection
123 and the licensee holding such license shall be subject to
124 all other provisions of this article and the rules,
125 regulations and orders of the commissioner relating to
126 such special license: *Provided*, That the commissioner
127 may by rule, regulation, or order provide for certain
128 waivers or exceptions with respect to such provisions,
129 rules, regulations, or orders as the circumstances of each
130 such festival or fair may require, including, without
131 limitation, the right to revoke or suspend any license
132 issued pursuant to this section prior to any notice or
133 hearing notwithstanding the provisions of section twelve
134 of this article: *Provided, however*, That under no
135 circumstances shall the provisions of subsection (c) or
136 (d), section twenty of this article be waived nor shall any
137 exception be granted with respect thereto.

138 A license issued under the provisions of this subsection
139 and the licensee holding such license shall not be subject
140 to the provisions of subsection (g) of this section.

141 (i) A license to sell wine granted to a private wine
142 restaurant under the provisions of this article entitles
143 the operator to sell and serve wine, for consumption on
144 the premises of the licensee, when such sale accompanies
145 the serving of food or a meal to its members and their
146 guests in accordance with the provisions of this article.
147 Such licensees are authorized to keep and maintain on
148 their premises a supply of wine in such quantities as
149 may be appropriate for the conduct of operations
150 thereof. Any sale of wine so made shall be subject to all
151 restrictions set forth in section twenty of this article. A
152 private wine restaurant may also be licensed as a Class
153 A retail dealer in nonintoxicating beer as provided by
154 article sixteen, chapter eleven of this code.

155 (j) With respect to subsections (h) and (i) of this
156 section, the commissioner shall promulgate legislative
157 rules in accordance with the provisions of chapter
158 twenty-nine-a of this code with regard to the form of the
159 applications, the suitability of both the applicant and

160 location of the licensed premises and such other
161 legislative rules deemed necessary to carry the provi-
162 sions of such subsections into effect.

163 (k) The commissioner shall promulgate legislative
164 rules in accordance with the provisions of chapter
165 twenty-nine-a of this code to allow restaurants to serve
166 West Virginia wine with meals, but not to sell the wine
167 by the bottle. Each restaurant so licensed shall be
168 charged a fee less than that charged for a wine license
169 to a retail outlet, such fees to be set forth in the
170 aforementioned rules promulgated pursuant to this
171 subsection.

172 (l) The commissioner shall establish guidelines to
173 permit West Virginia wines to be sold in state stores.

174 (m) Farm wineries as defined in section one-a of this
175 article may advertise off premises as provided in section
176 seven, article twenty-two of chapter seventeen and in
177 any other media, including, but not limited to, news-
178 paper, radio, television, magazines and direct mail
179 solicitation.

CHAPTER 173

(H. B. 2809—By Delegates Brown and Cerra)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and six, article twenty, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the women's commission; continuation within the department of health and human resources; composition of ex officio commission members; continuation of commission; powers and duties; commission administrative personnel; power to accept funds; and annual report.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four and six, article twenty, 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 20. WOMEN'S COMMISSION.

§29-20-1. Continuation; membership; appointment and terms of members; organization; reimbursement for expenses.

§29-20-2. Powers and duties of commission.

§29-20-3. Commission administrative personnel.

§29-20-4. Power of commission to accept funds.

§29-20-6. Annual report.

***§29-20-1. Continuation; membership; appointment and terms of members; organization; reimbursement for expenses.**

1 The West Virginia commission on the status of women
2 is hereby abolished, and there is hereby continued
3 within the department of health and human resources
4 the West Virginia women's commission, to consist of
5 eighteen members, seven of whom shall be ex officio
6 members, not entitled to vote: The attorney general, the
7 state superintendent of schools, the commissioner of
8 labor, the commissioner of the bureau of human
9 resources of the department of health and human
10 resources, the director of the human rights commission,
11 the director of the division of personnel, and the
12 chancellor of the board of directors of the state college
13 system. Each ex officio member may designate one
14 representative employed by his or her department to
15 meet with the commission in his or her absence. The
16 governor shall appoint the additional eleven members,
17 by and with the advice and consent of the Senate, from
18 among the citizens of the state. The governor shall
19 designate the chairman and vice chairman of the
20 commission and the commission may elect such other
21 officers as it deems necessary. The members shall serve
22 a term beginning the first day of July, one thousand nine
23 hundred seventy-seven, three to serve for a term of one
24 year, four to serve for a term of two years, and the
25 remaining four to serve for a term of three years. The
26 successors of the members initially appointed as
27 provided herein shall be appointed for a term of three
28 years each in the same manner as the members initially

*Clerk's Note: This section was also amended by S. B. 97 (Chapter 156), which passed prior to this act.

29 appointed under this article, except that any person
30 appointed to fill a vacancy occurring prior to the
31 expiration of the term for which his or her predecessor
32 was appointed shall be appointed for the remainder of
33 such term. Each member shall serve until the appoint-
34 ment and qualification of his or her successor.

35 No member may receive any salary for his or her
36 services, but each may be reimbursed for actual and
37 necessary expenses incurred in the performance of his
38 or her duties out of funds received by the commission
39 under section four of this article, except that in the event
40 the expenses are paid, or are to be paid, by a third party,
41 the members shall not be reimbursed by the
42 commission.

43 Pursuant to the provisions of section four, article ten,
44 chapter four of this code, the West Virginia women's
45 commission shall continue to exist until the first day of
46 July, one thousand nine hundred ninety-two, to allow for
47 the completion of an audit by the joint committee on
48 government operations.

§29-20-2. Powers and duties of commission.

1 It is the duty of the commission:

2 (a) To review and study the status of women in this
3 state;

4 (b) To recommend methods of overcoming discrimina-
5 tion against women in public and private employment
6 and in the exercise of their civil and political rights;

7 (c) To promote more effective methods for enabling
8 women to develop their skills, to continue their educa-
9 tion and to be retrained;

10 (d) To strengthen home life by directing attention to
11 critical problems confronting women as wives, mothers,
12 homemakers and workers;

13 (e) To make surveys in the fields of, but not limited
14 to, education, social services, labor laws and employ-
15 ment policies, law enforcement, health, new and
16 expanded services of benefit to women, legal rights,
17 family relations and volunteer services;

18 (f) To secure appropriate recognition of women's
19 accomplishments and contributions to this state;

20 (g) To disseminate information for the purpose of
21 educating the public as to the existence and functions
22 of the commission and as to matters of general beneficial
23 interest to women; and

24 (h) To advise, consult and cooperate with other offices
25 of the department of health and human resources and
26 other agencies of state government, and to receive
27 assistance therefrom, in the development of activities
28 and programs of beneficial interest to women and on
29 matters relating generally to women.

§29-20-3. Commission administrative personnel.

1 The commission may, consistent with state personnel
2 procedures and with the approval of the secretary of the
3 department of health and human resources or his or her
4 designee, appoint an executive director, who shall act as
5 the chief administrative officer of the commission, in
6 addition to such other duties as he or she may be
7 assigned. The commission may also, consistent with
8 state personnel procedures and with the approval of the
9 secretary of the department of health and human
10 resources or his or her designee, appoint such other
11 personnel as may be deemed necessary to accomplish its
12 objectives. All persons so employed shall be paid from
13 funds received by the department of health and human
14 resources or the commission under section four of this
15 article.

§29-20-4. Power of commission to accept funds.

1 The commission, or the department of health and
2 human resources on behalf of the commission, may
3 accept gifts, grants and bequests of funds from individ-
4 uals, foundations, corporations, the federal government,
5 governmental agencies and other organizations or
6 institutions; make and sign any agreements and do and
7 perform any acts that may be necessary to carry out the
8 purposes of this article.

§29-20-6. Annual report.

1 The commission shall, with the approval of the
2 secretary of the department of health and human
3 resources or his or her designee, submit an annual
4 report to the Legislature and the governor, including
5 recommendations based on its studies.

CHAPTER 174

(S. B. 187—By Senator Chafin)

[Passed March 9, 1991; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, one-a, one-b, two, five, nine and thirteen, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three, article five of said chapter; and to further amend said article by adding thereto a new section, designated section one-j, relating to providing workers' compensation coverage for certain corporate or associational officers, partners, and owners of sole proprietorships as employees; eliminating the restriction to only corporate employers who wish to temporarily come into the state but who choose to subscribe to the workers' compensation fund; elections to forego such coverages; exemptions to such elections for certain officers engaged in dual capacities for the employer; notices to be given to the commissioner of such elections; providing elective workers' compensation coverage for elected officials; methods of calculation of premiums for executive officers, partners, and sole owners both for for-profit entities and for not-for-profit entities; methods of calculation of premiums for elected officials; definitions; furnishing of confidential information to the division of workers' compensation by the state tax commissioner and by the division of unemployment compensation; specifying the types of information that may be so furnished; authorizing the commissioner to encourage employers to engage in loss prevention programs, programs for maintaining a safe workplace, and wellness programs; changing the types of penalties that

may be imposed upon defaulted or terminated employers; forbidding the waiver of penalties and interest on delinquent premiums and premium deposits; establishing a system and method for penalty premium rate of one hundred ten percent of base or modified premiums, whichever is higher, under certain circumstances of default and termination; providing for reinstatement agreements and conditions thereon; providing for requirements on employers entering into reinstatement agreements to abide by the conditions thereof and to maintain their accounts in good standing; clarifying that the commissioner may file a lien against an employer despite the filing of an application for reinstatement or the entering into of a reinstatement agreement; providing for requirements that employers filing applications for reinstatement keep their accounts in good standing and the consequences for failures to do so; providing for the method of determining the premium rates for subscribers to the second injury fund and the factors to be used in doing so; clarifying that the commissioner may require a premium deposit from self-insured employers; allowing the commissioner to limit the modifications of such second injury fund premiums based upon the employer's experience in using the second injury fund; making clear the intention of the Legislature regarding the respective responsibilities of the employer and the second injury fund for the payment of charges related to the last injury leading to a second injury life award; relating to the application of a rate of interest of eighteen percent upon past due premium and premium deposit; compounding of such rate of interest except for interest to be charged under a reinstatement agreement; relating to procedures before the office of chief administrative law judge with regard to certain requests for permanent total disability awards or for second injury life awards including remands to the commissioner for initial decisions, staying the protests then under consideration, continuing in effect the decision protested during the remand proceedings, and for resumption of action by the office of chief administrative law judge following the commissioner's decision on remand; removing the

requirement that the appeal board make findings of fact and conclusions of law in certain cases; and making other reconciling changes.

Be it enacted by the Legislature of West Virginia:

That sections one, one-a, one-b, two, five, nine and thirteen, article two, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section three, article five of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section one-j, all to read as follows:

Article

- 2. Employers and Employees Subject to Chapter; Extraterritorial Coverage.
- 5. Review.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

- §23-2-1. Employers subject to chapter; elections not to provide certain coverages; notices; filing of business registration certificates.
- §23-2-1a. Employees subject to chapter.
- §23-2-1b. Special provisions as to premiums.
- §23-2-2. Commissioner to be furnished information by employers, state tax commissioner and division of unemployment compensation; secrecy of information; examination of employers, etc.; violation a misdemeanor.
- §23-2-5. Application; payment of premiums; payroll report; premiums; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees; criminal provisions; penalties.
- §23-2-9. Election of employer to provide own system of compensation; mandatory participation in second injury reserve of surplus fund and exceptions; election to provide catastrophe coverage.
- §23-2-13. Interest on past due payments; reinstatement agreements.

§23-2-1. Employers subject to chapter; elections not to provide certain coverages; notices; filing of business registration certificates.

