

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1993
First Extraordinary Session, 1993

Volume I
Chapters 1—127

COMPILED AND PUBLISHED
UNDER THE DIRECTION
OF
DONALD L. KOPP
Clerk

By
GREGORY M. GRAY
*Parliamentarian &
Assistant Clerk*

William E. Hambrick, Jr.
Associate Editor

Phyllis Pomeroy
Associate Editor

Legislative Assistants

Billie J. Kidd

James E. McKay

Nancy J. Reynolds

BJW Printing and Office Supplies, Beckley, WV — 253-7361



FOREWORD

These volumes contain the Acts of the First Regular Session and the First Extraordinary Session of the 71st Legislature, 1993.

First Regular Session, 1993

The First Regular Session of the 71st Legislature convened on January 13, 1993, and following election of officers of the two houses, the opening and publishing of the returns of the election of state officers at the general election held on the 3rd day of November, 1992, all as prescribed by Section 18, Article VI of the Constitution of the State, the adoption of rules to govern the proceedings of the two houses and concurrently and separately acting on certain other matters incident to organization, took an adjournment until February 10, 1993, as provided by the aforesaid section of the Constitution. Reconvening, pursuant to the adjournment, the constitutional sixty-day limit on the duration of the session was midnight, April 10, 1993. However, the session was extended by concurrent action of the two houses (S. C. R. 28) for the purpose of consideration of specific matters enumerated within the resolution. The Legislature adjourned *sine die* on April 24, 1993.

Bills totaling 1,410 were introduced in the two houses during the session (823 House and 587 Senate). The Legislature passed 185 bills, 121 House and 64 Senate. The Governor vetoed four House bills: H. B. 2610, Attorney fees and expenses awarded against the State; H. B. 2618, Dietitians and nutritionists licensure and board; H. B. 2620, Requiring that coal severance taxes received by counties and municipalities be budgeted in the same manner as other revenues deposited in the county or municipal general fund; and H. B. 2781, Relating to the sale of tax liens on land for which taxes have become delinquent and to the sale of escheated lands. One bill, H. B. 2701, Designating students entitled to vote for school mascot and school colors at the new Summers County High School, became law without the signature of the Governor, leaving a net total of 181 bills which became law. One Senate bill, S. B. 542, Medicaid Tax Revenue, was vetoed.

Two bills were vetoed (S. B. 377, Relating to recommendations of higher education advocacy team, and S. B. 576, Limiting liability of landowners allowing property used for military purposes), amended and repassed in an effort to meet the Governor's objections. Both bills were subsequently approved by him.

There were 67 concurrent resolutions introduced during the session, 35 House and 32 Senate, of which 23 House and 11 Senate were adopted. 18 House Joint and 6 Senate Joint resolutions were introduced, proposing amendments to the State Constitution. No Joint Resolutions were adopted by the Legislature. The House had 31 House resolutions and the Senate had 42 Senate resolutions, of which 21 House and 31 Senate were adopted.

The Senate failed to pass 64 House bills passed by the House, and 60 Senate bills failed passage by the House. Two Senate bills and six House bills died in conference.

First Extraordinary Session, 1993

The Proclamation calling the Legislature into Extraordinary session at 6:00 P.M., May 16, 1993, contained ten items for consideration.

The Legislature passed 10 bills, 8 House and 2 Senate. The House adopted two House resolutions and the Senate adopted five Senate resolutions.

The Legislature adjourned the Extraordinary Session *sine die* on May 27, 1993.

* * * * *

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

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

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

TABLE OF CONTENTS

ACTS AND RESOLUTIONS

Regular Session, 1993
First Extraordinary Session, 1993

GENERAL LAWS

Chapter	Bill No.		Page
---------	----------	--	------

ALCOHOLIC LIQUOR

1.	*SB14	Unlawful purchase, consumption, possession, sale and serving of alcoholic liquor by minor.....	1
----	-------	--	---

APPROPRIATIONS

Supplemental

2.	*HB2196	Division of Corrections, Correctional Units, Acct. No. 3770.....	13
3.	*HB2197	Department of Military Affairs and Public Safety, Acct. No. 5700.....	15
4.	*SB273	Department of Transportation, Division of Highways, Acct. No. 6700.....	16
5.	*SB267	Department of Transportation, Division of Motor Vehicles, Acct. No. 6710.....	18
6.	HB2812	Public Service Commission, Acct. No. 8280.....	19
7.	HB2772	Department of Transportation, Division of Motor Vehicles—Driver's License Reinstatement Fund, Acct. No. 8422.....	21
8.	SB587	Division of Health, Substance Abuse Prevention and Treatment, Acct. No. 8501.....	22
9.	SB586	Division of Health, Community Mental Health Services, Acct. No. 8505.....	23

TABLE OF CONTENTS

Chapter	Bill No.		Page
BANKS AND BANKING			
10.	SB342	Orders of Commissioner of Banking Matter of Public Record.....	24
11.	*HB2595	Valuation of Real Estate by Fair Value Approach....	31
12.	*HB2249	Loans to Banking Officers and Directors Covered by Federal Requirements of Law.....	33
13.	*HB2250	Joint Deposit Accounts.....	44
BONDS			
14.	*HB2002	School Building Authority and Issuance of Certain Revenue Bonds.....	46
CABLE TELEVISION			
15.	*SB487	Per Diem Increase for Board Members and Establishing the Tenants' Rights to Cable Services Act.....	68
CEMETERIES			
16.	*SB407	Preneed Burial Goods and Related Contracts.....	79
CHARITABLE ORGANIZATIONS			
17.	HB2512	Membership of Board of Directors of Homes and Asylums of Fraternal Orders.....	92
CHILD WELFARE			
18.	SB464	Purpose of the Children's Fund.....	93
19.	HB2691	Predispositional Detention of Juveniles and Providing for a Descriptive Catalogue of Juvenile Programs and Services.....	94
CLAIMS			
20.	SB573	Claims Against Numerous State Agencies and Directing the Payment Thereof.....	98
21.	HB2686	Claims for Compensation of Innocent Victims of Crime.....	106
22.	HB2687	Claims Against the Department of Education, the Division of Human Services, the Division of Corrections and the Division of Culture and History.....	108
CONSUMER CREDIT AND PROTECTION			
23.	*HB2219	Charge and Collection of Late Payment Penalty Fee for Financed Merchandise.....	111

TABLE OF CONTENTS

vii

Chapter	Bill No.		Page
24.	HB2761	Solicitation or Cashing of Postdated Checks and Penalties for Violations.....	112
25.	*SB84	Defense to Persons Who Rely on Formal Opinions of the Attorney General and Examination Reports and Declaratory Rulings Issued by the Commissioner of Banking.....	114
CONTRACTS			
26.	HB2516	Reducing Requirements for Memoranda of Leases....	116
CORRECTIONAL FACILITIES			
27.	*SB122	Jail and Correctional Facility Standards.....	117
CORRECTIONAL OFFICERS			
28.	*HB2075	Execution of Warrants by Correctional Officers....	123
COURTS AND THEIR OFFICERS			
29.	*HB2126	Injunctive Relief Under the Open Governmental Proceedings Law.....	125
CRIMES AND THEIR PUNISHMENT			
30.	*HB2023	Offense of Stalking and Providing Penalties.....	128
31.	*HB2314	Criminal Offense of Assault and Battery Against a Police Officer.....	131
32.	*HB2268	Criminal Offense of Assault or Battery Against an Athletic Official.....	133
33.	HB2652	Offense of Burglary and Daytime Entering Without Breaking.....	134
34.	HB2102	Criminal Penalties for the Fraudulent Use, Forgery or Traffic of Counterfeit Credit Cards.....	135
35.	SB584	Sex Offender Registration Act.....	139
CRIMINAL PROCEDURE			
36.	SB366	Limitation on Parolee's Place of Residence.....	141
37.	SB577	Commissioner of Corrections Authorized to Charge Parolees Under the Supervision of the Division of Corrections.....	142
CULTURE AND HISTORY			
38.	*HB2671	Responsibility and Authority of the Division of Culture and History.....	144

TABLE OF CONTENTS

Chapter	Bill No.		Page
DOMESTIC RELATIONS			
39.	*HB2185	Enforcement of Child Support Obligations and Providing for the Reporting of Overdue Support Information to Credit Bureaus.....	157
40.	HB2024	Requiring Applications for a Marriage License to Include a Statement Concerning Freedom From Violence and Abuse Within the Married State.....	174
41.	*HB2427	Telephone Authorization for Arrest for Assault or Battery in Domestic Violence Matters.....	176
ECONOMIC DEVELOPMENT ACT			
42.	HB2741	Repeal of Economic Development Programs.....	179
EDUCATION			
43.	*HB2160	Policies to Promote School Board Effectiveness.....	180
44.	*HB2224	Discretionary Admittance by County Boards of Education of Children Suspended or Expelled From Another School.....	202
45.	*HB2124	Certain Retirees of the Teacher's Retirement System Permitted to Teach Up to Twelve Semester Hours at the Higher Education Level.....	205
46.	*HB2482	Providing Supported Employment Services to Persons With Disabilities.....	214
47.	*SB377	Higher Education Advocacy Team Recommendations.....	217
48.	HB2460	Reductions In Force of Professional Educators to be Based Solely Upon Seniority.....	316
49.	HB2782	Defining Service Personnel Classifications and Providing Methods of Determining Seniority....	322
ELECTIONS			
50.	*SB315	General Revision of the Election Laws.....	341
ELEVATOR SAFETY			
51.	*HB2184	Elevator Safety Act.....	409
ENVIRONMENTAL PROTECTION			
52.	SB474	Promulgation of Legislative Rules by Division of Environmental Protection Relating to Surface Mining and Reclamation.....	417

TABLE OF CONTENTS

ix

Chapter	Bill No.		Page
ESTATES AND TRUSTS			
53.	*HB2130	Expanded Accounting by Fiduciaries for Settlement of Estates.....	418
54.	HB2251	Specific Statutory Powers of Fiduciaries to Respond to Environmental Problems.....	419
55.	HB2095	Powers of Fiduciaries or Trustees Under Trust Agreements or Wills Which May be Incorporated by Reference in the Trust Instruments.....	422
FAMILY LAW MASTERS			
56.	*SB358	Administration of Courts and Revising the Provisions Governing Family Law Masters.....	434
FENCES			
57.	*HB2270	Settlement of Disputes Relating to Partition Fences.....	530
FIRE PREVENTION			
58.	HB2106	Fees for Fire Safety Review of New and Existing Construction Plans and Specifications.....	531
HAZARDOUS MATERIALS			
59.	*HB2028	Hazardous Material Accident Response Program.....	536
HEALTH			
60.	*SB423	Serological Testing Generally and Establishment of Centralized Database of Individuals who are Sex Offenders.....	538
61.	*HB2272	Criteria for Certificate of Need Review for Additional Ventilator Beds.....	552
62.	*HB2599	Health Care Surrogate Act.....	561
63.	HB2616	Do-Not-Resuscitate Act.....	572
64.	SB502	Asbestos Abatement.....	584
65.	HB2296	Composition of Board of Directors of a Not-For-Profit Corporation Established to Carry Out Patient Care Activities of WVU Medical Center.....	599
HORSE AND DOG RACING			
66.	*HB2785	Supplemental Purses for West Virginia Whelped Dogs, Provisions Relating to the Thoroughbred Development Fund, etc.	601

TABLE OF CONTENTS

Chapter	Bill No.		Page
INSURANCE			
67.	HB2286	Authority of State Insurance Commissioner to Regulate the Industry.....	618
68.	HB2518	Right to Return a Life or Accident and Sickness Insurance Policy.....	686
69.	HB2179	Repeal of Provisions Requiring Insurance Companies to Obtain Releases From Minors.....	687
70.	HB2728	Substandard Risk Motor Vehicle Insurance Policies.....	687
71.	HB2580	Uninsured and Underinsured Motor Vehicle Insurance Coverage.....	689
72.	*HB2271	Continuation of Coverage Under Automobile Liability Policies.....	693
73.	*SB510	Limited Benefits Accident and Sickness Insurance Policies.....	694
74.	*HB2182	Agent to Deal Only With Licensed Insurer, Broker or Solicitor.....	716
75.	*HB2440	Address File Requirements to Ensure Proper Notice of Hearing.....	717
76.	*HB2758	"Emergency Adjuster" and "Insurance Emergency" Defined and Providing for Temporary Insurance Adjuster's License.....	720
77.	*SB326	Minimum Coverage Standards for Group Accident and Sickness Insurance.....	724
78.	SB282	Medicare Supplement Insurance.....	730
79.	*HB2181	Conversion or Termination Advance Notice Requirements.....	740
80.	HB2180	Repeal of Section Relating to Fire and Marine Insurance Auditing and Stamping Offices.....	745
81.	*HB2467	Creation of Federal Insurance Subsidy for Children's Health Funds.....	746
82.	*HB2632	General Revision of Life and Health Insurance Guaranty Association Statutes.....	752
INVESTMENTS			
83.	HB2779	Fifteen Million Dollar Revolving Loan Fund for Industrial Development.....	781
84.	*HB2307	Limitation on Investments by the Jobs Investment Trust Fund.....	783
LEGISLATURE			
85.	SB51	Technical Correction to Senate Redistricting Act of 1991.....	784

TABLE OF CONTENTS

xi

Chapter	Bill No.		Page
86.	HB2429	Repeal of Article Creating the Legislative Committee on Pensions and Retirement.....	797
LIENS			
87.	*HB2596	Defining Suggestee's Obligation When Served With a Summons on a Suggestion Filed by a Judgment Creditor.....	797
LOTTERY			
88.	SB559	Composition and Appointment of the Lottery Commission.....	801
MAGISTRATES			
89.	*HB2277	Imposition of Alternative Sentences and Home Confinement by Magistrates.....	804
MENTALLY ILL			
90.	SB75	Alternative Transportation Systems to Mental Health Facilities or State Hospitals.....	813
MINES AND MINERALS			
91.	HB2807	Coal Mine Health and Safety Regulations and Procedures.....	814
MOTOR VEHICLES			
92.	SB509	Use of Alternative Fuels in State-Owned Vehicles...	821
93.	*HB2120	Special Registration Plates for Honorably Discharged Veterans.....	826
94.	SB508	Intergovernmental Relations Alternative Fuel Vehicles.....	839
95.	*HB2230	Charge Limit for Towing, Preservation and Storage of Abandoned or Junked Vehicles.....	843
96.	*HB2228	Perfection of Deferred Purchase Money Liens or Encumbrances.....	846
97.	*SB112	Licensure of Automobile Auction Businesses.....	847
98.	*SB133	Mandatory Suspension of Driver's License for Fraudulent Use.....	862
99.	HB2680	Permissible Number of Motorcycle Passengers, Use of Sidecars and Safety Belt Requirements.....	866
100.	*HB2098	Mandatory Use of Seat Belts.....	868
101.	HB2591	Single State Registration System.....	872
MUNICIPALITIES			
102.	HB2685	Taxation of Aircraft Repair Business Activities....	873

TABLE OF CONTENTS

Chapter	Bill No.		Page
103.	SB96	Participation of Members of Fire Departments in Political Activities.....	876
NATURAL RESOURCES			
104.	HB2266	Killing of Deer or Other Wildlife Causing Certain Damage.....	877
105.	*HB2116	Awarding of Service Revolver to Conservation Officers Upon Retirement and Furnishing Uniform for Burial.....	879
106.	HB2661	Amending Previously Filed Legislative Rule Relating to Water Pollution Control Permit Fees.....	880
PROFESSIONS AND OCCUPATIONS			
107.	HB2248	Physician Assistant-Midwives.....	895
108.	SB416	Licensure of Independent Clinical Social Workers....	903
109.	*HB2565	Regulating the Tadoo Studio Business.....	916
110.	*SB54	Real Estate Brokers Licensing.....	924
PUBLIC EMPLOYEES			
111.	HB2568	Payment of Supplemental Benefits from the Public Employees Retirement Fund.....	945
PUBLIC SAFETY			
112.	SB471	Creating a Grievance Procedure Recommendation Board and Review Procedures.....	947
113.	HB2234	Age Requirements for Members of the Division of Public Safety.....	951
114.	HB2293	Sale of Surplus Real Property by the Superintendent of Public Safety.....	953
115.	*SB53	West Virginia Law-Enforcement Mutual Assistance Act.....	957
RAILROADS			
116.	*HB2206	Train Locomotive Crew Requirements.....	961
REAL PROPERTY			
117.	SB576	Limiting Liability of Landowners for Land Used for Military Purposes.....	963
118.	*HB2483	Factory-Built Home Site Rentals.....	967
119.	*SB265	Landlords and Tenants of Mobile Home Parks.....	975
RECORDS AND PAPERS			
120.	HB2628	Recordation of Certified Copies of Certain Instruments.....	976

TABLE OF CONTENTS

xiii

Chapter	Bill No.		Page
RENT-TO-OWN			
121.	*SB108	Regulation of Rent-To-Own Agreements.....	977
ROADS AND HIGHWAYS			
122.	*HB2513	Cost of Relocation of Public Utility Lines.....	1015
SECURITIES			
123.	*HB2304	Registration Fees for Broker-Dealers, Agents and Investment Advisers.....	1017
SOLID WASTE			
124.	*SB288	Development of a Comprehensive Sludge Management Program.....	1024
125.	SB289	Extending the Solid Waste Facility Closure Deadline.....	1035
126.	*HB2445	Certain Incineration Technologies Prohibited.....	1044
127.	*SB400	Disposal of Yard Waste, Lead-Acid Batteries and Tires.....	1059
STEEL FUTURES PROGRAM			
128.	*HB2285	West Virginia Steel Futures Program Established.....	1061
SUNSET			
129.	HB2063	Capitol Building Commission Continued.....	1066
130.	HB2740	General Revision of the Sunset Law.....	1067
131.	HB2141	State Building Commission Continued.....	1082
132.	HB2654	Public Employees Insurance Agency Continued.....	1084
133.	HB2139	Public Employees Insurance Agency Finance Board Continued.....	1086
134.	HB2653	Forest Management Review Commission Continued.....	1088
135.	HB2140	Governor's Cabinet on Children and Families Continued.....	1088
136.	*HB2008	Ethics Commission and Compensation of Members Continued.....	1089
137.	HB2612	Task Force on Uncompensated Health Care and Medicaid Expenditures.....	1093
138.	HB2118	Division of Highways Continued.....	1097
139.	SB460	Forestry Commission Abolished and Appointing the Director of the Division of Forestry.....	1098
140.	SB7	Farm Management Commission Continued.....	1099

TABLE OF CONTENTS

Chapter	Bill No.		Page
141.	SB2	Soil Conservation Committee Continued.....	1100
142.	*HB2590	Division of Natural Resources Continued.....	1104
143.	HB2015	Water Resources Board Continued.....	1105
144.	SB72	Oil and Gas Conservation Commission Continued.....	1108
145.	SB110	Oil and Gas Inspectors' Examining Board Continued.....	1112
146.	SB4	Public Service Commission Continued.....	1116
147.	HB2034	Potomac River Basin Membership Continued.....	1119
148.	SB23	Legislative Oversight Commission on Education Accountability Continued.....	1120
149.	SB3	Board of Architects Continued.....	1122
150.	*SB127	Board of Architects Continued, Regulatory Authority and Compensation of Members.....	1123
151.	SB9	Board of Examiners of Land Surveyors Continued...	1125
152.	SB28	Board of Banking and Financial Institutions Continued.....	1127
153.	SB13	Family Protection Services Board Continued.....	1129
154.	HB2036	Child Advocate Office Continued.....	1130
155.	SB20	Family Law Masters System Continued.....	1131
TAXATION			
156.	SB463	General Expansion and Revision of the Tax Laws of the State.....	1132
157.	*HB2088	Ten-Year Limitation on Tax Liens.....	1218
158.	*HB2303	Providing an Increase in the Gasoline Tax.....	1223
159.	*HB2451	Brewpubs, Barrel Tax and Reporting Requirements.....	1228
160.	SB70	Personal Income Tax Terms.....	1231
161.	SB71	Business Franchise Tax Terms.....	1232
162.	HB2773	Sheriffs Relieved of Requirements to Pay Court Costs in Tax Suits.....	1235
TREE FRUIT INDUSTRY			
163.	HB2082	Tree Fruit Industry Self-Improvement Assessment Program.....	1236
UNCLAIMED PROPERTY			
164	*SB430	Disclosure of Certain Business Registration Information for Recovery of Unclaimed Property.....	1239

TABLE OF CONTENTS

Chapter	Bill No.		Page
UNEMPLOYMENT COMPENSATION			
165.	HB2626	Extension of Unemployment Benefits and Redefining "Employment".....	1256
UNIFORM COMMERCIAL CODE			
166.	*HB2494	Negotiable Instruments.....	1284
VENDORS			
167.	*SB568	Corporation Eligibility for Resident Vendor Preference.....	1375
168.	SB572	Exceptions on Purchases From the Handicapped.....	1380
WILLS			
169.	HB2638	Intestate Succession and Right of a Surviving Spouse to the Elective Share.....	1381
WINE			
170.	*HB2636	Limited Quantity Shipment of Wine From Other States to Adults in this State.....	1401
WORKERS' COMPENSATION			
171.	HB2802	General Revision of the Workers' Compensation Statutes.....	1402
LOCAL LAWS			
* * * * *			
BECKLEY-RALEIGH COUNTY HUMANE AUTHORITY			
172.	HB2600	Establishment and Operation.....	1484
JEFFERSON COUNTY			
173.	HB2504	Conveyance of a Parcel of County-Owned Land to the Jefferson County Fairgrounds.....	1485
174.	HB2705	Extending Time for Excess Levy for Schools.....	1487
MARSHALL COUNTY			
175.	SB526	Marshall County Activities Development Authority Membership Increased.....	1488
MONONGALIA COUNTY			
176.	HB2783	City of Morgantown Authorized to Hire Nonresidents as Police Officers.....	1489
OHIO COUNTY			
177.	SB19	Residency Requirements for Membership on the City of Wheeling Centre Market Commission....	1490

TABLE OF CONTENTS

Chapter	Bill No.	Page
OHIO VALLEY REGIONAL TRANSPORTATION AUTHORITY		
178.	*HB2456 Time Extension for Continuing Additional Levy....	1491
SHAWNEE PARKWAY AUTHORITY		
179.	SB55 Creation and Functions of Authority.....	1492
SUMMERS COUNTY		
180.	HB2701 Summers County High School Mascot and Colors to be Decided by Student Vote.....	1495
TYLER COUNTY		
181.	HB2651 Time Extension for Excess Levy for Library, Streets, Parks and Pool, Emergency Squad and Fire Department in the City of Sistersville.....	1496
RESOLUTIONS		
(Only resolutions of general interest are included herein)		
Number	House Concurrent	Page
3	Urging the President and Congress to Select a Route Between Morgantown and Pittsburgh for the Federal Magnetic Elevated Train System Pilot Program to be Powered by Electricity Produced from Coal.....	1497
5	Amending Joint Rules of the Senate and House of Delegates, by Adding Thereto a New Rule Creating the Joint Committee on Pensions and Retirement.....	1498
*9	Requesting the State Board of Education and Division of Corrections to Undertake a Study to Develop a Plan to Require Public School and State Prison Cafeterias to Provide Unused, Cooked Food to Community Agencies Providing Food for Persons in Need.....	1500
Senate Concurrent		
5	Commemorating the Passing of E. Hansford McCourt, Former Legislator and President of the Senate.....	1501
28	Providing for an Extension of the Regular Session of the Seventy-First Legislature.....	1502
32	Commemorating the Public Service of Earl M. Vickers, Former Member of the House of Delegates and Retiring Director of Legislative Services.....	1503
House		
12	Creating a Select Committee on Health Care Policies.....	1505
Senate		
40	Commemorating the Life and Public Service of the Honorable J. C. Dillon, Jr., Former Member and Clerk of the Senate.....	1505

First Extraordinary Session, 1993

Chapter	Bill No.	APPROPRIATIONS	Page
1.	*HB105	Budget Bill, Making Appropriations of Public Money for the Fiscal Year Beginning July 1, 1993.....	1509
2.	HB109	Supplementing, Amending, Reducing, Expiring and Transferring Specified Amounts From Various Accounts to Acct. No. 4050, Department of Health and Human Resources, Division of Human Services.....	1629
3.	HB108	Supplementing, Amending and Transferring Specified Unexpended Amounts to Acct. No. 9132, Division of Human Services.....	1631
BINGO			
4.	*SB6	Charitable Bingo and Charitable Raffle Boards and Games.....	1632
LEGISLATIVE RULES			
5.	HB100	Promulgation of Legislative Rules for Various State Agencies.....	1645
6.	HB110	Promulgation of Legislative Rules by the Air Pollution Control Commission, Operation of Coal Preparation Plants and Coal Handling Operations.....	1803
MEDICAID			
7.	*SB2	State Medicaid Program and Funding Therefor.....	1804
SCHOOL AID			
8.	*HB104	School Aid Formula for Public Education and the Financing Thereof.....	1899
TOBACCO			
9.	HB106	Repeal of Section Prohibiting the Imposition of More Restrictive Laws, Rules or Regulations on the Use, Sale or Distribution of Tobacco Products.....	1956
VETERANS' BONUS			
10.	HB101	Providing for the Payment of the Veterans' Bonus to Veterans of the Persian Gulf, Panama, Grenada and Lebanon Conflicts.....	1957

MEMBERS OF THE SENATE

REGULAR SESSION, 1993

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-70th
	John G. Chernenko (D)	Wellsburg	66th-70th
Second	Don Macnaughtan (D)	New Martinsville	70th
	Larry Wiedebusch (D)	Glen Dale	(House 62nd-67th); 69th-70th
Third	Donna Jean Boley (R)	St. Marys	Appt. 5/14/85. 67th; 68th-70th
	Keith Burdette (D)	Parkersburg	(House 64th-65th); 66th-70th
Fourth	Oshel B. Craigo (D)	Hurricane	(House 65th); 66th-70th
	Robert L. Dittmar (D)	Ravenswood	69th-70th
Fifth	Bartow Ned Jones (D)	Huntington	Appt. 12/30/85. 67th; 68th-70th
	Robert H. Plymale (D)	Ceredo	
Sixth	H. Truman Chafin (D)	Williamson	66th-70th
	A. Keith Wagner (D)	laeger	69th-70th
Seventh	Sammy D. Dalton (D)	Harts	(House 62nd-67th; 69th); 70th
	Earl Ray Tomblin (D)	Chapmanville	(House 62nd-64th); 65th-70th
Eighth	David Grubb (D)	Charleston	(House 69th-70th)
	James F. Humphreys (D)	Charleston	(House 66th-68th); Appt. 9/13/89. 69th; 70th
Ninth	Billy Wayne Bailey, Jr. (D)	Alpoca	Appt. 1/8/91. 70th
	William R. Wooton (D)	Beckley	(House 63rd-67th; 69th); 70th
Tenth	Leonard W. Anderson (D)	Hinton	70th
	Tony E. Whitlow (D)	Princeton	(House 60th-61st; 63rd-66th); 67th- 70th
Eleventh	J. D. Brackenrich (D)	Lewisburg	68th-70th
	Robert K. Holliday (D)	Fayetteville	(House 56th-58th); 59th-60th; 65th- 70th
Twelfth	Joseph M. Minard (D)	Clarksburg	(House, Appt. 1/10/83. 66th; 67th- 69th); 70th
	William R. Sharpe, Jr. (D)	Weston	55th-64th; 67th-70th
Thirteenth	Eugene Claypole (D)	Granville	70th
	Joe Manchin, III (D)	Fairmont	(House 66th); 68th-70th
Fourteenth	Charles B. Felton, Jr. (D)	Rowelsburg	Appt. 5/21/87. 68th; 69th-70th
	J. M. Withers (D)	Grafton	70th
Fifteenth	Walt Helmick (D)	Marlinton	(House 1 yr., 69th); Appt. 9/25/89. 69th; 70th
	Mike Ross (D)	Coalton	
Sixteenth	Sondra Moore Lucht (D)	Martinsburg	66th-70th
	John. C. Yoder (R)	Harpers Ferry	
Seventeenth	Martha Yeager Walker (D)	Charleston	(House 70th)
	Martha G. Wehrle (D)	Charleston	(House 62nd-66th); Appt. 9/5/89. 69th; 70th

(D) Democrats	32
(R) Republicans	2
TOTAL	34

MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 1993

OFFICERS

Speaker—Robert C. Chambers, Huntington
Speaker Pro Tem—Phyllis J. Rutledge, Charleston
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-70th
	Tamara Pettit (D).....	New Cumberland.....	Appt. 11/20/89, 69th; 70th
Second.....	Paul R. Higgins (D).....	Follansbee.....	70th
	Robert G. Lindsey, Jr. (D).....	Wellsburg.....	70th
Third.....	David B. McKinley, P.E. (R).....	Wheeling.....	65th-70th
	L. Gil White (R).....	Wheeling.....	70th
Fourth.....	A. E. Tribett (D).....	McMechen.....	69th
	Scott G. Varner (D).....	Moundsville.....	
Fifth.....	Dave Pethel (D).....	Hundred.....	69th-70th
Sixth.....	James E. Willison (R).....	Sistersville.....	69th-70th
Seventh.....	Otis A. Leggett (R).....	St. Marys.....	68th-70th
Eighth.....	Everette W. Anderson, Jr. (R).....	Williamstown.....	
Ninth.....	Larry Border, R.Ph. (R).....	Davisville.....	70th
Tenth.....	J. D. Beane (D).....	Vienna.....	70th
	Brenda K. Brum (D).....	Parkersburg.....	70th
	Robert W. Burk, Jr. (R).....	Parkersburg.....	58th-59th (Appt. to Senate 2/23/69, 59th); Appt. to House 1/17/86, 67th; 68th-70th
Eleventh.....	Bob Ashley (R).....	Spencer.....	67th-70th
Twelfth.....	Karen L. Facemyer (R).....	Ripley.....	
Thirteenth.....	Brady R. Paxton (D).....	Poca.....	
	Patricia Holmes White (D).....	Poca.....	67th-70th
Fourteenth.....	Deborah F. Phillips (D).....	Scott Depot.....	67th-70th
	Ben Vest (D).....	Scott Depot.....	70th
Fifteenth.....	Robert Chambers (D).....	Huntington.....	64th-70th
	Margarette R. Leach (D).....	Huntington.....	
	Evelyn E. Richards (R).....	Huntington.....	64th; 67th; 69th-70th
Sixteenth.....	Rick Houvouras (D).....	Huntington.....	68th-70th
	John C. Huntwork, M.D. (D).....	Huntington.....	70th
	Stephen T. Williams (D).....	Huntington.....	68th-70th
Seventeenth.....	Kenneth R. Adkins (D).....	Huntington.....	Appt. 1/20/92, 70th
Eighteenth.....	Larry Jack Heck (D).....	Huntington.....	
Nineteenth.....	Grant Preece (D).....	Ragland.....	70th
	Harry Keith White (D).....	Gilbert.....	Appt. 9/11/92, 70th
Twentieth.....	Tracy Dempsey (D).....	Harts.....	70th
	Danny L. Ellis (D).....	Chapmanville.....	
	Larry Hendricks (D).....	Chapmanville.....	70th
	David E. Whitman (D).....	Chapmanville.....	Appt. 2/17/89, 69th
Twenty-first.....	Delores W. Cook (D).....	Ridgeview.....	69th-70th
Twenty-second.....	Ernest C. Moore (D).....	Thorpe.....	60th-63rd; 65th-70th
	Emily W. Yeager (D).....	Welch.....	Appt. 3/10/93
Twenty-third.....	Richard Browning (D).....	Oceana.....	69th-70th
	W. Richard Staton (D).....	Mullens.....	69th-70th
Twenty-fourth.....	William G. Carper, Jr. (D).....	Bluefield.....	70th
Twenty-fifth.....	Richard D. Flanigan (D).....	Princeton.....	66th-70th
	Odell H. Huffman (D).....	Princeton.....	59th-60th; (Senate 61st-66th); 70th
Twenty-sixth.....	Mary Pearl Compton (D).....	Union.....	69th-70th

HOUSE OF DELEGATES

Twenty-seventh	Robert S. Kiss (D)	Beckley	69th-70th
	Warren R. McGraw, II (D)	Beckley	
	Robert P. Pulliam, M.D. (D)	Beckley	
	Pat Reed (D)	Beckley	70th
	Arnold W. Ryan (D)	Hinton	67th-69th
Twenty-eighth	James J. Rowe (D)	Lewisburg	69th-70th
	Bill Wallace (R)	Clintonville	69th-70th
Twenty-ninth	Tom Louisos (D)	Oak Hill	67th-68th; 70th
	Bruce N. Petersen (D)	Fayetteville	
	John Pino (D)	Oak Hill	67th-68th
Thirtieth	Bonnie L. Brown (D)	South Charleston	66th-68th; 70th
	Joe Farris (D)	Charleston	70th
	Nancy Kessel (D)	Charleston	70th
	Margaret Miller (R)	South Charleston	69th-70th
	Phyllis J. Rutledge (D)	Charleston	59th-61st; 69th-70th
	Joe F. Smith (D)	Charleston	
	Sharon Spencer (D)	Charleston	66th; 68th-70th
Thirty-first	Nelson A. Sorah (D)	Charleston	
Thirty-second	Steve Harrison (R)	Nitro	
	Dick Henderson (R)	St. Albans	
	William Jay Nesbitt (R)	Cross Lanes	
	Ronald Neal Walters (R)	Cross Lanes	
Thirty-third	Randy Schoonover (D)	Clay	69th-70th
Thirty-fourth	John Campbell (D)	Sutton	70th
Thirty-fifth	C. Farrell Johnson (D)	Summersville	68th-70th
Thirty-sixth	Joseph B. Talbot (D)	Webster Springs	
Thirty-seventh	Joe Martin (D)	Elkins	Appt. 6/15/78. 63rd; 64th-70th
	William D. Proudfoot (D)	Elkins	70th
Thirty-eighth	James R. Fealy (D)	Weston	
Thirty-ninth	Dale F. Riggs (R)	Buckhannon	69th-70th
Fortieth	Richard H. Everson (D)	Philippi	
Forty-first	Percy C. Ashcraft, II (D)	Clarksburg	66th-70th
	Ron Fragale (D)	Nutter Fort	70th
	Larry A. Lynch (D)	Clarksburg	
	Barbara A. Warner (D)	Bridgeport	69th-70th
Forty-second	John F. Bennett (D)	Grafton	
Forty-third	Nick Fantasia (D)	Kingmont	52nd-53rd; 57th-60th; 62nd; 69th; Appt. 2/26/93
	Roman W. Prezioso (D)	Fairmont	69th-70th
	William E. Stewart (D)	Fairmont	66th; 68th; 70th
Forty-fourth	Robert C. Beach (D)	Core	Appt. 7/27/90. 69th; 70th
	Stephen L. Cook (D)	Morgantown	Appt. 1/21/80. 64th; 65th (Senate 66th-67th); 69th-70th
	Brian Gallagher (D)	Morgantown	Appt. 5/22/89. 69th; 70th
	Michael A. Oliverio, II (D)	Morgantown	
Forty-fifth	David E. Miller (D)	Kingwood	69th-70th
Forty-sixth	David Collins (D)	Davis	70th
Forty-seventh	Harold K. Michael (D)	Moorefield	69th-70th
Forty-eighth	Allen V. Evans (R)	Dorcas	70th
Forty-ninth	James T. Nicol (D)	Keyser	
Fiftieth	Jerry L. Mezzatesta (D)	Romney	68th-70th
Fifty-first	Charles S. Trump, IV (R)	Berkeley Springs	
Fifty-second	Vicki V. Douglas (D)	Martinsburg	70th
Fifty-third	Larry V. Faircloth (R)	Inwood	65th-70th
Fifty-fourth	John Overington (R)	Martinsburg	67th-70th
Fifty-fifth	John Dolye (D)	Shepherdstown	66th
Fifty-sixth	Dale Manuel (D)	Charles Town	69th-70th

¹Appointed to fill the vacancy created by the resignation of Ebb K. Whitley, Jr.
²Appointed to fill the vacancy created by the death of Michael A. Heston

(D) Democrats	79
(R) Republicans	21
TOTAL	100

COMMITTEES OF THE HOUSE OF DELEGATES

Regular Session, 1993

STANDING

Agriculture and Natural Resources

D. Miller (*Chair of Agriculture*), Compton (*Vice Chair of Agriculture*), Love (*Chair of Natural Resources*), Johnson (*Vice Chair of Natural Resources*), Beach, Campbell, Fragale, Heck, Linch, McGraw, Nicol, Pethtel, Preece, Proudfoot, Schoonover, Stewart, Talbott, Vest, Warner, Anderson, Border, Evans, Leggett, Riggs and Willison.