- 1 (a) The state of West Virginia and all governmental
- 2 agencies or departments created by it, including county
- 3 boards of education, political subdivisions of the state,
- 4 any volunteer fire department or company and other
- 5 emergency service organizations as defined by article
- 6 five, chapter fifteen of this code, and all persons, firms,
- 7 associations and corporations regularly employing

8 another person or persons for the purpose of carrying
9 on any form of industry, service or business in this state,
10 are employers within the meaning of this chapter and
11 are hereby required to subscribe to and pay premiums
12 into the workers' compensation fund for the protection
13 of their employees and shall be subject to all require-
14 ments of this chapter and all rules and regulations
15 prescribed by the commissioner with reference to rate,
16 classification and premium payment: *Provided*, That
17 such rates will be adjusted by the commissioner to
18 reflect the demand on the compensation fund by the
19 covered employer.

20 (b) The following employers are not required to
21 subscribe to the fund, but may elect to do so:

22 (1) Employers of employees in domestic services; or

23 (2) Employers of five or fewer full-time employees in
24 agricultural service; or

25 (3) Employers of employees while said employees are
26 employed without the state except in cases of temporary
27 employment without the state; or

28 (4) Casual employers. An employer is deemed to be a
29 casual employer when the number of his employees does
30 not exceed three and the period of employment is
31 temporary, intermittent and sporadic in nature and does
32 not exceed ten calendar days in any calendar quarter;
33 or

34 (5) Churches; or

35 (6) Employers engaged in organized professional
36 sports activities, including employers of trainers and
37 jockeys engaged in thoroughbred horse racing.

38 (c) Notwithstanding any other provision of this
39 chapter to the contrary, whenever there are churches in
40 a circuit which employ one individual clergyman and
41 the payments to such clergyman from such churches
42 constitute his full salary, such circuit or group of
43 churches may elect to be considered a single employer
44 for the purpose of premium payment into the workers'
45 compensation fund.

46 (d) Employers who are not required to subscribe to the
47 workers' compensation fund may voluntarily choose to
48 subscribe to and pay premiums into the fund for the
49 protection of their employees and in such case shall be
50 subject to all requirements of this chapter and all rules
51 and regulations prescribed by the commissioner with
52 reference to rates, classifications and premium pay-
53 ments and shall afford to them the protection of this
54 chapter, including section six of this article, but the
55 failure of such employers to choose to subscribe to and
56 to pay premiums into the fund shall not impose any
57 liability upon them other than such liability as would
58 exist notwithstanding the provisions of this chapter.

59 (e) Any foreign corporation employer whose employ-
60 ment in this state is to be for a definite or limited period
61 which could not be considered "regularly employing"
62 within the meaning of this section may choose to pay
63 into the workers' compensation fund the premiums
64 herein provided for, and at the time of making appli-
65 cation to the commissioner, such employer shall furnish
66 a statement under oath showing the probable length of
67 time the employment will continue in this state, the
68 character of the work, an estimate of the monthly
69 payroll and any other information which may be
70 required by the commissioner. At the time of making
71 application such employer shall deposit with the state
72 compensation commissioner to the credit of the workers'
73 compensation fund the amount required by section five
74 of this article, which amount shall be returned to the
75 employer if his application be rejected by the commis-
76 sioner. Upon notice to such employer of the acceptance
77 of his application by the commissioner, he shall be an
78 employer within the meaning of this chapter and subject
79 to all of its provisions.

80 (f) Any foreign corporation employer choosing to
81 comply with the provisions of this chapter and to receive
82 the benefits hereunder shall, at the time of making
83 application to the commissioner, in addition to other
84 requirements of this chapter, furnish such commissioner
85 with a certificate from the secretary of state, where such
86 certificate is necessary, showing that it has complied

87 with all the requirements necessary to enable it legally
88 to do business in this state and no application of such
89 foreign corporation employer shall be accepted by the
90 commissioner until such certificate is filed.

91 (g) The following employers may elect not to provide
92 coverage to certain of their employees under the
93 provisions of this chapter:

94 (1) Employers of employees who are officers of and
95 stockholders in a corporation qualifying for special tax
96 treatment under subchapter S of the Internal Revenue
97 Code of the United States may elect not to provide
98 coverage to such employees; or

99 (2) If an employer is a partnership, sole proprietor-
100 ship, association, or corporation, such employer may
101 elect not to include as an "employee" within this chapter,
102 any member of such partnership, the owner of the sole
103 proprietorship, or any corporate officer or member of
104 the board of directors of the association or corporation.
105 The officers of a corporation or an association shall
106 consist of a president, a vice-president, a secretary, and
107 a treasurer, each of whom shall be elected by the board
108 of directors at such time and in such manner as may
109 be prescribed by the bylaws. Such other officers and
110 assistant officer as may be deemed necessary may be
111 elected or appointed by the board of directors or chosen
112 in such other manner as may be prescribed by the
113 bylaws and, if so elected, appointed, or chosen, such
114 employer may elect not to include any such officer or
115 assistant officer as an "employee" within the meaning
116 of this chapter: *Provided*, That except for those persons
117 who are members of the board of directors or who are
118 the corporation's or association's president, vice-presi-
119 dent, secretary, and treasurer and who may be excluded
120 by reason of their aforementioned positions from the
121 benefits of this chapter even though their duties,
122 responsibilities, activities, or actions may have a dual
123 capacity of work which is ordinarily performed by an
124 officer and also of work which is ordinarily performed
125 by a worker, an administrator, or an employee who is
126 not an officer, no such other officer or assistant officer
127 who is elected or appointed shall be excluded by election

128 from coverage or be denied the benefits of this chapter
129 merely because he or she is such an officer or assistant
130 officer if, as a matter of fact:

131 (A) He or she is engaged in a dual capacity of having
132 the duties and responsibilities for work ordinarily
133 performed by an officer and also having duties and work
134 ordinarily performed by a worker, administrator, or
135 employee who is not an officer;

136 (B) He or she is engaged ordinarily in performing the
137 duties of a worker, an administrator, or an employee
138 who is not an officer and receives pay therefor in the
139 capacity of an employee; or

140 (C) If he or she is engaged in an employment palpably
141 separate and distinct from his or her official duties as
142 an officer of the association or corporation.

143 (h) In the event of election under subsection (g) of this
144 section, the employer shall serve upon the commissioner
145 written notice naming the positions not to be covered
146 and shall not include such "employee's" remuneration
147 for premium purposes in all future payroll reports, and
148 such partner, proprietor or corporate or executive
149 officer shall not be deemed an employee within the
150 meaning of this chapter after such notice has been
151 served.

§23-2-1a. Employees subject to chapter.

1 (a) Employees subject to this chapter are all persons
2 in the service of employers and employed by them for
3 the purpose of carrying on the industry, business,
4 service or work in which they are engaged, including,
5 but not limited to:

6 (1) Persons regularly employed in the state whose
7 duties necessitate employment of a temporary or
8 transitory nature by the same employer without the
9 state;

10 (2) Every person in the service of the state or of any
11 political subdivision or agency thereof, under any
12 contract of hire, express or implied, and every appointed
13 official or officer thereof while performing his or her
14 official duties;

15 (3) Checkweighmen employed according to law;

16 (4) All members of rescue teams assisting in mine
17 accidents with the consent of the owner who, in such
18 case, shall be deemed the employer, or at the direction
19 of the director of the department of mines; and

20 (5) All forest fire fighters who, under the supervision
21 of the director of the department of natural resources
22 or his or her designated representative, assist in the
23 prevention, confinement and suppression of any forest
24 fire.

25 (b) The right to receive compensation under this
26 chapter shall not be affected by the fact that a minor
27 is employed or is permitted to be employed in violation
28 of the laws of this state relating to the employment of
29 minors, or that he or she obtained his or her employment
30 by misrepresenting his or her age.

§23-2-1b. Special provisions as to premiums.

1 (a) Except as provided for in subsection (b) of this
2 section, every executive officer of an association or of a
3 corporation, any member of a partnership or owner of
4 a sole proprietorship which has not elected to forego
5 coverage under this chapter for such officer, member or
6 owner shall pay premiums based upon the actual salary
7 paid to such employee up to an amount sufficient to
8 qualify such employee to receive the maximum level of
9 benefits, but in no event shall the basis for premium be
10 less than the salary necessary to provide such employee
11 with the minimum level of benefits.

12 (b) Every executive officer of a not-for-profit associ-
13 ation or of a not-for-profit corporation which has not
14 elected to forego coverage under this chapter for such
15 officer, member or owner shall pay premiums based
16 upon the actual salary paid to such employee up to an
17 amount sufficient to qualify such employee to receive the
18 maximum level of benefits, but in no event shall the
19 basis for premium be less than one hundred dollars.

20 (c) Every elected official or officer, whether full time

21 or part time and including members of the Legislature,
22 whose governmental entity elects coverage under this
23 chapter for such elected official or officer, shall pay or
24 have paid for him or her premiums based upon the
25 actual salary paid to such elected official or officer up
26 to an amount sufficient to qualify such elected official
27 or officer to receive the maximum level of benefits, but
28 in no event shall the basis for premium be less than the
29 salary necessary to provide such elected official or
30 officer with the minimum level of benefits. For the
31 purposes of this subsection, an elected official or officer
32 shall include a person appointed to an elected position
33 to complete a term for that elected position.

34 (d) The premium and actual expenses in connection
35 with governmental agencies and departments of the
36 state of West Virginia shall be paid out of the state
37 treasury from appropriations made for such agencies
38 and departments, in the same manner as other disbur-
39 sements are made by such agencies and departments.

40 (e) County commissions, municipalities, other political
41 subdivisions of the state, county boards of education,
42 emergency service organizations organized as aforesaid
43 and volunteer fire departments or companies shall
44 provide for the funds to pay their prescribed premiums
45 into the fund and such premiums and premiums of state
46 agencies and departments, including county boards of
47 education, shall be paid into the fund in the same
48 manner as herein provided for other employers subject
49 to this chapter.

50 (f) County commissions and municipalities are hereby
51 authorized to pay all or any part of the premiums
52 prescribed for such emergency service organizations
53 organized as aforesaid and such duly incorporated
54 volunteer fire departments or companies as may provide
55 services within the county or municipality.

§23-2-2. Commissioner to be furnished information by employers, state tax commissioner and division of unemployment compensation; secrecy of information; examination of employers, etc.; violation a misdemeanor.

1 (a) Every employer shall furnish the commissioner,
2 upon request, all information required by him or her to
3 carry out the purposes of this chapter. The commis-
4 sioner, or any person employed by the commissioner for
5 that purpose, shall have the right to examine under oath
6 any employer or officer, agent or employee of any
7 employer.

8 (b) Notwithstanding the provisions of any other
9 statute, specifically, but not exclusively, sections five
10 and five-b, article ten, chapter eleven of this code, and
11 section eleven, article ten, chapter twenty-one-a of this
12 code the commissioner of the bureau of employment
13 programs may receive the following information:

14 (1) Upon written request to the state tax commis-
15 sioner: The names, addresses, places of business and
16 other identifying information of all businesses receiving
17 a business franchise registration certificate and the
18 dates thereof; and the names and social security
19 numbers or other tax identification numbers of the
20 businesses and of the businesses' workers and em-
21 ployees, if otherwise collected, and the quarterly and
22 annual gross wages or other compensation paid to the
23 workers and employees of such businesses reported
24 pursuant to the requirement of withholding of tax on
25 income.

26 (2) Upon written application to the division of
27 unemployment compensation: In addition to the infor-
28 mation that may be released to the division of workers'
29 compensation for the purposes of this chapter under the
30 provisions of chapter twenty-one-a of this code, the
31 names, addresses and other identifying information of
32 all employing units filing reports and information
33 pursuant to section eleven, article ten, chapter twenty-
34 one-a of this code as well as information contained in
35 those reports regarding the number and names, ad-
36 dresses, and social security numbers of employees
37 employed and the gross quarterly wages paid by each
38 employing unit to each identified employee.