Banking and Insurance

Williams (*Chair of Banking*), Flanigan (*Vice Chair of Banking*), Phillips (*Chair of Insurance*), Gallagher (*Vice Chair of Insurance*), Beane, Carper, Collins, S. Cook, Dempsey, Douglas, Farris, Huntwork, Louisos, Michael, Moore, Rutledge, Sorah, Staton, Tribett, Vest, Ashley, McKinley, Harrison, Riggs and L. White.

Constitutional Revision

Brown (*Chair*), Pethtel (*Vice Chair*), Beane, Browning, Ellis, Houvouras, Huffman, Kessel, Linch, Lindsey, Manuel, Moore, Petersen, Preece, Prezioso, Pulliam, Ryan, Tribett, H. White, Faircloth, Harrison, McKinley, Overington, Trump and Wallace.

Education

Ashcraft (*Chair*), Prezioso (*Vice Chair*), Adkins, Beach, Bennett, Compton, Ellis, Everson, Fealy, Lindsey, Nicol, Paxton, Pettit, Preece, Proudfoot, Schoonover, Spencer, Talbott, Williams, Yeager*, Anderson, Harrison, Henderson, Overington and Richards.

*Delegate Yeager was appointed to fill the vacancy created by the resignation of Delegate Ebb K. Whitley, Jr.

Finance

Kiss (*Chair*), Browning (*Vice Chair*), Campbell, D. Cook, S. Cook, Doyle, Farris, Flanigan, Hendricks, Johnson, Leach, Mezzatesta, D. Miller, Petersen, Pettit, Rutledge, Ryan, Warner, H. White, P. White, Burk, Leggett, McKinley, M. Miller and Wallace.

Government Organization

Martin (*Chair*), Michael (*Vice Chair*), Beane, Carper, Dempsey, Fantasia*, Fragale, Heck, Higgins, Louisos, Love, McGraw, Oliverio, Preece, Pulliam, Smith, Stewart, Varner, Vest, Border, Evans, Facemyer, Nesbitt, Walters and Willison.

*Delegate Fantasia was appointed to fill the vacancy created by the death of Delegate Michael A. Heston.

Health and Human Resources

P. White (*Chair*), S. Cook (*Vice Chair*), Brown, Brum, Compton, Douglas, Doyle, Ellis, Fantasia*, Fealy, Flanigan, Gallagher, Huffman, Kessel, Leach, McGraw, Mezzatesta, Pettit, Pulliam, Spencer, Facemyer, Henderson, M. Miller, Richards and Walters.

*Delegate Fantasia was appointed to fill the vacancy created by the death of Delegate Michael A. Heston.

Industry and Labor

Spencer (*Chair*), Schoonover (*Vice Chair*), Adkins, Campbell, D. Cook, Farris, Heck, Hendricks, Higgins, Louisos, D. Miller, Oliverio, Paxton, Petersen, Phillips, Reed, Stewart, Varner, Whitman, Yeager*, Facemyer, Henderson, Nesbitt, Overington and Walters.

*Delegate Yeager was appointed to fill the vacancy created by the resignation of Delegate Ebb K. Whitley, Jr.

Judiciary

Rowe (*Chair*), Staton (*Vice Chair*), Brum, Brown, Collins, Douglas, Gallagher, Huffman, Huntwork, Kessel, Linch, Manuel, Moore, Pethel, Phillips, Pino, Reed, Sorah, Tribett, Whitman, Ashley, Faircloth, Riggs, Trump and L. White.

Political Subdivisions

Manuel (*Chair*), Collins (*Vice Chair*), Beach, Bennett, Doyle, Everson, Fantasia*, Huntwork, Johnson, Lindsey, Nicol, Oliverio, Pettit, Pino, Proudfoot, Reed, Ryan, Smith, H. White, Yeager*, Anderson, Faircloth, Richards, Trump and Willison.

*Delegate Fantasia was appointed to fill the vacancy created by the death of Delegate Michael A. Heston.

*Delegate Yeager was appointed to fill the vacancy created by the resignation of Delegate Ebb K. Whitley, Jr.

Roads and Transportation

Carper (*Chair*), Warner (*Vice Chair*), Adkins, Brum, Bennett, D. Cook, Dempsey, Everson, Fealy, Fragale, Hendricks, Higgins, Leach, Love, Paxton, Pino, Smith, Talbott, Varner, Whitman, Border, Evans, Leggett, Nesbitt and Wallace.

Rules

Chambers (*Chair*), Ashcraft, Houvouras, Kiss, Martin, Mezzatesta, Rowe, Staton, P. White, Burk, Ashley and Faircloth.

JOINT

Enrolled Bills

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

Government and Finance

Chambers (*Cochair*), Ashcraft, Houvouras, Kiss, Rowe, Burk and Ashley.

Legislative Rule-making Review

Gallagher (*Chair*), Douglas (*Vice Chair*), Compton, Huntwork, Burk and Faircloth.

Pensions and Retirement

Browning (*Chair*), Prezioso (*Vice Chair*), Lindsey, Campbell, Smith, Ashley and Wallace.

Rules

Chambers (*Cochair*), Houvouras and Burk.

SELECT**Select Committee on Health Care Policies**

Martin (*Chair*), P. White, (*Vice Chair*), Beane, Brown, Campbell, Carper, Compton, S. Cook, Douglas, Doyle, Fragale, Gallagher, Huntwork, Kessel, Mezzatesta, Michael, Petersen, Phillips, Pulliam, Vest, Ashley, Border, Burk, Faircloth and Walters.

STATUTORY LEGISLATIVE COMMISSIONS**Interstate Cooperation**

Pethtel (*Cochair*), Beach, Brown, Doyle, Farris, Sorah and L. White.

Juvenile Law

Brown (*Cochair*), Douglas and Trump.

Special Investigations

Chambers (*Cochair*), Martin, Rowe, Faircloth and Trump.

Clerk's Note: Michael A. Heston, 43rd Delegate District, died while in office on February 15, 1993.

Nick Fantasia was appointed in his stead.

Committees: Government Organization, Health and Human Resources and Political Subdivisions.

Ebb K. Whitley, Jr., 22nd Delegate District, resigned from office on February 26, 1993.

Emily W. Yeager was appointed in his stead.

Committees: Education, Industry and Labor and Political Subdivisions.

COMMITTEES OF THE SENATE

Regular Session, 1993

STANDING

Agriculture

Whitlow (*Chair*), Withers (*Vice Chair*), Anderson, Bailey, Chafin, Dittmar, Helmick, Holliday, Minard and Ross.

Banking and Insurance

Minard (*Chair*), Helmick (*Vice Chair*), Blatnik, Craigo, Dittmar, Felton, Jones, Manchin, Sharpe, Tomblin, Wagner, Wooton and Yoder.

Confirmations

Blatnik (*Chair*), Grubb (*Vice Chair*), Claypole, Jones, Lucht, Tomblin, Wehrle, Wooton and Boley.

Education

Lucht (*Chair*), Dalton (*Vice Chair*), Bailey, Blatnik, Brackenrich, Felton, Grubb, Humphreys, Jones, Plymale, Wagner, Whitlow, Withers and Boley.

Energy, Industry and Mining

Sharpe (*Chair*), Macnaughtan (*Vice Chair*), Brackenrich, Chernenko, Dalton, Felton, Grubb, Helmick, Manchin, Ross, Walker, Whitlow, Withers and Yoder.

Finance

Tomblin (*Chair*), Manchin (*Vice Chair*), Bailey, Blatnik, Brackenrich, Chafin, Chernenko, Craigo, Helmick, Jones, Lucht, Sharpe, Walker, Wehrle, Whitlow, Withers and Boley.

Government Organization

Felton (*Chair*), Wagner (*Vice Chair*), Brackenrich, Chernenko, Claypole, Craigo, Holliday, Jones, Lucht, Manchin, Tomblin, Wehrle, Wiedebusch and Yoder.

Health and Human Resources

Holliday (*Chair*), Walker (*Vice Chair*), Blatnik, Chafin, Chernenko, Craigo, Grubb, Macnaughtan, Manchin, Plymale, Sharpe, Wehrle, Wooton and Boley.

Interstate Cooperation

Wagner (*Chair*), Claypole (*Vice Chair*), Anderson, Chafin, Plymale, Ross and Whitlow.

Judiciary

Wooton (*Chair*), Wiedebusch (*Vice Chair*), Anderson, Claypole, Dalton, Dittmar, Felton, Grubb, Holliday, Humphreys, Macnaughtan, Minard, Plymale, Ross, Wagner and Yoder.

Labor

Chernenko (*Chair*), Claypole (*Vice Chair*), Bailey, Chafin, Grubb, Holliday, Humphreys, Macnaughtan, Wagner and Wiedebusch.

Military

Helmick (*Chair*), Bailey (*Vice Chair*), Chernenko, Dalton, Humphreys, Minard, Wiedebusch, Wooton and Boley.

Natural Resources

Brackenrich (*Chair*), Plymale (*Vice Chair*), Anderson, Craigo, Dittmar, Helmick, Humphreys, Macnaughtan, Minard, Ross, Whitlow, Wiedebusch, Withers and Yoder.

Pensions

Wehrle (*Chair*), Manchin (*Vice Chair*), Dittmar, Felton, Lucht, Walker and Withers.

Rules

Burdette (*Chair*), Anderson, Blatnik, Brackenrich, Craigo, Lucht, Manchin, Tomblin, Wooton and Boley.

Small Business

Anderson (*Chair*), Ross (*Vice Chair*), Blatnik, Craigo, Holliday, Jones, Macnaughtan, Minard, Plymale, Sharpe, Walker and Wehrle.

Transportation

Dittmar (*Chair*), Withers (*Vice Chair*), Chafin, Dalton, Sharpe, Tomblin, Wagner, Wiedebusch and Yoder.

JOINT**Commission on Special Investigations**

Burdette (*Cochair*), Blatnik, Craigo, Wooton and Boley.

Enrolled Bills

Bailey (*Cochair*), Claypole, Dalton, Humphreys and Walker.

Government and Finance

Burdette (*Cochair*), Craigo, Lucht, Sharpe, Tomblin, Wooton and Boley.

Government Operations

Felton (*Cochair*), Brackenrich, Manchin, Wiedebusch and Yoder.

Legislative Commission on Juvenile Law

Lucht, (*Cochair*), Felton and Yoder.

**Legislative Oversight Commission on
Education Accountability**

Lucht (*Cochair*), Blatnik, Felton, Tomblin, Wagner and Boley.

**Legislative Oversight Committee on
Regional Jail and Correctional Facility Authority**

Holliday (*Chair*), Blatnik, Craigo, Minard, Wiedebusch and Yoder.

Legislative Rule-Making Review

Manchin (*Cochair*), Grubb (*Vice Cochair*), Anderson,
Macnaughtan, Minard and Boley.

Rules

Burdette (*Cochair*), Craigo and Boley.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST REGULAR SESSION, 1993

CHAPTER 1

(Com. Sub. for S. B. 14—By Senator Wooton)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nineteen and twenty-three, article sixteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-two, article three, chapter sixty of said code; to amend and reenact section twenty-four, article three-a of said chapter; to amend and reenact sections twelve, twelve-a and thirteen, article seven of said chapter; and to amend and reenact section twenty-a, article eight of said chapter, all relating to prohibiting persons under the age of twenty-one from purchasing, consuming, possessing, selling and serving nonintoxicating beer, wine and alcoholic liquor; allowing employment by licensees of underage persons in certain instances; allowing exceptions for underage law enforcement and commission agents; providing criminal penalties; raising the amount to be retained in enforcement funds at fiscal year end; and prohibiting the sale or giving of nonintoxicating beer, wine or alcoholic liquors to certain persons.

Be it enacted by the Legislature of West Virginia:

That sections nineteen and twenty-three, article sixteen, chapter eleven of the code of West Virginia, one thousand nine

hundred thirty-one, as amended, be amended and reenacted; that section twenty-two, article three, chapter sixty of said code be amended and reenacted; that section twenty-four, article three-a of said chapter be amended and reenacted; that sections twelve, twelve-a and thirteen, article seven of said chapter be amended and reenacted; and that section twenty-a, article eight of said chapter be amended and reenacted, all to read as follows:

Chapter

11. Taxation

60. State Control of Alcoholic Liquors.

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-19. Unlawful acts of persons; criminal penalties.

§11-16-23. Revocation or suspension of license; monetary penalty; hearing assessment of costs; establishment of enforcement fund.

§11-16-19. Unlawful acts of persons; criminal penalties.

1 (a) Any person under the age of twenty-one years who
 2 purchases, consumes, sells, possesses or serves nonintox-
 3 icating beer is guilty of a misdemeanor, and, upon
 4 conviction thereof, shall be fined in an amount not to
 5 exceed five hundred dollars or shall be incarcerated in
 6 the county jail for a period not to exceed seventy-two
 7 hours, or both fined and imprisoned, or, in lieu of such
 8 fine and incarceration, may, for the first offense, be
 9 placed on probation for a period not to exceed one year.

10 Nothing in this article, nor any rule or regulation of
 11 the commissioner, shall prevent or be deemed to
 12 prohibit any person who is at least eighteen years of age
 13 from serving in the lawful employment of any licensee,
 14 which may include the sale or delivery of nonintoxicat-
 15 ing beer as defined in this article. Further, nothing in
 16 this article, nor any rule or regulation of the commis-
 17 sioner, shall prevent or be deemed to prohibit any
 18 person who is less than eighteen but at least sixteen
 19 years of age from being employed by a licensee whose
 20 principal business is the sale of food or consumer goods
 21 or the providing of recreational activities, including, but
 22 not limited to, nationally franchised fast food outlets,

23 family-oriented restaurants, bowling alleys, drug stores,
24 discount stores, grocery stores and convenience stores:
25 *Provided*, That such person shall not sell or deliver
26 nonintoxicating beer.

27 Nothing in this subsection shall prohibit a person who
28 is at least eighteen years of age from purchasing or
29 possessing nonintoxicating beer when he or she is acting
30 upon the request of or under the direction and control
31 of any member of a state, federal or local law-enforce-
32 ment agency or the West Virginia alcohol beverage
33 administration while the agency is conducting an
34 investigation or other activity relating to the enforce-
35 ment of the alcohol beverage control statutes and the
36 rules and regulations of the commissioner.

37 (b) Any person under the age of twenty-one years who,
38 for the purpose of purchasing nonintoxicating beer,
39 misrepresents his or her age, or who for such purpose
40 presents or offers any written evidence of age which is
41 false, fraudulent or not actually his or her own, or who
42 illegally attempts to purchase nonintoxicating beer, is
43 guilty of a misdemeanor, and, upon conviction thereof,
44 shall be fined in an amount not to exceed fifty dollars
45 or shall be imprisoned in the county jail for a period not
46 to exceed seventy-two hours, or both such fine and
47 imprisonment, or, in lieu of such fine and imprisonment,
48 may, for the first offense, be placed on probation for a
49 period not exceeding one year.

50 (c) Any person who shall knowingly buy for, give to
51 or furnish nonintoxicating beer to anyone under the age
52 of twenty-one to whom they are not related by blood or
53 marriage is guilty of a misdemeanor and shall, upon
54 conviction thereof, be fined in an amount not to exceed
55 one hundred dollars or shall be imprisoned in the county
56 jail for a period not to exceed ten days, or both such fine
57 and imprisonment.

58 (d) Any person who at any one time transports into
59 the state for their personal use, and not for resale, more
60 than six and seventy-five hundredths gallons of nonin-
61 toxicating beer, upon which the West Virginia barrel
62 tax has not been imposed, shall be guilty of a misdemea-

63 nor and shall, upon conviction thereof, be fined in an
64 amount not to exceed one hundred dollars and have all
65 the untaxed nonintoxicating beer in their possession at
66 the time of the arrest confiscated, or imprisoned for ten
67 days in the county jail, or both fined and imprisoned.

68 If the Congress of the United States repeals the
69 mandate established by the Surface Transportation
70 Assistance Act of 1982 relating to national uniform
71 drinking age of twenty-one as found in section six of
72 Public Law 98-363, or a court of competent jurisdiction
73 declares the provision to be unconstitutional or other-
74 wise invalid, it is the intent of the Legislature that the
75 provisions contained in this section and section eighteen
76 of this article which prohibit the sale, furnishing,
77 giving, purchase or ownership of nonintoxicating beer
78 to or by a person who is less than twenty-one years of
79 age shall be null and void and the provisions therein
80 shall thereafter remain in effect and apply to the sale,
81 furnishing, giving, purchase or ownership of nonintox-
82 icating beer to or by a person who is less than nineteen
83 years of age.

**§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
3 eighteen of this article or of chapter sixty of this code;
4 (ii) acted in such a way as would have precluded initial
5 or renewal licensure; or (iii) violated any rule or order
6 promulgated by the commissioner, the commissioner
7 may:

- 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 "Nonintoxicating
19 Beer Enforcement Fund", which is hereby created.
20 All moneys collected, received and deposited in the
21 "Nonintoxicating Beer Enforcement Fund" shall be kept
22 and maintained for expenditures by the commissioner
23 for the purpose of enforcement of the statutes and rules
24 pertaining to nonintoxicating beer and shall not be
25 treated by the state treasurer or state auditor as any
26 part of the general revenue of the state. At the end of
27 each fiscal year all funds in the nonintoxicating beer
28 enforcement fund in excess of twenty thousand dollars
29 shall be transferred to the general revenue fund.

30 (c) In addition to the grounds for revocation, suspen-
31 sion or other sanction of a license set forth in subsection
32 (a) of this section, conviction of the licensee of any
33 offense constituting a violation of the laws of this state
34 or of the United States relating to nonintoxicating beer
35 or alcoholic liquor shall be mandatory grounds for such
36 sanctioning of a license. Conviction of the licensee of any
37 violation of the laws of this state or of the United States
38 relating to prostitution or the sale, possession or
39 distribution of narcotics or controlled substances shall
40 be mandatory grounds for revocation of the licensee's
41 license for a period of at least one year.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

Article

3. Sales by Commissioner.
- 3A. Sales by Retail Liquor Licensees.
7. Licenses to Private Clubs.
8. Sales of Wines.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-22. Sales to certain persons prohibited.

1 (a) Alcoholic liquors and nonintoxicating beer as
2 defined in section three, article sixteen, chapter eleven
3 of this code shall not be sold to a person who is:

- 4 (1) Less than twenty-one years of age;

5 (2) An habitual drunkard;

6 (3) Intoxicated;

7 (4) Addicted to the use of any controlled substance as
8 defined by any of the provisions of chapter sixty-a of this
9 code; or

10 (5) Mentally incompetent.

11 (b) It shall be a defense to a violation of subdivision
12 (1), subsection (a) of this section if the seller shows that
13 the purchaser:

14 (1) Produced written evidence which showed his or
15 her age to be at least the required age for purchase and
16 which bore a physical description of the person named
17 on the writing which reasonably described the pur-
18 chaser; or

19 (2) Produced evidence of other facts that reasonably
20 indicated at the time of sale that the purchaser was at
21 least the required age.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-24. Unlawful acts by persons.

1 (a) Any person under the age of twenty-one years who
2 purchases, consumes, sells, serves or possesses alcoholic
3 liquor is guilty of a misdemeanor, and, upon conviction
4 thereof, shall be fined in an amount not to exceed five
5 hundred dollars or shall be incarcerated in the county
6 jail for a period not to exceed seventy-two hours, or both
7 fined and imprisoned, or, in lieu of such fine and
8 incarceration, may, for the first offense, be placed on
9 probation for a period not to exceed one year.

10 Nothing in this article, nor any rule or regulation of
11 the commissioner, shall prevent or be deemed to
12 prohibit any person who is at least eighteen years of age
13 from serving in the lawful employment of a licensee
14 which includes the sale and serving of alcoholic liquor.

15 Nothing in this subsection shall prohibit a person who
16 is at least eighteen years of age from purchasing or
17 possessing alcoholic liquor when he or she is acting upon
18 the request of or under the direction and control of any

19 member of a state, federal or local law-enforcement
20 agency or the West Virginia alcohol beverage adminis-
21 tration while the agency is conducting an investigation
22 or other activity relating to the enforcement of the
23 alcohol beverage control statutes and the rules and
24 regulations of the commissioner.

25 (b) Any person under the age of twenty-one years who,
26 for the purpose of purchasing liquor from a retail
27 licensee, misrepresents his or her age, or who for such
28 purpose presents or offers any written evidence of age
29 which is false, fraudulent or not actually his or her own,
30 or who illegally attempts to purchase liquor from a
31 retail licensee, is guilty of a misdemeanor, and, upon
32 conviction thereof, shall be fined in an amount not to
33 exceed fifty dollars or imprisoned in the county jail for
34 a period not to exceed seventy-two hours, or both fined
35 and imprisoned, or, in lieu of such fine and imprison-
36 ment, may, for the first offense, be placed on probation
37 for a period not exceeding one year.

38 (c) Any person who knowingly buys for, gives to or
39 furnishes to anyone under the age of twenty-one to
40 whom he or she is not related by blood or marriage any
41 liquor from whatever source, is guilty of a misdemeanor
42 and shall, upon conviction thereof, be fined in an amount
43 not to exceed one hundred dollars or imprisoned in the
44 county jail for a period not to exceed ten days, or both
45 fined and imprisoned.

46 (d) No person while on the premises of a retail outlet
47 may consume liquor or break the seal on any package
48 or bottle of liquor. Any person who violates the
49 provisions of this subsection is guilty of a misdemeanor
50 and shall, upon conviction thereof, be fined in an amount
51 not to exceed one hundred dollars or imprisoned in the
52 county jail for a period not to exceed ten days, or both
53 fined and imprisoned.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

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

§60-7-12a. Unlawful acts by persons.

§60-7-13. Revocation or suspension of license; monetary penalty; peering;
assessment of costs; establishment of enforcement fund.

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

1 (a) It is unlawful for any licensee, or agent, employee
2 or member thereof, on such licensee's premises to:

3 (1) Sell or offer for sale any alcoholic liquors other
4 than from the original package or container;

5 (2) Authorize or permit any disturbance of the peace;
6 obscene, lewd, immoral or improper entertainment,
7 conduct or practice; gambling or any slot machine,
8 multiple coin console machine, multiple coin console slot
9 machine or device in the nature of a slot machine;

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

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

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

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

32 (7) With the intent to defraud, alter, change or
33 misrepresent the quality, quantity or brand name of any
34 alcoholic liquor;

35 (8) Sell or offer for sale any alcoholic liquor to any
36 person who is not a duly elected or approved dues

37 paying member in good standing of said private club or
38 a guest of such member;

39 (9) (A) Employ any person who is less than eighteen
40 years of age in a position where the primary responsi-
41 bility for such employment is to sell, furnish or give
42 nonintoxicating beer, wine or alcoholic liquors to any
43 person;

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

50 (10) Violate any reasonable rule of the commissioner.

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

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

§60-7-12a. Unlawful acts by persons.

1 (a) A person under the age of twenty-one years may
2 not order, pay for, share the cost of or attempt to
3 purchase any nonintoxicating beer, wine or alcoholic
4 liquors from a licensee or consume any nonintoxicating
5 beer, wine or alcoholic liquors purchased from a licensee
6 or possess any nonintoxicating beer, wine or alcoholic
7 liquors purchased from a licensee. Any person under the
8 age of twenty-one years who violates any provisions of
9 this subsection is guilty of a misdemeanor, and, upon
10 conviction thereof, shall be fined in an amount not to
11 exceed five hundred dollars or imprisoned in the county
12 jail for a period not to exceed seventy-two hours, or both
13 fined and imprisoned, and, in addition to such fine and
14 imprisonment, may, for the first offense, be placed on

15 probation for a period not to exceed one year: *Provided*,
16 That nothing in this subsection shall prohibit a person
17 who is at least eighteen years of age from purchasing
18 or possessing nonintoxicating beer, wine or alcoholic
19 liquors when he or she is acting upon the request of or
20 under the direction and control of any member of a
21 state, federal or local law-enforcement agency or the
22 West Virginia alcohol beverage administration while
23 the agency is conducting an investigation or other
24 activity relating to the enforcement of the alcohol
25 beverage control statutes and the rules and regulations
26 of the commissioner.

27 (b) Any person under the age of twenty-one years who,
28 for the purpose of purchasing nonintoxicating beer,
29 wine, or alcoholic liquors from a licensee, misrepresents
30 his or her age, or who for such purpose presents or offers
31 any written evidence of age which is false, fraudulent
32 or not actually his or her own, or who illegally attempts
33 to purchase nonintoxicating beer, wine, or alcoholic
34 liquors from a licensee, is guilty of a misdemeanor, and,
35 upon conviction thereof, shall be fined in an amount not
36 to exceed five hundred dollars or shall be imprisoned in
37 the county jail for a period not to exceed seventy-two
38 hours, or both such fine and imprisonment, or, in lieu
39 of such fine and imprisonment, may, for the first
40 offense, be placed on probation for a period not
41 exceeding one year.

42 (c) Any person who knowingly buys for, gives to or
43 furnishes to anyone under the age of twenty-one, any
44 nonintoxicating beer, wine or alcoholic liquors pur-
45 chased from a licensee, is guilty of a misdemeanor and
46 shall, upon conviction thereof, be fined not more than
47 five hundred dollars, or imprisoned in the county jail not
48 more than ten days, or both fined and imprisoned.

**§60-7-13. 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 article sixteen,
3 chapter eleven, or of this chapter; (ii) acted in such a

4 way as would have precluded initial or renewal licen-
5 sure; or (iii) violated any rule or order promulgated by
6 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 twenty
29 thousand dollars shall be transferred to the general
30 revenue fund.

31 (c) In addition to the grounds for revocation, suspen-
32 sion or other sanction of a license set forth in subsection
33 (a) of this section, conviction of the licensee of any
34 offense constituting a violation of the laws of this state
35 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
42 of the licensee's license for a period of at least one year.

ARTICLE 8. SALE OF WINES.

§60-8-20a. Unlawful acts by persons.

1 (a) Any person under the age of twenty-one years who
2 purchases, consumes, sells, possesses or serves wine or
3 other alcoholic liquor is guilty of a misdemeanor, and,
4 upon conviction thereof, shall be fined in an amount not
5 to exceed five hundred dollars or shall be incarcerated
6 in the county jail for a period not to exceed seventy-two
7 hours, or both fined and imprisoned, or, in lieu of such
8 fine and incarceration, may, for the first offense, be
9 placed on probation for a period not to exceed one year.

10 Nothing in this article, nor any rule or regulation of
11 the commissioner, shall prevent or be deemed to
12 prohibit any person who is at least eighteen years of age
13 from serving in the lawful employment of any licensee,
14 which may include the sale or delivery of wine as
15 defined in this article. Further, nothing in this article,
16 nor any rule or regulation of the commissioner, shall
17 prevent or be deemed to prohibit any person who is less
18 than eighteen but at least sixteen years of age from
19 being employed by a licensee whose principal business
20 is the sale of food or consumer goods or the providing
21 of recreational activities, including, but not limited to,
22 nationally franchised fast food outlets, family-oriented
23 restaurants, bowling alleys, drug stores, discount stores,
24 grocery stores and convenience stores: *Provided*, That
25 such person shall not sell or deliver wine or alcoholic
26 liquor.

27 Nothing in this subsection shall prohibit a person who
28 is at least eighteen years of age from purchasing or
29 possessing wine or alcoholic liquor when he or she is
30 acting upon the request of or under the direction and
31 control of any member of a state, federal or local law-
32 enforcement agency or the West Virginia alcohol
33 beverage administration while the agency is conducting
34 an investigation or other activity relating to the
35 enforcement of the alcohol beverage control statutes and
36 the rules and regulations of the commissioner.

37 (b) Any person under the age of twenty-one years who,
38 for the purpose of purchasing wine or other alcoholic

39 liquors from a licensee, misrepresents his or her age, or
40 who for such purpose presents or offers any written
41 evidence of age which is false, fraudulent or not actually
42 his or her own, or who illegally attempts to purchase
43 wine or other alcoholic liquors, is guilty of a misdemea-
44 nor, and, upon conviction thereof, shall be fined in an
45 amount not to exceed fifty dollars or shall be imprisoned
46 in the county jail for a period not to exceed seventy-two
47 hours, or both such fine and imprisonment, or, in lieu
48 of such fine and imprisonment, may, for the first
49 offense, be placed on probation for a period not
50 exceeding one year.

51 (c) Any person who shall knowingly buy for, give to
52 or furnish wine or other alcoholic liquors from any
53 source to anyone under the age of twenty-one to whom
54 they are not related by blood or marriage, is guilty of
55 a misdemeanor and shall, upon conviction thereof, be
56 fined in an amount not to exceed one hundred dollars
57 or shall be imprisoned in the county jail for a period not
58 to exceed ten days, or both such fine and imprisonment.

CHAPTER 2

(Com. Sub. for H. B. 2196—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the state fund, general revenue, from surplus accrued for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the division of corrections—correctional units, Act. No. 3770, supplementing chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That chapter twelve, acts of the Legislature, regular session,

one thousand nine hundred ninety-two, known as the budget bill, be supplemented and amended by adding to title two, section nine thereof, as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 9. Appropriation from surplus accrued.**

3 DEPARTMENT OF MILITARY AFFAIR'S
4 AND PUBLIC SAFETY

5 *183b—Division of Corrections—*
6 *Correctional Units*

7 (WV Code Chapters 25, 28, 29 and 62)

8 Acct. No. 3770

		Federal	General
		Funds	Revenue
		Fiscal	Fund
		Year	Fiscal
		1992-93	Year
		1992-93	1992-93
15	1 Personal Services	\$ —	\$ 742,663
16	2 Employee Benefits	—	155,405
17	3 Payment to Counties and/or		
18	Regional Jails	—	1,000,000
19	4 Unclassified	—	601,932
20	5 Total	\$ —	\$ 2,500,000

21 The purpose of this supplementary appropriation bill
22 is to supplement the budget act for the fiscal year 1992-
23 1993 by providing for a new item of appropriation to be
24 established therein to appropriate surplus accrued in
25 the general revenue fund for the fiscal year ending June
26 30, 1992, and to be available for expenditure in the fiscal
27 year 1992-1993. Such amount shall be available for
28 expenditure upon passage of the bill.

CHAPTER 3

(Com. Sub. for H. B. 2197—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury from the state fund, general revenue, from surplus accrued for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-two, to the division of public safety, Acct. No. 5700, supplementing chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill, be supplemented and amended by adding to title two, section nine thereof, as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 9. Appropriations from surplus accrued.		
3	DEPARTMENT OF MILITARY AFFAIR'S		
4	AND PUBLIC SAFETY		
5	<i>183a—Division of Public Safety</i>		
6	(WV Code Chapter 15)		
7	Acct. No. 5700		
8			General
9		Federal	Revenue
10		Funds	Fund
11		Fiscal	Fiscal
12		Year	Year
13		1992-93	1992-93
14	1	Personal Services \$ — \$	357,000
15	2	Employee Benefits —	43,000
16	3	Unclassified —	100,000
17	4	Total \$ — \$	500,000

5 The purpose of this supplementary appropriation bill
6 is to supplement the budget act for the fiscal year 1992-
7 1993 by providing for a new item of appropriation to be
8 established therein to appropriate surplus accrued in
9 the general revenue fund for the fiscal year ending June
10 30, 1992, and to be available for expenditure in the fiscal
11 year 1992-1993. Such amount shall be available for
12 expenditure upon passage of the bill.

CHAPTER 4

(Com. Sub. for S. B. 273—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed April 9, 1993; 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-three, to the West Virginia department of transportation, division of highways, Acct. No. 6700, chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

WHEREAS, The governor submitted to the Legislature the executive budget document dated February 10, 1993, wherein are set forth the revenues and expenditures of the state road fund, including fiscal year 1992-1993; and

WHEREAS, It appears from such budget document that there now remains unappropriated a balance in the state road fund available for further appropriation during the fiscal year 1992-1993, 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 appropriation from the state road fund to the West Virginia department of transportation, division of highways, Acct. No. 6700, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, as appropriated by chapter twelve, acts of the Legislature,

regular session, one thousand nine hundred ninety-two, known as the budget bill, be supplemented, amended and thereafter read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	Sec. 4. Appropriations of federal funds.		
4	DEPARTMENT OF TRANSPORTATION		
5	<i>162—Division of Highways</i>		
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		1992-93	1992-93
14	1	Maintenance, Expressway,	
15	2	Trunkline and Feeder \$	— \$ 67,980,000
16	3	Maintenance, State	
17	4	Local Services	— 97,511,000
18	5	Maintenance, Contract	
19	6	Paving and	
20	7	Secondary Road	
21	8	Maintenance	— 32,402,000
22	9	Bridge Repair and	
23	10	Replacement	— 28,000,000
24	11	Industrial Access Roads	— 2,750,000
25	12	Inventory Revolving	— 1,250,000
26	13	Equipment Revolving	— 6,575,000
27	14	General Operations	— 29,750,000
28	15	Debt Service	— 56,498,000
29	16	Interstate Construction	— 60,000,000
30	17	Other Federal Aid	
31	18	Programs	— 205,000,000
32	19	Appalachian Programs	— 120,000,000
33	20	Nonfederal Aid	
34	21	Construction	— 40,000,000
35	22	Highway Litter Control	— 1,500,000
36	23	Total \$	— <u>\$749,216,000</u>

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 1992-1993 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 the bill.