39 (c) All information acquired by the division of
40 workers' compensation pursuant to subsection (b) of this

41 section shall be used only for auditing premium
42 payments and registering businesses under the single
43 point of registration program as defined in section two,
44 article one, chapter eleven of this code. The division of
45 workers' compensation, upon receiving the business
46 franchise registration certificate information made
47 available pursuant to subsection (b) of this section, shall
48 contact all businesses receiving a business franchise
49 registration certificate and provide all necessary forms
50 to register the business under the provisions of this
51 article. Any officer or employee of this state who uses
52 the aforementioned information in any manner other
53 than the one stated herein or elsewhere authorized in
54 this code, or who divulges or makes known in any
55 manner any of the aforementioned information shall be
56 guilty of a misdemeanor, and, upon conviction thereof,
57 shall be fined not more than one thousand dollars or
58 imprisoned in the county jail for not more than one year,
59 or both, together with cost of prosecution.

60 (d) Reasonable costs of compilation and production of
61 any information made available pursuant to subsection
62 (b) of this section shall be charged to the division of
63 workers' compensation.

64 (e) Information acquired by the commissioner pursu-
65 ant to subsection (b) of this section shall not be subject
66 to disclosure under the provisions of chapter twenty-
67 nine-b of this code.

**§23-2-5. Application; payment of premiums; payroll
report; premiums; deposits; delinquency;
default; reinstatement; payment of benefits;
notice to employees; criminal provisions;
penalties.**

1 (a) For the purpose of creating a workers' compensa-
2 tion fund, each employer who is required to subscribe to
3 the fund or who elects to subscribe to the fund shall pay
4 premiums calculated as a percentage of the employer's
5 payroll at the rate determined by the commissioner and
6 then in effect. At the time each employer subscribes to
7 the fund, the application required by the commissioner
8 shall be filed and a premium deposit equal to the first

9 quarter's estimated premium payment shall be remitted.
10 The minimum quarterly premium to be paid by any
11 employers shall be ten dollars.

12 (1) Thereafter, premiums shall be paid quarterly on
13 or before the last day of the month following the end
14 of the quarter, and shall be the prescribed percentage
15 of the total earnings of all employees during the
16 preceding quarter.

17 (2) At the time each premium is paid, every subscrib-
18 ing employer shall make a payroll report to the
19 commissioner for the preceding quarter. The report
20 shall be on the form or forms prescribed by the
21 commissioner, and shall contain all information re-
22 quired by the commissioner.

23 (3) After subscribing to the fund, each employer shall
24 remit with each payroll report and premium payment,
25 an amount calculated to be sufficient to maintain a
26 premium deposit equal to the previous quarter's
27 premium payment: *Provided*, That the commissioner
28 may reduce the amount of the premium deposit required
29 from seasonal employers for those quarters during
30 which employment is significantly reduced. The pre-
31 mium deposit shall be credited to the employer's account
32 on the books of the commissioner and used to pay
33 premiums and any other sums due the fund when an
34 employer becomes delinquent.

35 (4) All premiums and premium deposits required to
36 be paid by this chapter shall be paid by the employers
37 to the workers' compensation commissioner, who shall
38 maintain record of all sums so received. On and after
39 the first day of October, one thousand nine hundred
40 ninety-one, any such sum mailed to the commissioner
41 shall be deemed to be received on the date the envelope
42 transmitting it is postmarked by the United States
43 postal service. All sums received by the commissioner
44 shall be deposited in the state treasury to the credit of
45 the workers' compensation fund in the manner now
46 prescribed by law.

47 (5) The commissioner may encourage employer efforts
48 to create and maintain safe workplaces, to encourage

49 loss prevention programs, and to encourage employer
50 provided wellness programs, through the normal
51 operation of the experience rating formula, seminars
52 and other public presentations, the development of
53 model safety programs and other initiatives as may be
54 determined by the commissioner.

55 (b) Failure of an employer to timely pay premium, to
56 timely file a payroll report, or to maintain an adequate
57 premium deposit, shall cause the employer's account to
58 become delinquent. No employer will be declared
59 delinquent or be assessed any penalty therefor if the
60 commissioner determines that such delinquency has
61 been caused by delays in the administration of the fund.
62 The commissioner shall, in writing, within sixty days of
63 the end of each quarter notify all delinquent employers
64 of their failure to timely pay premiums, to timely file
65 a payroll report, or to maintain an adequate premium
66 deposit. The notification shall demand the filing of the
67 delinquent payroll report and payment of delinquent
68 premiums, and/or payment of an amount sufficient to
69 maintain the premium deposit, before the end of the
70 third month following the end of the preceding quarter.
71 The notification shall also require payment of interest
72 on the delinquent premium payment and/or premium
73 deposit pursuant to section thirteen of this article.

74 (c) Whenever the commissioner notifies an employer
75 of the delinquent status of his or her account, the
76 notification shall explain the legal consequence of
77 subsequent default by employers required to subscribe
78 to the fund, and the effects of termination of any electing
79 employer's account.

80 (d) Failure by the employer, who is required to
81 subscribe to the fund and who fails to resolve his or her
82 delinquency within the prescribed period, shall place
83 the account in default and shall deprive such defaulting
84 employer of the benefits and protection afforded by this
85 chapter, including section six of this article, and he or
86 she shall be liable as provided in section eight of this
87 article. The defaulting employer's liability under section
88 eight of this article shall be retroactive to twelve o'clock
89 p.m., of the last day of the month following the end of

90 the quarter for which the delinquency occurs. The
91 commissioner shall notify the defaulting employer of the
92 method by which the employer may be reinstated with
93 the fund. The commissioner shall also notify the
94 employees of such employer by written notice as
95 hereinafter provided for in this section.

96 (e) Failure by any employer, who voluntarily elects to
97 subscribe, to resolve his or her delinquency within the
98 prescribed period shall automatically terminate the
99 election of such employer to pay into the workers'
100 compensation fund and shall deprive such delinquent
101 employer of the benefits and protection afforded by this
102 chapter, including section six of this article, and he or
103 she shall be liable as provided in section eight of this
104 article. The defaulting employer's liability under section
105 eight of this article shall be retroactive to twelve o'clock
106 p.m., of the last day of the month following the end of
107 the quarter for which the delinquency occurs.

108 (f) (1) Except as provided for in subdivision (3) of this
109 subsection, any employer who is required to subscribe
110 to the fund and who is in default on the effective date
111 of this section or who subsequently defaults, and any
112 employer who has elected to subscribe to the fund and
113 whose account is terminated prior to the effective date
114 of this section or whose account is subsequently termi-
115 nated, shall be restored immediately to the benefits and
116 protection of this chapter only upon the filing of all
117 delinquent payroll and other reports required by the
118 commissioner and payment into the fund of all unpaid
119 premiums, an adequate premium deposit, and accrued
120 interest. Interest shall be calculated as provided for by
121 section thirteen of this article. In addition, for every
122 defaulted or terminated employer whose default or
123 termination lasts longer than two quarters or who has
124 defaulted or been terminated for more than two
125 quarters out of the preceding eight consecutive quarters,
126 then upon any such employer's restoration to the
127 benefits and protection of this chapter, for the next eight
128 quarters, including the quarter in which such restora-
129 tion occurs, the employer shall pay premiums to the
130 commissioner at a penalty rate. The applicable penalty

131 premium rate shall be determined by first calculating
132 the employer's premium under the provisions of section
133 four of this article, but including any applicable
134 experience modification, and then multiplying that
135 premium by one hundred ten percent.

136 The commissioner shall not have the authority to
137 waive either accrued interest or the imposition of the
138 penalty premium rate. Any employer whose default or
139 termination does not last longer than two quarters or
140 who has not defaulted in more than two quarters out of
141 the preceding eight consecutive quarters shall not have
142 a penalty premium rate imposed. The provisions of
143 section seventeen of this article apply to any action or
144 decision of the commissioner under this section. For
145 purposes of section four of this article, the extra ten
146 percent of premium constituting the penalty shall not be
147 used in determining any entitlement to experience
148 modification of the employer's premium rate for future
149 years.

150 (2) The commissioner shall have the authority to
151 restore a defaulted or terminated employer under a
152 reinstatement agreement. Such reinstatement agree-
153 ment shall require the payment in full of all premiums,
154 premium deposits, past accrued interest, and future
155 interest calculated pursuant to the provisions of section
156 thirteen of this article. The reinstatement agreement
157 shall not permit any modification or waiver of the
158 penalty premium rate provided for in subdivision (1) of
159 this subsection. Notwithstanding the filing of a rein-
160 statement application or the entering into of a reinstate-
161 ment agreement, the commissioner is authorized to file
162 a lien against the employer as provided for by section
163 five-a of this article. Applications for reinstatement
164 shall: (A) Be made upon forms prescribed by the
165 commissioner; (B) include a report of the gross payroll
166 of the employer during the entire period of delinquency
167 and default, which payroll information shall be verified
168 by the employer or its authorized agent; and (C) include
169 a payment equal to one half of one percent of the gross
170 payroll during the period of delinquency and default but
171 not to exceed the amount of the entire liability due and

172 owing for the period of delinquency and default, or one
173 hundred dollars, whichever amount shall be greater. An
174 employer who applies for reinstatement shall be entitled
175 to the benefits and protection of this chapter on the day
176 the application is received by the commissioner:
177 *Provided*, That if the commissioner reinstates an
178 employer subject to the terms of a repayment agree-
179 ment, the subsequent failure of the employer to make
180 scheduled payments or to pay accrued or future interest
181 in accordance with the repayment agreement or to
182 timely file current premiums or to otherwise maintain
183 its account in good standing or, if the repayment
184 agreement does not require earlier restoration of the
185 premium deposit, to restore the premium deposit to the
186 required amount by the end of the repayment period
187 shall cause the repayment agreement to be null, void
188 and of no effect, and the employer shall be denied the
189 benefits and protection of this chapter effective from the
190 date that such employer's account originally became
191 delinquent.

192 (3) Any employer who fails to maintain his or her
193 account in good standing with regard to subsequent
194 premiums and premium deposits prior to the final
195 resolution of an application for reinstatement as
196 provided for in subdivision (1) of this subsection shall
197 cause the reinstatement application to be null, void and
198 of no effect, and the employer shall be denied the
199 benefits and protection of this chapter effective from the
200 date that such employer's account originally became
201 delinquent. The commissioner may then make and
202 continue with any of the collection efforts provided for
203 by section five-a of this article even if the employer files
204 another reinstatement application.

205 (g) No employee of an employer required by this
206 chapter to subscribe to the workers' compensation fund
207 shall be denied benefits provided by this chapter
208 because the employer failed to subscribe or because the
209 employer's account is either delinquent or in default.

210 (h) (1) The provisions of this section shall not deprive
211 any individual of any cause of action which has accrued
212 as a result of an injury or death which occurred during

213 any period of delinquency not resolved in accordance
214 with the provisions of this article, or subsequent failure
215 to comply with the terms of the repayment agreement.

216 (2) Upon withdrawal from the fund or termination of
217 election of any employer, he or she shall be refunded the
218 balance due him or her of his or her deposit, after
219 deducting all amounts owed by him or her to the
220 workers' compensation fund, and the commissioner shall
221 notify the employees of such employer of said termina-
222 tion in such manner as he or she may deem best and
223 sufficient.