CHAPTER 5

(Com. Sub. for S. B. 267—By Senators Burdette, Mr. President, and Boley,
 By Request of the Executive)

[Passed April 6, 1993; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing, expiring and transferring between items of the existing appropriation of the department of transportation, division of motor vehicles, Acct. No. 6710, as appropriated by chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation of Acct. No. 6710, chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, be supplemented, amended, reduced, expired and transferred to read as follows:

1 TITLE II—APPROPRIATIONS.
 2 Sec. 3. Appropriations from other funds.
 3 Sec. 4. Appropriations of federal funds.
 4 DEPARTMENT OF TRANSPORTATION
 5 *163—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

		Federal Funds Fiscal Year 1992-93	Other Funds Fiscal Year 1992-93
1			
2			
3			
4			
5	1 Personal Services.....	\$ —	\$ 6 2,925,098
7	2 Annual Increment.....	—	41,904
8	3 Employee Benefits.....	—	1,094,876
9	4 Optic Scan System.....	—	8,632
10	5 Electronic Photo Operator		
11	6 and License System	—	-0-
12	7 Unclassified.....	100,000	10,254,901
13	7a Total Quality		
14	7b Management Program. ...	—	100,000
15	8 Total	\$100,000	\$14,425,411

16 The purpose of this supplementary appropriation bill
 17 is to supplement, amend, reduce, expire and transfer
 18 between line items certain moneys of the existing
 19 appropriation for the designated spending unit. The
 20 amounts as itemized for expenditure during the fiscal
 21 year one thousand nine hundred ninety-three shall be
 22 made available for expenditure upon the effective date
 23 of the bill.

CHAPTER 6

(H. B. 2812—By Delegates S. Cook and D. Cook)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury to the public service commission, Acct. No. 8280, from the balance of moneys remaining unappropriated in the designated account for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, supplementing and amending chapter twelve, acts of the Legislature, one thousand nine hundred ninety-two, known as the budget bill, by adding thereto a new line item of appropriation.

WHEREAS, It appears that there now remains unappropriated a balance in Acct. No. 8280 available for further appropriation during the fiscal year 1992-1993, 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 appropriation to Acct. No. 8280, Public Service Commission, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, as appropriated by chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill, be supplemented and amended by adding thereto a new line item to thereafter read as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 3. Appropriations from other funds.		
3	MISCELLANEOUS BOARDS AND COMMISSIONS		
4	<i>172—Public Service Commission</i>		
5	(WV Code Chapter 24)		
6	Acct. No. 8280		
7	TO BE PAID FROM SPECIAL REVENUE FUND		
8		Federal	Other
9		Funds	Funds
10		Fiscal	Fiscal
11		Year	Year
12		1992-93	1992-93
13	1 Personal Services	\$ —	\$ 4,976,338
14	2 Annual Increment	—	42,523
15	3 Employee Benefits	—	1,553,241
16	4 Unclassified	—	1,495,238
17	4a 765 KV Transmission		
18	4b Line Study	—	50,000
19	5 Total.....	\$ —	\$ 8,117,340

20 The purpose of this supplementary appropriation is to
 21 supplement and amend this account in the budget bill
 22 for fiscal year 1992-1993, from the unappropriated
 23 balance, by adding a new line item of appropriation in
 24 the amount of fifty thousand dollars, to be available for
 25 expenditure upon passage of the bill.

CHAPTER 7

(H. B. 2772—By Delegates S. Cook, Browning, Farris, Mezzatesta,
D. Miller, Rutledge and Wallace)

[Passed April 9, 1993; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public money out of the treasury to the department of transportation, division of motor vehicles—driver's license reinstatement fund, Acct. No. 8422, from the balance of moneys remaining unappropriated in the designated account for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, supplementing chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

WHEREAS, It appears that there now remains unappropriated balance in Acct. No. 8422 available for further appropriation during the fiscal year 1992-1993, 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 appropriation to Acct. No. 8422, division of motor vehicles, driver's license reinstatement fund, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, as appropriated by chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill, be supplemented and amended thereafter to read as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 3. Appropriations from other funds.
- 3 DEPARTMENT OF TRANSPORTATION
- 4 164—Division of Motor Vehicles—
- 5 Driver's License Reinstatement Fund
- 6 (WV Code Chapter 17B)

7	Acct. No. 8422		
8	TO BE PAID FROM SPECIAL REVENUE FUND		
9		Federal	Other
10		Funds	Funds
11		Fiscal	Fiscal
12		Year	Year
13		1992-93	1992-93
14	1	Personal Services	\$ — \$ 171,068
15	2	Annual Increment	— 2,124
16	3	Employee Benefits	— 62,941
17	4	Unclassified	— 89,907
18	5	Total	\$ — \$ 326,040

19 The purpose of this supplementary appropriation is to
 20 supplement this account in the budget bill for fiscal year
 21 1992-1993, from the unappropriated balances by adding
 22 twenty-two thousand, two hundred twenty-four dollars
 23 to the personal services line items and fourteen thou-
 24 sand, five hundred sixty-two dollars to the employee
 25 benefits line item, for a total increase in authorized
 26 spending authority of thirty-six thousand, seven
 27 hundred eighty-six dollars to be available for expendi-
 28 ture upon passage of the bill.

CHAPTER 8

(S. B. 587—Originating in the Committee on Finance.)

[Passed April 23, 1993; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal block grant moneys out of the treasury from the balance of available federal block grant moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, to the division of health—substance abuse prevention and treatment, Acct. No. 8501, supplementing and amending chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

WHEREAS, The governor has established the availability of federal block grant moneys, receivable for new programs and available for expenditure in fiscal year 1992-1993, a portion of the same is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill, be supplemented and amended by adding to title two, section ten thereof, as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 10. Appropriations from federal block grants.

3 187a—Division of Health—
4 Substance Abuse Prevention and Treatment

5 Acct. No. 8501

6 TO BE PAID FROM FEDERAL FUNDS

7 1 Unclassified—Total \$5,686,000

8 The purpose of this supplementary appropriation bill
9 is to supplement the budget act for the fiscal year 1992-
10 1993 by providing for a new account to be established
11 therein to appropriate federal block grant moneys
12 received for expenditure in the fiscal year 1992-1993.
13 These moneys shall be available for expenditure upon
14 passage of the bill.

CHAPTER 9

(S. B. 586—Originating in the Committee on Finance.)

[Passed April 23, 1993; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal block grant moneys out of the treasury from the balance of available federal block grant moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-three, to the division of health—community mental health

services, Acct. No. 8505, supplementing and amending chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill.

WHEREAS, The governor has established the availability of federal block grant moneys, receivable for new programs and available for expenditure in fiscal year 1992-1993, a portion of the same is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter twelve, acts of the Legislature, regular session, one thousand nine hundred ninety-two, known as the budget bill, be supplemented and amended by adding to title two, section ten thereof, as follows:

1	TITLE II—APPROPRIATIONS.	
2	Sec. 10.	Appropriations from federal block grants.
3	<i>190a—Division of Health—</i>	
4	<i>Community Mental Health Services</i>	
5	Acct. No. 8505	
6	TO BE PAID FROM FEDERAL FUNDS	
7	1	Unclassified—Total \$2,582,975

8 The purpose of this supplementary appropriation bill
 9 is to supplement the budget act for the fiscal year 1992-
 10 1993 by providing for a new account to be established
 11 therein to appropriate federal block grant moneys
 12 received for expenditure in the fiscal year 1992-1993.
 13 These moneys shall be available for expenditure upon
 14 passage of the bill.

CHAPTER 10

(S. B. 342—By Senator Minard)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter thirty-one-a of the code

of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section four-a; to amend and reenact section nine of said article; and to amend and reenact section two, article three of said chapter, all relating to making orders of the commissioner of banking and West Virginia board of banking public records.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Division of Banking.

3. Board of Banking and Financial Institutions.

ARTICLE 2. DIVISION OF BANKING.

§31A-2-4a. Orders of the commissioner of banking to be made public.

§31A-2-9. Correction of violations of law, irregularities and unsound practices; disposition of doubtful assets and past-due obligations; stockholders' meetings.

§31A-2-4a. Orders of the commissioner of banking to be made public.

1 Any order entered by the commissioner of banking
2 against any person:

3 (1) To cease violating any provision or provisions of
4 this chapter or other applicable law or rule and
5 regulation promulgated or order issued thereunder;

6 (2) To cease engaging in any unsound practice or
7 procedure which may detrimentally affect any financial
8 institution;

9 (3) To revoke the certificate of authority, permit or
10 license of any financial institution; and

11 (4) To take such other action as the commissioner of
12 banking may deem necessary to enforce and administer
13 the provisions of this chapter and all other laws which
14 the commissioner is empowered to enforce is a matter
15 of public record.

§31A-2-9. Correction of violations of law, irregularities and unsound practices; disposition of doubtful assets and past-due obligations; stockholders' meetings.

1 Whenever it appears that any law, rule and regulation
2 or order applicable to any financial institution is being
3 violated, or that any irregularities exist or unsound
4 practices or procedures are being engaged in, it shall
5 be the duty of the commissioner of banking to promptly
6 call the same to the attention of the officers and
7 directors of the financial institution offending and to
8 demand that the same be promptly corrected; and he or
9 she may require a sworn statement from the said
10 officers and directors covering the matter of all such
11 violations and of all such irregularities, unsound
12 practices or procedures to be furnished to him or her
13 as often as he or she may deem necessary, until he or
14 she is satisfied that such violations have ceased and that
15 the irregularities, unsound practices or procedures
16 complained of have been corrected. Such reports shall
17 not be made public, except as necessary as part of any
18 order or other enforcement action or proceeding.

19 If any such institution owns any asset, the value of
20 which, in the judgment of the commissioner of banking,
21 is questionable, or owns past-due obligations, the
22 commissioner of banking may require the assets of
23 doubtful value to be at once converted into money or
24 charged off of the books of the financial institution at
25 the expiration of three months from the date of such
26 order; or require legal proceedings to be at once
27 instituted for the collection of any past-due obligations
28 to the financial institution or that they be charged off.

29 Upon the written notice of the commissioner of
30 banking, the directors of any financial institution shall
31 call a general meeting of the stockholders thereof to
32 consider such matters as the commissioner may pre-
33 scribe. Notice of such meeting shall be given in accor-
34 dance with applicable statutes and the bylaws of the
35 financial institution. The expense of such meeting and
36 notice thereof shall be borne by the financial institution
37 whose stockholders are so required to convene.

ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.**§31A-3-2. General powers and duties.**

1 (a) In addition to other powers conferred by this
2 chapter, the board shall have the power to:

3 (1) Regulate its own procedure and practice;

4 (2) Promulgate reasonable rules to implement any
5 provision of this article, such rules to be promulgated
6 in accordance with the provisions of article three,
7 chapter twenty-nine-a of this code;

8 (3) Advise the commissioner in all matters within his
9 jurisdiction;

10 (4) Study the organization, programs and services of
11 financial institutions and the laws relating thereto in
12 this state and in other jurisdictions, and to report and
13 recommend to the governor and the Legislature all such
14 changes and amendments in laws, policies and proce-
15 dures relating thereto as may be by it deemed proper;
16 and

17 (5) Grant permission and authority to a financial
18 institution:

19 (A) To participate in a public agency hereafter
20 created under the laws of this state or of the United
21 States, the purpose of which is to afford advantages or
22 safeguards to financial institutions or to depositors
23 therein, and to comply with all lawful requirements and
24 conditions imposed upon such participants;

25 (B) To engage in any financial institution activity,
26 services, procedures and practices in which financial
27 institutions of the same type subject to the jurisdiction
28 of the federal government may hereafter be authorized
29 by federal laws, rules or regulations to engage, notwith-
30 standing any contrary provision of this code; and

31 (C) To pay interest on demand deposits of the United
32 States or any agency thereof, if the payment of such
33 interest shall be permitted under any applicable federal

34 law, rule or regulation.

35 Any permission and authority granted by the board
36 pursuant to this subdivision shall cease and terminate
37 upon the adjournment of the next regular session of the
38 Legislature, unless the Legislature shall at such session
39 enact legislation authorizing the financial institution
40 participation, activity, services and procedures or
41 payment of interest with respect to which such permis-
42 sion and authority were granted, in which event such
43 permission and authority shall continue in effect until
44 the effective date of such legislation.

45 (b) The board shall further have the power, by
46 entering appropriate orders, to:

47 (1) Restrict the withdrawal of deposits from any
48 financial institution when, in the judgment of the board,
49 extraordinary circumstances make such restrictions
50 necessary for the protection of creditors of and depos-
51 itors in the affected institution;

52 (2) Compel the holder of shares in any corporate
53 financial institution to refrain from voting said shares
54 on any matter when, in the judgment of the board, such
55 order is necessary to protect the institution against
56 reckless, incompetent or careless management, to
57 safeguard funds of depositors in the institution or to
58 prevent willful violation of any applicable law or of any
59 rule and regulation or order issued thereunder. In such
60 a case the shares of such a holder shall not be counted
61 in determining the existence of a quorum or a percen-
62 tage of the outstanding shares necessary to take any
63 corporate action;

64 (3) Approve or disapprove applications to incorporate
65 and organize state banking institutions in accordance
66 with the provisions of sections six and seven, article four
67 of this chapter;

68 (4) Approve or disapprove applications to incorporate
69 and organize state-chartered bankers' banks in accor-
70 dance with the provisions of sections six and seven,
71 article four of this chapter;

72 (5) Exempt a bankers' bank from any provision of this
73 chapter if the board finds that such provision is
74 inconsistent with the purpose for which a bankers' bank
75 is incorporated and organized and that the welfare of
76 the public or any banking institution or other financial
77 institution would not be jeopardized thereby;

78 (6) Revoke the certificate of authority, permit,
79 certificate or license of any state banking institution to
80 engage in business in this state if such institution shall
81 fail or refuse to comply with any order of the commis-
82 sioner entered pursuant to the provisions of paragraph
83 (A) or (B), subdivision (14), subsection (c), section four,
84 article two of this chapter, or at the board's election to
85 direct the commissioner to apply to any court having
86 jurisdiction for a prohibitory or mandatory injunction or
87 other appropriate remedy to compel obedience to such
88 order;

89 (7) Suspend or remove a director, officer or employee
90 of any financial institution who is or becomes ineligible
91 to hold such position under any provision of law or rule
92 and regulation or order, or who willfully disregards or
93 fails to comply with any order of the board or commis-
94 sioner made and entered in accordance with the
95 provisions of this chapter or who is dishonest or grossly
96 incompetent in the conduct of financial institution
97 business;

98 (8) To receive from state banking institutions appli-
99 cations to establish branch banks by the purchase of the
100 business and assets and assumption of the liabilities of,
101 or merger or consolidation with, another banking
102 institution, or by the construction, lease or acquisition
103 of branch bank facilities in an unbanked area; examine
104 and investigate such applications, to hold hearings
105 thereon, and to approve or disapprove such applications,
106 all in accordance with section twelve, article eight of
107 this chapter;

108 (9) Approve or disapprove the application of any state
109 bank to purchase the business and assets and assume the
110 liabilities of, or merge or consolidate with, another state
111 banking institution in accordance with the provisions of

112 section seven, article seven of this chapter;

113 (10) Approve or disapprove the application of any
114 state bank to purchase the business and assets and
115 assume the liabilities of a national banking association,
116 or merge or consolidate with a national banking
117 association to form a resulting state bank in accordance
118 with the provisions of section seven, article seven of this
119 chapter; and

120 (11) In addition to any authority granted pursuant to
121 section twelve, article eight of this chapter, incident to
122 the approval of an application pursuant to subdivision
123 (7) or (8) of this subsection, permit the bank the
124 application of which is so approved to operate its
125 banking business under its name from the premises of
126 the bank the business and assets of which have been
127 purchased and the liabilities of which have been
128 assumed by such applicant bank or with which such
129 applicant bank has merged or consolidated: *Provided,*
130 That such permission may be granted only if the board
131 has made the findings required by subsection (f), section
132 three of this article and such applicant bank has no
133 common directors or officers nor common ownership of
134 stock exceeding ten percent of total outstanding voting
135 stock with the bank whose business and assets are being
136 purchased and liabilities assumed, or with whom such
137 applicant bank is being merged.

138 (c) No provision of this section shall be construed to
139 alter, reduce or modify the rights of shareholders, or
140 obligations of a banking institution in regard to its
141 shareholders, as set forth in section one hundred
142 seventeen, article one, chapter thirty-one of this code
143 and section seven, article seven of this chapter, and
144 other applicable provisions of this code.

145 (d) Any order entered by the West Virginia board of
146 banking and financial institutions pursuant to this
147 section is a matter of public record.

CHAPTER 11

(Com. Sub. for H. B. 2595—By Delegates Williams and Carper)

[Passed April 6, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers of state banking institutions generally; the authorization to own real property; and determining how certain real estate is to be valued.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-13. Powers of state banking institutions generally.

1 (a) Any state-chartered banking institution shall have
2 and exercise all of the powers necessary for, or incid-
3 ental to, the business of banking, and without limiting
4 or restricting such general powers, it shall have the
5 right to buy or discount promissory notes and bonds,
6 negotiate drafts, bills of exchange and other evidences
7 of indebtedness, borrow money, receive deposits on such
8 terms and conditions as its officers may prescribe, buy
9 and sell, exchange, bank notes, bullion or coin, loan
10 money on personal or other security, rent safe-deposit
11 boxes and receive on deposit, for safekeeping, jewelry,
12 plate, stocks, bonds and personal property of whatsoever
13 description and provide customer services incidental to
14 the business of banking, including, but not limited to,
15 the issuance and servicing of and lending money by
16 means of credit cards as letters of credit or otherwise.
17 Any state-chartered banking institution may accept, for
18 payment at a future date, not to exceed one year, drafts
19 drawn upon it by its customers. Any state-chartered

20 banking institution may issue letters of credit, with a
21 specified expiration date or for a definite term, autho-
22 rizing the holders thereof to draw drafts upon it or its
23 correspondents, at sight or on time. Any such banking
24 institution may organize, acquire, own, operate, dispose
25 of, and otherwise manage wholly owned subsidiary
26 corporations for purposes incident to the banking
27 powers and services authorized by this chapter.

28 (b) Any state-chartered banking institution may
29 acquire, own, hold, use and dispose of real estate, which
30 shall in no case be carried on its books at a value greater
31 than the actual cost: *Provided*, That such property shall
32 be necessary for the convenient transaction of its
33 business, including any buildings, office space or other
34 facilities to rent as a source of income: *Provided*,
35 *however*, That such investment hereafter made shall not
36 exceed sixty-five percent of the amount of its capital
37 stock and surplus, unless the consent in writing of the
38 commissioner of banking is first secured.

39 (c) Any state-chartered banking institution may
40 acquire, own, hold, use and dispose of real estate, which
41 shall be carried on its books at the lower of fair value
42 or cost as defined in rules promulgated by the commis-
43 sioner of banking, subject to the following limitations:

44 (1) Such as shall be mortgaged to it in good faith as
45 security for debts in its favor;

46 (2) Such as shall be conveyed to it in satisfaction of
47 debts previously contracted in the course of its business
48 dealings; and

49 (3) Such as it shall purchase at sales under judg-
50 ments, decrees, trust deeds or mortgages in its favor, or
51 shall purchase at private sale, to secure and effectuate
52 the payment of debts due to it.

53 (d) The value at which any real estate is held shall not
54 be increased by the addition thereto of taxes, insurance,
55 interest, ordinary repairs, or other charges which do not
56 materially enhance the value of the property.

57 (e) Any real estate acquired by any such banking
58 institution under subdivisions two and three of subsec-

59 tion (c) of this section shall be disposed of by the banking
60 institution at the earliest practicable date, but the
61 officers thereof shall have a reasonable discretion in the
62 matter of the time to dispose of such property in order
63 to save the banking institution from unnecessary losses:
64 *Provided*, That in every case such property shall be
65 disposed of within ten years from the time it is acquired
66 by the banking institution, unless an extension of time
67 is given in writing by the commissioner of banking.

68 (f) No state-chartered banking institution shall
69 hereafter invest more than twenty percent of the amount
70 of its capital and surplus in furniture and fixtures,
71 whether the same be installed in a building owned by
72 such banking institution, or in quarters leased by it,
73 unless the consent in writing of the commissioner of
74 banking is first secured.

CHAPTER 12

(Com. Sub. for H. B. 2249—By Delegates Williams, Carper, Phillips,
H. White, Rutledge and Harrison)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-six, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the borrowing by an officer or director of any banking institution or by the commissioner of banking or any employee of the department of banking.

Be it enacted by the Legislature of West Virginia:

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

§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to officers and employees of banks and banking department; exceptions; valuation of securities.

1 (a) (1) The total loans and extensions of credit by a
2 state-chartered banking institution to a person outstand-
3 ing at one time and not fully secured, as determined in
4 a manner consistent with subdivision (2) of this subsec-
5 tion, by collateral having a market value at least equal
6 to the amount of the loan or extension of credit shall not
7 exceed fifteen percent of the unimpaired capital and
8 unimpaired surplus of that state-chartered banking
9 institution.

10 (2) The total loans and extensions of credit by a state-
11 chartered banking institution to a person outstanding at
12 one time and fully secured by readily marketable
13 collateral having a market value, as determined by
14 reliable and continuously available price quotations, at
15 least equal to the amount of the funds outstanding shall
16 not exceed ten percent of the unimpaired capital and
17 unimpaired surplus of that state-chartered banking
18 institution. This limitation shall be separate from and
19 in addition to the limitation contained in subdivision (1)
20 of this subsection.

21 (3) For the purposes of this subsection:

22 (A) The term "loans and extensions of credit" shall
23 include all direct or indirect advances of funds to a
24 person made on the basis of any obligation of that person
25 to repay the funds or repayable from specific property
26 pledged by or on behalf of the person and to the extent
27 specified by the commissioner of banking, such terms
28 shall also include any liability of a state-chartered
29 banking institution to advance funds to or on behalf of
30 a person pursuant to a contractual commitment; and

31 (B) The term "person" shall include an individual,
32 partnership, society, association, firm, institution,
33 company, public or private corporation, state, govern-
34 mental agency, bureau, department, division or instru-
35 mentality, political subdivision, county commission,
36 municipality, trust, syndicate, estate or any other legal
37 entity whatsoever, formed, created or existing under the
38 laws of this state or any other jurisdiction.

39 (4) The limitations contained in this subsection shall
40 be subject to the following exceptions:

41 (A) Loans or extensions of credit arising from the
42 discount of commercial or business paper evidencing an
43 obligation to the person negotiating it with recourse
44 shall not be subject to any limitation based on capital
45 and surplus;

46 (B) The purchase of bankers' acceptances of the kind
47 described in section thirteen of the Federal Reserve Act
48 and issued by other banks shall not be subject to any
49 limitation based on capital and surplus;

50 (C) Loans and extensions of credit secured by bills of
51 lading, warehouse receipts, or similar documents
52 transferring or securing title to readily marketable
53 staples shall be subject to a limitation of thirty-five
54 percent of capital and surplus in addition to the general
55 limitations if the market value of the staples securing
56 each additional loan or extension of credit at all times
57 equals or exceeds one hundred fifteen percent of the
58 outstanding amount of such loan or extension of credit.
59 The staples shall be fully covered by insurance when-
60 ever it is customary to insure such staples;

61 (D) Loans or extensions of credit secured by bonds,
62 notes, certificates of indebtedness, or treasury bills of
63 the United States or by other such obligations fully
64 guaranteed as to principal and interest by the United
65 States or by bonds, notes, certificates of indebtedness
66 which are general obligations of the state of West
67 Virginia or by other such obligations fully guaranteed
68 as to principal and interest by the state of West Virginia
69 shall not be subject to any limitation based on capital
70 and surplus;

71 (E) Loans or extensions of credit to or secured by
72 unconditional takeout commitments or guarantees of
73 any department, agency, bureau, board, commission or
74 establishment of the United States or of the state of
75 West Virginia or any corporation wholly owned directly
76 or indirectly by the United States shall not be subject
77 to any limitation based on capital and surplus;

78 (F) Loans or extensions of credit secured by a
79 segregated deposit account in the lending bank shall not

80 be subject to any limitation based on capital and
81 surplus;

82 (G) Loans or extensions of credit to any banking
83 institution or to any receiver, conservator or other agent
84 in charge of the business and property of such banking
85 institution or other federally insured depository institu-
86 tion, when such loans or extensions of credit are
87 approved by the commissioner of banking, shall not be
88 subject to any limitation based on capital and surplus;

89 (H) (i) Loans and extensions of credit arising from the
90 discount of negotiable or nonnegotiable installment
91 consumer paper which carries a full recourse endorse-
92 ment or unconditional guarantee by the person transfer-
93 ring the paper shall be subject under this section to a
94 maximum limitation equal to twenty-five percent of
95 such capital and surplus, notwithstanding the collateral
96 requirements set forth in subdivision (2) of this
97 subsection.

98 (ii) If the bank's files or the knowledge of its officers
99 of the financial condition of each maker of such
100 consumer paper is reasonably adequate, and an officer
101 of the bank designated for that purpose by the board of
102 directors of the bank certifies in writing that the bank
103 is relying primarily upon the responsibility of each
104 maker for payment of such loans or extensions of credit
105 and not upon any full or partial recourse endorsement
106 or guarantee by the transferor, the limitations of this
107 section as to the loans or extensions of credit of each
108 such maker shall be the sole applicable loan limitations;

109 (I) (i) Loans and extensions of credit secured by
110 shipping documents or instruments transferring or
111 securing title covering livestock or giving a lien on
112 livestock when the market value of the livestock
113 securing the obligation is not at any time less than one
114 hundred fifteen percent of the face amount of the note
115 covered, shall be subject under this section, notwith-
116 standing the collateral requirements set forth in
117 subdivision (2) of this subsection, to a maximum
118 limitation equal to twenty-five percent of such capital
119 and surplus.

120 (ii) Loans and extensions of credit which arise from
121 the discount by dealers in livestock of paper given in
122 payment for livestock, which paper carries a full
123 recourse endorsement or unconditional guarantee of the
124 seller and which are secured by the livestock being sold,
125 shall be subject under this section, notwithstanding the
126 collateral requirements set forth in subdivision (2) of
127 this subsection, to a limitation of twenty-five percent of
128 such capital and surplus;

129 (J) Loans or extensions of credit to the student loan
130 marketing association shall not be subject to any
131 limitation based on capital and surplus; and

132 (K) Loans or extensions of credit to a corporation
133 owning the property in which that state-chartered
134 banking institution is located, when that state-chartered
135 banking institution has an unimpaired capital and
136 surplus of not less than one million dollars or when
137 approved in writing by the commissioner of banking,
138 shall not be subject to any limitation based on capital
139 and surplus.

140 (5) (A) The commissioner of banking may prescribe
141 rules and regulations to administer and carry out the
142 purposes of this subsection including rules or regula-
143 tions to define or further define terms used in this
144 subsection and to establish limits or requirements other
145 than those specified in this subsection for particular
146 classes or categories of loans or extensions of credit;

147 (B) The commissioner of banking may also prescribe
148 rules and regulations to deal with loans or extensions of
149 credit, which were not in violation of this section prior
150 to the effective date of this act, but which will be in
151 violation of this section upon the effective date of this
152 act; and

153 (C) The commissioner of banking also shall have
154 authority to determine when a loan putatively made to
155 a person shall for purposes of this subsection be
156 attributed to another person.

157 (b) (1) Except as hereinafter provided or otherwise
158 permitted by law, nothing herein contained shall

159 authorize the purchase by a state-chartered banking
160 institution for its own account of any shares of stock of
161 any corporation: *Provided*, That a state-chartered
162 banking institution may purchase and sell securities and
163 stock without recourse, solely upon the order and for the
164 account of customers.

165 (2) In no event shall the total amount of investment
166 securities of any one obligor or maker held by a state-
167 chartered banking institution for its own account,
168 exceed fifteen percent of the unimpaired capital and
169 unimpaired surplus of that state-chartered banking
170 institution.

171 (3) For purposes of this subsection:

172 (A) The term "investment securities" shall include
173 marketable obligations, evidencing indebtedness of any
174 person in the form of stocks, bonds, notes and/or
175 debentures; "investment securities" may be further
176 defined by regulation of the commissioner of banking;
177 and

178 (B) The term "person" shall include any individual,
179 partnership, society, association, firm, institution,
180 company, public or private corporation, state, govern-
181 mental agency, bureau, department, division or instru-
182 mentality, political subdivision, county commission,
183 municipality, trust, syndicate, estate or any other legal
184 entity whatsoever, formed, created or existing under the
185 laws of this state or any other jurisdiction.

186 (4) The limitations contained in this subsection (b)
187 shall be subject to the following exceptions:

188 (A) Obligations of the United States;

189 (B) General obligations of any state or of any political
190 subdivision thereof;

191 (C) Obligations issued under authority of the Federal
192 Farm Loan Act, as amended, or issued by the thirteen
193 banks for cooperatives or any of them or the Federal
194 Home Loan Banks;

195 (D) Obligations which are insured by the secretary of
196 housing and urban development under Title XI of the

197 National Housing Act (12 USC § 1749aaa et seq.);

198 (E) Obligations which are insured by the secretary of
199 housing and urban development hereafter in this
200 sentence referred to as the "secretary" pursuant to
201 section 207 of the National Housing Act (12 USC §
202 1713), if the debentures to be issued in payment of such
203 insured obligations are guaranteed as to principal and
204 interest by the United States;

205 (F) Obligations, participations or other instruments of
206 or issued by the federal national mortgage association
207 or the government national mortgage association, or
208 mortgages, obligations or other securities which are or
209 ever have been sold by the federal home loan mortgage
210 corporation pursuant to Section 305 or Section 306 of the
211 Federal Home Loan Mortgage Corporation Act (12 USC
212 § 1454 or § 1455);

213 (G) Obligations of the federal financing bank;

214 (H) Obligations or other instruments or securities of
215 the student loan marketing association;

216 (I) Obligations of the environmental financing
217 authority;

218 (J) Such obligations of any local public agency (as
219 defined in Section 110(h) of the Housing Act of 1949 (42
220 USC § 1460 (h)) as are secured by an agreement between
221 the local public agency and the secretary of housing and
222 urban development in which the local public agency
223 agrees to borrow from said secretary and said secretary
224 agrees to lend to said local public agency, moneys in an
225 aggregate amount which (together with any other
226 moneys irrevocably committed to the payment of
227 interest on such obligations) will suffice to pay, when
228 due, the interest on and all installments (including the
229 final installment) of the principal of such obligations,
230 which moneys under the terms of said agreement are
231 required to be used for such payments;

232 (K) Obligations of a public housing agency as that
233 term is defined in the United States Housing Act of
234 1937, as amended, (42 USC Sec. 1401 et seq.) as are
235 secured;

236 (i) By an agreement between the public housing
237 agency and the secretary in which the public housing
238 agency agrees to borrow from the secretary, and the
239 secretary agrees to lend to the public housing agency,
240 prior to the maturity of such obligations, moneys in an
241 amount which, together with any other moneys irrevoc-
242 ably committed to the payment of interest on such
243 obligations, will suffice to pay the principal of such
244 obligations with interest to maturity thereon, which
245 moneys under the terms of said agreement are required
246 to be used for the purpose of paying the principal of and
247 the interest on such obligations at their maturity;

248 (ii) By a pledge of annual contributions under an
249 annual contributions contract between such public
250 housing agency and the secretary if such contract shall
251 contain the covenant by the secretary which is autho-
252 rized by subsection (b) of Section 22 (Section 6 (g) (42
253 USC Sec. 1421a (b)) of the United States Housing Act
254 of 1937, as amended, and if the maximum sum and the
255 maximum period specified in such contract pursuant to
256 said subsection (b), section twenty-two, shall not be less
257 than the annual amount and the period for payment
258 which are requisite to provide for the payment when due
259 of all installments of principal and interest on such
260 obligations; or

261 (iii) By a pledge of both annual contributions under
262 an annual contributions contract containing the coven-
263 ant by the secretary which is authorized by Section 6
264 (g) of the United States Housing Act of 1937 (42 USC
265 Sec. 1437d (g)) and a loan under an agreement between
266 the local public housing agency and the secretary in
267 which the public housing agency agrees to borrow from
268 the secretary, and the secretary agrees to lend to the
269 public housing agency, prior to the maturity of the
270 obligations involved, moneys in an amount which,
271 together with any other moneys irrevocably committed
272 under the annual contributions contract to the payment
273 of principal and interest on such obligations will suffice
274 to provide for the payment when due of all installments
275 of principal and interest on such obligations, which
276 moneys under the terms of the agreement are required

277 to be used for the purpose of paying the principal and
278 interest on such obligations at their maturity; and

279 (L) Obligations of a corporation owning the property
280 in which that state-chartered banking institution is
281 located when that state-chartered banking institution
282 has an unimpaired capital and surplus of not less than
283 one million dollars or when approved in writing by the
284 commissioner of banking.

285 (5) Notwithstanding any other provision in this
286 subsection, a state-chartered banking institution may
287 purchase for its own account shares of stock issued by
288 a corporation authorized to be created pursuant to Title
289 IX of the Housing and Urban Development Act of 1968
290 (42 USC Sec. 3931 et seq.) and may make investments
291 in a partnership, limited partnership, or joint venture
292 formed pursuant to section 907 (a) or 907 (c) of that act
293 (42 USC Sec. 3937 (a) or (c)), and may purchase shares
294 of stock issued by any West Virginia housing corpora-
295 tion and may make investments in loans and commit-
296 ments for loans to any such corporation: *Provided*, That
297 in no event shall the total amount of such stock held for
298 its own account and such investments in loans and
299 commitments made by the state-chartered banking
300 institution exceed at any time five percent of the
301 unimpaired capital and unimpaired surplus of that
302 state-chartered banking institution.

303 (6) Notwithstanding any other provision in this
304 subsection, a state-chartered banking institution may
305 purchase, for its own account, shares of stock of small
306 business investment companies chartered under the
307 laws of this state, which are licensed under the act of
308 Congress known as the "Small Business Investment Act
309 of 1958," as amended, and of business development
310 corporations created and organized under the act of the
311 Legislature known as the "West Virginia Business
312 Development Corporation Act," as amended: *Provided*,
313 That in no event shall any such state-chartered banking
314 institution hold shares of stock in small business
315 investment companies and/or business development
316 corporations in any amount aggregating more than
317 fifteen percent of the unimpaired capital and unim-

318 paired surplus of that state-chartered banking
319 institution.

320 (7) Notwithstanding any other provision of this
321 subsection, a state-chartered banking institution may
322 purchase for its own account shares of stock of a
323 bankers' bank or a bank holding company which owns
324 or controls such bankers' bank, but in no event shall the
325 total amount of such stock held by such state-chartered
326 banking institution exceed at any time fifteen percent
327 of the unimpaired capital and unimpaired surplus of
328 that state-chartered banking institution and in no event
329 shall the purchase of such stock result in that state-
330 chartered banking institution acquiring more than
331 twenty percent of any class of voting securities of such
332 bankers' bank or of the bank holding company which
333 owns or controls such bankers' bank.

334 (8) Notwithstanding any other provision of this
335 subsection, a state-chartered banking institution may
336 invest its funds in any investment authorized for
337 national banking associations. Such investments by
338 state-chartered banking institutions shall be on the same
339 terms and conditions applicable to national banking
340 associations. The commissioner of banking may, from
341 time to time, provide notice to state-chartered banking
342 institutions of authorized investments under this
343 paragraph.

344 (9) The commissioner of banking may prescribe rules
345 and regulations to administer and carry out the
346 purposes of this subsection, including rules and regula-
347 tions to define or further define terms used in this
348 subsection and to establish limits or requirements other
349 than those specified in this subsection for particular
350 classes or categories of investment securities.