224 (3) Notice to employees in this section provided for
225 shall be given by posting written notice that the
226 employer is delinquent under the compensation law of
227 West Virginia, and in the case of employers required by
228 this chapter to subscribe and pay premiums to the fund,
229 that the delinquent employer is liable to his or her
230 employees for injury or death, both in workers' compen-
231 sation benefits and in damages at common law or by
232 statute; and in the case of employers not required by this
233 chapter to subscribe and pay premiums to the fund, but
234 voluntarily electing to do so as herein provided, that
235 neither the employer nor the employees of such em-
236 ployer are protected by said laws as to any injury or
237 death sustained after the date specified in said notice.
238 Such notice shall be in the form prescribed by the
239 commissioner and shall be posted in a conspicuous place
240 at the chief works of the employer, as the same appear
241 in records of the commissioner. If said chief works of
242 the employer cannot be found or identified, then said
243 notices shall be posted at the front door of the courthouse
244 of the county in which said chief works are located,
245 according to the records in the commissioner's office.
246 Any person who shall, prior to the reinstatement of said
247 employer, as hereinbefore provided for, or prior to sixty
248 days after the posting of said notice, whichever shall
249 first occur, remove, deface, or render illegible said
250 notice, shall be guilty of a misdemeanor, and, upon
251 conviction thereof, shall be fined not to exceed five
252 hundred dollars, and said notice shall state this
253 provision upon its face. The commissioner may require

254 any sheriff, deputy sheriff, constable or other official of
255 the state of West Virginia, who may be authorized to
256 serve civil process, to post such notice and to make
257 return thereof of the fact of such posting to the
258 commissioner, and any failure of such officer to post any
259 notice within ten days after he or she shall have received
260 the same from the commissioner, without just cause or
261 excuse, shall constitute a willful failure or refusal to
262 perform a duty required of him or her by law within
263 the meaning of section twenty-eight, article five, chapter
264 sixty-one of this code. Any person actually injured by
265 reason of such failure shall have an action against said
266 official, and upon any official bond he or she may have
267 given, for such damages as such person may actually
268 have incurred, but not to exceed, in the case of any
269 surety upon said bond, the amount of the penalty of said
270 bond. Any official posting said notice as herein required
271 shall be entitled to the same fee as is now or may
272 hereafter be provided for the service of process in suits
273 instituted in courts of record in the state of West
274 Virginia, which fee shall be paid by the commissioner
275 out of any funds at his or her disposal, but shall be
276 charged by him or her against the account of the
277 employer to whose delinquency such notice relates.

**§23-2-9. Election of employer to provide own system of
compensation; mandatory participation in
second injury reserve of surplus fund and
exceptions; election to provide catastrophe
coverage.**

1 (a) (1) Notwithstanding anything contained in this
2 chapter, employers subject to this chapter who are of
3 sufficient financial responsibility to ensure the payment
4 of compensation to injured employees and the depend-
5 ents of fatally injured employees, whether in the form
6 of pecuniary compensation or medical attention, funeral
7 expenses or otherwise as herein provided, of the value
8 at least equal to the compensation provided in this
9 chapter, or employers of such financial responsibility
10 who maintain their own benefit funds, or system of
11 compensation to which their employees are not required
12 or permitted to contribute, or such employers as shall

13 furnish bond or other security to ensure such payments,
14 may, upon a finding of such facts by the commissioner,
15 elect to pay individually and directly, or from such
16 benefit funds, department or association, such compen-
17 sation and expenses to injured employees or fatally
18 injured employees' dependents. The commissioner shall
19 require security or bond from such employer, to be
20 approved by the commissioner, and of such amount as
21 is by the commissioner considered adequate and
22 sufficient to compel or secure to such employees, or their
23 dependents, payment of the compensation and expenses
24 herein provided for, which shall in no event be less than
25 the compensation paid or furnished out of the state
26 workers' compensation fund in similar cases to injured
27 employees or the dependents of fatally injured em-
28 ployees whose employers contribute to such fund.

29 (2) Any employer electing under this section to ensure
30 payment of compensation to injured employees and the
31 dependents of fatally injured employees shall on or
32 before the last day of the first month of each quarter,
33 for the preceding quarter, file with the commissioner a
34 sworn statement of the total earnings of all the employ-
35 er's employees subject to this chapter for such preceding
36 quarter, and shall pay into the workers' compensation
37 fund as self-insurance premium contributions:

38 (A) A sum sufficient to pay the employer's proper
39 proportion of the expenses of the administration of this
40 chapter;

41 (B) A sum sufficient to pay the employer's proper
42 portion of the expenses for claims for those employers
43 who are delinquent in the payment of premiums;

44 (C) A sum sufficient to pay the employer's fair portion
45 of the expenses of the disabled workers' relief fund, as
46 may be determined by the commissioner; and

47 (D) A sum sufficient to maintain as an advance deposit
48 an amount equal to the previous quarter's payment of
49 each of the foregoing three factors.

50 (3) The commissioner shall make and promulgate
51 legislative rules in accordance with chapter twenty-

52 nine-a of this code governing the mode and manner of
53 making application, and the nature and extent of the
54 proof required to justify the finding of facts by the
55 commissioner, to consider and pass upon such election
56 by employers subject to this chapter, which rules shall
57 be general in their application.

58 (4) Any employer whose record upon the books of the
59 commissioner shows a liability against the workers'
60 compensation fund incurred on account of injury to or
61 death of any of the employer's employees, in excess of
62 premiums paid by such employer, shall not be granted
63 the right, individually and directly or from such benefit
64 funds, department or association, to compensate the
65 employer's injured employees and the dependents of the
66 employer's fatally injured employees until the employer
67 has paid into the workers' compensation fund the
68 amount of such excess of liability over premiums paid,
69 including the employer's proper proportion of the
70 liability incurred on account of explosions, catastrophes
71 or second injuries as defined in section one, article three
72 of this chapter, occurring within the state and charged
73 against such fund.

74 (b) (1) Subject to any limitations set forth herein, all
75 employers who have heretofore elected, or shall hereaf-
76 ter elect, to pay compensation and expenses directly as
77 provided in subsection (a) of this section, shall, unless
78 they be permitted under the provisions of this subsection
79 hereinafter set forth to give the second injury security
80 or bond hereinafter provided for, pay into the second
81 injury reserve of the surplus fund referred to in section
82 one, article three of this chapter, upon the basis set forth
83 herein, such payments to be made at the same time as
84 provided in this section for the payment of proportion
85 of expenses of administration.

86 (2) To determine the contribution for second injury
87 coverage for self-insured employers, the commissioner
88 shall first establish, based upon actuarial advice, the
89 projected funding cost for incurred losses for the second
90 injury reserve of the surplus fund for the prospective
91 year for each industrial group or class, so that industrial
92 groups or classes with significantly different experience

93 in use of the second injury reserve shall pay their proper
94 share based upon the record of that industrial group or
95 class: *Provided*, That the commissioner shall establish
96 industrial groups or classes as permitted by section four
97 of this article but need not establish the same number
98 of industrial groups or classes as the number established
99 for purposes of section four of this article. The commis-
100 sioner shall establish a rate for each industrial group or
101 class based upon the total expected second injury fund
102 base rate premium for that industrial group or class and
103 shall further modify such rate for individual employers
104 based upon the ratio of the individual employer's record
105 of actual second injury awards to the average cost of
106 second injury awards for all employers in that industrial
107 group or class. The commissioner may limit such
108 modifications. Actual second injury awards shall mean
109 awards made under this chapter on and after the first
110 day of January, one thousand nine hundred ninety-one,
111 as reflected on the books of the commissioner for a
112 period not to exceed three years ending the thirty-first
113 day of December of the year preceding the year in which
114 the rate is to be effective: *Provided, however*, That any
115 employer whose record for such period cannot be
116 obtained shall be given a rate based upon the employer's
117 record for any part of such period as may be deemed
118 just and equitable by the commissioner: *Provided*
119 *further*, That for the period from the first day of
120 January, one thousand nine hundred ninety-one, through
121 the thirtieth day of June, one thousand nine hundred
122 ninety-two, inclusive, the commissioner shall consider
123 second injury premium based on a percentage of the
124 base rates assigned to each industrial group or class.

125 (3) In case there be a second injury, as defined in
126 section one, article three of this chapter, to an employee
127 of any employer making such second injury reserve
128 payments, the employer shall be liable to pay compensa-
129 tion or expenses arising from or necessitated by the
130 second injury, and such compensation and expenses
131 shall be charged against such employer: *Provided*, That
132 in addition to such compensation and expenses, and
133 after the completion of the payments therefor, the
134 employee shall be paid the remainder of the compensa-

135 tion and expenses that would be due for permanent total
136 disability from the second injury reserve of the surplus
137 fund. Such additional compensation and expenses shall
138 be paid from the second injury reserve of the surplus
139 fund in the same manner and to the same extent as in
140 the case of premium-paying subscribers and such
141 additional compensation and expenses shall not be
142 charged against such employer.

143 (4) (A) Any employer who has heretofore elected to
144 pay compensation and expenses directly under the
145 provisions of subsection (a) of this section, and who:

146 (i) Elected prior to the first day of January, one
147 thousand nine hundred eighty-nine, not to make pay-
148 ments into the second injury reserve of the surplus fund;
149 and

150 (ii) Continuously without interruption, from the first
151 day of January, one thousand nine hundred eighty-nine,
152 to the effective date of this section, elected not to make
153 payments into the second injury reserve of the surplus
154 fund, may elect to continue not to make payments into
155 the second injury reserve of the surplus fund.

156 (B) Any employer who has heretofore elected to pay
157 compensation and expenses directly under the provi-
158 sions of subsection (a) of this section, and who:

159 (i) Was making payments into the second injury
160 reserve of the surplus fund on the first day of January,
161 one thousand nine hundred eighty-nine; and

162 (ii) Elected not to make such payments during
163 calendar year one thousand nine hundred eighty-nine;
164 and

165 (iii) Has not thereafter, to the effective date of this
166 section, recommenced making such payments, shall
167 elect one of the two following options:

168 (I) Begin payments into the second injury reserve of
169 the surplus fund as of the first day of July, one thousand
170 nine hundred ninety, in which event such employer shall
171 not thereafter be permitted to elect not to make such
172 payments; or

173 (II) Elect to continue not making such payments in
174 which event the commissioner shall examine the
175 employer's record with regard to the second injury
176 reserve of the surplus fund upon the books of the
177 commissioner and if such record shows a liability
178 against the surplus fund incurred on account of injury
179 to any of the employer's employees, in excess of
180 premiums paid by such employer to the second injury
181 reserve of the surplus fund, then such employer shall
182 pay to the commissioner the present value of that
183 liability.

184 (C) Any employer who is permitted by paragraphs (A)
185 and (B) of this subdivision not to make payments into
186 the second injury reserve of the surplus fund shall, in
187 addition to bond or security required by subsection (a)
188 of this section, furnish second injury security or bond,
189 approved by the commissioner, in such amount and form
190 as the commissioner shall consider adequate and
191 sufficient to compel or secure payment of all compen-
192 sation and expenses arising from, or necessitated by, any
193 second injury that is or remains to be paid by the
194 employer: *Provided*, That any second injury security or
195 bond given by any such employer pursuant to rules
196 promulgated by the commissioner and with the approval
197 of the commissioner prior to the effective date of this
198 section shall remain valid upon the effective date of this
199 section until such time thereafter as the commissioner
200 notifies such employer to the contrary.

201 (D) Any employer permitted by paragraphs (A) and
202 (B) of this subdivision not to make payments into the
203 second injury reserve of the surplus fund who on or after
204 the effective date of this section elects to make payments
205 into the second injury reserve of the surplus fund shall
206 not thereafter be permitted to elect not to make such
207 payments.