351 (c) Loans to directors or executive officers are subject
352 to the following limitations:

353 (1) A director or executive officer of any banking
354 institution may not borrow, directly or indirectly, from
355 a banking institution with which he is connected, any
356 sum of money without the prior approval of a majority
357 of the board of directors or discount committee of the

358 banking institution, or of any duly constituted commit-
359 tee whose duties include those usually performed by a
360 discount committee. Such approval shall be by resolu-
361 tion adopted by a majority vote of such board or
362 committee, exclusive of the director or executive officer
363 to whom the loan is made.

364 (2) If any director or executive officer of any bank
365 owns or controls a majority of the stock of any corpo-
366 ration, or is a partner in any partnership, a loan to such
367 corporation or partnership shall constitute a loan to such
368 director or officer.

369 (3) For purposes of this subsection, an "executive
370 officer" means:

371 (A) A person who participates or has authority to
372 participate, other than in the capacity of a director, in
373 major policymaking functions of the company or bank,
374 regardless of any official title, salary or other compen-
375 sation. The chairman of the board, the president, every
376 vice president, the cashier, the secretary and the
377 treasurer of a company or bank are considered executive
378 officers unless the officer is excluded, by resolution of
379 the board of directors or by the bylaws of the bank or
380 company from participation, other than in the capacity
381 of director, in major policymaking functions of the bank
382 or company, and the officer does not actually participate
383 therein.

384 (B) An executive officer of a company of which the
385 bank is a subsidiary, and any other subsidiary of that
386 company, unless the executive officer of the subsidiary
387 is excluded, by name or by title, from participation in
388 major policymaking functions of the bank by resolutions
389 of the boards of directors of both the subsidiary and the
390 bank and does not actually participate in such major
391 policymaking functions.

392 (d) The commissioner of banking and any employee
393 of the department of banking may not borrow, directly
394 or indirectly, any sum of money from a state chartered
395 banking institution which is subject to examination by
396 the commissioner or the department.

397 (e) Securities purchased by a banking institution shall
398 be entered upon the books of the bank at actual cost. For
399 the purpose of calculating the undivided profits appli-
400 cable to the payment of dividends, securities shall not
401 be valued at a valuation exceeding their present cost as
402 determined by amortization, that is, by deducting from
403 the cost of a security purchased at a premium, and
404 charging to profit and loss a sum sufficient to bring it
405 to par at maturity.

CHAPTER 13

(Com. Sub. for H. B. 2250—By Delegates Williams, Carper, Phillips,
H. White, Rutledge and Harrison)

[Passed April 7, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-three, article four, chapter thirty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to joint deposit accounts; payment, pledge or garnishment of joint accounts; notice requirements; limitation on liability of banking institutions; and rules to be promulgated by the commissioner.

Be it enacted by the Legislature of West Virginia:

That section 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 to read as follows:

§31A-4-33. Deposits in trust; deposits in more than one name; limitation on liability of institutions making payments from certain accounts; notice requirements; pledges or garnishment of joint accounts; commissioner to promulgate rules.

1 (a) If any deposit in any banking institution be made
2 by any person describing himself in making such
3 deposit as trustee for another, and no other or further
4 notice of the existence and terms of a legal and valid

5 trust than such description shall be given in writing to
6 the banking institution, in the event of the death of the
7 person so described as trustee, such deposit, or any part
8 thereof, together with the interest thereon, may be paid
9 to the person for whom the deposit was thus stated to
10 have been made.

11 (b) 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. All such deposits, 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.

22 (c) Payment to any joint depositor and the receipt or
23 the acquittance of the one to whom such payment is
24 made shall be a valid and sufficient release and
25 discharge for all payments made on account of such
26 deposit, prior to the receipt by the banking institution
27 of notice in writing, signed by any one of such joint
28 tenants not to pay such deposit in accordance with the
29 terms thereof. Prior to the receipt of such notice no
30 banking institution shall be liable for the payment of
31 such sums.

32 (d) All owners of joint deposit accounts created
33 pursuant to this section shall be given written notice on
34 a form to be approved by the banking commissioner that
35 the entire balance of any such account may be paid to
36 a creditor or other claimant of any one of the joint
37 tenants pursuant to legal process, including, but not
38 limited to, garnishment, suggestion, or execution,
39 regardless of the receipt of any notice from any of the
40 joint tenants. Such notice shall also advise the owners
41 of a joint deposit account that the entire balance of any
42 such account may be paid to any of the named joint
43 tenants at any time; pledged as security to a banking
44 institution by any of the named joint tenants; or
45 otherwise encumbered at the request of any of the

46 named joint tenants unless written notice is given to the
47 banking institution, signed by any one of the joint
48 tenants, not to permit such payment, pledge or
49 encumbrance.

50 (e) If a pledge or encumbrance of any joint account
51 created pursuant to this section is made to a banking
52 institution and the banking institution has not received,
53 prior to the date of the pledge, any written notice signed
54 by any one of the joint tenants prohibiting such a pledge
55 or encumbrance, the banking institution shall not be
56 liable to any one of the joint tenants for its recourse
57 against the deposit in accordance with the terms of the
58 pledge.

59 (f) A banking institution may pay the entire amount
60 of a deposit account created pursuant to this section to
61 a creditor or other claimant of any one of the joint
62 tenants in response to legal process employed by the
63 creditor including, but not limited to, garnishment,
64 suggestion, or execution, regardless of any notice
65 received from any of the joint tenants. Upon such
66 payment, the banking institution shall be released and
67 discharged from all payments on account of such
68 deposit: *Provided*, That payment by a banking institu-
69 tion to any such creditor shall be without prejudice to
70 any right or claim of any joint tenant against the
71 creditor or any other person to recover his interest in
72 the deposit.

73 (g) The commissioner shall promulgate rules in
74 accordance with the provisions of chapter twenty-nine-
75 a of this code regarding the approval of forms and
76 procedures required by this section.

CHAPTER 14

(Com. Sub. for H. B. 2002—By Delegate Kiss)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to repeal section seventeen, article nine-d, chapter
eighteen of the code of West Virginia, one thousand nine

hundred thirty-one, as amended; to amend and reenact section eight, article six, chapter five of said code; and to amend and reenact sections three, five, eight, nine, thirteen, fifteen and sixteen, article nine-d, chapter eighteen of said code, all relating to bonding; authorizing state building commission to issue stated amount of financing and refinancing bonds for specified purposes; addressing powers and duties of school building authority; requiring attorney general be used for litigation matters; authorizing use of other professionals; authorizing emergency funds in accordance with authority guidelines; providing for individual higher education savings plans, tax treatment thereof and issuance of revenue bonds therefor; providing for disbursement of bond proceeds in accordance with resolution or trust agreement; deleting requirement that such proceeds and payments to sinking fund be deposited in state treasury; authorizing transfer of interest on debt service reserve funds to state treasury for authority's operational costs; authorizing deposit of county's net enrollment moneys to county's credit for three years rather than redistribution; acknowledging districts' comprehensive facilities plans; and providing that priority list of region-wide plan is one criteria rather than the basis for determining expenditure of funds.

Be it enacted by the Legislature of West Virginia:

That section seventeen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section eight, article six, chapter five of said code be amended and reenacted; and that sections three, five, eight, nine, thirteen, fifteen and sixteen, article nine-d, chapter eighteen of said code be amended and reenacted, all to read as follows:

Chapter

5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works' Miscellaneous Agencies, Commissions, Officers, Programs, Etc.

18. Education.

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

ARTICLE 6. STATE BUILDING COMMISSION.

§5-6-8. Commission empowered to issue state building revenue bonds after legislative authorization; form and requirements for bonds; procedure for issuance; temporary bonds; funds, grants and gifts.

1 (a) The commission is hereby empowered to raise the
2 cost of a project, as defined in this article, by the
3 issuance of state building revenue bonds of the state, the
4 principal of and interest on which bonds shall be
5 payable solely from the special fund herein provided for
6 such payment. Subject to the proceedings pursuant to
7 which any bonds outstanding were authorized and
8 issued pursuant to this article, the commission shall
9 pledge the moneys in such special fund, except such part
10 of the proceeds of sale of any bonds to be used to pay
11 the cost of a project, for the payment of the principal
12 of and interest on bonds issued pursuant to this article,
13 such pledge to apply equally and ratably to separate
14 series of bonds or upon such priorities as the commission
15 shall determine. Such bonds shall be authorized by
16 resolution of the commission which shall recite an
17 estimate by the commission of such cost, and shall
18 provide for the issuance of bonds in an amount suffi-
19 cient, when sold as hereinafter provided, to produce
20 such cost, less the amount of any funds, grant or grants,
21 gift or gifts, contribution or contributions received, or
22 in the opinion of the commission expected to be received,
23 from the United States of America or from any other
24 source. The acceptance by the commission of any and all
25 such funds, grants, gifts and contributions, whether in
26 money or in land, labor or materials, is hereby expressly
27 authorized. All such bonds shall have and are hereby
28 declared to have all the qualities of negotiable instru-

29 ments. Such bonds shall bear interest at not more than
30 twelve percent per annum, payable semiannually, and
31 shall mature in not more than forty years from their
32 date or dates, and may be made redeemable at the
33 option of the state, to be exercised by the commission,
34 at such price and under such terms and conditions, all
35 as the commission may fix prior to the issuance of such
36 bonds. The commission shall determine the form of such
37 bonds, including coupons, if any, to be attached thereto
38 to evidence the right of interest payments, which bonds
39 shall be signed by the chairman and secretary of the
40 commission, under the great seal of the state, attested
41 by the secretary of state, and the coupons, if any,
42 attached thereto shall bear the facsimile signature of the
43 chairman of the commission. In case any of the officers
44 whose signatures appear on the bonds or coupons issued
45 as hereinbefore authorized shall cease to be such officers
46 before the delivery of such bonds, such signatures shall
47 nevertheless be valid and sufficient for all purposes the
48 same as if they had remained in office until such
49 delivery. The commission shall fix the denominations of
50 such bonds, the principal and interest of which shall be
51 payable at the office of the treasurer of the state of West
52 Virginia, at the capitol of the state, or, at the option of
53 the holder, at some bank or trust company within or
54 without the state of West Virginia to be named in the
55 bonds, in such medium as may be determined by the
56 commission. The bonds and interest thereon shall be
57 exempt from taxation by the state of West Virginia, or
58 any county or municipality therein. The commission
59 may provide for the registration of such bonds in the
60 name of the owners as to principal alone, and as to both
61 principal and interest under such terms and conditions
62 as the commission may determine, and shall sell such
63 bonds in such manner as it may determine to be for the
64 best interest of the state, taking into consideration the
65 financial responsibility of the purchaser, and the terms
66 and conditions of the purchase, and especially the
67 availability of the proceeds of the bonds when required
68 for payment of the cost of the project, such sale to be
69 made at a price not lower than a price which, computed
70 upon standard tables of bond values, will show a net

71 return of not more than thirteen percent per annum to
72 the purchaser upon the amount paid therefor. The
73 proceeds of such bonds shall be used solely for the
74 payment of the cost of the project for which bonds were
75 issued, and shall be deposited and checked out as
76 provided by section five of this article, and under such
77 further restrictions, if any, as the commission may
78 provide. If the proceeds of bonds issued for a project or
79 a specific group of projects shall exceed the cost thereof,
80 the surplus shall be paid into the fund hereinafter
81 provided for payment of the principal and interest of
82 such bonds. Such fund may be used for the purchase of
83 any of the outstanding bonds payable from such fund at
84 the market price, but at not exceeding the price, if any,
85 at which such bonds shall in the same year be redeem-
86 able, and all bonds redeemed or purchased shall
87 forthwith be canceled, and shall not again be issued.
88 Prior to the preparation of definitive bonds, the
89 commission may, under like restrictions, issue tempor-
90 ary bonds with or without coupons, exchangeable for
91 definitive bonds upon the issuance of the latter.
92 Notwithstanding the provisions of sections nine and ten,
93 article six, chapter twelve of this code, revenue bonds
94 issued under the authority herein granted shall be
95 eligible as investments for the workers' compensation
96 fund, teachers retirement fund, division of public safety
97 death, disability and retirement fund, West Virginia
98 public employees retirement system and as security for
99 the deposit of all public funds. Such revenue bonds may
100 be issued without any other proceedings or the happen-
101 ing of any other conditions or things than those
102 proceedings, conditions and things which are specified
103 and required by this article, or by the constitution of the
104 state.

105 For all projects authorized under the provisions of
106 this article other than projects to be leased by the
107 commission to the regional jail and correctional facilities
108 authority, the aggregate amount of all issues of bonds
109 outstanding at one time shall not exceed sixty-two
110 million five hundred thousand dollars including the
111 renegotiation, reissuance or refinancing of any such
112 bonds, and no such project in connection with which

113 bonds are to be issued shall be initiated by the commis-
114 sion unless and until the Legislature, through enactment
115 of general law, approves the purpose, the amount of
116 bonds to be issued, and the total cost for such project,
117 construction or acquisition.

118 For projects which are to be leased by the commission
119 to the regional jail and correctional facilities authority,
120 legislative approval pursuant to the provisions of this
121 section shall not be required if such projects have
122 otherwise been approved by the Legislature in accor-
123 dance with the provisions of subsection (m), section five,
124 article twenty, chapter thirty-one of this code, and the
125 limitations on the amount of revenue bonds which may
126 be issued by the commission and the project costs shall
127 be governed by the terms of any concurrent resolution
128 adopted pursuant to said subsection.

129 (b) Notwithstanding anything in this article to the
130 contrary, the commission is authorized to issue bonds or
131 otherwise finance or refinance the following projects,
132 including the costs of issuance and sale of the bonds or
133 financing, all necessary financial and legal expenses and
134 creation of debt service reserve funds, in an amount not
135 to exceed twenty-one million dollars:

136 (1) Any or all of the state office buildings and
137 adjoining real property being lease-purchased in
138 Beckley, Clarksburg, Fairmont, Huntington and Par-
139 kersburg: *Provided*, That no such building and adjoin-
140 ing real property shall be financed or refinanced unless
141 such financing or refinancing is at an interest rate at
142 one and one-half percent below the interest rate being
143 paid by the current owner under the lease-purchase
144 agreement;

145 (2) A facility to be obtained or constructed by the
146 commission and leased to the division of motor vehicles;
147 and

148 (3) Property and buildings needed for state spending
149 units in an amount not to exceed three million dollars.

CHAPTER 18. EDUCATION

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

- §18-9D-3. Powers of Authority.
§18-9D-5. School building authority authorized to offer individual higher education savings plans.
§18-9D-8. Issuance of revenue bonds; use of proceeds; bonds exempt from taxation.
§18-9D-9. Issuance of revenue refunding bonds; use of moneys; power to enter into escrow agreements; call for redemption.
§18-9D-13. Sinking fund for payment of bonds.
§18-9D-15. Legislative intent; distribution of money.
§18-9D-16. Facilities plans generally; need-based eligibility.

§18-9D-3. Powers of authority.

1 The school building authority has the power:

2 (1) To sue and be sued, plead and be impleaded;

3 (2) To have a seal and alter the same at pleasure;

4 (3) To contract to acquire and to acquire, in the name
5 of the authority by purchase, lease-purchase, or other-
6 wise, real property or rights or easements necessary or
7 convenient for its corporate purposes and to exercise the
8 power of eminent domain to accomplish such purposes;

9 (4) To acquire, hold and dispose of real and personal
10 property for its corporate purposes;

11 (5) To make bylaws for the management and rule of
12 its affairs;

13 (6) To use the facilities, office, assistants and em-
14 ployees of the attorney general in all legal matters
15 relating to litigation involving the authority;

16 (7) Except as limited in subdivision (6), to appoint,
17 contract with and employ attorneys, bond counsel,
18 accountants, construction and financial experts, un-
19 derwriters, financial advisers, trustees, managers,
20 officers and such other employees and agents as may be
21 necessary in the judgment of the authority and to fix
22 their compensation;

23 (8) To make contracts and to execute all instruments
24 necessary or convenient to effectuate the intent of, and
25 to exercise the powers granted to it by this article;

26 (9) To renegotiate all contracts entered into by it
27 whenever, due to a change in situation, it appears to the

28 authority that its interests will be best served;

29 (10) To acquire by purchase, eminent domain or
30 otherwise all real property or interests therein necessary
31 or convenient to accomplish the purposes of this article;

32 (11) To require proper maintenance and insurance of
33 any project authorized hereunder;

34 (12) To charge rent for the use of all or any part of
35 a project or buildings at any time financed, constructed,
36 acquired or improved, in whole or in part, with the
37 revenues of the authority;

38 (13) To acquire land, buildings and capital improve-
39 ments to existing school buildings and property, by lease
40 from a private or public lessor for a term not to exceed
41 twenty-five years, with or without an option to purchase
42 pursuant to an investment contract with said lessor, for
43 use as public school facilities on such terms and
44 conditions as may be determined to be in the best
45 interests of the authority and consistent with the
46 purposes of this article;

47 (14) To accept and expend any gift, grant, contribu-
48 tion, bequest or endowment of money to, or for the
49 benefit of, the authority, from the state of West Virginia
50 or any other source for any or all of the purposes
51 specified in this article or for any one or more of such
52 purposes as may be specified in connection with such
53 gift, grant, contribution, bequest or endowment;

54 (15) To enter on any lands and premises for the
55 purpose of making surveys, soundings and
56 examinations;

57 (16) To contract for architectural, engineering or
58 other professional services considered necessary or
59 economical by the authority to provide consultative or
60 other services to the authority or to any regional
61 educational service agency or county board requesting
62 professional services offered by the authority, to
63 evaluate any facilities plan or any project encompassed
64 therein, to inspect existing facilities or any project that
65 has received or may receive funding from the authority,
66 or to perform any other service considered by the

67 authority to be necessary or economical. Assistance to
68 the region or district may include the development of
69 preapproved systems, plans, designs, models or docu-
70 ments; advice or oversight on any plan or project; or any
71 other service that may be efficiently provided to
72 regional educational service agencies or county boards
73 by the authority;

74 (17) To provide funds on an emergency basis to repair
75 or replace property damaged by fire, flood, wind, storm,
76 earthquake or other natural occurrence, such funds to
77 be made available in accordance with guidelines of the
78 school building authority; and

79 (18) To do all things necessary or convenient to carry
80 out the powers given in this article.

§18-9D-5. School building authority authorized to offer individual higher education savings plans.

1 (a) *Legislative findings.*—The Legislature hereby
2 finds and declares that:

3 (1) It is an essential function of state government to
4 encourage postsecondary education in order to increase
5 the education level of the residents of the state of West
6 Virginia.

7 (2) Tuition, fees and other costs at institutions of
8 higher education are difficult for many to afford and are
9 difficult to predict in order to enable individuals and
10 families to plan for the payment of such costs.

11 (3) Students in elementary and secondary schools
12 tend to achieve a higher standard of performance when
13 the payment of tuition, fees and other costs for their
14 higher education is secured.

15 (4) It is in the best interest of the people of the state
16 of West Virginia and is necessary for the public health,
17 safety and welfare to encourage state residents desiring
18 a higher education to enroll in institutions of higher
19 education in order to provide well-educated and in-
20 formed citizens.

21 (b) *Purpose.*—In light of the findings described in
22 subsection (a) of this section and in light of the purposes

23 of this article, the Legislature declares that the purpose
24 of this section is to encourage higher education and the
25 means of paying costs relating thereto by (1) authorizing
26 establishment of higher education savings plan pro-
27 grams; and (2) providing funding for such programs
28 through the sale and purchase of school building
29 authority revenue bonds to be used to make capital
30 improvements for primary and secondary educational
31 facilities in this state, or through the sale and purchase
32 of refunding revenue bonds, as provided in this article.

33 (c) *Authorization.*—The school building authority is
34 authorized to offer to the general public one or more
35 higher education savings plan programs. In order to
36 establish, operate and maintain an efficient and effec-
37 tive program or programs, the school building authority
38 shall have such additional powers as are necessary or
39 reasonably desirable to implement such a program or
40 programs. These additional powers shall include, but
41 are not limited to, the power to:

42 (1) Issue revenue bonds in accordance with the
43 provisions of this section and as authorized by this
44 article;

45 (2) Permit employees of the state of West Virginia
46 and its subdivisions to purchase through payroll
47 deductions by their employer bonds of not less than one
48 thousand dollar maturity increments when issued
49 pursuant to this section;

50 (3) As deemed appropriate and practical, offer bond
51 issues which take into consideration the various needs
52 of different individuals participating in a higher
53 education savings plan program;

54 (4) Offer a rate or rates of interest on bonds pur-
55 chased pursuant to such a program which encourages
56 maximum participation;

57 (5) Execute a separate trust agreement or agree-
58 ments under section twelve of this article for bonds sold
59 pursuant to an individual higher education savings plan
60 program established under this section;

61 (6) Transfer available moneys of the school building

62 authority, including revenues, investment earnings on
63 funds or accounts established in connection with the
64 issuance of bonds and moneys available from any other
65 source, to funds or accounts as may be necessary or
66 desirable in establishing a higher education savings
67 plan program, including, but not limited to, escrow
68 funds, investment agreements or similar instruments;

69 (7) Establish program guidelines for the administra-
70 tion of a higher education savings plan program.

71 (d) *Construction.*—Other sections of this article which
72 apply generally to bonds issued under this article shall
73 apply to the revenue bonds or refunding revenue bonds
74 issued under this section. If any language in this section
75 conflicts with language in another section of this article,
76 the language of this section shall control unless such a
77 construction would be unlawful, or would not be in the
78 public interest, or would be contrary to the statements
79 of finding and purpose of this section.

80 (e) *Tax treatment.*—

81 (1) The amount which an individual expends during
82 a taxable year in the purchase of revenue bonds or
83 refunding revenue bonds issued pursuant to this section
84 shall be allowed as a deduction from federal adjusted
85 gross income for such year, or, if not fully deducted
86 during such year, for the remaining four years, until
87 fully deducted, for purposes of the tax imposed by
88 article twenty-one, chapter eleven of this code, except as
89 provided in subdivision (3) of this subsection.

90 (2) The interest which an individual earns on revenue
91 bonds or refunding revenue bonds issued under this
92 section shall not be subject to the tax imposed by article
93 twenty-one, chapter eleven of this code, except as
94 provided in subdivision (3) of this subsection.

95 (3) If the owner of a revenue bond or refunding
96 revenue bonds purchased under this section sells it or
97 receives the proceeds of such bond at maturity or
98 otherwise during a taxable year and does not, within
99 four years of the date of such sale or other disposition,
100 expend an amount equal to such proceeds for tuition,

101 fees, books, reasonable room and board, and child care
102 costs necessary to enable a person to attend an institu-
103 tion of higher education, such proceeds of sale or other
104 disposition not so spent shall be taxed under article
105 twenty-one, chapter eleven of this code, by application
106 of the applicable rate to the taxpayer to the amount not
107 so spent. The amount of tax imposed shall be due and
108 payable on the fifteenth day of April of the taxable year
109 immediately succeeding the fourth taxable year in
110 which the bond was sold or otherwise disposed of.

111 (f) *Confidentiality*—The identity of any individual
112 purchasing revenue bonds under this section, the
113 amount of the bonds so purchased by any individual and
114 the amount allowed as an income tax deduction shall be
115 and remain confidential information: *Provided*, That
116 nothing herein shall prohibit the disclosure of the
117 number of individuals purchasing the bonds, the
118 aggregate amount of bond purchased, or other general
119 information which does not breach any individual's
120 confidentiality.

121 (g) *Reports*.—The school building authority and the
122 indenture trustee of an individual higher education
123 savings plan program shall make such reports regard-
124 ing such bonds to the tax commissioner and to the
125 individuals of record who own the bonds with respect
126 to bond principal and interest (and the years to which
127 they relate) and such other matters as the tax commis-
128 sioner may reasonably require. The reports required by
129 this section shall be filed with the tax commissioner at
130 least annually, at such time and in such manner as the
131 tax commissioner may by regulation require.

**§18-9D-8. Issuance of revenue bonds; use of proceeds;
bonds exempt from taxation.**

1 The issuance of revenue bonds under the provisions
2 of this article shall be authorized from time to time by
3 resolution or resolutions of the school building authority,
4 which shall set forth the proposed projects and provide
5 for the issuance of bonds in amounts sufficient, when
6 sold as hereinafter provided, to provide moneys consi-
7 dered sufficient by the authority to pay such costs, less

8 the amounts of any other funds available for said costs
9 or from any appropriation, grant or gift therefor:
10 *Provided*, That bond issues from which bond revenues
11 are to be distributed in accordance with section fifteen
12 of this article shall not be required to set forth the
13 proposed projects in the resolution. Such resolution shall
14 prescribe the rights and duties of the bondholders and
15 the school building authority, and for such purpose may
16 prescribe the form of the trust agreement hereinafter
17 referred to. The bonds may be issued from time to time,
18 in such amounts, shall be of such series, bear such date
19 or dates, mature at such time or times not exceeding
20 forty years from their respective dates, bear interest at
21 such rate or rates; be in such denominations; be in such
22 form, either coupon or registered, carrying such
23 registration, exchangeability and interchangeability
24 privileges; be payable in such medium of payment and
25 at such place or places within or without the state; be
26 subject to such terms of redemption at such prices not
27 exceeding one hundred five percent of the principal
28 amount thereof; and be entitled to such priorities on the
29 revenues paid into the school building authority capital
30 improvements fund as may be provided in the resolution
31 authorizing the issuance of the bonds or in any trust
32 agreement made in connection therewith. The bonds
33 shall be signed by the governor, and by the president
34 or vice president of the authority, under the great seal
35 of the state, attested by the secretary of state, and the
36 coupons attached thereto shall bear the facsimile
37 signature of the president or vice president of the
38 authority. In case any of the officers whose signatures
39 appear on the bonds or coupons cease to be such officers
40 before the delivery of such bonds, such signatures shall
41 nevertheless be valid and sufficient for all purposes the
42 same as if such officers had remained in office until such
43 delivery. Such revenue bonds shall be sold in such
44 manner as the authority may determine to be for the
45 best interests of the state.

46 Any pledge of revenues for such revenue bonds made
47 by the school building authority shall be valid and
48 binding between the parties from the time the pledge
49 is made; and the revenues so pledged shall immediately

50 be subject to the lien of such pledge without any further
51 physical delivery thereof or further act. The lien of such
52 pledge shall be valid and binding against all parties
53 having claims of any kind in tort, contract or otherwise,
54 irrespective of whether such parties have notice of the
55 lien of such pledge, and such pledge shall be a prior and
56 superior charge over any other use of such revenues so
57 pledged.

58 The proceeds of such bonds shall be used solely for
59 the purpose or purposes as may be generally or
60 specifically set forth in the resolution authorizing those
61 bonds and shall be disbursed in such manner and with
62 such restrictions, if any, as the authority may provide
63 in the resolution authorizing the issuance of such bonds
64 or in the trust agreement hereinafter referred to
65 securing the same. If the proceeds of such bonds, by
66 error in calculations or otherwise, shall be less than the
67 cost of any projects specifically set forth in the resolu-
68 tion, additional bonds may in like manner be issued to
69 provide the amount of the deficiency; and unless
70 otherwise provided for in the resolution or trust
71 agreement hereinafter mentioned, such additional bonds
72 shall be considered to be of the same issue, and shall be
73 entitled to payment from the same fund, without
74 preference or priority, as the bonds before issued for
75 such projects. If the proceeds of bonds issued for such
76 projects exceed the cost thereof, the surplus may be used
77 for such other projects as the school building authority
78 may determine or in such other manner as the resolution
79 authorizing such bonds may provide. Prior to the
80 preparation of definitive bonds, the authority may,
81 under like restrictions, issue temporary bonds with or
82 without coupons, exchangeable for definitive bonds upon
83 the issuance of such definitive bonds.

84 After the issuance of any of such revenue bonds, the
85 revenues pledged therefor shall not be reduced as long
86 as any of such revenue bonds are outstanding and
87 unpaid except under such terms, provisions and condi-
88 tions as shall be contained in the resolution, trust
89 agreement or other proceedings under which such
90 revenue bonds were issued.

91 Such revenue bonds and the revenue refunding bonds,

92 and bonds issued for combined purposes shall, together
93 with the interest thereon, be exempt from all taxation
94 by the state of West Virginia, or by any county, school
95 district, municipality or political subdivision thereof.

96 To meet the operational costs of the school building
97 authority, the school building authority may transfer to
98 a special revenue account in the state treasury interest
99 on any debt service reserve funds created within any
100 resolution authorizing the issue of bonds or any trust
101 agreement made in connection therewith, for expendi-
102 ture in accordance with legislative appropriation or
103 allocation of appropriation.

**§18-9D-9. Issuance of revenue refunding bonds; use of
moneys; power to enter into escrow agree-
ments; call for redemption.**

1 The issuance of revenue refunding bonds under the
2 provisions of this article shall be authorized by resolu-
3 tion of the school building authority and shall otherwise
4 be subject to the limitations, conditions and provisions
5 of other revenue bonds under this article. Such revenue
6 refunding bonds may be issued in an amount at the
7 option of the authority sufficient to pay either in part
8 or in full, together with interest earned on the invest-
9 ment of the proceeds thereof, whether or not at the time
10 of the issuance of the revenue refunding bonds the
11 hereafter mentioned bonds are payable or callable for
12 optional redemption: (1) The principal of such outstand-
13 ing bonds; (2) the redemption premium, if any, on such
14 outstanding bonds if they are to be redeemed prior to
15 maturity; (3) the interest due and payable on such
16 outstanding bonds to and including the maturity date
17 thereof or the first date upon which said outstanding
18 bonds are to be redeemed, including any interest
19 theretofore accrued and unpaid; and (4) all expenses of
20 the issuance and sale of said revenue refunding bonds,
21 including all necessary financial and legal expenses, and
22 also including the creation of initial debt service reserve
23 funds. Any existing moneys pledged with respect to the
24 outstanding bonds may be used for any or all of the
25 purposes stated in (1), (2), (3) and (4) above or may be
26 deposited in a sinking fund or reserve fund or other

27 funds for the issue of bonds which have been issued
28 wholly or in part for the purpose of such refunding.
29 Such amount of the proceeds of the revenue refunding
30 bonds as shall be sufficient for the payment of the
31 principal, interest and redemption premium, if any, on
32 such outstanding bonds which will not be immediately
33 due and payable shall be deposited in trust, for the sole
34 purpose of making such payments, in a banking
35 institution chosen by the authority and in accordance
36 with any provisions which may be included in the
37 resolution authorizing the issuance of such bonds or in
38 the trust agreement securing the same. Any of the
39 moneys so deposited in trust may, prior to the date on
40 which such moneys will be needed for the payment of
41 principal of, interest and redemption premium, if any,
42 on such outstanding bonds, be invested and reinvested
43 as determined by the authority, in whole or in part: (a)
44 In direct obligations issued by the United States of
45 America or one of its agencies or in direct obligations
46 of the state of West Virginia; (b) in obligations uncon-
47 ditionally guaranteed by the United States of America
48 as to principal and interest; or (c) in certificates of
49 deposit of a banking corporation or association which is
50 a member of the federal deposit insurance corporation,
51 or successor; but any such certificates of deposit must
52 be fully secured as to both principal and interest by
53 pledged collateral consisting of direct obligations of or
54 obligations guaranteed by the United States of America,
55 or direct obligations of the state of West Virginia,
56 having a market value, excluding accrued interest, at
57 all times at least equal to the amount of the principal
58 of and accrued interest on such certificates of deposit.
59 Any such investments must mature, or be payable in
60 advance of maturity at the option of the holder, and
61 must bear interest in such manner as to provide funds
62 which, together with uninvested money, will be suffi-
63 cient to pay when due or called for redemption the bonds
64 refunded, together with interest accrued and to accrue
65 thereon and redemption premiums, if any, and such
66 refunding bonds' proceeds or obligations so purchased
67 therewith shall be deposited in escrow and held in trust
68 for the payment and redemption of the bonds refunded:

69 *Provided*, That if interest earned by any investment in
70 such escrow is shown to be in excess of the amounts
71 required from time to time for the payment of interest
72 on and principal of the refunded bonds, including
73 applicable redemption premium, then such excess may
74 be withdrawn from escrow and disbursed in such
75 manner as the authority shall by resolution determine,
76 subject to the provisions of section five of this article.
77 Any moneys in the sinking or reserve funds or other
78 funds maintained for the outstanding bonds to be
79 refunded may be applied in the same manner and for
80 the same purpose as are the net proceeds of refunding
81 bonds or may be deposited in the special fund or any
82 reserve funds established for account of the refunding
83 bonds.

84 The authority to issue revenue refunding bonds shall
85 be in addition to any other authority to refund bonds
86 conferred by law.

87 The school building authority shall have power to
88 enter into such escrow agreements with such bank or
89 banks and to insert therein such protective and other
90 covenants and provisions as it may consider necessary
91 to permit the carrying out of the provisions of this
92 article and to insure the prompt payment of the
93 principal of and interest and redemption premiums on
94 the revenue bonds refunded.

95 Where any revenue bonds to be refunded are not to
96 be surrendered for exchange or payment and are not to
97 be paid at maturity with escrowed obligations, but are
98 to be paid from such source prior to maturity pursuant
99 to call for redemption exercised under a right of
100 redemption reserved in such revenue bonds, the author-
101 ity shall, prior to the issuance of the refunding bonds,
102 determine which redemption date or dates shall be used,
103 call such revenue bonds for redemption and provide for
104 the giving of the notice of redemption required by the
105 proceedings authorizing such revenue bonds. Where
106 such notice is to be given at a time subsequent to the
107 issuance of the refunding bonds, the necessary notices
108 may be deposited with the state treasurer or the bank
109 acting as escrow agent of the refunding bond proceeds

110 and the escrow agent appropriately instructed and
111 authorized to give the required notices at the prescribed
112 time or times. If any officer of the public body signing
113 any such notice shall no longer be in office at the time
114 of the utilization of the notice, the notice shall neverthe-
115 less be valid and effective for its intended purpose.

§18-9D-13. Sinking fund for payment of bonds.

1 From the school building capital improvement fund
2 the school building authority shall make periodic
3 payments in an amount sufficient to meet the require-
4 ments of any issue of bonds sold under the provisions
5 of this article, as may be specified in the resolution of
6 the authority authorizing the issue thereof and in any
7 trust agreement entered into in connection therewith.
8 The payments so made shall be placed as specified in
9 such resolution of trust agreement in a special sinking
10 fund which is hereby pledged to and charged with the
11 payment of the principal of the bonds of such issue and
12 the interest thereon, and to the redemption or repur-
13 chase of such bonds, such sinking fund to be a fund for
14 all bonds of such issue without distinction or priority of
15 one over another, except as may be provided in the
16 resolution authorizing such issue of bonds. The moneys
17 in the special sinking fund, less such reserve for
18 payment of principal and interest and redemption
19 premium, if any, as may be required by the resolution
20 of the school building authority, authorizing the issue
21 and any trust agreement made in connection therewith,
22 may be used for the redemption of any of the outstand-
23 ing bonds payable from such fund which by their terms
24 are then redeemable, or for the purchase of bonds at the
25 market price, but at not exceeding the price, if any, at
26 which such bonds shall in the same year be redeemable;
27 and all bonds redeemed or purchased shall forthwith be
28 canceled and shall not again be issued.

§18-9D-15. Legislative intent; distribution of money.

1 (a) It is the intent of the Legislature to empower the
2 school building authority to facilitate and provide state
3 funds for the construction and maintenance of school
4 facilities so as to meet the educational needs of the

5 people of this state in an efficient and economical
6 manner. The authority shall make funding determina-
7 tions in accordance with the provisions of this article
8 and shall assess existing school facilities and each
9 facilities plan in relation to the needs of the individual
10 student, the general school population, the communities
11 served by the facilities, and facility needs statewide.

12 (b) An amount that is no more than three percent of
13 the sum of moneys that are determined by the authority
14 to be available for distribution during the then current
15 fiscal year from: (1) The increase in local share paid into
16 the school building capital improvements fund pursuant
17 to section ten, article nine-a of this chapter; (2) the
18 issuance of revenue bonds for which such increase in
19 local share is pledged as security; and (3) any other
20 moneys received by the authority may be allocated and
21 may be expended by the authority for projects that
22 service the educational community statewide or, upon
23 application by the state board, for educational programs
24 that are under the jurisdiction of the state board.

25 Fifty percent of the remaining available funds shall
26 be allocated and distributed to each county board on the
27 basis of its net enrollment as defined in section two,
28 article nine-a of this chapter: *Provided*, That such
29 moneys shall not be distributed to any county board
30 whose region does not have an approved region-wide
31 facilities plan or to any county board that is not
32 prepared to commence expenditures of such funds
33 during the fiscal year in which the moneys are distrib-
34 uted: *Provided, however*, That any moneys allocated to
35 a county board and not distributed to that county board
36 shall be deposited in an account to the credit of that
37 county board, such principal amount to remain to the
38 credit of and available to the county board for a period
39 of three years. Any moneys which are unexpended after
40 a three-year period shall be redistributed on the basis
41 of net enrollment to those county boards then eligible for
42 the receipt of net enrollment distributions in that fiscal
43 year.

44 The remaining fifty percent of moneys available for
45 distribution shall be allocated and expended on the basis
46 of need and efficient use of resources, such basis to be

47 determined by the authority in accordance with the
48 provisions of section sixteen of this article.

49 No local matching funds shall be required under the
50 provisions of this subsection, and any county board may
51 use the state moneys provided herein in conjunction with
52 local funds derived from bonding or other source. Any
53 county board may dedicate any allocations of state
54 moneys pursuant to this subsection to the payment of
55 local bonds used for purposes encompassed in an
56 approved facilities plan or for the payment of bonds that
57 are issued by the authority for the benefit of that county
58 that are in addition to the bond moneys distributed in
59 accordance with this subsection.

60 Moneys made available pursuant to this subsection
61 that shall be expended on projects that benefit more
62 than one district shall be apportioned among the
63 districts in accordance with the formula encompassed in
64 that portion of the facilities plan that addresses the
65 project designed to benefit more than one district.

66 (c) To encourage regional educational service agen-
67 cies and county boards to proceed promptly with
68 facilities planning and to prepare for the expenditure of
69 any state moneys derived from the sources described in
70 subsection (b) of this section, any county board failing
71 to expend money within three years of the allocation
72 thereto shall forfeit such allocation and thereafter shall
73 be ineligible for further net enrollment or other
74 allocations pursuant to subsection (b) until the county
75 board is ready to expend funds in accordance with an
76 approved facilities plan. Any amount so forfeited shall
77 be added to the total funds available for allocation and
78 distribution in the next ensuing fiscal year.

79 (d) Distribution to the county boards may be in a
80 lump sum or in accordance with a schedule of payments
81 adopted by the authority pursuant to such guidelines as
82 it shall adopt.

**§18-9D-16. Facilities plans generally; need-based
eligibility.**

1 (a) To facilitate the goals as stated in section fifteen
2 of this article and to assure the prudent and resourceful

3 expenditure of state funds, each regional educational
4 service agency created pursuant to section twenty-six,
5 article two of this chapter shall submit a region-wide
6 facilities plan that addresses the facilities needs of each
7 district within the region pursuant to such guidelines as
8 shall be adopted by the authority in accordance with this
9 section and in accordance with each district's compre-
10 hensive school facilities plan approved by the state
11 board of education. Any project receiving funding shall
12 be in furtherance of such approved region-wide facilities
13 plan.

14 (b) To assure efficiency and productivity in the
15 project approval process, the region-wide facilities plan
16 shall be submitted only after a preliminary plan, a plan
17 outline or a proposal for a plan has been submitted to
18 the authority. Selected members of the authority, which
19 selection shall include citizen members, shall then meet
20 promptly with those persons designated by the regional
21 educational service agency, including one person from
22 each county within the region, to attend the facilities
23 plan consultation. The purpose of the consultation is to
24 assure understanding of the general goals of the school
25 building authority and the specific goals encompassed
26 in the following criteria and to discuss ways the plan
27 may be structured to meet those goals.

28 (c) The guidelines for the development of a facilities
29 plan shall state the manner, timeline and process for
30 submission of any plan to the authority; such project
31 specifications as may be deemed appropriate by the
32 authority; and those matters which are deemed by the
33 authority to be important reflections of how the project
34 will further the overall goals of the authority.

35 The guidelines regarding submission of the plans
36 shall include requirements for public hearings, com-
37 ments or other means of providing broad-based input
38 within a reasonable time period as the authority may
39 deem appropriate. The submission of each facilities plan
40 shall be accompanied by a synopsis of all comments
41 received and a formal comment by each county board
42 included in the region. The guidelines regarding project
43 specifications may include such matters as energy

44 efficiency, preferred siting, construction materials,
45 maintenance plans or any other matter related to how
46 the capital improvement project is to proceed. The
47 guidelines pertaining to quality education shall require
48 that a facilities plan address how the current facilities
49 do not meet and the proposed plan and any project
50 thereunder does meet the following goals:

51 (1) Student health and safety;

52 (2) Economies of scale, including compatibility with
53 similar schools that have achieved the most economical
54 organization, facility utilization and pupil-teacher
55 ratios;

56 (3) Reasonable travel time and practical means of
57 addressing other demographic considerations;

58 (4) Multi-county and regional planning to achieve the
59 most effective and efficient instructional delivery
60 system;

61 (5) Curriculum improvement and diversification,
62 including computerization and technology and advanced
63 senior courses in science, mathematics, language arts
64 and social studies;

65 (6) Innovations in education such as year-round
66 schools and community-based programs; and

67 (7) Adequate space for projected student enrollments.

68 If the project is to benefit more than one county in
69 the region, the facilities plan shall state the manner in
70 which the cost and funding of the project shall be
71 apportioned among the counties.

72 (d) Each plan shall prioritize all the projects both
73 within a county and among the counties, which priority
74 list shall be one of the criteria to be considered by the
75 authority in determining how available funds shall be
76 expended. In prioritizing the projects, each regional
77 educational service agency shall make determinations in
78 accordance with the objective criteria formulated by the
79 school building authority.

80 (e) Each plan shall include the objective means to be

81 utilized in evaluating implementation of the overall plan
82 and each project included therein. Such evaluation shall
83 measure each project's furtherance of each goal stated
84 in this section and any guidelines adopted hereunder, as
85 well as the overall success of any project as it relates
86 to the facilities plan of its region and the overall goals
87 of the authority.

88 (f) The authority may adopt guidelines for requiring
89 that a regional educational service agency modify,
90 update, supplement or otherwise submit changes or
91 additions to an approved plan and shall provide
92 reasonable notification and sufficient time for such
93 change or addition.

CHAPTER 15

(Com. Sub. for S. B. 487—By Senators Minard, Wagner, Wiedebusch, Chernenko,
Bailey, Dittmar and Macnaughtan)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four and seven, article eighteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article eighteen-a, all relating to increasing the per diem for board members and tenants' rights to cable television; procedure for notifying landlord of request to cable operator to provide cable services; compensation for any physical damage to premises of landlord; availability of proceeding before cable board in the event of disagreement between landlord and cable operator; and protection of existing cable television services.

Be it enacted by the Legislature of West Virginia:

That sections four and seven, article eighteen, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article eighteen-a, all to read as follows:

Article

- 18. West Virginia Cable Television Systems Act.
- 18A. Tenants' Rights to Cable Services.

ARTICLE 18. WEST VIRGINIA CABLE TELEVISION SYSTEMS ACT.

- §5-18-4. Cable franchise required; franchising authority.
- §5-18-7. Compensation and expenses of board members.

§5-18-4. Cable franchise required; franchising authority.

1 (a) No person may construct, operate or acquire a
 2 cable system, or extend an existing cable system outside
 3 its designated service area, without first obtaining a
 4 cable franchise from a franchising authority as provided
 5 in this article.

6 (b) Any person operating a cable system on the
 7 effective date of this article without a franchise shall,
 8 within sixty days of the effective date of this article,
 9 notify the board in writing setting forth: (1) The name,
 10 business address and telephone number of the cable
 11 operator; (2) the principals and ultimate beneficial
 12 owners of the cable system or systems; (3) the geogra-
 13 phic location and service area of any cable system
 14 operated by such person; and (4) the number of
 15 subscribers within the cable system or systems. If the
 16 board shall not have been appointed and organized
 17 within sixty days of the effective date of this article,
 18 then such filing shall be made with the public service
 19 commission where such documents shall be retained for
 20 delivery to the board following the appointment and
 21 organization of its members.

22 (c) The board shall, upon receipt of such information,
 23 determine the appropriate franchising authority or
 24 authorities for the purposes of the consideration of the
 25 issuance of a franchise to such cable operator or
 26 operators and shall notify the appropriate franchising
 27 authority or authorities and any such cable system
 28 operator of the franchise application procedures to be
 29 followed by the respective parties. Any such cable
 30 operator shall, within sixty days of receipt of such notice
 31 from the board, make formal application to the approp-
 32 riate franchising authority or authorities for a franchise

33 in accordance with the provisions of this article.

34 (d) The franchising authority shall be the municipal-
35 ity in which a cable system is to be constructed,
36 operated, acquired or extended, or if there be no such
37 municipality or if the municipality so elects not to act
38 as a franchising authority, then the franchising author-
39 ity shall be the county commission of the county in
40 which such cable system is to be constructed, operated,
41 acquired or extended: *Provided*, That nothing herein
42 shall prohibit any county commission of a county in
43 which a municipality acting as a franchising authority
44 is located from also acting as a franchising authority for
45 any cable system to be constructed, operated, acquired
46 or extended within the jurisdiction of such county
47 commission, nor prohibit any county commission of a
48 county acquiring the franchise authority from a munic-
49 ipality from electing to transfer such authority to the
50 board.

51 (e) If a county commission elects not to act as the
52 franchise authority, the board shall become the fran-
53 chise authority. A county commission acting as a
54 franchise authority for unincorporated areas of the
55 county may elect separately to transfer to the board any
56 franchise authority acquired from a municipality. If any
57 municipality or county commission so elects not to be the
58 franchise authority, the mayor or president of the county
59 commission shall certify such delegation in writing to
60 the presiding officer of the board. Such election shall be
61 promptly made upon written request of the board or the
62 cable operator.

§5-18-7. Compensation and expenses of board members.

1 Each member of the board not otherwise employed by
2 the state shall receive a per diem in the amount of fifty
3 dollars while actually engaged in the performance of the
4 duties of the board, which shall be paid out of the cable
5 advisory board fund created under the provisions of this
6 article. Each member shall be reimbursed for all
7 reasonable and necessary expenses actually incurred
8 during the performance of his or her duties. Each
9 member shall receive meals, lodging and mileage

10 expense reimbursements at the rates established by rule
11 of the secretary of the department of administration for
12 in-state travel of public employees. The reimbursement
13 shall be paid out of the state treasury upon a requisition
14 upon the state auditor, properly certified by the
15 chairman of the board.

ARTICLE 18A. TENANTS' RIGHTS TO CABLE SERVICES.

- §5-18A-1. Short title.
- §5-18A-2. Legislative findings.
- §5-18A-3. Definitions.
- §5-18A-4. Landlord-tenant relationship.
- §5-18A-5. Prohibition.
- §5-18A-6. Just compensation.
- §5-18A-7. Right of entry.
- §5-18A-8. Notice of installation.
- §5-18A-9. Application for just compensation.
- §5-18A-10. Existing cable services protected.
- §5-18A-11. Exception.

§5-18A-1. Short title.

1 This article shall be known and may be cited as the
2 "Tenants' Rights to Cable Services Act".

§5-18A-2. Legislative findings.

1 The Legislature finds and declares as follows:

2 (a) Cable television has become an important medium
3 of public communication and entertainment.

4 (b) It is in the public interest to assure apartment
5 residents and other tenants of leased residential
6 dwellings access to cable television service of a quality
7 and cost comparable to service available to residents
8 living in personally owned dwellings.

9 (c) It is in the public interest to afford apartment
10 residents and other tenants of leased residential
11 dwellings the opportunity to obtain cable television
12 service of their choice and to prevent landlords from
13 treating such residents and tenants as a captive market
14 for the sale of television reception services selected or
15 provided by the landlord.

§5-18A-3. Definitions.

1 As used in this article:

2 (a) "Board" means the West Virginia cable television
3 advisory board created under the provisions of article
4 eighteen of this chapter.

5 (b) "Cable operator" means any person or group of
6 persons: (1) Who provides cable service over a cable
7 system and directly or through one or more affiliates
8 owns a significant interest in the cable system; or (2)
9 who otherwise controls or is responsible for, through any
10 arrangement, the management and operation of a cable
11 system.

12 (c) "Cable service" or "cable television service" means:
13 (1) The one-way transmission to subscribers of video
14 programming or other programming service; and (2)
15 subscriber interaction, if any, which is required for the
16 selection of video programming or other programming
17 service.

18 (d) "Cable system" means any facility within this state
19 consisting of a set of closed transmission paths and
20 associated signal generation, reception and control
21 equipment that is designed to provide cable service
22 which includes video programming and which is
23 provided to multiple subscribers within a community,
24 but does not include: (1) A facility that serves only to
25 retransmit the television signals of one or more televi-
26 sion broadcast stations; (2) a facility that serves only
27 subscribers in one or more multiple unit dwellings
28 under common ownership, control or management,
29 unless that facility or facilities uses any public right-of-
30 way; or (3) a facility of a public utility subject, in whole
31 or in part, to the provisions of chapter twenty-four of
32 this code, except to the extent that those facilities
33 provide video programming directly to subscribers.

34 (e) "Cable television facilities" includes all antennas,
35 poles, supporting structures, wires, cables, conduits,
36 amplifiers, instruments, appliances, fixtures and other
37 personal property used by a cable operator in providing
38 service to its subscribers.

39 (f) "Landlord" means a person owning, controlling,
40 leasing, operating or managing the multiple dwelling
41 premises.

42 (g) "Multiple dwelling premises" means any area
43 occupied by dwelling units, appurtenances thereto,
44 grounds and facilities, which dwelling units are in-
45 tended or designed to be occupied or leased for occupa-
46 tion, or actually occupied, as individual homes or
47 residences for three or more households. The term
48 includes mobile home parks.

49 (h) "Person" means an individual, partnership,
50 associate, joint stock company, trust, corporation or
51 governmental agency.

52 (i) "Tenant" means a person occupying single or
53 multiple dwelling premises owned or controlled by a
54 landlord but does not include an inmate or any person
55 incarcerated or housed within any state institution.

§5-18A-4. Landlord-tenant relationship.

1 (a) A landlord may not:

2 (1) Interfere with the installation, maintenance,
3 operation or removal of cable television facilities upon
4 his property or multiple dwelling premises, except that
5 a landlord may require:

6 (A) That the installation of cable television facilities
7 conform to such reasonable conditions as are necessary
8 to protect the safety, functioning and appearance of the
9 multiple dwelling premises and the convenience and
10 well-being of other tenants;

11 (B) That the cable operator or the tenant or a
12 combination thereof bear the entire cost of the installa-
13 tion or removal of such facilities; and

14 (C) That the cable operator agrees to indemnify the
15 landlord for any damage caused by the installation,
16 operation or removal of such facilities;

17 (2) Demand or accept any payment from any tenant,
18 in any form, in exchange for permitting cable television
19 service on or within his property or multiple dwelling
20 premises, or from any cable operator in exchange
21 therefor except as may be determined to be just
22 compensation in accordance with this article;

23 (3) Discriminate in rental charges, or otherwise,
24 between tenants who receive cable television service and
25 those who do not.

26 (b) Provisions relating to cable television service or
27 satellite master antenna systems contained in rental
28 agreements and leases executed prior to the effective
29 date of this article may be enforced notwithstanding this
30 section.

31 (c) A cable operator may not enter into any agreement
32 with the owners, lessees or persons controlling or
33 managing the multiple dwelling premises served by a
34 cable television, or do or permit any act, that would have
35 the effect, directly or indirectly, of diminishing or
36 interfering with existing rights of any tenant or other
37 occupant of such building to use or avail himself of
38 master or individual antenna equipment.

39 (d) The cable operator shall retain ownership of all
40 wiring and equipment used in any installation or
41 upgrade of a cable system within any multiple dwelling
42 premises.

§5-18A-5. Prohibition.

1 Except as provided in this article, no landlord may
2 demand or accept any payment from any cable operator
3 in exchange for permitting cable television service or
4 facilities on or within the landlord's property or multiple
5 dwelling premises.

§5-18A-6. Just compensation.

1 Every landlord is entitled to a single payment of just
2 compensation for property taken by a cable operator for
3 the installation of cable television service or facilities.
4 The amount of just compensation, if not agreed between
5 the landlord and cable operator, shall be determined by
6 the board in accordance with this article upon applica-
7 tion by the landlord pursuant to section nine of this
8 article. A landlord is not entitled to just compensation
9 in the event of a rebuild, upgrade or rewiring of cable
10 television service or facilities by a cable operator.

§5-18A-7. Right of entry.

1 A cable operator, upon receiving a request for service
2 by a tenant or landlord, has the right to enter property
3 of the landlord for the purpose of making surveys or
4 other investigations preparatory to the installation.
5 Before such entry, the cable operator shall serve notice
6 upon the landlord and tenant, which notice shall contain
7 the date of the entry and all other information described
8 in subsection (b), section eight of this article. The cable
9 operator is liable to the landlord for any damages caused
10 by such entry but such damages shall not duplicate
11 damages paid by the cable operator pursuant to section
12 nine of this article.

§5-18A-8. Notice of installation.

1 (a) Every cable operator proposing to install cable
2 television service or facilities upon the property of a
3 landlord shall serve upon said landlord and tenant, or
4 an authorized agent, written notice of intent thereof at
5 least fifteen days prior to the commencement of such
6 installation. Verbal notice to the tenant shall be legally
7 sufficient if the date and time of entry is communicated
8 to the tenant by either the landlord or cable operator
9 at least twenty-four hours prior to entry.

10 (b) The board shall prescribe the procedure for
11 service of such notice, and the form and content of such
12 notice, which shall include, but need not be limited to:

- 13 (1) The name and address of the cable operator;
- 14 (2) The name and address of the landlord;
- 15 (3) The approximate date of the installation; and
- 16 (4) A citation to this act.

17 (c) Where the installation of cable television service
18 or facilities is not effected pursuant to a notice served
19 in accordance with this section, for whatever reason
20 including denial of entry by the landlord, the cable
21 operator may file with the board a petition, verified by
22 an authorized person from the cable operator, setting
23 forth:

- 24 (1) Proof of service of a notice of intent to install cable
25 television service upon the landlord;

- 26 (2) The specific location of the real property;
- 27 (3) The resident address of the landlord, if known;
- 28 (4) A description of the facilities and equipment to be
29 installed upon the property, including the type and
30 method of installation and the anticipated costs thereof;
- 31 (5) The name of the individual or officer responsible
32 for the actual installation;
- 33 (6) A statement that the cable operator shall indem-
34 nify the landlord for any damage caused in connection
35 with the installation, including proof of insurance or
36 other evidence of ability to indemnify the landlord;
- 37 (7) A statement that the installation shall be con-
38 ducted without prejudice to the rights of the landlord
39 to just compensation in accordance with section nine of
40 this article;
- 41 (8) A summary of efforts by the cable operator to
42 effect entry of the property for the installation; and
- 43 (9) A statement that the landlord is afforded the
44 opportunity to answer the petition within twenty days
45 from the receipt thereof, which answer must be
46 responsive to the petition and may set forth any
47 additional matter not contained in the petition.
- 48 If no appearance by the landlord is made in the
49 proceeding or no answer filed within the time permit-
50 ted, the board shall grant to the petitioning cable
51 operator an order of entry, which order constitutes a
52 ruling that the petitioning cable operator has complied
53 with the requirements of this article. If the landlord
54 files a written answer to the petition, the cable operator
55 shall have ten days within which to reply to the answer.
56 The board may grant or deny the petition, schedule an
57 administrative hearing on any factual issues presented
58 thereby or direct such other procedures as may be
59 consistent with the installation of cable television service
60 or facilities in accordance with this article. The only
61 basis upon which the board may deny a petition by the
62 cable operator is that the cable operator has not
63 complied with the requirements of this article.

64 Within thirty days of the date of grant or denial of
65 the petition, or issuance of any other order by the board
66 following a hearing or other procedure, the cable
67 operator or landlord may appeal such grant or denial
68 or order of the board to the circuit court of Kanawha
69 county. Any order issued by the board pursuant to this
70 section may be enforced by an action seeking injunctive
71 or mandamus relief in circuit court where the property
72 is located.

§5-18A-9. Application for just compensation.

1 (a) If the landlord and cable operator have not
2 reached agreement on the amount of just compensation,
3 a landlord may file with the board an application for
4 just compensation within four months following the
5 service by the cable operator of the notice described in
6 section eight of this article, or within four months
7 following the completion of the installation of the cable
8 television facilities, whichever is later.

9 (b) An application for just compensation shall set
10 forth specific facts relevant to the determination of just
11 compensation. Such facts should include, but need not
12 be limited to, a showing of:

13 (1) The location and amount of space occupied by the
14 installation;

15 (2) The previous use of such space;

16 (3) The value of the applicant's property before the
17 installation of cable television facilities and the value of
18 the applicant's property subsequent to the installation of
19 cable television facilities; and

20 (4) The method or methods used to determine such
21 values. The board may, upon good cause shown, permit
22 the filing of supplemental information at any time prior
23 to final determination by the board.

24 (c) A copy of the application filed by the landlord for
25 just compensation shall be served upon the cable
26 operator making the installation and upon either the
27 mayor or county commission of the municipality or
28 county, respectively, in which the real property is

29 located when the municipality or county is the franchise
30 authority.

31 (d) Responses to the application, if any, shall be served
32 on all parties and on the board within twenty days from
33 the service of the application.

34 (e) (1) The board shall within sixty days of the receipt
35 of the application, make a preliminary finding of the
36 amount of just compensation for the installation of cable
37 television facilities.

38 (2) Either party may, within twenty days from the
39 release date of the preliminary finding by the board
40 setting the amount of just compensation, file a written
41 request for a hearing. Upon timely receipt of such
42 request, the board shall conduct a hearing on the issue
43 of compensation.

44 (3) In determining just compensation, the board may
45 consider evidence introduced including, but not limited to,
46 the following:

47 (A) Evidence that a landlord has a specific alternative
48 use for the space occupied or to be occupied by cable
49 television facilities, the loss of which will result in a
50 monetary loss to the owner;

51 (B) Evidence that installation of cable facilities upon
52 such multiple dwelling premises will otherwise substan-
53 tially interfere with the use and occupancy of such
54 premises to the extent which causes a decrease in the
55 resale or rental value; or

56 (C) Evidence of increase in the value of the property
57 occurring by reason of the installation of the cable
58 television facilities.

59 (4) For purposes of this article, the board shall
60 presume that a landlord has received just compensation
61 from a cable operator for the installation within a
62 multiple dwelling premises if the landlord receives
63 compensation in the amount of one dollar for each
64 dwelling unit within the multiple dwelling premises or
65 one hundred dollars for the entire multiple dwelling
66 premises, whichever amount is more.

67 (5) If, after the filing of an application, the cable
 68 operator and the applicant agree upon the amount of
 69 just compensation, a hearing shall not be held on the
 70 issue.

71 (6) Within thirty days of the date of the notice of the
 72 decision of the board, either party may appeal the
 73 decision of the board in the circuit court of Kanawha
 74 county regarding the amount awarded as compensation.

§5-18A-10. Existing cable services protected.

1 Cable services being provided to tenants on the
 2 effective date of this article may not be prohibited or
 3 otherwise prevented so long as the tenant continues to
 4 request such services.

§5-18A-11. Exception.

1 Notwithstanding any provision in this article to the
 2 contrary, a landlord and cable operator may by mutual
 3 agreement establish the terms and conditions upon
 4 which cable television facilities are to be installed within
 5 a multiple dwelling premises without having to comply
 6 with the provisions of this article.

CHAPTER 16

**(Com. Sub. for S. B. 407—By Senators Burdette, Mr. President, Blatnik,
 Felton, Sharpe, Wagner and Boley)**

[Passed April 8, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-b, relating to the sale of preneed cemetery company property, goods and services; definitions; requirements for engaging in business as a cemetery company; fees; compliance agent; state treasury special account; exemptions; deposit in trust fund of percentage of proceeds from sale of property, goods and services required; contents of preneed cemetery company contracts; composition of trust account; payment of

certain expenses from trust account; exceptions; disbursement of trust funds; construction of mausoleums; records to be kept; financial report to tax commissioner; audit; appointment of trustee; fidelity bond of trustee; breach of contract; purpose of trust; liability of trustee; transfer of trust funds; advertisement of name of trustee; maintenance of cemetery property; prohibition of waiver; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That chapter thirty-five 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-b, to read as follows:

ARTICLE 5B. PRENEED CEMETERY COMPANY PROPERTY, GOODS AND SERVICES; RELATED CONTRACTS.

- §35-5B-1. Definitions.
- §35-5B-2. Information filing; fees, compliance agent.
- §35-5B-3. Exemptions.
- §35-5B-4. Deposit in preneed trust required; who may serve as trustee.
- §35-5B-5. Requirements for preneed cemetery company contracts.
- §35-5B-6. Identification of funds.
- §35-5B-7. Corpus of trust account and income to remain in preneed trust account; exception.
- §35-5B-8. Disbursement of trust funds upon performance of contract; mausoleum construction required.
- §35-5B-9. Seller required to keep records.
- §35-5B-10. Financial report and written assurance required.
- §35-5B-11. Inclusion of property, goods and services to be delivered within one hundred twenty days.
- §35-5B-12. Breach of contract by seller; trust to be single purpose trust.
- §35-5B-13. Trustee may rely on certifications and affidavits.
- §35-5B-14. Transfer of trust funds to another trustee.
- §35-5B-15. Use of trustee's name in advertisements.
- §35-5B-16. Cemetery property maintained by cemetery company.
- §35-5B-17. Waiver of article void.
- §35-5B-18. Violation a misdemeanor.

§35-5B-1. Definitions.

- 1 The following words and phrases as used in this
- 2 article, unless a different meaning is clearly indicated
- 3 by the context, have the following meanings:

- 4 (1) "Burial vault" means a protective container for a

5 casket which is used to prevent a grave from sinking.

6 (2) "Cemetery" means and includes all land and
7 appurtenances including roadways, office buildings,
8 outbuildings and other structures used or intended to be
9 used for or in connection with the interment of human
10 remains. The sprinkling of ashes or their burial in a
11 biodegradable container on church grounds or their
12 placement in a columbarium on church property does
13 not constitute the creation of a cemetery.

14 (3) "Cemetery company" or "seller" means any person,
15 partnership, firm or corporation engaged in the business
16 of operating a cemetery or selling property, goods or
17 services used in connection with interring or disposing
18 of the remains or commemorating the memory of a
19 deceased human being, where delivery of the property
20 or goods or performance of the service may be delayed
21 later than one hundred twenty days after receipt of the
22 initial payment on account of such sale. Such property,
23 goods or services include, but are not limited to, burial
24 vaults, mausoleum crypts, lawn crypts, memorials,
25 marker bases and opening and closing and/or interment
26 services, but do not include graves or incidental
27 additions such as dates, scrolls or other supplementary
28 matter representing not more than ten percent of the
29 total contract price.

30 (4) "Commissioner" or "tax commissioner" means the
31 secretary of the West Virginia department of tax and
32 revenue.

33 (5) "Compliance agent" means a natural person who
34 owns or is employed by a cemetery company to assure
35 the compliance of the cemetery company with the
36 provisions of this article.

37 (6) "Cost requirement" means the total cost to the
38 seller of the property, goods or services subject to the
39 deposit requirements of section four of this article
40 required by that seller's total contracts.

41 (7) "Delivery" means that the seller has transferred
42 physical possession of the identified goods, has attached
43 or installed such goods at the designated interment

44 space or has actually furnished preneed cemetery
45 company contract services. In the case of preneed goods
46 which are identified with the name of the buyer or other
47 contract beneficiary, "delivery" may also occur when:
48 (A) The seller pays for and stores the goods at the
49 cemetery where they are intended to be used; or (B) the
50 seller has paid the supplier of such goods and the
51 supplier has caused such merchandise to be manufac-
52 tured and stored, has caused title to such merchandise
53 to be transferred to the buyer or other contract
54 beneficiary and has agreed to ship such merchandise
55 upon his or her request.

56 (8) "Grave" means a below-ground right of interment.

57 (9) "Interment" means the disposition of human
58 remains by earth burial, entombment or inurnment.

59 (10) "Lawn crypt" means a burial receptacle, usually
60 constructed of reinforced concrete, installed under-
61 ground in quantity on gravel or tile underlay. Each
62 crypt becomes an integral part of the given garden area
63 and is considered real property.

64 (11) "Marker base" means the visible part of the base
65 or foundation upon which the memorial, marker or
66 monument rests and is considered personal property.

67 (12) "Mausoleum crypt" means a burial receptacle
68 usually constructed of reinforced concrete and usually
69 constructed or assembled above the ground and is
70 considered real property.

71 (13) "Memorials, markers or monuments" means the
72 object used to identify the deceased including the base
73 and is considered personal property.

74 (14) "Opening and closing or interment service"
75 means any service associated with the excavation and
76 filling in of a grave in a manner which will not disturb
77 or invade adjacent grave sites.

78 (15) "Preneed" means at any time other than either
79 at the time of death or while death is imminent.

80 (16) "Preneed cemetery company contract" means a
81 contract for the sale of real and personal property, goods

82 or services used in connection with interring or disposing
83 ing of the remains or commemorating the memory of a
84 deceased human being, where delivery of the property
85 or performance of the service may be delayed for more
86 than one hundred twenty days after the receipt of initial
87 payment on account of such sale. Such property, goods
88 or services include, but are not limited to, burial vaults,
89 mausoleum crypts, lawn crypts, memorials, marker
90 bases and opening and closing and/or interment servi-
91 ces, but do not include graves or incidental additions
92 such as dates, scrolls or other supplementary matter
93 representing not more than ten percent of the total
94 contract price.

95 (17) "Seller's trust account" means the total specific
96 funds deposited from all of a specific seller's contracts,
97 plus income on such funds allotted to that seller.

98 (18) "Specific trust funds" means funds identified
99 with a certain preneed cemetery company contract for
100 personal property, goods or services.

101 (19) "Trustee" means any natural person, partnership
102 or corporation, including any bank, trust company,
103 broker-dealer, foreign state charter trust, savings and
104 loan association or credit union which receives money in
105 trust pursuant to any agreement or contract made
106 pursuant to the provisions of this article.

§35-5B-2. Information filing; fees, compliance agent.

1 On or after the first day of July, one thousand nine
2 hundred ninety-three, no person, partnership, firm or
3 corporation may engage in the business of operating a
4 cemetery company in this state without having first paid
5 an annual registration fee established by the tax
6 commissioner in an amount not to exceed four hundred
7 dollars, and filing with the tax commissioner certain
8 information which shall include the name and addresses
9 of all officers, owners and directors of the cemetery
10 company and the name of the designated compliance
11 agent. The cemetery company shall notify the tax
12 commissioner of any changes in the information re-
13 quired to be filed within ninety days of the date on
14 which the change occurs. A new filing shall also be

15 required if there is a change in the ownership of the
16 cemetery company or if there is a change in the name
17 of the compliance agent designated by the cemetery
18 company. The cemetery company shall pay an additional
19 fee as established by the commissioner in connection
20 with the reporting of such changes, not to exceed one
21 hundred dollars. There is hereby created in the state
22 treasury a special account to be known as the "cemetery
23 company account" into which all fees collected under
24 this article shall be deposited: *Provided*, That amounts
25 collected which are found from time to time to exceed
26 funds needed for the purposes set forth in this article
27 may be transferred to other accounts or funds and
28 redesignated for other purposes by appropriation of the
29 Legislature. Funds in this account shall be expended
30 upon appropriation of the Legislature by the secretary
31 of tax and revenue in connection with the administration
32 of this article.

§35-5B-3. Exemptions.

1 The provisions of this article do not apply to:

2 (1) Sales of property, goods and services subject to the
3 provisions of article fourteen, chapter forty-seven of this
4 code;

5 (2) Sales of services by perpetual care cemeteries
6 subject to the provisions of article five-a of this chapter;

7 (3) Sales of property, goods and services by cemeteries
8 owned and operated by a county, municipal corporation,
9 by a church or by a nonstock corporation not operated
10 for profit if the cemetery: (A) Does not compensate any
11 officer or director except for reimbursement of reason-
12 able expenses incurred in the performance of official
13 duties; (B) does not sell or construct or directly or
14 indirectly contract for the sale or construction of vaults
15 or lawn or mausoleum crypts; and (C) uses proceeds
16 from the sale of all graves and entombment rights for
17 the sole purpose of defraying the direct expenses of
18 maintaining the cemetery;

19 (4) Sales of property, goods and services by commun-
20 ity cemeteries not operated for profit if the cemetery:

21 (A) Does not compensate any officer, owner or director
22 except for reimbursement of reasonable expenses
23 incurred in the performance of official duties; and (B)
24 uses the proceeds from the sale of the graves for the sole
25 purpose of defraying the direct expenses of maintaining
26 its facilities; and

27 (5) Sales of property, goods and services by family
28 cemeteries wherein lots or spaces are not offered for
29 public sale.

**§35-5B-4. Deposit in preneed trust required; who may
serve as trustee.**

1 (a) Each cemetery company shall deposit into an
2 interest bearing trust fund forty percent of the receipts
3 from the sale of property, goods or services purchased
4 pursuant to a preneed cemetery company contract
5 including sales of opening and closing or interment
6 services, when the delivery thereof will be delayed more
7 than one hundred twenty days from the initial payment
8 on said contract. However, should the proceeds from the
9 sale be financed through a lending institution, it shall
10 be considered a cash sale. Deposits are required to be
11 made by the cemetery company within thirty days after
12 the close of the month in which said receipts are paid
13 to it.

14 (b) If payment is made on an installment or deferred
15 payment basis, the seller shall have the option of
16 depositing into the trust fund forty percent of the
17 amount of the principal initially, or alternatively,
18 depositing forty percent of the principal of each
19 payment within thirty days after the close of the month
20 in which said receipts are paid to it.