208 (5) Except as provided in paragraphs (A) and (B),
209 subdivision (4) of this subsection, all other employers
210 who have heretofore elected or who henceforth elect to
211 pay compensation and expenses directly under the
212 provisions of subsection (a) of this section shall pay into
213 the second injury reserve of the surplus fund such

214 amounts as are determined by the commissioner
215 pursuant to subdivision (2), subsection (b) of this section:
216 *Provided*, That all such other employers who, as of the
217 date immediately preceding the effective date of this
218 section, have been permitted by the commissioner not to
219 make such payments are not required to commence
220 making such payments until the first day of July, one
221 thousand nine hundred ninety.

222 (c) (1) All employers who have heretofore elected, or
223 shall hereafter elect, to pay compensation and expenses
224 directly as provided in subsection (a) of this section
225 shall, unless they give the catastrophe security or bond
226 hereinafter provided for, pay into the catastrophe
227 reserve of the surplus fund referred to in section one,
228 article three of this chapter, upon the same basis and
229 in the same percentages, subject to the limitations
230 herein set forth, as funds are set aside for the mainte-
231 nance of the catastrophe reserve of the surplus fund out
232 of payments made by premium-paying subscribers, such
233 payments to be made at the same time as hereinbefore
234 provided with respect to payment of proportion of
235 expenses of administration.

236 (2) In case there be a catastrophe, as defined in section
237 one, article three of this chapter, to the employees of any
238 employer making such payments, the employer shall not
239 be liable to pay compensation or expenses arising from
240 or necessitated by the catastrophe, and such compensa-
241 tion and expenses shall not be charged against such
242 employer, but such compensation and expenses shall be
243 paid from the catastrophe reserve of the surplus fund
244 in the same manner and to the same extent as in the
245 case of premium-paying subscribers.

246 (3) If an employer elects to make payments into the
247 catastrophe reserve of the surplus fund as aforesaid,
248 then the bond or other security required by this section
249 shall be of such amount as the commissioner considers
250 adequate and sufficient to compel or secure to the
251 employees or their dependents payments of compensa-
252 tion and expenses, except any compensation and
253 expenses that may arise from, or be necessitated by, any
254 catastrophe as defined in section one, article three of this

255 chapter, which last are secured by and shall be paid
256 from the catastrophe reserve of the surplus fund as
257 hereinbefore provided.

258 (4) If any employer elects not to make payments into
259 the catastrophe reserve of the surplus fund, as herein-
260 before provided, then, in addition to bond or security in
261 the amount hereinbefore set forth, such employer shall
262 furnish catastrophe security or bond, approved by the
263 commissioner, in such additional amount as the commis-
264 sioner shall consider adequate and sufficient to compel
265 or secure payment of all compensation and expenses
266 arising from, or necessitated by, any catastrophe that
267 might thereafter ensue.

268 (5) All employers hereafter making application to
269 carry their own risk under the provisions of this
270 subsection shall, with such application, make a written
271 statement as to whether such employer elects to make
272 payments as aforesaid into the catastrophe reserve of the
273 surplus fund or not to make such payments and to give
274 catastrophe security or bond hereinbefore in such case
275 provided for.

276 (d) In any case under the provisions of this section that
277 shall require the payment of compensation or benefits
278 by an employer in periodical payments, and the nature
279 of the case makes it possible to compute the present
280 value of all future payments, the commissioner may, in
281 his or her discretion, at any time compute and permit
282 or require to be paid into the workers' compensation
283 fund an amount equal to the present value of all unpaid
284 compensation for which liability exists, in trust; and
285 thereupon such employer shall be discharged from any
286 further liability upon such award, and payment of the
287 same shall be assumed by the workers' compensation
288 fund.

289 (e) Any employer subject to this chapter who shall
290 elect to carry the employer's own risk and who has
291 complied with the requirements of this section and the
292 rules of the commissioner shall not be liable to respond
293 in damages at common law or by statute for the injury
294 or death of any employee, however occurring, after such

295 election and during the period that the employer is
296 allowed by the commissioner to carry the employer's
297 own risk.

§23-2-13. Interest on past due payments; reinstatement agreements.

1 Payments unpaid on the date on which due and
2 payable, as prescribed by the commissioner, shall
3 immediately begin bearing interest at the rate of
4 eighteen percent per annum. This same rate of interest
5 shall be applicable to all reinstatement agreements
6 entered into by the commissioner pursuant to section
7 five of this article on and after the effective date of this
8 section. Interest shall be compounded quarterly until
9 payment plus accrued interest is received by the
10 commissioner: *Provided*, That on and after the date of
11 execution of a reinstatement agreement, for determin-
12 ing future interest on any past due premium, premium
13 deposit, and past compounded interest thereon, any
14 reinstatement agreement entered into by the commis-
15 sioner shall provide for a simple rate of interest for the
16 future interest. Interest collected pursuant to this
17 section shall be paid into the workers' compensation
18 fund: *Provided, however*, That in no event shall the rate
19 of interest charged a political subdivision of the state or
20 a volunteer fire department pursuant to this section
21 exceed ten percent per annum.

ARTICLE 5. REVIEW.

§23-5-1j. Requests for permanent total disability awards and second injury life awards following objections to decisions by the commissioner; remands to the commissioner; development of the record.

§23-5-3. Appeal to board; procedure; remand and supplemental hearing.

§23-5-1j. Requests for permanent total disability awards and second injury life awards following objections to decisions by the commissioner; remands to the commissioner; development of the record.

1 (a) If, following an objection to any decision of the
2 commissioner, any party to a claim pending before the
3 office of judges requests that a claimant be awarded a

4 permanent total disability award or a second injury life
5 award or if the administrative law judge on his or her
6 own motion believes that the record is incomplete on the
7 issue of whether a claimant should be issued a perman-
8 ent total disability award or a second injury life award,
9 then the administrative law judge shall enter an order
10 remanding the claim to the commissioner. An order
11 directing that a claim be remanded shall be interlocu-
12 tory in nature and shall not be appealable under section
13 three of this article to the appeals board created
14 pursuant to section two of this article. Upon remand, the
15 commissioner may exercise the authority granted to him
16 or her by this chapter to determine whether or not the
17 claimant is entitled to a permanent total disability
18 award or a second injury life award. The commissioner
19 shall act upon any matter remanded to him or her
20 pursuant to this section in a speedy and timely manner
21 and in no event longer than one hundred twenty days.
22 Following the commissioner's decision, any party to the
23 claim may file an objection to the decision pursuant to
24 the other provisions of this article.

25 (b) During the pendency of the remand proceedings
26 before the commissioner, the original decision from
27 which the objection was taken shall remain in effect and
28 action on the protest held in abeyance pending the
29 commissioner's action on the remand order. Upon the
30 entry of a decision on the issue of whether a permanent
31 total disability award or a second injury life award is
32 to be made, the claim shall be returned to the office of
33 judges for such further proceedings as may be required
34 on that first objection. If a further objection is made
35 pursuant to subsection (a) of this section to the commis-
36 sioner's decision on the issue of whether a permanent
37 total disability award or a second injury life award is
38 to be made, then such proceedings on such objection
39 shall be made part of the proceedings on the first
40 objection.

**§23-5-3. Appeal to board; procedure; remand and supple-
mental hearing.**

1 Any employer, employee, claimant or dependent, who
2 shall feel aggrieved at any final action of the commis-

3 sioner or administrative law judge taken after a hearing
4 held in accordance with the provisions of section one or
5 section one-h of this article, shall have the right to
6 appeal to the board created in section two of this article
7 for a review of such action. The commissioner shall
8 likewise have the right to appeal to the appeal board any
9 final action taken in a proceeding in which he or she
10 is a party. The aggrieved party shall file a written notice
11 of appeal with the compensation commissioner or, after
12 the first day of July, one thousand nine hundred ninety-
13 one, with the office of judges directed to such board,
14 within thirty days after receipt of notice of the action
15 complained of, or in any event, regardless of notice,
16 within sixty days after the date of the action complained
17 of, and unless the notice of appeal is filed within the
18 time specified, no such appeal shall be allowed, such
19 time limitation being hereby declared to be a condition
20 of the right to such appeal and hence jurisdictional; and
21 the commissioner or the office of judges shall notify the
22 other parties immediately upon the filing of a notice of
23 appeal. The commissioner or the office of judges shall
24 forthwith make up a transcript of the proceedings
25 before the commissioner or the office of judges and
26 certify and transmit the same to the board. Such
27 certificate shall incorporate a brief recital of the
28 proceedings therein had and recite each order entered
29 and the date thereof.

30 The board shall review the action of the commissioner
31 or administrative law judge complained of at its next
32 meeting after the filing of notice of appeal, provided
33 such notice of appeal shall have been filed thirty days
34 before such meeting of the board, unless such review be
35 postponed by agreement of parties or by the board for
36 good cause. The board shall set a time and place for the
37 hearing of arguments on each claim and shall notify the
38 interested parties thereof, and briefs may be filed by the
39 interested parties in accordance with the rules of
40 procedure prescribed by the board. And thereupon,
41 after a review of the case, the board shall sustain the
42 finding of the commissioner or administrative law
43 judge, in which case it need not make findings of fact
44 or conclusions of law, or enter such order or make such

45 award as the commissioner or administrative law judge
46 should have made, stating in writing its reasons
47 therefor, and shall thereupon certify the same to the
48 commissioner, or chief administrative law judge, who
49 shall proceed in accordance therewith. Or, instead of
50 affirming or reversing the commissioner or administra-
51 tive law judge as aforesaid, the board may, upon motion
52 of either party or upon its own motion, for good cause
53 shown, to be set forth in the order of the board, remand
54 the case to the commissioner or chief administrative law
55 judge for the taking of such new, additional or further
56 evidence as in the opinion of the board may be necessary
57 for a full and complete development of the facts of the
58 case. In the event the board shall remand the case to
59 the commissioner or chief administrative law judge for
60 the taking of further evidence therein, the commissioner
61 or administrative law judge shall proceed to take such
62 new, additional or further evidence in accordance with
63 any instruction given by the board, and shall take the
64 same within thirty days after receipt of the order
65 remanding the case, giving to the interested parties at
66 least ten days' written notice of such supplemental
67 hearing, unless the taking of evidence shall be postponed
68 by agreement of parties, or by the commissioner or
69 administrative law judge for good cause. After the
70 completion of such supplemental hearing, the commis-
71 sioner or administrative law judge shall, within sixty
72 days, render his or her decision affirming, reversing or
73 modifying the former action of the commissioner or
74 administrative law judge, which decision shall be
75 appealable to, and proceeded with by the appeal board
76 in like manner as in the first instance. The board may
77 remand any case as often as in its opinion is necessary
78 for a full development and just decision of the case. The
79 board may take evidence or consider *ex parte* state-
80 ments furnished in support of any motion to remand the
81 case to the commissioner or chief administrative law
82 judge. All evidence taken by or filed with the board
83 shall become a part of the record. All appeals from the
84 action of the commissioner or administrative law judge
85 shall be decided by the board at the same session at
86 which they are heard, unless good cause for delay

87 thereof be shown and entered of record. In all proceed-
88 ings before the board, any party may be represented by
89 counsel.

CHAPTER 175

(Com. Sub. for S. B. 559—By Senator Heck)

[Passed March 8, 1991; in effect July 1, 1991. Approved by the Governor.]

AN ACT to amend and reenact sections seven and eight, chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters), as amended by chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-three; by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred seventy-two; by chapter one hundred forty-eight, acts of the Legislature, regular session, one thousand nine hundred seventy-four; and as last amended and reenacted by chapter one hundred ninety-four, acts of the Legislature, one thousand nine hundred eighty-three, all relating to the greater Huntington park and recreation district; financing and financial powers; law enforcement; and severing the relationship of the village of Barboursville from the district.