21 (c) (1) The trustee of the trust fund shall be appointed
22 by the person owning, operating, or developing a
23 cemetery company. If the trustee is other than a bank,
24 savings and loan or other federally insured investment
25 banking institution, the trustee shall be approved by the
26 tax commissioner. A trustee that is not a bank, savings
27 and loan or other federally insured investment banking
28 institution shall apply to the tax commissioner for
29 approval, and the tax commissioner shall approve the

30 trustee when satisfied that:

31 (A) The applicant employs and is directed by persons
32 who are qualified by character, experience, and finan-
33 cial responsibility to care for and invest the funds of
34 others; and

35 (B) The applicant will perform its duties in a proper
36 and legal manner and the trust funds and interest of the
37 public generally will not be jeopardized.

38 (2) If the trustee is other than a bank, savings and
39 loan or other federally insured investment banking
40 institution, the trustee shall furnish a fidelity bond with
41 corporate surety thereon, payable to the trust estab-
42 lished, in a sum equal to but not less than one hundred
43 percent of the value of the principal of the trust estate
44 at the beginning of each calendar year, which bond shall
45 be deposited with the tax commissioner.

46 (3) If the trustee is other than a bank, savings and
47 loan or other federally insured investment banking
48 institution, and if it appears that an officer, director or
49 employee of the trustee is dishonest, incompetent or
50 reckless in the management of a trust fund required by
51 the provisions of this article, the tax commissioner may
52 bring an action in the circuit courts of this state to
53 remove the trustee and to impound the property and
54 business of the trustee as may be reasonably necessary
55 to protect the trust funds.

§35-5B-5. Requirements for preneed cemetery company contracts.

1 A preneed cemetery company contract shall:

2 (1) Be written in clear understandable language and
3 printed in easy-to-read type, size and style;

4 (2) Identify the seller, the contract buyer and the
5 person for whom the contract is bought if other than the
6 contract buyer;

7 (3) Contain a complete description of the property,
8 goods or services bought;

9 (4) Clearly disclose whether the price of the property,

10 goods or services bought is guaranteed;

11 (5) Provide that if the particular property, goods and
12 services specified in the contract are unavailable at the
13 time of delivery, the seller shall be required to furnish
14 property, goods and services similar in size and style
15 and at least equal in quality of material and workman-
16 ship and that the representative of the deceased has the
17 right to reasonably choose the property, goods or
18 services to be substituted; and

19 (6) Be executed in duplicate and a signed copy given
20 to the buyer.

§35-5B-6. Identification of funds.

1 Any funds deposited in the trust account as required
2 by section four of this article shall be identified in the
3 records of the seller by the contract number and by the
4 name of the buyer. The trustee may commingle the
5 deposits in any preneed trust account for the purposes
6 of the management thereof and the investment of funds
7 therein.

**§35-5B-7. Corpus of trust account and income to remain
in preneed trust account; exception.**

1 The corpus of the trust account shall remain intact
2 until the property or goods are delivered or services
3 performed as specified in the contract: *Provided*, That
4 the net income from the preneed trust account may be
5 used to pay any appropriate trustee and auditor fees,
6 commissions and costs. The net income from the preneed
7 trust account, after payment of any appropriate trustee
8 and auditor fees, commissions and costs, shall remain in
9 the account and be reinvested and compounded. Any
10 trustee fees, commissions and costs in excess of income
11 shall be paid by the cemetery company and not from the
12 trust. However, the trustee shall, as of the close of the
13 cemetery company's fiscal year, upon the written
14 assurance to the trustee by a certified public accountant
15 employed by the seller, return to the seller any income
16 in the seller's account which, when added to the corpus
17 of the trust account is in excess of the current cost
18 requirements for all undelivered property, goods or

19 services included in the seller's preneed cemetery
20 company contracts including all outstanding preneed
21 cemetery company contracts entered into prior to the
22 first day of July, one thousand nine hundred ninety-
23 three. The seller's cost requirements shall be based upon
24 wholesale cost and certified in its records by a sworn
25 affidavit by the compliance agent and shall be deter-
26 mined by the seller as of the close of the cemetery
27 company's fiscal year.

**§35-5B-8. Disbursement of trust funds upon performance
of contract; mausoleum construction
required.**

1 (a) Upon performance of the preneed cemetery
2 company contract, the seller shall certify to the trustee
3 by affidavit the amount of specific funds in the trust,
4 identified with the contract performed, which the
5 trustee shall pay to the seller. The seller may in its
6 records itemize the property, goods or services and the
7 consideration paid or to be paid therefor, to which the
8 deposit requirements of this article apply. In such case
9 the seller may, upon certification to the trustee of
10 performance or delivery of such property, goods or
11 services and of the amount of specific trust funds
12 identified in its records with such items, request
13 disbursement of that portion of the specific funds
14 deposited pursuant to the contract, which the trustee
15 shall pay to the seller.

16 (b) If the preneed contract provides for two or more
17 persons, the seller may, at its option, designate in its
18 records the consideration paid for each individual in the
19 preneed cemetery company contract. In such case, upon
20 performance of that portion of the contract identified
21 with a particular individual, the seller may request, by
22 certification in the manner described above, the
23 disbursement of trust funds applicable to that portion
24 of the contract, which the trustee shall pay to the seller.

25 (c) Any cemetery company that sells space in an
26 unconstructed mausoleum must commence construction
27 within seven years from the date of the first sale or
28 when eighty percent of the spaces in the original

29 mausoleum plan are sold, whichever occurs first.

§35-5B-9. Seller required to keep records.

1 Each seller of a preneed cemetery company contract
2 shall record and keep detailed accounts of all contracts
3 and transactions regarding preneed cemetery company
4 contracts and the records shall be subject to examina-
5 tion by the tax commissioner.

**§35-5B-10. Financial report and written assurance
required.**

1 (a) The cemetery company shall report the following
2 information to the tax commissioner within four months
3 following the close of the cemetery company's fiscal
4 year:

5 (1) The total amount of principal in the preneed trust
6 account;

7 (2) The securities in which the preneed trust account
8 is invested;

9 (3) The income received from the trust and the source
10 of that income during the preceding fiscal year;

11 (4) An affidavit executed by the compliance agent that
12 all provisions of this article applicable to the seller
13 relating to preneed trust accounts have been complied
14 with;

15 (5) The total receipts required to be deposited in the
16 preneed trust account;

17 (6) All expenditures from the preneed trust account;
18 and

19 (7) If the trustee is other than a bank, savings and
20 loan or other federally insured investment banking
21 institution, proof, in a manner determined by the tax
22 commissioner, that the fidelity bond required by the
23 provisions of section four of this article has been secured
24 and that it is in effect.

25 (b) The cemetery company shall employ an independ-
26 ent certified public accountant who is to audit the
27 account and provide assurance, which assurance shall be

28 forwarded with the report required by subsection (a) of
29 this section, that forty percent of the cash receipts from
30 the sale of preneed property, goods or services which
31 will not be delivered or performed within one hundred
32 twenty days after receipt of the initial payment on
33 account has been deposited in the account within thirty
34 days after the close of the month in which the payment
35 was received.

§35-5B-11. Inclusion of property, goods and services to be delivered within one hundred twenty days.

1 Nothing in this article prohibits the sale within the
2 contract of preneed property, goods or services to be
3 delivered within one hundred twenty days after the
4 receipt of the initial payment on account of such sale.
5 Contracts may specify separately the total consideration
6 paid or to be paid for preneed property, goods or
7 services not to be delivered or provided within one
8 hundred twenty days after receipt of initial payment. If
9 a contract does not so specify, the seller shall deposit
10 forty percent of the total consideration for the entire
11 contract.

§35-5B-12. Breach of contract by seller; trust to be single purpose trust.

1 (a) If, after a written request, the seller fails to
2 perform its contractual duties, the purchaser, executor
3 or administrator of the estate, or heirs, or assigns or
4 duly authorized representative of the purchaser shall be
5 entitled to maintain a proper legal or equitable action
6 in any court of competent jurisdiction. No other
7 purchaser need be made a party to or receive notice of
8 any proceeding brought pursuant to this section relating
9 to the performance of any other contract.

10 (b) The trust shall be a single purpose trust, and the
11 trust funds are not available to any creditors as assets
12 of the seller, nor may the seller encumber the trust
13 funds.

§35-5B-13. Trustee may rely on certifications and affidavits.

1 The trustee may rely upon all certifications and

- 2 affidavits which have been made pursuant to the
- 3 provisions of this article and is not liable to any person
- 4 for such reasonable reliance.

§35-5B-14. Transfer of trust funds to another trustee.

- 1 The seller may, upon notification in writing to the
- 2 trustee, and upon such other terms and conditions as the
- 3 agreement between them may specify, transfer its
- 4 account funds to another trustee qualified under the
- 5 provisions of this article. The trustee may, upon
- 6 notification in writing to the seller, and upon such other
- 7 terms and conditions as the agreement between them
- 8 may specify, transfer the trust funds to another trustee
- 9 qualified under the provisions of this article.

§35-5B-15. Use of trustee's name in advertisements.

- 1 No person subject to the provisions of this article may
- 2 use the name of the trustee in any advertisement or
- 3 other public solicitation without written permission of
- 4 the trustee.

§35-5B-16. Cemetery property maintained by cemetery company.

- 1 With respect to cemetery property maintained by a
- 2 cemetery company, the cemetery company is responsible
- 3 for the performance of:
 - 4 (1) The care and maintenance of the cemetery
 - 5 property it owns; and
 - 6 (2) The opening and closing of all graves, crypts or
 - 7 niches for human remains in any cemetery property it
 - 8 owns.

§35-5B-17. Waiver of article void.

- 1 Any provision of any contract which purports to waive
- 2 any provision of this article is void.

§35-5B-18. Violation a misdemeanor.

- 1 Any person who violates any of the provisions of this
- 2 article is guilty of a misdemeanor, and, upon conviction
- 3 thereof, shall be fined not less than one hundred nor
- 4 more than one thousand dollars for each occurrence, or

5 incarcerated in the county or regional jail for a term not
 6 to exceed one year, or both fined and incarcerated. Any
 7 person who violates any of the provisions of this article
 8 shall for a second offense be guilty of a felony and, upon
 9 conviction thereof, shall be fined not less than five
 10 hundred nor more than three thousand dollars, or
 11 incarcerated in the penitentiary not less than one nor
 12 more than three years, or, in the discretion of the court,
 13 be incarcerated in the county jail for a term not to
 14 exceed one year.

CHAPTER 17

(H. B. 2512—By Delegate Pethel)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article three, chapter thirty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to homes and asylums of fraternal orders; membership of board of directors.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. HOMES AND ASYLUMS OF FRATERNAL ORDERS.

§35-3-2. Regulations and boards for government.

1 Any such grand lodge desiring to establish a home or
 2 asylum shall adopt and prescribe such rules and
 3 regulations for the government and control thereof as
 4 may be deemed wise by such grand body; and it shall
 5 appoint a board of directors, trustees, regents or
 6 commissioners, composed of a specified number of
 7 persons from its own membership, not fewer than seven
 8 nor more than eleven, to serve for definite periods; and
 9 any such grand lodge may select for each of such boards
 10 two members from the associate branches of the orders,
 11 known as Pythian Sisters, Rebekahs, Eastern Star, or

12 other like organizations, as the case may be. Such board
13 shall have the management and control of the home or
14 asylum for which it is appointed, under the prescribed
15 rules and regulations adopted by said body for the
16 government thereof. Such board of directors, trustees,
17 regents or commissioners shall organize by the election
18 of a president, secretary and treasurer, and, if necessary
19 or expedient, an executive committee, all from its own
20 membership.

CHAPTER 18

(S. B. 464—By Senators Jones, Plymale and Holliday)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the purpose of the children's fund.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26. GOVERNOR'S CABINET ON CHILDREN AND FAMILIES.

§5-26-6. Children's fund created; purpose.

1 (a) The cabinet shall establish a children's fund for the
2 sole purpose of awarding grants, loans and loan
3 guaranties for child abuse and neglect prevention
4 activities. Gifts, bequests or donations for this purpose,
5 in addition to appropriations to the fund, shall be
6 deposited in the state treasury in a special revenue
7 account that is independent from any executive or other
8 department of government, other than the office of the
9 governor. Any moneys deposited in the children's trust
10 fund created pursuant to article six-c, chapter forty-nine
11 of this code on the effective date of this section, and any
12 interest accruing to such fund, shall be deposited in the

13 children's fund created pursuant to this section, and the
14 children's trust fund shall thereafter be discontinued.

15 (b) Each state taxpayer may voluntarily contribute a
16 portion of the taxpayer's state income tax refund to the
17 children's fund by so designating the contribution on the
18 state personal income tax return form. The cabinet shall
19 approve the wording of the designation on the income
20 tax return form, which designation shall appear on tax
21 forms as of the first day of January, one thousand nine
22 hundred ninety-one. The tax commissioner shall deter-
23 mine by the first day of July of each year the total
24 amount designated pursuant to this subsection and shall
25 report that amount to the state treasurer, who shall
26 credit that amount to the children's fund.

27 (c) All interest accruing from investment of moneys
28 in the children's fund shall be credited to the fund, and
29 the legislative auditor shall conduct an annual audit of
30 the fund.

31 (d) Grants, loans and loan guaranties may be awarded
32 from the children's fund by the cabinet for child abuse
33 and neglect prevention activities.

CHAPTER 19

(H. B. 2691—By Delegates Brown and Douglas)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six-a, article five-a, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section seven, article five-b of said chapter, all relating to maintaining a unified state system of predispositional detention for juveniles; including the juvenile justice committee, the state board of education, detention center personnel, juvenile probation officers in those groups giving input for the plan; requiring the development of policy and program goals for secure licensed facilities; requiring identifica-

tion of operational problems of secure detention centers, establishment of policies regarding overcrowding, security, violence, health needs, educational needs, transportation problems, staff problems and time limitations; requiring inclusion of statement of policies and goals regarding licensing, placement criteria, alternative placement, allocation of fiscal resources, information and referral services and educational regulations; requiring oversight by the legislative commission on juvenile law or their subcommittee and periodic review and updating of the plan; requiring the department of health and human resources to make a descriptive catalogue of its juvenile programs and services available to local communities; and requiring periodic updating of the catalogue.

Be it enacted by the Legislature of West Virginia:

That section six-a, article five-a, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section seven, article five-b of said chapter be amended and reenacted, all to read as follows:

Article

5A. Juvenile Referee System.

5B. West Virginia Juvenile Offender Rehabilitation Act.

ARTICLE 5A. JUVENILE REFEREE SYSTEM.

§49-5A-6a. State plan for predisposition detention of juveniles.

1 (a) The secretary of the department of health and
 2 human resources and the legislative commission on
 3 juvenile law shall develop a comprehensive plan to
 4 maintain and improve a unified state system of predis-
 5 positional detention for juveniles. The secretary and the
 6 commission plan shall consider recommendations from
 7 the division of corrections, the governor's committee on
 8 crime, delinquency and correction, the juvenile justice
 9 committee, the state board of education, detention center
 10 personnel, juvenile probation officers of the department
 11 of health and human resources and judicial and law-

12 enforcement officials from throughout the state.

13 The principal purpose of the plan shall be, through
14 statements of policy and program goals, to provide for
15 the effective and efficient use of juvenile detention
16 facilities licensed or operated by local units of govern-
17 ment and the state, including those operated regionally
18 by the department of health and human resources.

19 (b) The plan shall identify operational problems of
20 secure detention centers, including, but not limited to,
21 overcrowding, security and violence within centers,
22 difficulties in moving juveniles through the centers
23 within required time periods, health needs, educational
24 needs, transportation problems, staff turnover and
25 morale and other perceived problem areas. The plan
26 shall further provide recommendations directed to
27 alleviate the problems.

28 (c) The plan shall include, but not be limited to,
29 statements of policies and goals in the following areas:

30 (1) Licensing of secure detention centers;

31 (2) Criteria for placing juveniles in detention;

32 (3) Alternatives to secure detention;

33 (4) Allocation of fiscal resources to the costs of secure
34 detention facilities;

35 (5) Information and referral services; and

36 (6) Educational regulations developed and approved
37 by the West Virginia board of education.

38 (d) The legislative commission on juvenile law, or a
39 designated subcommittee or task force thereof, shall act
40 in a continuing capacity as an oversight committee, and
41 shall assist the secretary of the department of health and
42 human resources in the periodic review and update of
43 the state plan for the predisposition detention of
44 juveniles.

**ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHA-
BILITATION ACT.**

§49-5B-7. Reporting requirements; cataloguing of services.

1 (a) The department of health and human resources
2 shall from time to time, but not less often than annually,
3 review its programs and services and submit a report
4 to the governor, the Legislature and the supreme court
5 of appeals, analyzing and evaluating the effectiveness of
6 the programs and services being carried out by the
7 department. Such report shall include, but not be
8 limited to, an analysis and evaluation of programs and
9 services continued, established and discontinued during
10 the period covered by the report, and shall further
11 describe programs and services which should be
12 implemented to further the purposes of this article.
13 Such report shall also include, but not be limited to,
14 relevant information concerning the number of children
15 comprising the population of any rehabilitative facility
16 during the period covered by the report, the length of
17 residence, the nature of the problems of each child, the
18 child's response to programs and services and such other
19 information as will enable a user of the report to
20 ascertain the effectiveness of the facility as a rehabil-
21 itative facility.

22 (b) The department of health and human resources
23 shall prepare a descriptive catalogue of its juvenile
24 programs and services available in local communities
25 throughout this state and shall distribute copies of the
26 same to every juvenile court in the state and, at the
27 direction of the juvenile court, such catalogue shall be
28 distributed to attorneys practicing before such court.
29 Such catalogue shall also be made available to members
30 of the general public upon request. The catalogue shall
31 contain sufficient information as to particular programs
32 and services so as to enable a user of the catalogue to
33 make inquiries and referrals. The catalogue shall be
34 constructed so as to meaningfully identify and describe
35 programs and services. The requirements of this section
36 are not satisfied by a simple listing of specific agencies
37 or the individuals in charge of programs at a given time.
38 The catalogue shall be updated and republished or
39 supplemented from time to time as may be required to
40 maintain its usefulness as a resource manual.

CHAPTER 20

(S. B. 573—Originating in the Committee on Finance)

[Passed April 8, 1993; in effect July 1, 1993. 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 consolidated medical services fund; division of general services; division of health; division of human services; information services and communications; division of personnel; division of purchasing; West Virginia hospital finance authority; alcohol beverage control administration; attorney general; board of directors of the state college system; board of education; board of trustees of the university of West Virginia; department of education; division of public safety; tax division; division of banking; division of corrections; division of culture and history; division of forestry; division of highways; division of motor vehicles; governor's office; public service commission; railroad maintenance authority; state fire commission; state treasurer; supreme court of appeals; West Virginia development office; West Virginia state Senate; West Virginia state board of examiners for licensed practical nurses; and 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 claim in the
 10 amount specified below, and directs the auditor to issue
 11 warrants for the payment thereof out of any fund
 12 appropriated and available for the purpose.

13 (a) *Claims against the Consolidated Medical Services*
 14 *Fund:*

15 (TO BE PAID FROM GENERAL REVENUE FUND)

16	(1) Doak, Cuppett & Poling	\$	15,167.99
17	(2) Tri Cities Health Service		
18	Corporation		
19	d/b/a H.C.A. River Park		
20	Hospital	\$	53,158.41

21 (b) *Claim against the Division of General Services:*

22 (TO BE PAID FROM GENERAL REVENUE FUND)

23	(1) Paul D. Marshall & Assoc., Inc.	\$	210.00
----	--	----	--------

24 (c) *Claims against the Division of Health:*

25 (TO BE PAID FROM GENERAL REVENUE FUND)

26	(1) Board of Trustees of the		
27	University of WV on behalf		
28	of WVU	\$	18,750.00

29 (TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8500-18)

30	(2) Appalachian Welding Supply		
31	Co., Inc.	\$	370.80
32	(3) A. A. Goodarzi, M.D.	\$	1,530.00
33	(4) William R. Hutton	\$	500.00
34	(5) IVAC Corporation	\$	1,447.71
35	(6) Welding, Incorporated	\$	4,000.00

36 (TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8509-14)

37	(7) Friden Alcatel Leasing	\$	319.20
----	----------------------------------	----	--------

38 (d) *Claims against the Division of Human Services:*

39 (TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 9150-01)

40	(1) Janet Y. Richmond	\$	290.95
----	-----------------------------	----	--------

41	(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 9155-10)		
42	(2) Pressley Ridge School.....	\$	156,297.00
43	(e) <i>Claim against Information Services and</i>		
44	<i>Communications:</i>		
45	(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8151)		
46	(1) Computer Associates		
47	International, Inc.	\$	24,254.09
48	(f) <i>Claim against the Division of Personnel:</i>		
49	(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8402-14)		
50	(1) Cornell University	\$	475.00
51	(g) <i>Claims against the Division of Purchasing:</i>		
52	(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8140)		
53	(1) General Truck Sales Corporation	\$	185.28
54	(2) Manpower Temporary Services.....	\$	900.85
55	(3) Security America, Inc.	\$	82.68
56	(h) <i>Claim against the West Virginia Hospital Finance</i>		
57	<i>Authority:</i>		
58	(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8330)		
59	(1) Bowles Rice McDavid		
60	Graff & Love	\$	597.91
61	(i) <i>Claims against the Alcohol Beverage Control</i>		
62	<i>Administration:</i>		
63	(TO BE PAID FROM SPECIAL REVENUE FUND)		
64	(1) Zane L. Metz, Sr.	\$	29.45
65	(2) Robin D. Newhouse	\$	152.24
66	(j) <i>Claim against the Attorney General:</i>		
67	(TO BE PAID FROM GENERAL REVENUE FUND)		
68	(1) Xerox Corporation	\$	1,409.92
69	(k) <i>Claims against the Board of Directors of the State</i>		
70	<i>College System:</i>		
71	(TO BE PAID FROM SPECIAL REVENUE FUND)		

72	(1) Nancy A. Maihoff.....	\$	385.57
73	(2) Sodaro's Electronic Sales, Inc.	\$	1,302.02
74	(3) Ben Spielman	\$	150.00

75 (l) *Claim against the Board of Education:*

76 (TO BE PAID FROM GENERAL REVENUE FUND)

77	(1) The Board of Education of the		
78	County of McDowell, et al.	\$	461,163.32

79 *Provided, That \$461,163.32 shall be paid during the*
 80 *time period beginning the first day of July, one*
 81 *thousand nine hundred ninety-three, and ending the*
 82 *last day of June, one thousand nine hundred ninety-*
 83 *four: Provided, however, That \$461,163.32 shall be*
 84 *paid during the time period beginning the first day*
 85 *of July, one thousand nine hundred ninety-four, and*
 86 *ending no later than the last day of June, one thousand*
 87 *nine hundred ninety-five.*

88 (m) *Claims against the Board of Trustees of the*
89 *University of West Virginia:*

90 (TO BE PAID FROM SPECIAL REVENUE FUND)

91	(1) C & L Construction Company	\$	33,654.02
92	(2) Capitol Business Interiors Division		
93	of Capitol Business		
94	Equipment, Inc.	\$	4,300.00
95	(3) Scott Catherwood	\$	305.00
96	(4) Cathy A. Ciesielski.....	\$	157.50
97	(5) Ruth M. Smith	\$	75.00
98	(6) Buhong Zheng.....	\$	799.50

99 (n) *Claim against the Department of Education:*

100 (TO BE PAID FROM GENERAL REVENUE FUND)

101	(1) Ralph Hugh Johnson, Jr.	\$	203.00
-----	----------------------------------	----	--------

102 (o) *Claims against the Division of Public Safety:*

103 (TO BE PAID FROM GENERAL REVENUE FUND)

104	(1) Melinda B. Assi.....	\$	5,000.00
105	(2) Keystone Helicopter Corporation	\$	95,000.00

106 (p) *Claims against the Tax Division:*

102

CLAIMS

[Ch. 20

107

(TO BE PAID FROM GENERAL REVENUE FUND)

108	(1)	Memorex Telex Corporation.....	\$	864.24
109	(2)	Motorola Inc., Computer Group		
110		Field Service Division.....	\$	504.00

111 (q) *Claim against the Division of Banking:*

112 (TO BE PAID FROM SPECIAL REVENUE FUND)

113 from Account No. 8395

114 (1) National Travel Service, Inc. \$ 324.00

115 (r) *Claims against the Division of Corrections:*

116 (TO BE PAID FROM GENERAL REVENUE FUND)

117	(1)	AT & T Communications	\$	442.67
118	(2)	AT & T Corporation	\$	293.63
119	(3)	Barbour County Commission	\$	85,385.00
120	(4)	Cabell County Commission	\$	160,000.00
121	(5)	Calhoun County Commission	\$	7,376.00
122	(6)	Clay County Commission	\$	8,396.57
123	(7)	Doddridge County Commission	\$	40,043.53
124	(8)	Fayette County Commission	\$	80,000.00
125	(9)	Gilmer County Commission.....	\$	14,709.18
126	(10)	Greenbrier County Commission.....	\$	68,331.27
127	(11)	Harrison County Commission.....	\$	46,160.00
128	(12)	Jackson County Commission.....	\$	21,549.88
129	(13)	Kanawha County Commission	\$	600,000.00
130	(14)	Lewis County Commission.....	\$	56,739.94
131	(15)	Lincoln County Commission	\$	20,919.61
132	(16)	Marion County Commission	\$	96,844.42
133	(17)	McDowell County Commission.....	\$	85,477.66
134	(18)	Mercer County Commission	\$	123,208.34
135	(19)	Monongalia County Commission ...	\$	66,281.79
136	(20)	Monroe County Commission	\$	59,241.19
137	(21)	Nicholas County Commission	\$	54,519.74
138	(22)	Raleigh County Commission	\$	95,000.00
139	(23)	Roane County Commission	\$	12,900.00
140	(24)	Upshur County Commission	\$	15,365.60
141	(25)	Wood County Commission	\$	133,862.81
142	(26)	Wyoming County Commission	\$	6,725.00
143	(27)	Clarksburg Cardiology		
144		Consultants, Inc.....	\$	1,134.00

145	(28)	Clint R. Lawson, Sr.	\$	1,500.00
146	(29)	Jacob C. Miller	\$	30,512.79
147	(30)	WV Regional Jail and Correctional		
148		Facility Authority	\$	419,456.00
149	(s)	<i>Claims against the Division of Culture and</i>		
150		<i>History</i>		
151		(TO BE PAID FROM GENERAL REVENUE FUND)		
152	(1)	City of Wheeling.....	\$	509.94
153	(2)	Xerox Corporation.....	\$	360.00
154	(t)	<i>Claim against the Division of Forestry:</i>		
155		(TO BE PAID FROM GENERAL REVENUE FUND)		
156	(1)	Mark A. Metz	\$	1,245.68
157	(u)	<i>Claims against the Division of Highways:</i>		
158		(TO BE PAID FROM STATE ROAD FUND)		
159	(1)	Danny L. and Sandra K. Ashworth	\$	1,542.28
160	(2)	Edward Michael Boyle.....	\$	1,131.06
161	(3)	John Carper	\$	51.94
162	(4)	City of Grafton	\$	161.07
163	(5)	Danny Ray Cook.....	\$	188.12
164	(6)	Kerry P. Dillard and		
165		Susan R. Dillard	\$	250.00
166	(7)	Roy L. Drake, Jr.	\$	534.83
167	(8)	Katherine Jean Dunn	\$	882.51
168	(9)	John Edwards	\$	3,140.67
169	(10)	Wade and Gladys Marie		
170		Ferrebee	\$	500.00
171	(11)	Herbert L. Flinn.....	\$	750.00
172	(12)	Connie Given	\$	106.00
173	(13)	Leonard Golden.....	\$	192.00
174	(14)	Isabel N. Gordon.....	\$	250.88
175	(15)	H. Steven Grass	\$	124.80
176	(16)	Elmo Greer & Sons, Inc.	\$	1,214,088.68
177	(17)	William L. Harding.....	\$	1,063.86
178	(18)	Bernard D. Henline.....	\$	576.00
179	(19)	Ernest A. Johnson	\$	4,003.10
180	(20)	Angela D. Kirk	\$	82.77
181	(21)	Cynthia J. Mahafkey.....	\$	1,251.76
182	(22)	Lloyd J. Moore.....	\$	500.00

183	(23)	Joseph F. Myers	\$	95.35
184	(24)	Letha E. Reynolds	\$	300.00
185	(25)	Deborah J. Robinson	\$	1,200.00
186	(26)	David Scott.....	\$	500.00
187	(27)	Larry D. and Evelyn L. Shriver	\$	100.00
188	(28)	Phyllis Shupe.....	\$	500.00
189	(29)	John W. Singleton, Jr.....	\$	100.00
190	(30)	James E. Symns	\$	402.00
191	(31)	Vecellio & Grogan, Inc.	\$	172,130.32
192	(32)	David J. Wilburn, M.D.	\$	544.30
193	(33)	Larry A. Wilson and Mildred P.		
194		Wilson	\$	20,100.00
195		<i>(v) Claims against the Division of Motor Vehicles:</i>		
196		(TO BE PAID FROM STATE ROAD FUND)		
197	(1)	Potomac Highlands Guild	\$	7,650.00
198	(2)	Prestera Mental Health Center	\$	10,050.00
199		<i>(w) Claim against the Governor's Office:</i>		
200		(TO BE PAID FROM GENERAL REVENUE FUND)		
201	(1)	Nicholas County Commission	\$	11,855.77
202		<i>(x) Claims against the Public Service Commission:</i>		
203		(TO BE PAID FROM SPECIAL REVENUE FUND)		
204	(1)	GAI Consultants, Inc.	\$	12,359.33
205	(2)	Charles R. Roberts, Jr.	\$	520.80
206	(3)	West Publishing Company	\$	326.55
207		<i>(y) Claim against the Railroad Maintenance</i>		
208		<i>Authority:</i>		
209		(TO BE PAID FROM SPECIAL REVENUE ACCOUNT NO. 8344-06)		
210	(1)	The Potomac Edison Company.....	\$	1,349.27
211		<i>(z) Claim against the State Fire Commission:</i>		
212		(TO BE PAID FROM SPECIAL REVENUE FUND)		
213	(1)	Lumberport Volunteer Fire		
214		Department	\$	6,630.44
215		<i>(aa) Claim against the State Treasurer:</i>		
216		(TO BE PAID FROM GENERAL REVENUE FUND)		

217	(1)	Moore Business Forms	\$	971.71
218	(bb)	<i>Claims against the Supreme Court of Appeals:</i>		
219		(TO BE PAID FROM GENERAL REVENUE FUND)		
220	(1)	Logan-Mingo Area Mental		
221		Health, Inc.	\$	485.00
222	(2)	Logan County Commission	\$	61,328.61
223	(cc)	<i>Claims against the West Virginia Development</i>		
224		<i>Office:</i>		
225		(TO BE PAID FROM GENERAL REVENUE FUND)		
226	(1)	AT & T Corporation	\$	578.90
227	(2)	Lowe's Home Centers, Inc.	\$	377.62
228	(dd)	<i>Claims against the West Virginia State Senate:</i>		
229		(TO BE PAID FROM GENERAL REVENUE FUND)		
230	(1)	Sally L. Chestnut	\$	300.00
231	(2)	Jarrett Printing Company.....	\$	7,920.00
232	(ee)	<i>Claims against the West Virginia State Board of</i>		
233		<i>Examiners for Licensed Practical Nurses:</i>		
234		(TO BE PAID FROM SPECIAL REVENUE FUND)		
235	(1)	Elsie S. Patterson.....	\$	612.00
236	(2)	Jacquelyn L. Titcher	\$	396.00
237	(ff)	<i>Claims against the Workers' Compensation Fund:</i>		
238		(TO BE PAID FROM WORKERS' COMPENSATION FUND)		
239	(1)	Contract Business Interiors		
240		Co., Inc.	\$	232.00
241	(2)	McGhee & Company, Inc.	\$	355.20
242	(3)	Unijax	\$	34.92
243	(4)	Morris Square Associates, LTD.....	\$	3,344.47

244 The Legislature finds that the above moral obligations
 245 and the appropriations made in satisfaction thereof shall
 246 be the full compensation for all claimants, and that prior
 247 to the payments to any claimant provided for in this bill,
 248 the court of claims shall receive a release from said
 249 claimant releasing any and all claims for moral
 250 obligations arising from the matters considered by the

251 Legislature in the finding of the moral obligations and
252 the making of the appropriations for said claimant. The
253 court of claims shall deliver all releases obtained from
254 claimants to the department against which the claim
255 was allowed.

CHAPTER 21

(H. B. 2686—By Delegates D. Cook, Johnson, Pettit, Warner,
P. White, Leggett and M. Miller)

[Passed April 7, 1993; in effect from passage. Approved by the Governor.]

AN ACT finding and declaring certain claims for compensation of innocent victims of crimes occurring in West Virginia to be moral obligations of the state and directing the auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§1. Finding and declaring certain crime victims claims for compensation to be moral obligations of the state and directing payment thereof.

1 The Legislature has duly considered the findings of
2 fact and recommendations for awards reported to it by
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) Abraham, Louis W. and Pearl M., as
15 guardians of Maria Annette Darby.. \$ 7,500.00

16	(2)	Barker, Richard A.	\$ 5,000.00
17	(3)	Beaver, Anna G.	\$ 10,000.00
18	(4)	Beverage, Everett D.	\$ 15,000.00
19	(5)	Bittner, Matthew W.	\$ 2,000.00
20	(6)	Blankenship, LaDonna, as guardian of Ryan M. Wilson	\$ 5,000.00
22	(7)	Brady, Gerald L.	\$ 15,000.00
23	(8)	Brewster, Tracy L.	\$ 2,500.00
24	(9)	Canby, Reba B.	\$ 5,000.00
25	(10)	Danehart, Thomas L.	\$ 5,000.00
26	(11)	Davis, Lee Ann	\$ 1,500.00
27	(12)	Davis, Leonard and Sharon, as guard- ians of Christopher Lee Dawson ...	\$ 2,500.00
29	(13)	Davis, Leonard and Sharon, as guard- ians of Herbert Samuel Dawson ...	\$ 2,500.00
31	(14)	Ditmore, Jeanne S.	\$ 5,000.00
32	(15)	Edge, Monica J.	\$ 1,000.00
33	(16)	Fields, Edward A., Jr., as guardian of James E. Fields	\$ 1,000.00
34	(17)	Fields, Edward A., Jr., as guardian of Corinna M. Fields	\$ 1,000.00
37	(18)	Hairston, James G.	\$ 10,000.00
38	(19)	Harlow, Billie Jo.	\$ 2,500.00
39	(20)	Harlow, Kimberlie	\$ 2,500.00
40	(21)	Harlow, William T., Jr.	\$ 2,500.00
41	(22)	Hawkins, Henry L.	\$ 500.00
42	(23)	Hicks, Ronald J.	\$ 5,000.00
43	(24)	Hunt, Toni	\$ 2,500.00
44	(25)	Hustead, Gregory S.	\$ 5,000.00
45	(26)	Justus, Patricia	\$ 5,000.00
46	(27)	Justus, Patricia, as guardian of Joyce Ann Justus	\$ 2,500.00
48	(28)	Justus, Patricia, as guardian of Tina Marie Justus	\$ 2,500.00
50	(29)	Lawson, Charles Oliver	\$ 10,000.00
51	(30)	Lewis, Christopher L.	\$ 2,500.00
52	(31)	Lewis, Phillip N.	\$ 2,500.00
53	(32)	Lewis, Virginia C.	\$ 5,000.00
54	(33)	Long, Edward T.	\$ 2,500.00
55	(34)	Lowe, Woody L.	\$ 10,000.00
56	(35)	Lowe, Woody L., as guardian of Kevin W. Lowe	\$ 5,000.00
57			

58	(36)	Lowe, Woody L., as guardian	
59		of Jeremy B. Lowe	\$ 5,000.00
60	(37)	Mansfield, Clarence A.	\$ 2,500.00
61	(38)	Matney, Nancy, as guardian	
62		of Sandra Kaye Matney	\$ 2,500.00
63	(39)	McCartney, Judy A.	\$ 5,000.00
64	(40)	McFarland, Michelle S.	\$ 1,000.00
65	(41)	Miller, Robert L.	\$ 5,000.00
66	(42)	Parsons, Verlena J.	\$ 5,000.00
67	(43)	Pascual, Filomena	\$ 5,000.00
68	(44)	Proctor, Lamont L.	\$ 1,000.00
69	(45)	Raeon, Ernest L.	\$ 15,000.00
70	(46)	Randall, Ann, as guardian of	
71		Shemeika Lee Johnson	\$ 5,000.00
72	(47)	Salisbury, Hobert G.	\$ 1,000.00
73	(48)	Scott, William J., as guardian	
74		of Leslie C. Scott	\$ 5,000.00
75	(49)	Sigmon, Marcella C.	\$ 10,000.00
76	(50)	Thomas, Amanda B.	\$ 1,000.00
77	(51)	Thomas, Arthur R.	\$ 17,000.00
78	(52)	Thomas, Ozalia G.	\$ 4,500.00
79	(53)	Vickers, Carey A., father and next	
80		friend of Craig A. Vickers	\$ 15,000.00
81	(54)	Wallace, Stephanie A., attorney-in-	
82		fact for Tuwyone Moore	\$ 15,000.00
83		TOTAL.....	\$285,000.00

84 The Legislature finds that the above moral obligations
 85 and the appropriations made in satisfaction thereof shall
 86 be the full compensation for all claimants herein.