Be it enacted by the Legislature of West Virginia:

That sections seven and eight, chapter twenty-six, acts of the Legislature, regular session, one thousand nine hundred twenty-five (municipal charters), as amended by chapter one hundred twenty-two, acts of the Legislature, regular session, one thousand nine hundred thirty-three, by chapter one hundred thirty-two, acts of the Legislature, regular session, one thousand nine hundred seventy-two, by chapter one hundred forty-eight, acts of the Legislature, regular session, one thousand nine hundred seventy-four, and as last amended and reenacted by chapter one hundred ninety-four, acts of the

Legislature, regular session, one thousand nine hundred eighty-three, be amended and reenacted, all to read as follows:

GREATER HUNTINGTON PARK AND RECREATION DISTRICT.

§7. Financing and financial powers.

§8. Law enforcement.

§7. Financing and financial powers.

1 The park district shall have the following powers to:

2 (1) Make charges to the public for services offered or
3 goods sold by the park district.

4 (a) Charges for services may be in the forms of, but
5 not limited to: Admission and entrance fees; exclusive
6 use and rental fees; user fees; license and permit fees;
7 equipment rental; program maintenance fees; instructor
8 fees; special accommodation fees; amusement fees;
9 restricted membership fees; and cemetery service fees.

10 (b) Charges for goods sold may be in the forms of, but
11 not limited to: Beverages and foods; novelties and gifts;
12 clothing; athletic equipment and supplies; cemetery
13 plots, crypts, monuments, memorials, markers, vaults
14 and any other forms of merchandise sold in connection
15 with the burial of the dead; and other items that may
16 pertain to the operation and maintenance of the park
17 district.

18 (2) Annually levy on each one hundred dollars of the
19 assessed valuation of the property taxable in said park
20 district, within the corporate boundaries of the city of
21 Huntington according to the last assessment thereof for
22 state and county purposes, as follows:

23 On Class I property, one and one-half cents; on Class
24 II property, three cents; on Class IV property, six cents.
25 The park district may levy a lesser amount, in which
26 case the above levies shall be reduced proportionately.
27 These levies shall be made at the time and in the
28 manner provided by article eight, chapter eleven of the
29 code of West Virginia, one thousand nine hundred
30 thirty-one, as amended; except that the levies shall be
31 included in the maximum rates for the city of Hunting-
32 ton as established by law.

33 After the park district has made the levy, it shall
34 certify to the finance director of the city of Huntington
35 the amount of said levy, and the finance director shall
36 thereupon extend the levy upon the tax tickets, and all
37 levies made by the park district shall be collected by the
38 finance director who shall occupy a fiduciary relation-
39 ship with the park district, and then such levy funds
40 shall be paid to the park district upon written order of
41 the park district signed by the president of the park
42 district and countersigned by the secretary of the park
43 district.

44 Levies for support, maintenance and operation.

45 (3) In order to ensure adequate support for the
46 maintenance and operation of the park district the
47 following governing authorities shall, upon written
48 request by the park district levy annually as follows
49 within the respective taxing districts of the governing
50 authorities, on each one hundred dollars of assessed
51 valuation of the property taxable in the area served by
52 it according to the last assessment for state and county
53 purposes, amounts not exceeding the following amounts
54 for fiscal year beginning the first day of July, one
55 thousand nine hundred eighty-three:

56 (a) The county commission of Cabell County, for the
57 first year of the act and annually thereafter: Class I, .433
58 cents; Class II, .866 cents; Class III and Class IV, 1.73
59 cents.

60 (b) The county commission of Wayne County, for the
61 first year of the act and annually thereafter: Class I,
62 .0066 cents; Class II, .0132 cents; Class III and Class IV,
63 .0266 cents.

64 (c) The board of education of the county of Cabell shall
65 provide funds available to the board through special and
66 excess levies for the first year of the act and annually
67 thereafter: Class I, .433 cents; Class II, .866 cents; Class
68 III and Class IV, 1.73 cents.

69 (d) The city of Huntington, for the first year of the
70 act and annually thereafter: Class I, one and three-
71 tenths cents; Class II, two and six-tenths cents; Class III

72 and IV, five and two-tenths cents.

73 (e) The town of Milton, for the first year of the act
74 and annually thereafter: Class I, one and three-tenths
75 cents; Class II, two and six-tenths cents; Class III and
76 IV, five and two-tenths cents.

77 In addition to the aforesaid amounts which, upon
78 written request by said board, the governing authorities
79 shall levy, each such governing authority may support
80 the park district with any other general or special
81 revenues or excess levies. All income realized by the
82 operation of the park district from any sources other
83 than the above levies shall be used by the board of
84 directors for support of the park district.

85 All money collected or appropriated by the foregoing
86 governing authorities for park district purposes shall be
87 deposited in a special account of the park district and
88 shall be disbursed by that board for the purpose of
89 operating such park district.

90 (4) Assess the cost of improvements to or construction
91 of streets, sidewalks, sewers, curbs, alleys, public ways
92 or easements, or portions thereof, upon the abutting
93 property owners whose property lies within the park
94 district. Such assessments shall require approval of a
95 majority of the commissioners present and voting, and
96 shall be commenced and conducted in such manner as
97 is prescribed by article eighteen, chapter eight of the
98 code of West Virginia, one thousand nine hundred
99 thirty-one, as amended.

100 (5) The municipalities of Huntington, Milton and the
101 counties of Cabell and Wayne are hereby empowered,
102 and authorized to issue, in the manner prescribed by
103 law, revenue bonds or general obligation bonds, for the
104 purpose of raising funds to establish, construct, improve,
105 extend, develop, maintain or operate, a system of public
106 parks and recreational facilities for the city or counties,
107 or to refund any bonds of the city or counties, the
108 proceeds of which were expended in the establishing,
109 constructing, improving, extending, developing, main-
110 taining or operating of such public park and recreation
111 system or any part thereof. Any bonds issued for any

112 of the purposes stated in this section shall contain in the
113 title or subtitle thereto the words "public park and
114 recreation bonds", in order to identify the same, and
115 shall be of such form, denomination and maturity and
116 shall bear such rate of interest as shall be fixed by
117 ordinance of the governing body of the city or counties.
118 The governing body may provide for the issuance of
119 bonds for other lawful purposes of the city or counties
120 in the same ordinance in which provision shall be made
121 for the issuance of bonds under the provisions of this
122 section. The park district shall pay all of the costs and
123 expenses of any election which shall be held to authorize
124 the issuance of public park and recreation bonds only.
125 The costs and expenses of holding an election to
126 authorize the issuance of public park and recreation
127 bonds and bonds for other city or county purposes shall
128 be paid by the park district and the city or counties
129 respectively, in the proportion that the public park and
130 recreation bonds bear to the total amount of bonds
131 authorized.

132 Whenever the governing body of the city or counties
133 and the requisite majority of the legal votes cast at the
134 election thereon shall authorize in the manner pres-
135 cribed by law, the issuance of bonds for the purpose of
136 establishing, constructing, improving, extending, devel-
137 oping, maintaining or operating, or any combination of
138 the foregoing, a system of public parks and recreational
139 facilities for the city or counties, or for refunding any
140 outstanding bonds, the proceeds of which were applied
141 to any of said purposes, said bonds shall be issued and
142 delivered to the park district to be by it sold in the
143 manner prescribed by law, and the proceeds thereof
144 shall be paid into the treasury of the park district, and
145 the same shall be applied and utilized by the park
146 district for the purposes prescribed by the ordinance
147 authorizing the issuance of such bonds. In any ordinance
148 for the issuance of bonds for such purposes, it shall be
149 a sufficient statement of the purposes for creating the
150 debt to specify that the same is for the purpose of
151 establishing, constructing, improving, extending, devel-
152 oping, maintaining or operating, or any combination of
153 the foregoing, a public park and recreation system for

154 the city or counties, without specifying the particular
155 establishment, construction, improvement, extension,
156 development, maintenance or operation contemplated;
157 but an ordinance for refunding bonds shall designate the
158 issue and the number of bonds which it is proposed to
159 refund.

160 (6) Sue and be sued; make contracts and guarantees;
161 incur liabilities; borrow or lend money for any time
162 period deemed advisable by the commission, sell,
163 mortgage, lease, exchange, transfer or otherwise dispose
164 of its property; or pledge its property as collateral or
165 security for any time period deemed advisable by the
166 commission.

167 (7) Create trusts of such kind as will expedite the
168 efficient management of the property and other assets
169 owned or controlled by the park district. The trustee,
170 whether individual or corporate, in any such trust shall
171 have a fiduciary relationship with the park district and
172 may be removed by the park district for good cause
173 shown or for a breach of the fiduciary relationship with
174 the park district.

§8. Law enforcement.

1 (a) The park district is authorized and empowered to
2 employ as many park rangers as the park district shall
3 deem proper and necessary. Park rangers shall have the
4 power to make arrest for violations of ordinances
5 promulgated by the park district upon the property
6 under the jurisdiction of the park district. Park rangers
7 may not carry a gun without obtaining a license therefor
8 as required by law.

9 (b) Police officers employed by the city of Huntington,
10 town of Milton, members of the West Virginia division
11 of public safety and sheriff's deputies in Cabell and
12 Wayne counties are hereby authorized and empowered
13 to make arrests for violations of ordinances promulgated
14 by the park district upon property within the park
15 district which is under the jurisdiction of the park
16 district; and all of the foregoing officers of the law,
17 except members of the Huntington police department,
18 are hereby authorized and empowered to make arrests

19 for violations of ordinances promulgated by the park
20 district upon property under the jurisdiction of the park
21 district which is outside of the park district.

22 (c) For violations of park district ordinances, jurisdic-
23 tion of all warrants relating thereto to be issued is
24 hereby granted to such courts as have criminal jurisdic-
25 tion of misdemeanors committed upon property which
26 is owned or controlled by the park district.

CHAPTER 176

(Com. Sub. for H. B. 2207—By Delegate Pettit)

[Passed February 25, 1991; in effect from passage. Approved by the Governor.]

AN ACT directing the commissioner of highways to issue a permit to certain users of two highways in the city of Weirton and allowing the increasing of gross weight limitations on certain roads in the city of Weirton, West Virginia.

Be it enacted by the Legislature of West Virginia:

SIZE, WEIGHT AND LOAD LIMITATIONS ON CERTAIN ROADS IN WEIRTON, WEST VIRGINIA.

§1. Authority of the commissioner of the division of highways to increase weight limitations upon highways within the city of Weirton, West Virginia.

1 If the commissioner of the division of highways
2 determines that the design, construction and safety of
3 the highways within the city of Weirton, West Virginia,
4 may be increased without undue damage, the commis-
5 sioner may increase them. The commissioner shall then
6 set new gross weight limitations applicable to said
7 highways or portions thereof.

8 The commissioner may not establish any weight
9 limitation in excess of or in conflict with any weight
10 limitation prescribed by or pursuant to acts of Congress
11 with respect to the national system of interstate and
12 defense highways.

13 If the commissioner determines that the portion of
14 State Route 2 located in the city of Weirton in the
15 counties of Hancock and Brooke, named "Main Street"
16 and that portion of U.S. Route 22 within the city of
17 Weirton in the county of Brooke named "Freedom Way"
18 are designed and constructed to allow the gross weight
19 limitation to be increased to one hundred thousand
20 pounds without undue damage, the commissioner may
21 increase the weight limitations from eighty thousand
22 pounds to one hundred thousand pounds on those
23 sections of State Route 2 and U.S. Route 22 described
24 above: *Provided*, That any person, organization or
25 corporation exceeding eighty thousand pounds gross
26 weight limitation while using these routes shall first
27 obtain a permit from the commissioner before proceed-
28 ing and shall provide the commissioner with a bond
29 sufficient to cover any potential undue damage which
30 may result from the use: *Provided, however*, That prior
31 to issuance of that permit, if it is the determination of
32 the commissioner that the road is in need of repaving,
33 those persons, organizations or corporations shall be
34 assessed the cost of repaving: *Provided further*, That the
35 commissioner also determines that the increased
36 limitation is not barred by an act of the United States
37 Congress and the commissioner has received approval
38 from the United States department of transportation to
39 increase the weight limitation.

CHAPTER 177

(S. B. 149—By Senators Blatnik and Chernenko)

[Passed February 22, 1991; in effect ninety days from passage. Approved by the Governor.]

AN ACT authorizing the creation of conditional zoning for the
city of Wheeling.

Be it enacted by the Legislature of West Virginia:

URBAN AND RURAL ZONING - ZONING DISTRICTS.

§1. Zoning districts - Wheeling.

1 The city of Wheeling is hereby empowered to create
2 conditional zoning areas with rules that provide that an
3 area shall be used only for a designated purpose in a
4 specific location or building, subject to the condition of
5 reverting to the prior zoning classification if the
6 approved use is ceased in that location or building.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 12

(By Mr. Speaker, Mr. Chambers, and Delegate P. White)

[Adopted March 9, 1991]

Requesting the Joint Committee on Government and Finance in cooperation with the Statewide AHEC Steering Committee to continue the study of the expansion and development of area health education centers (AHEC).

WHEREAS, West Virginia remains a medically underserved state; and

WHEREAS, AHECs establish a link between university health science centers and remote communities for the clinical training of medical and health science students; and

WHEREAS, Students trained in rural areas are more likely to return to these areas after graduation; and

WHEREAS, A Carnegie Commission study in 1970 recommended the regionalization of medical education through the development of area health education centers in West Virginia; and

WHEREAS, West Virginia University was one of the first eleven AHEC projects funded in 1972 under P.L. 92-157; and

WHEREAS, West Virginia University has established the Central AHEC office at the Charleston division to coordinate AHEC activities in West Virginia; and

WHEREAS, The Central AHEC office has created a Statewide AHEC Steering Committee to advise on matters relating to the development of a Statewide AHEC system in West Virginia; and

WHEREAS, The West Virginia School of Osteopathic Medicine, the Marshall University School of Medicine and the West Virginia University School of Medicine are all working together to coordinate AHEC activities in order to provide better health care to the citizens of West Virginia; and

WHEREAS, The Carnegie Commission study of higher education in West Virginia recommended the regionalization of medical education; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance in cooperation with the Statewide AHEC Steering Committee is hereby requested to continue to study the expansion, development and coordination of AHECs in West Virginia; and, be it

Further Resolved, That the Joint Committee on Government and Finance is requested to report its findings, conclusions and recommendations together with drafts of any legislation necessary to effectuate its recommendations by January 1, 1992; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

COMMITTEE SUBSTITUTE FOR
HOUSE CONCURRENT RESOLUTION 27

(By Delegates Flanigan, Moore and Stewart)

[Adopted March 9, 1991]

Requesting the Joint Committee on Government and Finance to make a study of the problem of access to the State Capitol for people with physical disabilities to determine ways to improve access to the Capitol for all citizens.

WHEREAS, Many disabled West Virginians have reported difficulties in obtaining access to the State Capitol, its offices, restrooms and meeting rooms; and

WHEREAS, Many of these people were disabled as a result of defending this country in times of war; and

WHEREAS, Access to the Capitol should be available to all citizens of this State; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is

hereby requested to review, examine and study the problem of access to the State Capitol for people with physical disabilities to determine ways in which access for all citizens may be improved; and, be it

Further Resolved, That the Joint Committee on Government and Finance is requested to report to the regular session of the Legislature, one thousand nine hundred ninety-two, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the Joint Committee on Government and Finance is requested to pay, from legislative appropriations, any expenses necessary to conduct this study, to prepare a report and to draft necessary legislation.

HOUSE CONCURRENT RESOLUTION 28

(By Mr. Speaker, Mr. Chambers, and Delegate Burk)

[Adopted February 13, 1991]

Raising a Joint Assembly to hear an address by the Honorable Robert C. Byrd, Senator of the Congress of the United States.

WHEREAS, The Honorable Robert C. Byrd has accepted an invitation to address a Joint Assembly of the House of Delegates and State Senate; therefore, be it

Resolved by the Legislature of West Virginia:

That the Senate and House of Delegates raise a Joint Assembly at 12:00 o'clock meridian on February 14, 1991, in the Hall of the House of Delegates, for the express purpose of hearing an address by Senator Byrd.

HOUSE CONCURRENT RESOLUTION 32

(By Mr. Speaker, Mr. Chambers, and Delegate P. White)

[Adopted March 9, 1991]

Urging the U. S. Congress to enact a national health plan providing access to health care for all Americans.

WHEREAS, Almost 37 million Americans under sixty-five have no health insurance; and

WHEREAS, The United States spends more than eleven percent of its gross national product on health care, a higher percentage than any other nation; and

WHEREAS, Approximately 350,000—one in five—West Virginians have no health insurance; and

WHEREAS, Nearly 100,000 West Virginia children have no health insurance; and

WHEREAS, Ten hospitals and five primary care providers have closed in West Virginia in the last five years, largely because government reimbursements did not equal the cost of providing service; and

WHEREAS, Rising health care costs are the leading cause of personal and small business bankruptcies in America; and

WHEREAS, The rising costs of health care have contributed to the problems of the Public Employees Insurance Agency and the failure of Blue Cross-Blue Shield of West Virginia; and

WHEREAS, State government—including the Medicaid program and the Workers' Compensation Fund—have experienced the harsh impact of skyrocketing health care costs; and

WHEREAS, Health care is a basic human right; and

WHEREAS, The United States and South Africa are the only two industrialized countries in the world that have failed to enact a national health policy that guarantees all citizens access to basic health care; and

WHEREAS, A comprehensive national health policy is needed to address the health care crisis; and

WHEREAS, Federal leadership is required to enact a national health plan; therefore, be it

Resolved by the Legislature of West Virginia:

That Congress is encouraged to address the critical state of our health care system and to enact a national plan designed to guarantee universal access to health care for all citizens.

SENATE CONCURRENT RESOLUTION 13

(By Senators Jones, Heck, Chafin and Blatnik)

[Adopted February 14, 1991]

Commending the lifetime of service to the State and recognizing the contributions to the people of the State by the Honorable Robert C. Byrd, United States Senator.

WHEREAS, United States Senator Robert C. Byrd's story is a classic American saga of success and achievement starting with his mastery of the early lessons of life as a miner's son in the depths of the Great Depression of the 1930's; and

WHEREAS, One of the most successful careers in American politics commenced with his service to the people of West Virginia as a distinguished member of the West Virginia House of Delegates and the West Virginia Senate; and

WHEREAS, After three successful terms in the United States House of Representatives, Robert C. Byrd was elected in 1958 to the United States Senate where he daily continues to add to his records: Serving longer in the Senate than any other West Virginian and casting more votes than anyone who has ever served in the Senate from any state in the union; and

WHEREAS, The quality of Robert C. Byrd's service is equally record setting, having been chosen by his colleagues in the United States Senate to serve in more leadership positions than any other senator in Senate history including minority leader for six years, majority leader for six years and currently president pro tempore of the Senate, placing him third in line of succession to the presidency of the United States of America; and

WHEREAS, Since 1989 Robert C. Byrd has also served as chairman of the powerful appropriations committee in the U. S. Senate which has enabled Senator Byrd to do even more to help the people of our State and nation; therefore, be it

Resolved by the Legislature of West Virginia:

That the State of West Virginia declares that Senator Robert C. Byrd is not only our most valuable resource but also the greatest statesman in the history of West Virginia; and, be it

Further Resolved, That henceforth the State of West Virginia will officially recognize November 20, the birthdate of Senator Robert C. Byrd, as Senator Robert C. Byrd Day; and, be it

Further Resolved, That the governor, the president of the Senate and speaker of the House of Delegates invite U.S. Senator Robert C. Byrd to attend a joint session of the West Virginia Legislature called for the specific purpose of presenting this resolution to him.

SENATE CONCURRENT RESOLUTION 19

(By Senators Dittmar, Craigo, Chernenko, Boley, Burdette, Mr. President, Claypole, Blatnik, Withers, Wiedebusch, Tomblin, Brackenrich, Sharpe and J. Manchin)

[Adopted February 23, 1991]

Urging resolution of the labor-management crisis at Ravenswood Aluminum Corporation at Ravenswood, West Virginia.

WHEREAS, Due to the encouraging signs of the beginning of an economic upturn in West Virginia which promises benefits for all West Virginians; and

WHEREAS, Due to the need for creating a better labor-management image in West Virginia; and

WHEREAS, Due to West Virginia's need to keep present jobs while creating conditions to encourage the development of more jobs; therefore, be it

Resolved by the Legislature of West Virginia:

That Ravenswood Aluminum Corporation and the United Steelworkers of America are hereby urged to meet and with renewed effort on the part of each party to resolve through good faith bargaining to end the labor-management dispute now existing; and, be it

Further Resolved, That the Clerk of the Senate forward a copy of this resolution to Ravenswood Aluminum Corporation and to the United Steelworkers of America, Local Union 5668.

HOUSE RESOLUTION 9

(By Mr. Speaker, Mr. Chambers)
(Originating in House Rules)

[Adopted January 16, 1991]

Creating a Select Committee on Redistricting.

Resolved by the House of Delegates:

That for the life of the 70th Legislature, and under authority of House Rule 90, there is hereby created a Select Committee on Redistricting of the House of Delegates, consisting of not more than seventeen members to be appointed by the Speaker. Notwithstanding the provisions of any rule to the contrary, this committee shall have jurisdiction of legislative proposals to divide the State into senatorial districts, to apportion delegate representation in the House of Delegates, to divide the State into districts for the election of representatives to the Congress, and related matters; and, be it

Further Resolved, That the rules and practices of the House of Delegates governing standing committees shall govern the actions and proceedings of this committee insofar as applicable.

HOUSE RESOLUTION 18

(By Delegate Meadows)

[Adopted February 23, 1991]

Urging the President to support civil rights initiatives to help minorities and women in this country reach their full potential.

WHEREAS, There is a disproportionate number of blacks and other minorities servicing our nation in the Persian Gulf. Although they are serving with pride and dedication, their presence in such numbers is confusing to many here at home; and

WHEREAS, President Bush should do more for the rights of blacks and other minorities. While asking minorities to fight for freedom in a far-off distant land, it should also include the President fighting for freedom here at home; and

WHEREAS, President Bush vetoed the Civil Rights Act of 1990; and

WHEREAS, Congressional findings specified that a "series of recent decisions addressing employment discrimination under federal law, the Supreme Court cut back drastically on the scope and effectiveness of civil rights protections" which are needed now for minority people; and

WHEREAS, "Existing protections and remedies under federal law are not adequate to deter unlawful discrimination or to compensate victims of such discrimination"; and

WHEREAS, While we support the war effort in the Gulf, it should not be an excuse for ignoring the rights of minority people here at home; therefore, be it

Resolved by the House of Delegates:

That the President and members of Congress examine civil rights and take action to end the institutional racism that still occurs; and, be it

Further Resolved, That the Clerk of the House of Delegates forward copies of this resolution to the President, the six members of Congress from West Virginia and to the NAACP of West Virginia.