CHAPTER 22

(H. B. 2687—By Delegates Browning, Petersen, Rutledge, H. White,
 S. Cook, Leach and Hendricks)

[Passed April 8, 1993; in effect July 1, 1993. 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 education; division of human services; division of corrections; and division of culture and history, 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 Education:*

28 (TO BE PAID FROM GENERAL REVENUE FUND)

29 (1) Irene Sellas \$ 265.00

30 *(b) Claims against the Division of Human Services:*

31 (TO BE PAID FROM GENERAL REVENUE FUND)

32	(1)	Allen Funeral Home	\$ 400.00
33	(2)	Altmeyer Funeral Homes, Inc.	\$ 400.00
34	(3)	Barlow-Bonsall Funeral Home	\$ 400.00
35	(4)	Boyle Funeral Home	\$ 400.00
36	(5)	Brown Funeral Home	\$ 800.00
37	(6)	Carpenter & Ford, Inc.	\$ 1,062.00
38	(7)	Casdoroph & Curry Funeral Home, Inc. \$	325.00
39	(8)	Chambers Funeral Home, Inc.	\$ 325.00
40	(9)	Chambers-James Funeral Home	\$ 400.00
41	(10)	Chapman's Mortuary, Inc.	\$ 400.00
42	(11)	Dodd-Payne-Hess Funeral Home	\$ 400.00
43	(12)	Evans Funeral Home	\$ 400.00
44	(13)	Evans Funeral Home, Inc.	\$ 325.00
45	(14)	Fanning Funeral Home, Inc.	\$ 325.00
46	(15)	Foglesong Funeral Home	\$ 400.00
47	(16)	Frey Home for Funerals	\$ 800.00
48	(17)	Greco-Hertnick Funeral Home	\$ 400.00
49	(18)	Greene-Robertson Funeral Home	\$ 400.00
50	(19)	Grisell Funeral Home, Inc.	\$ 325.00
51	(20)	Handley Funeral Home, Inc.	\$ 400.00
52	(21)	Hastings Funeral Home, Inc.	\$ 725.00
53	(22)	Heck Funeral Home, Inc.	\$ 400.00
54	(23)	Jones Funeral Home	\$ 400.00
55	(24)	Keller Funeral Home, Inc.	\$ 800.00
56	(25)	Kepner Funeral Homes, Inc.	\$ 400.00
57	(26)	Kimes Funeral Home, Inc.	\$ 400.00
58	(27)	Lambert-Tatman Funeral Home	\$ 400.00
59	(28)	Longanacre Funeral Home	\$ 400.00
60	(29)	Masters Funeral Home, Inc.	\$ 400.00
61	(30)	McGlumphy Mortuary	\$ 325.00
62	(31)	Melton Mortuary, Inc.	\$ 400.00
63	(32)	Memorial Funeral Directory, Inc.	\$ 400.00
64	(33)	Myers Funeral Home	\$ 325.00
65	(34)	Nixon Funeral Home, Inc.	\$ 400.00
66	(35)	Pennington Funeral Home	\$ 400.00
67	(36)	Pivont Funeral Service, Inc.	\$ 400.00
68	(37)	Poling-St. Clair Funeral Home, Inc.	\$ 400.00
69	(38)	Pryor Funeral Home	\$ 400.00
70	(39)	Raiguel Funeral Home, Inc.	\$ 400.00
71	(40)	Schaeffer Funeral Home, Inc.	\$ 725.00
72	(41)	Shanklin Funeral Home, Inc.	\$ 325.00
73	(42)	Stockert-Gibson Funeral Home	\$ 400.00

74	(43)	Stonewall Jackson Memorial Hospital.....	\$	853.37
75	(44)	Stump Funeral Home, Inc.	\$	400.00
76	(45)	Tomblyn Bros. Funeral Home, Inc.	\$	400.00
77	(46)	Wallace & Wallace, Inc.	\$	400.00
78	(47)	Waters Funeral Chapel	\$	400.00
79	(48)	Wm. McCulla Funeral Home	\$	400.00
80	(49)	James Funeral Home	\$	400.00
81	(c)	<i>Claims against the Division of Corrections:</i>		
82		(TO BE PAID FROM GENERAL REVENUE FUND)		
83	(1)	Paul Bachwitt, MD	\$	522.00
84	(2)	Braxton County Memorial Hospital ...	\$	4,786.62
85	(3)	Hubert H. Byron, Jr., DMD.....	\$	3,451.00
86	(4)	Healthcare Financial Services.....	\$	441.80
87	(5)	Highlawn Pharmacy, Inc.	\$	981.92
88	(6)	Richard C. Newhart, DDS	\$	75.00
89	(7)	Princeton Community Hospital	\$	9,397.68
90	(8)	Radiology, Inc.	\$	1,444.00
91	(d)	<i>Claim against the Division of Culture and History:</i>		
92		(TO BE PAID FROM GENERAL REVENUE FUND)		
93	(1)	Xerox Corporation	\$	336.19

CHAPTER 23

(Com. Sub. for H. B. 2219—By Delegates Hendricks, H. White,
Harrison, Carper and Williams)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred thirteen, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing merchants to charge and collect a late payment penalty fee for merchandise which is financed.

Be it enacted by the Legislature of West Virginia:

That section one hundred thirteen, 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:

§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

1 (1) In addition to the continuation of the sales finance
2 charge or loan finance charge on a delinquent install-
3 ment with respect to a nonprecomputed consumer credit
4 sale or consumer loan, refinancing or consolidation,
5 repayable in installments, the parties may contract for
6 a delinquency charge on any installment not paid in full
7 within ten days after its scheduled due date in an
8 amount not less than one dollar or five percent of the
9 unpaid installment not to exceed five dollars if five
10 percent of the unpaid installment is greater than one
11 dollar.

12 (2) A delinquency charge under subsection (1) may be
13 collected only once on an installment however long it
14 remains in default. A delinquency charge may be
15 collected at the time it accrues or at any time thereafter.

16 (3) No delinquency charge may be collected on an
17 installment which is paid in full within ten days after
18 its scheduled due date, even though an earlier maturing
19 installment or a delinquency or deferral charge on an
20 earlier installment may not have been paid in full. For
21 purposes of this subsection, payments shall be applied
22 first to current installments, then to delinquent install-
23 ments, and then to delinquency and other charges.

CHAPTER 24

(H. B. 2761—By Delegates Pethtel, Brum, Brown, L. White,
Manuel, Pino and Tribett)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one hundred ten, relating to the solicitation of or early presentment of postdated checks and providing civil penalties for violation of this section.

Be it enacted by the Legislature of West Virginia:

That article six, 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 section, designated section one hundred ten, to read as follows:

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-110. Solicitation or cashing of postdated checks; penalties.

1 (a) No person may:

2 (1) Solicit or accept a postdated check with the intent
3 of presenting it for payment prior to the date listed on
4 the check; or

5 (2) Represent in any manner that postdating a check
6 will prevent its payment from the account of the maker
7 of the check prior to the date listed on the check; and
8 either (A) present the check or cause the check to be
9 presented for payment before the date on the check
10 either intentionally, or (B) in the case of a payee that
11 is an organization, present the check or cause the check
12 to be presented without reasonable procedures to
13 prevent such presentment.

14 (b) When a check is presented for payment from the
15 account of the maker before the date of the check, no
16 payee who knowingly accepted a postdated check may
17 refuse, upon request of the maker of the postdated
18 check, to immediately return the funds to the maker of
19 the postdated check, to pay the fees and other costs
20 incurred by the maker as a result of the early present-
21 ment of the check.

22 (c) If a person has violated the provisions of subsection
23 (a) or (b) of this section, the maker has a cause of action
24 to recover from that person the amount of the check,
25 any fees or costs incurred and, in addition, a civil
26 penalty, in an amount determined by the court, of not
27 less than one hundred nor more than one thousand
28 dollars.

CHAPTER 25

(Com. Sub. for S. B. 84—By Senators Minard and Sharpe)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one hundred two, article seven, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the consumer credit and protection act; and providing a defense to persons who rely upon formal opinions of the attorney general and examination reports and declaratory rulings issued by the commissioner of banking.

Be it enacted by the Legislature of West Virginia:

That section one hundred two, article seven, 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 7. ADMINISTRATION.

§46A-7-102. Power of attorney general; reliance on rules of attorney general or commissioner of banking; duty to report.

1 (1) In addition to other powers granted by this
2 chapter, the attorney general within the limitations
3 provided by law may:

4 (a) Receive and act on complaints, take action
5 designed to obtain voluntary compliance with this
6 chapter or commence proceedings on his own initiative;

7 (b) Counsel persons and groups on their rights and
8 duties under this chapter;

9 (c) Establish programs for the education of consumers
10 with respect to credit practices and problems;

11 (d) Make studies appropriate to effectuate the pur-
12 poses and policies of this chapter and make the results
13 available to the public;

14 (e) Adopt, amend and repeal such reasonable rules

15 and regulations, in accordance with the provisions of
16 chapter twenty-nine-a of this code, as are necessary and
17 proper to effectuate the purposes of this chapter and to
18 prevent circumvention or evasion thereof; and

19 (f) Delegate his powers and duties under this chapter
20 to qualified personnel in his office, who shall act under
21 the direction and supervision of the attorney general and
22 for whose acts he shall be responsible.

23 (2) Except for refund of an excess charge, no liability
24 is imposed under this chapter for an act done or omitted
25 in conformity with a rule of the attorney general or
26 commissioner, notwithstanding that after the act or
27 omission the rule may be amended or repealed or be
28 determined by judicial or other authority to be invalid
29 for any reason. Any form or procedure which has been
30 submitted to the commissioner and the attorney general
31 in writing and approved in writing by them shall not
32 be deemed a violation of the penalty provisions of this
33 chapter notwithstanding that such approval may be
34 subsequently amended or rescinded or be determined by
35 judicial or other authority to be invalid for any reason.

36 (3) Except for refund of an excess charge, in any
37 action brought pursuant to the provisions of this
38 chapter, it shall be a defense that the act or omission
39 complained of was in conformity with a published
40 opinion of the attorney general issued in compliance
41 with section one, article three, chapter five of this code
42 or in conformity with an examination report issued by
43 the commissioner to the person against whom the action
44 is brought pursuant to section six, article two, chapter
45 thirty-one-a of this code, or a declaratory ruling issued
46 to the person against whom the action is brought
47 pursuant to subdivision (9), subsection (c), section four
48 of said article.

49 (4) On or before the first day of December of each
50 year, the attorney general and commissioner shall
51 jointly or separately submit a report or reports to the
52 governor and to the Legislature on the operation of their
53 offices, on the use of consumer credit and on consumer
54 protection problems in the state, and on the problems

55 of persons of small means obtaining credit from persons
56 regularly engaged in extending sales or loan credit. For
57 the purpose of making such report or reports, the
58 attorney general and commissioner are authorized to
59 conduct research and make appropriate studies. The
60 report or reports shall include a description of the
61 examination and investigation procedures and policies
62 of their offices, a statement of policies followed in
63 deciding whether to investigate or examine the offices
64 of credit suppliers subject to this chapter, a statement
65 of the number and percentages of offices which are
66 periodically investigated or examined, a statement of
67 the types of consumer credit and consumer protection
68 problems of both creditors and consumers which have
69 come to their attention through their examinations and
70 investigations and the disposition of them under existing
71 law, and a general statement of the activities of their
72 offices and of others to promote the purposes of this
73 chapter.

CHAPTER 26

(H. B. 2516—By Delegates Staton, Riggs, L. White and Reed)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article one, chapter forty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the effect of recording certain contracts as to creditors and purchasers and eliminating the requirement that recordable memoranda of leases include the rentals or royalties to be charged and terms of payment thereof.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ACTS GENERALLY VOID AS TO CREDITORS AND PURCHASERS.

§40-1-8. Effect of recording certain contracts as to creditors and purchasers; memorandum of lease may be recorded.

1 Any contract in writing made in respect to real estate
2 or goods and chattels in consideration of marriage; or
3 any contract in writing made for the conveyance or sale
4 of real estate, or an interest or term therein of more than
5 five years, or any other interest or term therein, of any
6 duration, under which the whole or any part of the
7 corpus of the estate may be taken, destroyed, or
8 consumed, except for domestic use, shall, from the time
9 it is duly admitted to record, be, as against creditors and
10 purchasers, as valid as if the contract were a deed
11 conveying the estate or interest embraced in the
12 contract. In lieu of the recording of a lease pursuant to
13 this section, there may be recorded with like effect a
14 memorandum of such lease, executed by all persons who
15 are parties to the lease and acknowledged in the manner
16 to entitle a conveyance to be recorded. A memorandum
17 of lease thus entitled to be recorded shall contain at least
18 the following information with respect to the lease: The
19 name of the lessor and the name of the lessee and the
20 addresses of such parties as set forth in the lease; a
21 reference to the lease, with its date of execution; a
22 description of the leased premises in the form contained
23 in the lease; the term of the lease, with the date of
24 commencement and the date of termination of such
25 term, and if there is a right of extension or renewal, the
26 maximum period for which, or date to which, the lease
27 may be extended, or the number of times or date to
28 which it may be renewed and the date or dates on which
29 such rights of extension or renewal are exercisable.
30 Such memorandum shall constitute notice of only the
31 information contained therein.

CHAPTER 27

(Com. Sub. for S. B. 122—By Senators Plymale, Jones, Helmick, Brackenrich,
Yoder, Walker, Wagner and Boley)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections nine and ten, article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the purpose, powers and duties of the jail and correctional facility standards commission and to the collection of revenues by the regional jail and correctional facilities development fund; requiring the commission to prescribe standards for the maintenance and operation of correctional facilities, county and regional jails; providing that the standards serve as guidelines only for certain jail facilities; requiring the commission to promulgate implementing rules; requiring the commission to develop a review process for facility standards; requiring periodic reports; requiring the commission to maintain county jails after a regional jail becomes available; setting guidelines for the charge and collection of revenues by the regional jail and correctional facilities development fund; directing the commission to permit and implement double bunking of inmates; and limiting charges assessed a county to one day per each twenty-four-hour period of inmate incarceration.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-9. Purpose, powers and duties.

§31-20-10. Regional jail and correctional facility development fund.

§31-20-9. Purpose, powers and duties.

- 1 (a) The purpose of the commission is to assure that
- 2 proper minimum standards and procedures are deve-
- 3 loped for jail, work farm and correctional facility
- 4 operation, maintenance and management of inmates for
- 5 correctional facilities, regional jails and local jail
- 6 facilities used as temporary holding facilities. In order
- 7 to accomplish this purpose, the commission shall:

8 (1) Prescribe standards for the maintenance and
9 operation of correctional facilities and county and
10 regional jails. The standards shall include, but not be
11 limited to, requirements assuring adequate space,
12 lighting and ventilation; fire protection equipment and
13 procedures; provision of specific personal hygiene
14 articles; bedding, furnishings and clothing; food servi-
15 ces; appropriate staffing and training; sanitation, safety
16 and hygiene; isolation and suicide prevention; approp-
17 riate medical, dental and other health services; indoor
18 and outdoor exercise; appropriate vocational and
19 educational opportunities; classification; inmate rules
20 and discipline; inmate money and property; religious
21 services; inmate work programs; library services;
22 visitation, mail and telephone privileges; and other
23 standards necessary to assure proper operation: *Pro-*
24 *vided*, That the standards as developed for the construc-
25 tion, operation and maintenance of jails shall only apply
26 to facilities completed after the fifth day of April, one
27 thousand nine hundred eighty-eight, and that the
28 standards shall serve only as guidelines for any jail
29 facility in operation prior to that date: *Provided,*
30 *however*, That the commission shall establish standards
31 and procedures permitting and implementing in such
32 facilities the double bunking of inmates in all approp-
33 riate cases to the extent that such a practice does not
34 violate federal law.

35 (2) Promulgate the rules pursuant to the provisions of
36 chapter twenty-nine-a of this code as are necessary to
37 implement the provisions of this article, including,
38 without limitation, minimum jail, work farm and
39 correctional facility standards which shall be promul-
40 gated on or before the first day of July, one thousand
41 nine hundred eighty-six.

42 (3) Develop a process for reviewing and updating the
43 jail, work farm and correctional facility standards
44 pursuant to the provisions of chapter twenty-nine-a of
45 this code as may be necessary to assure that they
46 conform to current law.

47 (4) Report periodically to the authority to advise and
48 recommend actions to be taken by the authority to

49 implement proper minimum jail, work farm and
50 correctional facility standards.

51 (b) Notwithstanding any other provision of this code
52 to the contrary, any county commission providing and
53 maintaining a jail on the effective date of this article
54 shall not be required to provide and maintain a jail after
55 a regional jail becomes available pursuant to the
56 provisions of article twenty, chapter thirty-one of this
57 code, unless the county commission determines that such
58 a facility is necessary: *Provided*, That the county
59 commission may provide and maintain a holding facility
60 which complies with the standards set forth for such
61 holding facilities in legislative rules promulgated by the
62 jail and correctional facility standards commission or its
63 predecessor, the jail and prison standards commission.

**§31-20-10. Regional jail and correctional facility develop-
ment fund.**

1 (a) The regional jail and correctional facility develop-
2 ment fund is hereby created and shall be a special
3 account in the state treasury. The fund shall operate as
4 a revolving fund whereby all appropriations and
5 payments thereto may be applied and reapplied by the
6 authority for the purposes of this article. Separate
7 accounts may be established within the special account
8 for the purpose of identification of various revenue
9 resources and payment of specific obligations.

10 (b) Revenues deposited into the fund may be used to
11 make payments of interest and may be pledged as
12 security for bonds, security interests or notes issued by
13 the authority pursuant to this article.

14 (c) Whenever the authority determines that the
15 balance in the fund is in excess of the immediate
16 requirements of this article, it may request that such
17 excess be invested until needed. In such case such excess
18 shall be invested in a manner consistent with the
19 investment of the temporary state funds. Interest earned
20 on any money invested pursuant to this section shall be
21 credited to the fund.

22 (d) If the authority determines that funds held in the

23 fund are in excess of the amount needed to carry out
24 the purposes of this article, it shall take such action as
25 is necessary to release such excess and transfer it to the
26 general fund of the state treasury.

27 (e) The fund shall consist of the following:

28 (1) Amounts raised by the authority by the sale of
29 bonds or other borrowing authorized by this article;

30 (2) Moneys collected and deposited in the state
31 treasury which are specifically designated by acts of the
32 Legislature for inclusion into the fund;

33 (3) Contributions, grants and gifts from any source,
34 both public and private, which may be used by the
35 authority for any project or projects;

36 (4) All sums paid by the counties pursuant to
37 subsection (h) of this section; and

38 (5) All interest earned on investments made by the
39 state from moneys deposited in this fund.

40 (f) The amounts deposited in the fund shall be
41 accounted for and expended in the following manner:

42 (1) Amounts raised by the sale of bonds or other
43 borrowing authorized by this article shall be deposited
44 in a separate account within the fund and expended for
45 the purpose of construction and renovation of correc-
46 tional facilities and regional jails for which need has
47 been determined by the authority;

48 (2) Amounts deposited from all other sources shall be
49 pledged first to the debt service on any bonded indebted-
50 ness or other obligation incurred by borrowing of the
51 authority;

52 (3) After any requirements of debt service have been
53 satisfied, the authority shall requisition from the fund
54 such amounts as are necessary to provide for payment
55 of the administrative expenses of this article;

56 (4) The authority shall requisition from the fund after
57 any requirements of debt service have been satisfied
58 such amounts as are necessary for the maintenance and
59 operation of the correctional facilities or regional jails

60 or both that are constructed pursuant to the plan
61 required by this article and shall expend such amounts
62 for such purpose. The fund shall make an accounting of
63 all amounts received from each county by virtue of any
64 filing fees, court costs or fines required by law to be
65 deposited in the fund and amounts from the jail
66 improvement funds of the various counties. After the
67 expenses of administration have been deducted, the
68 amounts expended in the respective regions from such
69 sources shall be in proportion to the percentage the
70 amount contributed to the fund by the counties in each
71 region bears to the total amount received by the fund
72 from such sources;

73 (5) Notwithstanding any other provisions of this
74 article, sums paid into the fund by each county pursuant
75 to subsection (h) of this section for each inmate shall be
76 placed in a separate account and shall be requisitioned
77 from the fund to pay for the costs specified in that
78 subsection incurred at the regional jail facility at which
79 each such inmate was incarcerated; and

80 (6) Any amounts deposited in the fund from other
81 sources permitted by this article shall be expended in
82 the respective regions based on particular needs to be
83 determined by the authority.

84 (g) After a regional jail facility becomes available
85 pursuant to this article for the incarceration of inmates,
86 each county within the region shall incarcerate all
87 persons whom the county would have incarcerated in
88 any jail prior to the availability of the regional jail
89 facility in the regional jail facility except those whose
90 incarceration in a local jail facility used as a local
91 holding facility is specified as appropriate under the
92 standards and procedures developed pursuant to section
93 nine of this article and who the sheriff or the circuit
94 court elects to incarcerate therein.

95 (h) When inmates are placed in a regional jail facility
96 pursuant to subsection (g) of this section, the county
97 shall pay into the regional jail and correctional facility
98 development fund a cost per day for each inmate so
99 incarcerated to be determined by the regional jail and

100 correctional facility authority according to criteria and
101 by procedures established by regulations pursuant to
102 article three, chapter twenty-nine-a of this code to cover
103 the costs of operating the regional jail facilities of this
104 state to maintain each such inmate which costs shall not
105 include the cost of construction, acquisition or renova-
106 tion of said regional jail facilities: *Provided*, That each
107 regional jail facility operating in this state shall keep a
108 record of the date and time of the incarceration of an
109 inmate, and a county may not be charged for a second
110 day of incarceration for an individual inmate until that
111 inmate has remained incarcerated for more than twenty-
112 four hours. Thereafter, in cases of continuous incarcer-
113 ation, subsequent per diem charges shall be made upon
114 a county only as subsequent intervals of twenty-four
115 hours pass from the original time of incarceration.

CHAPTER 28

(Com. Sub. for H. B. 2075—By Delegate Love)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section sixteen, article fourteen-b, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section nine, article ten, chapter sixty-two of said code, all relating to correctional officers generally; defining the qualifications and duties of correctional officers; reducing the retraining requirements of correctional officers; and authorizing correctional officers to execute warrants when the person named in the warrant surrenders to the correctional officer.

Be it enacted by the Legislature of West Virginia:

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

Chapter

- 7. **County Commissions and Officers.**
- 62. **Criminal Procedure.**

**CHAPTER 7. COUNTY COMMISSIONS
AND OFFICERS.****ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.****§7-14B-16. Training and retraining programs for all
correctional officers required.**

1 (a) The civil service commission of any such county
2 shall establish or prescribe a training program which
3 every correctional officer first appointed a correctional
4 officer of such county on or after the effective date of
5 this article must satisfactorily complete during his
6 probationary period.

7 (b) The civil service commission of any such county
8 shall also establish or prescribe retraining programs of
9 at least sixteen hours which every correctional officer,
10 whether such correctional officer was first appointed
11 before or after the effective date of this article, must
12 satisfactorily complete annually after the effective date
13 of this article, in order to continue as a correctional
14 officer of such county.

CHAPTER 62. CRIMINAL PROCEDURE.**ARTICLE 10. PREVENTION OF CRIME.****§62-10-9. Power and authority of sheriffs and deputy
sheriffs to make arrests.**

1 Sheriffs and each of their deputies are hereby
2 authorized and empowered within their respective
3 counties to make arrests for any crime for which a
4 warrant has been issued in violation of any laws of the
5 United States or of this state, and to make arrests
6 without warrant for all violations of any of the criminal
7 laws of the United States, or of this state, when
8 committed in their presence. A county correctional
9 officer may execute a warrant, issued for the arrest of
10 a person, only when the person named in the warrant
11 voluntarily surrenders to the correctional officer at the
12 county jail at which the correctional officer is employed.

CHAPTER 29

(Com. Sub. for H. B. 2126—By Mr. Speaker, Mr. Chambers, and
Delegates Phillips, Williams, Richards, Douglas and Vest)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and six, article nine-a, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to open governmental proceedings; defining governing bodies of the Legislature; clarifying the powers of circuit courts to enforce the provisions of the article or to annul decisions of a governing body; expanding the time in which a civil action may be commenced, respecting actions taken or decisions made by governing bodies; authorizing awards for attorney fees and expenses; and providing limited civil liability for compensatory and punitive damages.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.

§6-9A-2. Definitions.

§6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.

§6-9A-2. Definitions.

1 As used in this article:

2 (1) "Decision" means any determination, action, vote
3 or final disposition of a motion, proposal, resolution,
4 order, ordinance or measure on which a vote of the
5 governing body is required at any meeting at which a
6 quorum is present;

7 (2) "Executive session" means any meeting or part of
8 a meeting of a governing body which is closed to the
9 public;

10 (3) "Governing body" means the members of any
11 public body having the authority to make decisions for
12 or recommendations to a public body on policy or
13 administration, the membership of which governing
14 body consists of two or more members; for the purposes
15 of this article, a governing body of the Legislature shall
16 be any standing, select or special committee as deter-
17 mined by the rules of the respective houses thereof;

18 (4) "Meeting" means the convening of a governing
19 body of a public body for which a quorum is required
20 in order to make a decision or to deliberate toward a
21 decision on any matter, but such term does not include
22 (a) any meeting for the purpose of making an adjudi-
23 catory decision in any quasi-judicial, administrative or
24 court of claims proceeding, (b) any on-site inspection of
25 any project or program, or (c) any political party caucus;

26 (5) "Political subdivision" means any county, county
27 board of education or municipality in or any other
28 political subdivision of this state;

29 (6) "Public body" means any executive, legislative or
30 administrative body or agency of this state or any
31 political subdivision, or any commission, board, council,
32 bureau, committee or subcommittee or any other agency
33 of any of the foregoing, and such term shall not be
34 construed to include the judicial branch of government,
35 state or local; and

36 (7) "Quorum" means, unless otherwise defined by
37 applicable law, a simple majority of the constituent
38 membership of a governing body.

**§6-9A-6. Enforcement by injunctions; actions in violation
of article voidable; voidability of bond issues.**

1 The circuit court in the county where the public body
2 regularly meets shall have jurisdiction to enforce this
3 article upon civil action commenced by any citizen of
4 this state within one hundred twenty days after the
5 action complained of was taken or the decision com-
6 plained of was made. Where such action seeks injunctive
7 relief, no bond shall be required unless the petition
8 appears to be without merit or made with the sole intent

9 of harassing or delaying or avoiding return by the
10 governing body.

11 The court is empowered to compel compliance or
12 enjoin noncompliance with the provisions of this article
13 and to annul a decision made in violation thereof. An
14 injunction may also order that subsequent actions be
15 taken or decisions be made in conformity with the
16 provisions of this article: *Provided*, That no bond issue
17 that has been passed or approved by any governing body
18 in this state may be annulled under this section if notice
19 of the meeting at which such bond issue was finally
20 considered was given at least ten days prior to such
21 meeting by a Class I legal advertisement published in
22 accordance with the provisions of article three, chapter
23 fifty-nine of this code in a qualified newspaper having
24 a general circulation in the geographic area represented
25 by that governing body.

26 Any order which compels compliance or enjoins non-
27 compliance with the provisions of this article, or which
28 annuls a decision made in violation of this article shall
29 include findings of fact and conclusions of law and shall
30 be recorded in the minutes of the governing body.

31 Upon entry of any such order, the court may, where
32 the court finds that the governing body intentionally
33 violated the provisions of this article, order such
34 governing body to pay the complaining person's neces-
35 sary attorney fees and expenses. Where the court, upon
36 denying the relief sought by the complaining person in
37 the action, finds that the action was frivolous or
38 commenced with the primary intent of harrassing the
39 governing body or any member thereof or, in the
40 absence of good faith, of delaying any meetings or
41 decisions of the governing body, the court may require
42 the complaining person to pay the governing body's
43 necessary attorney fees and expenses.

44 Any person who intentionally violates the provisions
45 of this article shall be liable in such action for compen-
46 satory and punitive damages not to exceed a total of five
47 hundred dollars.

CHAPTER 30

(Com. Sub. for H. B. 2023—By Mr. Speaker, Mr. Chambers,
and Delegate Riggs)

[Passed March 24, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article two, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to creating the misdemeanor offense of stalking and establishing the penalty therefor; defining the misdemeanor offense of stalking in violation of certain types of restraining orders and establishing the penalty therefor; creating the misdemeanor offense for the second subsequent offenses and establishing the penalty therefor; creating the felony offense for certain subsequent offenses and establishing the penalty therefor; providing for the conviction of subsequent offenses and establishing the penalty therefor; definitions; restraining orders; durations; exceptions; alternative sentencing; and counseling requirement.

Be it enacted by the Legislature of West Virginia:

That section nine-a, 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.

§61-2-9a. Stalking; penalties; definitions.

1 (a) Any person who knowingly, willfully and repeat-
2 edly follows and harasses another person and who makes
3 a credible threat with the intent to place that person in
4 reasonable fear of death or serious bodily injury shall
5 be guilty of a misdemeanor and, upon conviction thereof,
6 shall be incarcerated in the county jail for not more than
7 six months or fined not more than one thousand dollars,
8 or both.

9 (b) Notwithstanding the provisions of section ten,

10 article two-a, chapter forty-eight of this code, any person
11 who violates the provisions of subsection (a) of this
12 section in violation of an order entered by a circuit
13 court, magistrate court or family law master, in effect
14 and entered pursuant to sections thirteen or fifteen,
15 article two, chapter forty-eight of this code or sections
16 five or six, article two-a, chapter forty-eight shall be
17 guilty of a misdemeanor and, upon conviction thereof,
18 shall be incarcerated in the county jail for not less than
19 ninety days nor more than one year or fined not less than
20 two thousand dollars nor more than five thousand
21 dollars, or both.

22 (c) A second conviction for a violation of this section
23 occurring within five years of a prior conviction is
24 punishable by incarceration in the county jail for not
25 less than ninety days nor more than one year or fined
26 not less than two thousand dollars nor more than five
27 thousand dollars, or both.

28 (d) A third or subsequent conviction for a violation of
29 this section occurring within five years of a prior
30 conviction is a felony punishable by incarceration in the
31 penitentiary for not less than one year nor more than
32 five years or fined not less than three thousand dollars
33 nor more than ten thousand dollars, or both.

34 (e) Notwithstanding any provision of this code, any
35 person against whom a permanent restraining order
36 issued pursuant to subsection (i) of this section who is
37 convicted of a second or subsequent violation of the
38 provisions of this section shall be incarcerated in the
39 county jail for not less than six months nor more than
40 one year, or fined not less than two thousand dollars nor
41 more than five thousand dollars, or both.

42 (f) For the purposes of this section:

43 (1) "Harasses" means knowing and willful conduct
44 directed at a specific person which is done with the
45 intent to cause mental injury or emotional distress.

46 (2) "Credible threat" means a threat made with the
47 apparent ability to carry out the threat so as to cause

48 the person who is the subject of the threat to be placed
49 in reasonable apprehension of serious bodily injury. The
50 credible threat must be against the life of or a threat
51 to cause serious bodily injury to the subject of the threat.

52 (g) Nothing in this section shall be construed to
53 prevent lawful assembly and petition for the redress of
54 grievances, including, but not limited to, any labor
55 dispute, demonstration at the seat of federal, state,
56 county or municipal government, activities protected by
57 the West Virginia Constitution or the United States
58 Constitution or any statute of this state or the United
59 States.

60 (h) Any person convicted under the provisions of this
61 section who is granted probation or for whom execution
62 or imposition of a sentence or incarceration is suspended
63 shall have as a condition of probation or suspension of
64 sentence that he or she participate in counseling or
65 medical treatment as directed by the court.

66 (i) Upon conviction, the court may issue an order
67 restraining the defendant from any contact with the
68 victim for a period not to exceed ten years. The length
69 of any restraining order shall be based upon the
70 seriousness of the violation before the court, the
71 probability of future violations, and the safety of the
72 victim or his or her immediate family. The duration of
73 the restraining order may be longer than five years only
74 in such cases when a longer duration is necessary to
75 protect the safety of the victim or his or her immediate
76 family.

77 (j) It shall be a condition of bond for any person
78 accused of the offense described in this section that the
79 person shall have no contact, direct or indirect, verbal
80 or physical, with the alleged victim.

81 (k) Nothing in this section shall be construed to
82 preclude a sentencing court from exercising its power
83 to impose home confinement with electronic monitoring
84 as an alternative sentence.

CHAPTER 31

(Com. Sub. for H. B. 2314—By Delegates Love and Pettit)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, 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 ten-b, relating to creating the crimes of malicious assault, unlawful assault and assault and battery against police officers; and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

That article two, 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 ten-b, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-10b. **Malicious assault; unlawful assault; battery and recidivism of battery; assault on police officers, conservation officers, county or state correctional officers; penalties.**

1 (a) *Malicious assault.* — If any person maliciously
2 shoots, stabs, cuts or wounds or by any means causes
3 bodily injury with intent to maim, disfigure, disable or
4 kill a police officer, county correctional officer or state
5 correctional officer acting in his or her official capacity
6 and the person committing the malicious assault knows
7 or has reason to know that the victim is a police officer,
8 conservation officer, county correctional officer or state
9 correctional officer acting in his or her official capacity,
10 then the offender shall be guilty of a felony, and, upon
11 conviction, shall be punished by confinement in the
12 penitentiary not less than three nor more than fifteen
13 years.