HOUSE RESOLUTION 21

(By Mr. Speaker, Mr. Chambers, Delegates P. White, S. Cook, Houvouras, Rowe, Williams, Rollins, Mezzatesta and Ashcraft)

[Adopted March 6, 1991]

Recognizing and commending the three medical schools for collaborative efforts in the development of foundation support for rural primary care centers.

WHEREAS, Much has been written and discussed recently about the cooperation and alleged lack of cooperation among the three Medical Schools of the State University System, the University of West Virginia School of Medicine, the Marshall University School of Medicine and the West Virginia School of Osteopathic Medicine; and

WHEREAS, Officials at the three medical schools along with

the Deans of Nursing at West Virginia University and Marshall University and the Deans of Dentistry and Pharmacy at West Virginia University have put in many long hours to develop a six million dollar (\$6,000,000) proposal to the W. K. Kellogg Foundation to change health professions education in West Virginia; and

WHEREAS, These health professions leaders have worked tirelessly together with faculty members from the three schools and with the legislators and community members to identify rural primary care centers that can be transformed into Rural Academic Centers for Education, Research, and Service for the Kellogg Project; and

WHEREAS, Faculty and students of all three medical schools will work with clinicians and nonprofessional community members to identify rural health problems and work together to solve these problems; therefore, be it

Resolved by the House of Delegates:

That the three medical schools should be recognized and commended for their efforts to work together and to collaborate in the development of the Kellogg Grant that would benefit the people of West Virginia; and, be it

Further Resolved, That copies of this Resolution be forwarded to the deans and presidents of the three medical schools.

SENATE RESOLUTION 8

(By Senators M. Manchin, Tomblin, Spears, Hawse, Claypole, Brackenrich, Felton, Humphreys, Boley, Heck, Anderson, Minard, Bailey, J. Manchin, Pritt, Wagner, Withers, Helmick, Dittmar, Whitlow, Jones and Dalton)

[Adopted January 30, 1991]

Requesting the government of the United States of America release all information obtained from intelligence sources, actual sightings and refugee reports pertaining to West Virginia's soldiers still classified as Prisoners of War (P.O.W.) or Missing in Action (M.I.A.) who still remain unaccounted for from serving in World War II, the Korean Conflict and the Vietnam Conflict.

WHEREAS, West Virginia answered the call of this great country during times of crisis; and

WHEREAS, West Virginia has given this country the supreme sacrifice by sending her sons and daughters forth to defend this great nation; and

WHEREAS, The families of those West Virginians who never returned from serving their country during World War II, the Korean Conflict and the Vietnam Conflict need information concerning their loved ones who were lost or killed in the service of their country; and

WHEREAS, The United States government has a duty and obligation to inform the soldiers' families of the fate of their loved ones; therefore, be it

Resolved by the Senate:

That the United States government release this information so that those who have lost a family member can finally rest in knowing the fate of their loved one; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the United States Congress, the West Virginia congressional delegation and the families of those West Virginian soldiers who remain prisoners of war or missing in action.

SENATE RESOLUTION 13

(By Senators Heck, Chafin, Wagner,
Jones, Dalton and Tomblin)

[Adopted February 6, 1991]

Commemorating the death of Rueben G. Kirk, III, of Fort Gay, Wayne County, West Virginia, the first West Virginian to die in Operation Desert Shield.

WHEREAS, Rueben G. Kirk, III, age nineteen, was killed when his U.S. Army truck was hit by a civilian tractor-trailer on a highway to Kuwait in northern Saudi Arabia, according to Kirk's father, Rueben Kirk, Jr.; and

WHEREAS, Kirk was stationed in Saudi Arabia with the 1st Mechanized Infantry Division, also known as "The Big Red

One", and had been in the gulf region since January 13, 1991. Prior to that time, Kirk had been in the Army for about one year; and

WHEREAS, The younger Kirk, nicknamed "Skipper", was a graduate of Tolsia High School and is survived by wife Cindy of Fort Gay, father Rueben, mother Connie, brother Bobby, sister Teresa and a grandmother, all of Dunlow, West Virginia; and

WHEREAS, Kirk had wanted to join the military since he was thirteen, according to his father, and was sent to Saudi Arabia along with approximately two thousand two hundred West Virginia reservists and National Guard units stationed in Saudi Arabia and with many hundreds of other West Virginians in the regular armed forces; and

WHEREAS, The passing of Rueben G. Kirk, III, should not go unnoticed; therefore, be it

Resolved by the Senate:

That regret is hereby expressed by the members at the passing of Rueben G. Kirk, III, one of West Virginia's finest young men, who has given his life for his country and his state, but above all, shall not have died in vain; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to his wife Cindy and to the immediate family members of Rueben G. Kirk, III.

ENROLLED
SENATE JOINT RESOLUTION 4

(By Senators Dittmar and Craigo)

[Adopted March 7, 1991]

Proposing an amendment to the Constitution of the State of West Virginia, amending sections one and eight, article ten thereof, relating to taxation and finance and increasing the maximum rates, authorized to be fixed, by the different levying bodies upon all classes of property, and the percentage of votes necessary for such increase to become effective; and bonded indebtedness of counties, cities, school districts and municipal corporations and the

percentage of votes necessary for the passage of a bond issue; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year one thousand nine hundred ninety-two, which proposed amendment is that sections one and eight, article ten thereof be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§1. Taxation and finance.

Subject to the exceptions in this section contained, taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value; except that the aggregate of taxes assessed in any one year upon personal property employed exclusively in agriculture, including horticulture and grazing, products of agriculture as above defined, including livestock, while owned by the producer, and money, notes, bonds, bills and accounts receivable, stocks and other similar intangible personal property shall not exceed fifty cents on each one hundred dollars of value thereon and upon all property owned, used and occupied by the owner thereof exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants, one dollar; and upon all other property situated outside of municipalities, one dollar and fifty cents; and upon all other property situated within municipalities, two dollars; and the Legislature shall further provide by general law for increasing the maximum rates, authorized to be fixed, by the different levying bodies upon all classes of property, by submitting the question to the voters of the taxing units affected, but no increase shall be effective unless at least a majority of the qualified voters shall favor such increase, and such increase shall not continue for a longer period than three

years at any one time, and shall never exceed by more than fifty percent the maximum rate herein provided and prescribed by law; and the revenue derived from this source shall be apportioned by the Legislature among the levying units of the State in proportion to the levy laid in said units upon real and other personal property; but property used for educational, literary, scientific, religious or charitable purposes, all cemeteries, public property, the personal property, including livestock, employed exclusively in agriculture as above defined and the products of agriculture as so defined while owned by the producers may by law be exempted from taxation; household goods to the value of two hundred dollars shall be exempted from taxation. The Legislature shall have authority to tax privileges, franchises, and incomes of persons and corporations and to classify and graduate the tax on all incomes according to the amount thereof and to exempt from taxation incomes below a minimum to be fixed from time to time, and such revenues as may be derived from such tax may be appropriated as the Legislature may provide. After the year nineteen hundred thirty-three, the rate of the State tax upon property shall not exceed one cent upon the hundred dollars valuation, except to pay the principal and interest of bonded indebtedness of the State now existing.

§8. Bonded indebtedness of counties, etc.

No county, city, school district or municipal corporation, except in cases where such corporations have already authorized their bonds to be issued, shall hereafter be allowed to become indebted in any manner or for any purpose to an amount including existing indebtedness in the aggregate exceeding five per centum on the value of the taxable property therein to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness; nor without, at the same time, providing for the collection of a direct annual tax on all taxable property therein in the ratio as between the several classes or types of such taxable property specified in section one of this article separate and apart from and in addition to all other taxes for all other purposes sufficient to pay annually the interest on such debt and the principal thereof within, and not exceeding, thirty-four years. Such tax in an amount sufficient to pay the interest and principal on bonds issued by any school district not

exceeding in the aggregate three per centum of such assessed value may be levied outside the limits fixed by section one of this article: *Provided*, That no debt shall be contracted under this section unless all questions connected with the same shall have been first submitted to a vote of the people and is approved by a majority of all the votes cast for and against the same.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 1" designated as the "Local Government Levy and Bond Issue Amendment" and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution to reduce from sixty percent to a simple majority the vote required to increase the property tax levy rate and to reduce from three fifths to a simple majority the vote required for passage of the bond issue by counties, cities, school districts or municipal corporations."

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1991

CHAPTER 1

(H. B. 101—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
[By Request of the Executive]

[Passed March 17, 1991; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending and transferring between items of the existing appropriations of the department of public safety, division of public safety, account no. 5700; as appropriated by chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, and by chapters one and three, acts of the Legislature, third extraordinary session, one thousand nine hundred ninety.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of account no. 5700, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, and chapters one and three, acts of the Legislature, third extraordinary session, one thousand nine hundred ninety, be supplemented, amended and transferred to read as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 Sec. 2. Appropriations of federal funds.
- 4 DEPARTMENT OF PUBLIC SAFETY

5		<i>77—Division of Public Safety</i>	
6		(WV Code Chapter 15)	
7		Acct. No. 5700	
8			
9		Federal	General
10		Funds	Revenue
11		Fiscal Year	Fiscal Year
12		1990-91	1990-91
13	1	Personal Services \$ —	\$ 14,666,504
14	2	Annual Increment —	73,908
15	3	Employee Benefits —	3,725,614
16	4	Unclassified 774,223	4,840,776
17	4a	Public Employees	
18		Insurance —	711,669
19	5	Total \$ 774,223	\$24,018,471

20 The purpose of this supplementary appropriation bill
 21 is to supplement, amend and transfer certain moneys
 22 between items of the existing appropriation for the
 23 designated spending unit. The amounts as itemized for
 24 expenditure during the fiscal year one thousand nine
 25 hundred ninety-one shall be made available for expen-
 26 diture upon the effective date of this bill.

CHAPTER 2

(H. B. 102—By Mr. Speaker, Mr. Chambers, and Delegate Burk)
 [By Request of the Executive]

[Passed March 17, 1991; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transfer-
 ring between items of the existing appropriations of the
 department of public safety, division of public safety—
 inspection fees, account no. 8350, as appropriated by
 chapter ten, acts of the Legislature, regular session, one
 thousand nine hundred ninety, known as the budget bill,
 and as amended by chapter four, acts of the Legislature,
 second extraordinary session, one thousand nine
 hundred ninety.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of account no. 8350, chapter ten, acts of the Legislature, regular session, one thousand nine hundred ninety, known as the budget bill, and as amended by chapter four, acts of the Legislature, second extraordinary session, one thousand nine hundred ninety, be supplemented, amended, reduced and transferred to read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 5. Appropriations from other funds.		
3	DEPARTMENT OF PUBLIC SAFETY		
4	<i>151—Division of Public Safety—</i>		
5	<i>Inspection Fees</i>		
6	(WV Code Chapter 15)		
7	Acct. No. 8350		
8	TO BE PAID FROM SPECIAL REVENUE FUND		
9		Federal	Other
10		Funds	Funds
11		Fiscal Year	Fiscal Year
12		1990-91	1990-91
13	1	Personal Services \$ —	\$ 480,000
14	2	Annual Increment —	2,160
15	3	Employee Benefits —	137,956
16	4	Equipment —	—0—
17	5	Unclassified —	123,070
18	6	Total \$ —	\$ 743,186

19 The purpose of this supplementary appropriation bill
 20 is to supplement, amend, reduce and transfer certain
 21 moneys between items of the existing appropriation for
 22 the designated spending unit. The amounts as itemized
 23 for expenditure during the fiscal year one thousand nine
 24 hundred ninety-one shall be made available for expen-
 25 diture upon the effective date of this bill.

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