14 (b) *Unlawful assault.* — If any person unlawfully but
15 not maliciously shoots, stabs, cuts or wounds or by any
16 means causes a police officer, conservation officer,

17 county correctional officer acting in his or her official
18 capacity or state correctional officer bodily injury with
19 intent to maim, disfigure, disable or kill said officer and
20 the person committing the unlawful assault knows or
21 has reason to know that the victim is a police officer,
22 conservation officer, county correctional officer or state
23 correctional officer acting in his or her official capacity,
24 then the offender is guilty of a felony, and, upon
25 conviction, shall be confined to the penitentiary for a
26 period of not less than two years nor more than five
27 years.

28 (c) *Battery*. — If any person unlawfully and intention-
29 ally makes physical contact of an insulting or provoking
30 nature with a police officer, conservation officer, county
31 correctional officer or state correctional officer acting in
32 his or her official capacity, or unlawfully and intention-
33 ally causes physical harm to a police officer, conserva-
34 tion officer, county correctional officer or state correc-
35 tional officer acting in such capacity, said person is
36 guilty of a misdemeanor, and, upon conviction thereof,
37 shall be confined to the county or regional jail for a
38 period of not less than forty-eight hours nor more than
39 twelve months or fined the sum of five hundred dollars
40 or both. If any person commits a second such offense,
41 then such person is guilty of a misdemeanor, and, upon
42 conviction, shall be confined in the county or regional
43 jail for a period of not less than ten days nor more than
44 twelve months. Any person who commits a third
45 violation of this section is guilty of a felony, and, upon
46 conviction, shall be confined in the penitentiary for a
47 period of not less than one year nor more than five years
48 or fined not more than one thousand dollars or both.

49 (d) *Assault*. — If any person unlawfully attempts to
50 commit a violent injury to the person of a police officer,
51 conservation officer, county correctional officer or state
52 correctional officer, or unlawfully commits an act which
53 places a police officer, conservation officer, county
54 correctional officer or state correctional officer acting in
55 his or her official capacity in reasonable apprehension
56 of immediately receiving a violent injury, he shall be
57 guilty of a misdemeanor, and, upon conviction, shall be

58 confined in the county or regional jail for not less than
59 twenty-four hours nor more than six months, or fined
60 not more than two hundred dollars, or both such fine
61 and imprisonment.

62 (e) *Police officer defined.* — As used in this section, a
63 police officer means any officer employed by the division
64 of public safety, any county law-enforcement agency or
65 any police officer employed by any city or municipality
66 who is responsible for the prevention or detection of
67 crime and the enforcement of the penal, traffic or
68 highway laws of this state.

CHAPTER 32

(Com. Sub. for H. B. 2268—By Delegates Dempsey and Preece)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, 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 fifteen-a, relating to assault or battery against an athletic official; and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

That article two, 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 fifteen-a, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-15a. Assault, battery on athletic officials; penalties.

1 (a) If any person commits an assault as defined in
2 subsection (b), section nine of this article, to the person
3 of an athletic official during the time the official is
4 acting as an athletic official, the offender is guilty of a
5 misdemeanor, and, upon conviction thereof, shall be
6 fined not less than fifty dollars nor more than one
7 hundred dollars, and imprisoned in the county jail not
8 less than twenty-four hours nor more than thirty days.

9 (b) If any person commits a battery, as defined in
10 subsection (c), section nine of this article, against an
11 athletic official during the time the official is acting as
12 an athletic official, the offender is guilty of a misdemea-
13 nor, and, upon conviction thereof, shall be fined not less
14 than one hundred dollars nor more than five hundred
15 dollars, and imprisoned in the county jail not less than
16 twenty-four hours nor more than thirty days.

17 (c) For the purpose of this section, "athletic official"
18 means a person at a sports event who enforces the rules
19 of that event, such as an umpire or referee, or a person
20 who supervises the participants, such as a coach.

CHAPTER 33

(H. B. 2652—By Delegates Pethel and Staton)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the elements of the crime of burglary and daytime entering without breaking; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That section eleven, 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.

§61-3-11. Burglary; entry of dwelling or outhouse; penalties.

1 (a) Burglary shall be a felony and any person
2 convicted thereof shall be confined in the penitentiary
3 not less than one nor more than fifteen years. If any
4 person shall, in the nighttime, break and enter, or enter
5 without breaking, or shall, in the daytime, break and
6 enter, the dwelling house, or an outhouse adjoining
7 thereto or occupied therewith, of another, with intent to

8 commit a crime therein, he shall be deemed guilty of
9 burglary.

10 (b) If any person shall, in the daytime, enter without
11 breaking a dwelling house, or an outhouse adjoining
12 thereto or occupied therewith, of another, with intent to
13 commit a crime therein, he shall be deemed guilty of
14 a felony, and, upon conviction, shall be confined in the
15 penitentiary not less than one nor more than ten years.

16 (c) The term "dwelling house," as used in subsections
17 (a) and (b) of this section, shall include, but not be
18 limited to, a mobile home, house trailer, modular home,
19 factory-built home or self-propelled motor home, used as
20 a dwelling regularly or only from time to time, or any
21 other nonmotive vehicle primarily designed for human
22 habitation and occupancy and used as a dwelling
23 regularly or only from time to time.

CHAPTER 34

(H. B. 2102—By Delegates Carper, Phillips, Harrison and Williams)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four-a, article three, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to credit card crimes; defining terms; expanding the crime of forgery of a credit card and providing criminal penalties therefor; prohibiting traffic in counterfeit credit cards and providing criminal penalties therefor; prohibiting the use of revoked credit cards and providing criminal penalties therefor; prohibiting the possession or transfer of credit card making equipment and providing criminal penalties therefor; and prohibiting acquisition or possession of counterfeit credit cards and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

That section twenty-four-a, 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.

§61-3-24a. Attempted or fraudulent use, forgery, traffic of credit cards; possession and transfer of credit cards and credit card making equipment; false or fraudulent use of telephonic services; penalties.

1 (a) As used in this section:

2 (1) "Counterfeit credit card" means the following:

3 (A) Any credit card or a representation, depiction,
4 facsimile, aspect or component thereof that is counter-
5 feit, fictitious, altered, forged, lost, stolen, incomplete or
6 obtained in violation of this section, or as part of a
7 scheme to defraud; or

8 (B) Any invoice, voucher, sales draft or other reflec-
9 tion or manifestation of such a card.

10 (2) "Credit card making equipment" means any
11 equipment, machine, plate mechanism, impression or
12 any other contrivance which can be used to produce a
13 credit card, a counterfeit credit card, or any aspect or
14 component of either.

15 (3) "Traffic" means:

16 (A) To sell, transfer, distribute, dispense or otherwise
17 dispose of any property; or

18 (B) To buy, receive, possess, obtain control of or use
19 property with the intent to sell, transfer, distribute,
20 dispense or otherwise dispose of such property.

21 (4) "Notice" means either information given in person
22 or information given in writing to the person to whom
23 the number, card or device was issued. The sending of
24 a notice in writing by registered or certified mail in the
25 United States mail, duly stamped and addressed to such
26 person at his last known address, is prima facie evidence
27 that such notice was duly received. A cardholder's

28 knowledge of the revocation of his or her credit card
29 may be reasonably inferred by evidence that notice of
30 such revocation was mailed to him or her, at least four
31 days prior to his or her use or attempted use of the
32 credit card, by first class mail at his or her last known
33 address.

34 (b) (1) It is unlawful for any person knowingly to
35 obtain or attempt to obtain credit, or to purchase or
36 attempt to purchase any goods, property or service, by
37 the use of any false, fictitious or counterfeit credit card,
38 telephone number, credit number or other credit device,
39 or by the use of any credit card, telephone number,
40 credit number or other credit device of another beyond
41 or without the authority of the person to whom such
42 card, number or device was issued, or by the use of any
43 credit card, telephone number, credit number or other
44 credit device in any case where such card, number or
45 device has been revoked and notice of such revocation
46 has been given to the person to whom issued.

47 (2) It is unlawful for any person knowingly to obtain
48 or attempt to obtain, by the use of any fraudulent
49 scheme, device, means or method, telephone or tele-
50 graph service or the transmission of a message, signal
51 or other communication by telephone or telegraph, or
52 over telephone or telegraph facilities with intent to avoid
53 payment of charges therefor.

54 (3) Any person who violates any provision of this
55 subsection, if the credit, goods, property, service or
56 transmission is of the value of two hundred dollars or
57 more, is guilty of a felony, and, upon conviction thereof,
58 shall be imprisoned in a penitentiary not less than one
59 nor more than ten years; and if of less value, is guilty
60 of a misdemeanor, and, upon conviction thereof, shall be
61 imprisoned in the county or regional jail not exceeding
62 one year or fined not more than five hundred dollars,
63 or both imprisoned and fined. Any person convicted of
64 an attempt to commit an offense under the provisions
65 of this subsection is guilty of a misdemeanor, and, upon
66 conviction thereof, shall be imprisoned in the county or
67 regional jail not exceeding six months or fined not less

68 than fifty nor more than three hundred dollars, or both
69 imprisoned and fined.

70 (c) A person is guilty of forgery of a credit card when
71 he or she makes, manufactures, presents, embosses,
72 alters or utters a credit card with intent to defraud any
73 person, issuer of credit or organization providing money,
74 goods, services, or anything else of value in exchange for
75 payment by credit card and he or she is guilty of a
76 felony, and, upon conviction thereof, shall be imprisoned
77 in the penitentiary not less than one nor more than ten
78 years, or be imprisoned in the county or regional jail not
79 more than one year and fined not less than fifty nor
80 more than five hundred dollars.

81 (d) Any person who traffics in or attempts to traffic
82 in ten or more counterfeit credit cards or credit card
83 account numbers of another in any six-month period is
84 guilty of a felony, and, upon conviction thereof, shall be
85 imprisoned in the penitentiary not less than one nor
86 more than ten years, or be imprisoned in the county or
87 regional jail not more than one year and fined not less
88 than fifty nor more than five hundred dollars.

89 (e) A person who receives, possesses, transfers, buys,
90 sells, controls or has custody of any credit card making
91 equipment with intent that the equipment be used in the
92 production of counterfeit credit cards is guilty of a
93 felony, and, upon conviction thereof, shall be imprisoned
94 in the penitentiary not less than one nor more than five
95 years, or be imprisoned in the county or regional jail not
96 more than one year and fined not less than five hundred
97 nor more than five thousand dollars.

98 (f) A person who receives, possesses, acquires, controls
99 or has custody of a counterfeit credit card is guilty of
100 a misdemeanor, and, upon conviction thereof, shall be
101 imprisoned in the county or regional jail not exceeding
102 six months or fined not less than fifty nor more than
103 three hundred dollars, or both fined and imprisoned.

CHAPTER 35

(S. B. 584—By Senators Plymale, Dittmar, Anderson, Holliday and Claypole)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article eight-f, relating to crime and punishment; sex offender registry act; definitions; registration with division of public safety; period of registration; sharing information with other law-enforcement agencies; confidentiality; and criminal penalties.

Be it enacted by the Legislature of West Virginia:

That chapter sixty-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 eight-f, to read as follows:

ARTICLE 8F. SEX OFFENDER REGISTRATION ACT.

§61-8F-1. Short title.

§61-8F-2. Registration.

§61-8F-3. Change of address.

§61-8F-4. Duration.

§61-8F-5. Confidentiality.

§61-8F-6. Duties of institution officials.

§61-8F-7. Information may be shared with other law-enforcement agencies.

§61-8F-8. Failure to register; penalty.

§61-8F-1. Short title.

1 This article may be cited as the "Sex Offender
2 Registration Act".

§61-8F-2. Registration.

1 Any person who has been convicted of a violation of
2 the provisions described in article eight-b of this chapter
3 or similar provisions in another jurisdiction shall, within
4 thirty days of his or her moving into any county in which
5 he or she resides or is temporarily domiciled for more
6 than thirty days, register with the division of public
7 safety.

§61-8F-3. Change of address.

1 When any person required to register under this
2 article changes his or her residence or address, he or she
3 shall inform the division of public safety of his or her
4 new address, in writing, within ten days.

§61-8F-4. Duration.

1 Any person required to register under this article
2 shall be required to do so for a period of ten years after
3 conviction for the second offense defined herein if not
4 imprisoned, and if imprisoned, for a period of ten years
5 after release from prison by discharge or parole. A
6 person is no longer required to register at the expiration
7 of ten years from the date of initial registration, when
8 that convicted person is not otherwise required, during
9 such period, to register.

§61-8F-5. Confidentiality.

1 The information and documentation required in
2 connection with the registration shall not be open to
3 inspection by the public, or by any person other than a
4 regularly employed peace or other law-enforcement
5 officer acting in his or her capacity as a law-enforce-
6 ment officer.

§61-8F-6. Duties of institution officials.

1 Any person required to register under this article,
2 before parole or release, shall be informed of their duty
3 to register by the official in charge of the place of
4 confinement.

§61-8F-7. Information may be shared with other law-enforcement agencies.

1 The division of public safety may share information
2 gathered pursuant to this article with federal, state and
3 local law-enforcement agencies in this state and other
4 states in the course of their official duties.

§61-8F-8. Failure to register; penalty.

1 Any person required to register under this article who
2 knowingly and willfully violates any of the provisions
3 thereof is guilty of a misdemeanor, and, upon

4 conviction thereof, shall be fined not less than fifty
5 dollars nor more than five hundred dollars, or impri-
6 soned in the county jail not more than one year, or both
7 fined and imprisoned.

CHAPTER 36

(S. B. 366—By Senators Wiedebusch, Plymale, Yoder, Ross and Dittmar)

[Passed April 9, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to conditions of release on parole; and board of parole's authority to limit parolee's place of residence.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. PROBATION AND PAROLE.

§62-12-17. Conditions of release on parole.

1 Release on parole shall be upon the following
2 conditions:

3 (1) That the parolee shall not, during the period of his
4 parole, violate any criminal law of this or any other state
5 or of the United States.

6 (2) That he shall not, during the period of his parole,
7 leave the state without the consent of the board.

8 (3) That he shall comply with the rules and regula-
9 tions prescribed by the board for his supervision by the
10 probation and parole officer.

11 (4) That in every case wherein the parolee for a
12 conviction is seeking parole from an offense against a
13 child, defined in section twelve, article eight, chapter
14 sixty-one of this code; or articles eight-b and eight-d of
15 said chapter, or similar convictions from other jurisdic-

16 tions where the parolee is returning or attempting to
 17 return to this state pursuant to the provisions of article
 18 six, chapter twenty-eight of this code, the parolee shall
 19 not live in the same residence as any minor child, nor
 20 exercise visitation with any minor child and shall have
 21 no contact with the victim of the offense.

22 In addition, the board may impose, subject to modi-
 23 fication at any time, any other conditions which the
 24 board may deem advisable.

CHAPTER 37

(S. B. 577—By Senators Ross, Dittmar and Yoder)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article thirteen, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to allowing the commissioner of corrections to charge parolees under the supervision of the division of corrections a fee to help defray the increasing costs of parole supervision.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. CORRECTIONS MANAGEMENT.

*§62-13-2. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.

1 The commissioner of corrections shall supervise all
 2 persons released on parole under any law of this state
 3 with the exception of those persons paroled pursuant to
 4 section thirteen, article two, chapter forty-nine of this
 5 code. The commissioner shall have authority to revoke

* Clerk's Note: This section was also amended by S. B. 358 (Chapter 56), which passed subsequent to this act.

6 the parole with appropriate due process. He shall also
7 supervise all probationers and parolees whose supervi-
8 sion may have been undertaken by this state by reason
9 of any interstate compact entered into pursuant to the
10 uniform act for out-of-state parolee supervision. The
11 commissioner shall prescribe rules and regulations for
12 the supervision of probationers and parolees under his
13 supervision and control and shall succeed to all admi-
14 nistrative and supervisory powers of the board of
15 probation and parole and the authority of said board of
16 probation and parole in such matters only. The commis-
17 sioner of corrections may charge persons under his or
18 her supervision who are on parole a monthly fee to be
19 determined by the commissioner, based upon the
20 parolee's ability to pay, not to exceed twenty dollars per
21 month to defray costs of supervision. All fees collected
22 shall be placed into a special revenue account in the
23 state treasury to be used to defray the expenses
24 incurred. The commissioner shall consider the following
25 factors in determining whether the parolee is financially
26 able to pay the fee:

27 (1) Current income prospects, taking into account
28 seasonal variations in income;

29 (2) Liquid assets, assets which may provide collateral
30 to obtain funds and other assets which may be liqui-
31 dated to provide funds to pay the fee;

32 (3) Fixed debts and obligations, including federal,
33 state and local taxes and medical expenses;

34 (4) Child care, transportation and expenses necessary
35 for employment;

36 (5) Age or physical infirmity of resident family
37 members; and

38 (6) The consequences for the individual if a waiver or
39 reduced fee is denied.

40 The commissioner of corrections shall administer all
41 other laws affecting the custody, control, treatment and
42 employment of persons sentenced or committed to
43 institutions under the supervision of the department or
44 affecting the operation and administration of institu-
45 tions or functions of the department.

46 The final determination regarding the release of
 47 inmates from penal institutions and the final determi-
 48 nation regarding revocation of parolees from such
 49 institutions pursuant to the provisions of article twelve,
 50 chapter sixty-two of this code shall remain within the
 51 exclusive jurisdiction of the board of probation and
 52 parole.

CHAPTER 38

(Com. Sub. for H. B. 2671—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
 By Request of the Executive)

[Passed April 10, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact sections one, five and eight-a, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to setting salary of the commissioner of culture and history; transferring responsibility for capitol visitor touring to the division of culture and history; adding definitions; providing of ad hoc committee to develop permit conditions and providing for director of historic preservation to chair committee; adding permit conditions to be addressed; requiring provision of information deemed necessary.

Be it enacted by the Legislature of West Virginia:

That sections one, five and eight-a, 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.

§29-1-5. Archives and history commission.

§29-1-8a. Protection of human skeletal remains, grave artifacts and grave markers; permits for excavation and removal; penalties.

§29-1-1. Division of culture and history continued; sections and commissions; purposes; definitions; effective date.

1 (a) The division of culture and history and the office
2 of commissioner of culture and history heretofore
3 created are hereby continued. The governor shall
4 nominate, and by and with the advice and consent of the
5 Senate, appoint the commissioner, who shall be the chief
6 executive officer of the division and shall be paid an
7 annual salary of forty-five thousand dollars per year,
8 notwithstanding the provisions of section two-a, article
9 seven, chapter six of this code. The commissioner so
10 appointed shall have: (1) A bachelor's degree in one of
11 the fine arts, social sciences, library science or a related
12 field; or (2) four years' experience in the administration
13 of museum management, public administration, arts,
14 history or a related field.

15 (b) The division shall consist of five sections as follows:

16 (1) The arts and humanities section;

17 (2) The archives and history section;

18 (3) The museums section;

19 (4) The historic preservation section; and

20 (5) The administrative section.

21 (c) The division shall also consist of two citizens
22 commissions as follows:

23 (1) A commission on the arts; and

24 (2) A commission on archives and history.

25 (d) The commissioner shall exercise control and
26 supervision of the division and shall be responsible for
27 the projects, programs and actions of each of its sections.
28 The purpose and duty of the division is to advance, foster
29 and promote the creative and performing arts and
30 crafts, including both indoor and outdoor exhibits and
31 performances; to advance, foster, promote, identify,
32 register, acquire, mark and care for historical, prehis-
33 torical, archaeological and significant architectural
34 sites, structures and objects in the state; to encourage
35 the promotion, preservation and development of signif-
36 icant sites, structures and objects through the use of
37 economic development activities such as loans, subsidies,

38 grants and other incentives; to coordinate all cultural,
39 historical and artistic activities in state government and
40 at state-owned facilities; to acquire, preserve and
41 classify books, documents, records and memorabilia of
42 historical interest or importance; and, in general, to do
43 all things necessary or convenient to preserve and
44 advance the culture of the state.

45 (e) The division shall have jurisdiction and control and
46 may set and collect fees for the use of all space in the
47 building presently known as the West Virginia science
48 and culture center, including the deck and courtyards
49 forming an integral part thereof; the building presently
50 known as West Virginia Independence Hall in Wheel-
51 ing, including all the grounds and appurtenances
52 thereof; "Camp Washington Carver" in Fayette County,
53 as provided for in section fourteen of this article; and
54 any other sites as may be transferred to or acquired by
55 the division. Notwithstanding any provision of this code
56 to the contrary, including the provisions of article one
57 of chapter five-b of this code, beginning on and after the
58 first day of July, one thousand nine hundred ninety-
59 three, the division shall have responsibility for, and
60 control of, all visitor touring and visitor tour guide
61 activities within the state capitol building at Charleston.

62 (f) For the purposes of this article, "commissioner"
63 means the commissioner of culture and history, and
64 "division" means the division of culture and history.

§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 six 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 should 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 alliance,
37 inc., and the state historic preservation officer shall
38 serve as ex officio nonvoting members of the archives
39 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.

§29-1-8a. 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;
- 44 (6) "Disturb" means the excavating, removing,
45 exposing, defacing, mutilating, destroying, molesting, or
46 desecrating in any way of human skeletal remains,
47 unmarked graves, grave artifacts or grave markers;
- 48 (7) "Native American tribe" means any Indian tribe,
49 band, nation, or organized group or community which
50 is recognized as eligible for the special programs and
51 services provided by the United States to Indians
52 because of their status as Indians;
- 53 (8) "Cultural affiliation" means the relationship of
54 shared group identity which can be reasonably traced
55 historically or prehistorically between a present day
56 group and an identifiable earlier group;
- 57 (9) "Lineal descendants" means any individuals
58 tracing his or her ancestry directly or by proven
59 kinship; and
- 60 (10) "Proven kinship" means the relationship among
61 people that exists because of genetic descent, which
62 includes racial descent.
- 63 (c) *Acts prohibited; penalties.*
- 64 (1) No person may excavate, remove, destroy, or
65 otherwise disturb any historic or prehistoric ruins,
66 burial grounds, archaeological site, or human skeletal
67 remains, unmarked grave, grave artifact or grave
68 marker of historical significance unless such person has
69 a valid permit issued to him or her by the director of
70 the historic preservation section: *Provided*, That the
71 supervising archaeologist of an archaeological investiga-
72 tion being undertaken in compliance with the federal
73 Archaeological Resources Protection Act (Public Law
74 96-95 at 16 USC 470(aa)) and regulations promulgated
75 thereunder shall not be required to obtain such permit,
76 but shall notify the director of the historic preservation
77 section that such investigation is being undertaken and
78 file reports as are required of persons issued a permit

79 under this section: *Provided, however,* That projects
80 being undertaken in compliance with section 106 of the
81 National Historic Preservation Act of 1966, as amended,
82 or subsection (a), section five of this article shall not be
83 required to obtain such permit for excavation, removal,
84 destruction or disturbance of historic or prehistoric
85 ruins or archaeological sites.

86 A person who, either by himself or through an agent,
87 intentionally excavates, removes, destroys or otherwise
88 disturbs any historic or prehistoric ruins, burial
89 grounds or archaeological site, or unmarked grave,
90 grave artifact or grave marker of historical significance
91 without first having been issued a valid permit by the
92 director of the historic preservation section, or who fails
93 to comply with the terms and conditions of such permit,
94 is guilty of a misdemeanor, and, upon conviction, shall
95 be fined not less than one hundred dollars nor more than
96 five hundred dollars, and may be imprisoned in the
97 county jail for not less than ten days nor more than six
98 months or both fined and imprisoned.

99 A person who, either by himself or through an agent,
100 intentionally excavates, removes, destroys or otherwise
101 disturbs human skeletal remains of historical signifi-
102 cance without first having been issued a valid permit
103 by the director of the historic preservation section, or
104 who fails to comply with the terms and conditions
105 relating to disinterment or displacement of human
106 skeletal remains of such permit, is guilty of the felony
107 of disinterment or displacement of a dead human body
108 or parts thereof under section fourteen, article eight,
109 chapter sixty-one of this code and, upon conviction, shall
110 be confined in the state penitentiary not less than two
111 nor more than five years.

112 A person who intentionally withholds information
113 about the excavation, removal, destruction, or other
114 disturbance of any historic or prehistoric ruins, burial
115 grounds, archaeological site, or human skeletal remains,
116 unmarked grave, grave artifact or grave marker of
117 historical significance is guilty of a misdemeanor and,
118 upon conviction, shall be fined not more than one
119 hundred dollars, and may be imprisoned in the county

120 jail not more than ten days.

121 (2) No person may offer for sale or exchange any
122 human skeletal remains, grave artifact or grave marker
123 obtained in violation of this section.

124 A person who, either by himself or through an agent,
125 offers for sale or exchange any human skeletal remains,
126 grave artifact or grave marker obtained in violation of
127 this section is guilty of a misdemeanor and, upon
128 conviction, shall be fined not less than one thousand
129 dollars nor more than five thousand dollars, and may be
130 imprisoned in the county jail not less than six months
131 nor more than one year.

132 (3) Each instance of excavation, removal, destruction,
133 disturbance or offering for sale or exchange under (1)
134 and (2) of this subsection shall constitute a separate
135 offense.

136 (d) *Notification of discovery of human skeletal remains*
137 *in unmarked locations.*

138 Within forty-eight hours of the discovery of human
139 skeletal remains, grave artifact or grave marker in an
140 unmarked grave on any publicly or privately owned
141 property, the person making such discovery shall notify
142 the county sheriff of the discovery and its location. If the
143 human remains, grave artifact or grave marker appear
144 to be from an unmarked grave, the sheriff shall
145 promptly, and prior to any further disturbance or
146 removal of the remains, notify the director of the
147 historic preservation section. The director shall cause an
148 on-site inspection of the disturbance to be made to
149 determine the potential for archaeological significance
150 of the site: *Provided*, That when the discovery is made
151 by an archaeological investigation permitted under state
152 or federal law, the supervising archaeologist shall notify
153 the director of the historic preservation section directly.

154 If the director of the historic preservation section
155 determines that the site has no archaeological signifi-
156 cance, the removal, transfer and disposition of the
157 remains shall be subject to the provisions of article
158 thirteen, chapter thirty-seven of this code, and the

159 director shall notify the circuit court of the county
160 wherein the site is located.

161 If the director of historic preservation determines that
162 the site has a potential for archaeological significance,
163 the director shall take such action as is reasonable,
164 necessary and prudent, including consultation with
165 appropriate private or public organizations, to preserve
166 and advance the culture of the state in accordance with
167 the powers and duties granted to the director, including
168 the issuance of a permit for the archaeological excava-
169 tion or removal of the remains. If the director deter-
170 mines that the issuance of a permit for the archaeolog-
171 ical excavation or removal of the remains is not
172 reasonable, necessary or prudent, the director shall
173 provide written reasons to the applicant for not issuing
174 the permit.

175 (e) *Issuance of permits.*

176 Prior to the issuance of a permit for the disturbance
177 of human skeletal remains, grave artifacts, or grave
178 markers, the director of historic preservation shall
179 convene and chair an ad hoc committee to develop
180 permit conditions. The committee shall be comprised of
181 the chair and six or eight members representing known
182 or presumed lineal descendants, private and public
183 organizations which have cultural affiliation to the
184 presumed contents of the site, the Council for West
185 Virginia Archaeology and the West Virginia Archaeo-
186 logical Society. In the case of Native American sites, the
187 membership of the committee shall be comprised of the
188 chair and six or eight members representing the Council
189 for West Virginia Archaeology, the West Virginia
190 Archaeological Society, and known or presumed lineal
191 descendants, preferably with cultural affiliation to
192 tribes that existed in the geographic area that is now
193 West Virginia.

194 In the case of a site of less than five acres, which is
195 owned by an individual or partnership, the ad hoc
196 committee must be formed within thirty days of
197 application for same by the property owner, must meet
198 within sixty days of such application, and must render

199 a decision within ninety days of such application.

200 All such permits shall at a minimum address the
201 following conditions: (1) The methods by which lineal
202 descendants of the deceased are notified prior to the
203 disturbance; (2) the respectful manner in which the
204 remains, artifacts or markers are to be removed and
205 handled; (3) scientific analysis of the remains, artifacts
206 or markers and the duration of those studies; (4) the way
207 in which the remains may be reburied in consultation
208 with any lineal descendants, when available; (5) methods
209 for the respectful curation of recovered items; and (6)
210 such other conditions as the director may deem neces-
211 sary. Expenses accrued in meeting the permit condi-
212 tions shall be borne by the permit applicant, except in
213 cases where the deceased descendants or sponsors are
214 willing to share or assume the costs. A permit to disturb
215 human skeletal remains, grave artifacts or grave
216 markers will be issued only after alternatives to
217 disturbance and other mitigative measures have been
218 considered.

219 In addition, a person applying for a permit to
220 excavate or remove human skeletal remains, grave
221 artifacts, grave markers, or any historic or prehistoric
222 features of archaeological significance may provide to
223 the ad hoc committee information he or she deems
224 appropriate and shall:

225 (1) Provide a detailed statement to the director of the
226 historic preservation section giving the reasons and
227 objectives for excavation or removal and the benefits
228 expected to be obtained from the contemplated work;

229 (2) Provide data and results of any excavation, study
230 or collection in annual reports to the director of the
231 historic preservation section and submit a final report
232 to the director upon completion of the excavation;

233 (3) Obtain the prior written permission of the owner
234 if the site of such proposed excavation is on privately
235 owned land; and

236 (4) Provide any additional information the ad hoc
237 committee deems necessary in developing the permit

238 conditions.

239 Such permits shall be issued for a period of two years
240 and may be renewed at expiration. The permits are not
241 transferable but other persons who have not been issued
242 a permit may work under the direct supervision of the
243 person holding the permit. The person or persons to
244 whom a permit was issued must carry the permit while
245 exercising the privileges granted and must be present
246 at the site whenever work is being done.

247 Notwithstanding any other penalties to which a
248 person may be subject under this section for failing to
249 comply with the terms and conditions of a permit, the
250 permit of a person who violates any of the provisions of
251 this subsection shall be revoked.

252 As permits are issued, the director of the historic
253 preservation section shall maintain a catalogue of
254 unmarked grave locations throughout the state.

255 (f) *Property tax exemption for unmarked grave sites.*

256 To serve as an incentive for the protection of un-
257 marked graves, the owner, having evidence of the
258 presence of unmarked graves on his or her property,
259 may apply to the director of the historic preservation
260 section for a determination as to whether such is the
261 case. Upon making such a determination in the affirma-
262 tive, the director of the historic preservation section
263 shall provide written certification to the landowner that
264 the site containing the graves is a cemetery and as such
265 is exempt from property taxation upon presentation of
266 the certification to the county assessor. The area of the
267 site to receive property tax exempt status shall be
268 determined by the director of the historic preservation
269 section. Additionally, a property owner may establish
270 protective easements for the location of unmarked
271 graves.

272 (g) *Additional provisions for enforcement; civil*
273 *penalties; rewards for information.*

274 (1) The prosecuting attorney of the county in which
275 a violation of any provision of this section is alleged to
276 have occurred may be requested by the director of the

277 historic preservation section to initiate criminal prose-
278 cutions or to seek civil damages, injunctive relief and
279 any other appropriate relief. The director of the historic
280 preservation section shall cooperate with the prosecut-
281 ing attorney in resolving such allegations.

282 (2) Persons convicted of any prohibited act involving
283 the excavation, removal, destruction, disturbance or
284 offering for sale or exchange of historic or prehistoric
285 ruins, burial grounds, archaeological site, human
286 skeletal remains, unmarked grave, grave artifact or
287 grave marker under the provisions of subdivisions (1)
288 and (2), subsection (c) of this section shall also be liable
289 for civil damages to be assessed by the prosecuting
290 attorney in consultation with the director of the historic
291 preservation section.

292 Civil damages may include:

293 (i) Forfeiture of any and all equipment used in
294 disturbing the protected unmarked graves or grave
295 markers;

296 (ii) Any and all costs incurred in cleaning, restoring,
297 analyzing, accessioning and curating the recovered
298 material;

299 (iii) Any and all costs associated with recovery of data,
300 and analyzing, publishing, accessioning and curating
301 materials when the prohibited activity is so extensive as
302 to preclude the restoration of the unmarked burials or
303 grave markers;

304 (iv) Any and all costs associated with restoring the
305 land to its original contour or the grave marker to its
306 original condition;

307 (v) Any and all costs associated with reinterment of
308 the human skeletal remains; and

309 (vi) Any and all costs associated with the determina-
310 tion and collection of the civil damages.

311 When civil damages are recovered, the proceeds, less
312 the costs of the prosecuting attorney associated with the
313 determination and collection of such damages, shall be
314 deposited into the endangered historic properties fund

315 and may be expended by the commissioner of culture
316 and history for archaeological programs at the state
317 level, including the payment of rewards for information
318 leading to the arrest and conviction of persons violating
319 the provisions of subdivisions (1) and (2), subsection (c)
320 of this section.

321 (3) The commissioner of culture and history is
322 authorized to offer and pay rewards of up to one
323 thousand dollars from funds on deposit in the endan-
324 gered historic properties fund for information leading
325 to the arrest and conviction of persons who violate the
326 provisions of subdivisions (1) and (2), subsection (c) of
327 this section.

328 (h) *Disposition of remains and artifacts not subject to*
329 *reburial.*

330 All human skeletal remains and grave artifacts found
331 in unmarked graves on public or private land, and not
332 subject to reburial, under the provisions of subsection (e)
333 of this section, are held in trust for the people of West
334 Virginia by the state and are under the jurisdiction of
335 the director of historic preservation. All materials
336 collected and not reburied through this section shall be
337 maintained with dignity and respect for the people of
338 the state under the care of the West Virginia state
339 museum.

CHAPTER 39

(Com. Sub. for H. B. 2185—By Delegates Rutledge, Brown and Douglas)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections fifteen-a and fifteen-b, article two, chapter forty-eight of said code; to amend article two, chapter forty-eight of said code by adding thereto a new section, designated section fifteen-d; to amend and reenact section three, article one, chapter

forty-eight-a of said code; and to amend and reenact section nineteen, article two of said chapter, all relating to the enforcement of support obligations generally; authorizing the insurance commissioner to enforce the provisions of the code relating to medical support; redefining the term "insurer" as applied to medical support enforcement; providing for immediate withholding from income of a support obligor under certain circumstances; allowing support to be continued beyond the date a child reaches the age of eighteen, is married or emancipated; allowing educational expenses for some children; limitations; redefining certain terms related to the enforcement of support obligations so as to expand the category of persons entitled to support enforcement services; and authorizing the promulgation of procedural rules governing the child advocate office in providing information to consumer reporting agencies.

Be it enacted by the Legislature of West Virginia:

That section three, article two, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections fifteen-a and fifteen-b, article two, chapter forty-eight of said code be amended and reenacted; that article two, chapter forty-eight of said code be amended by adding thereto a new section, designated section fifteen-d; that section three, article one, chapter forty-eight-a of said code be amended and reenacted; and that section nineteen, article two of said chapter be amended and reenacted, all to read as follows:

Chapter

33. Insurance Commissioner.

48. Domestic Relations.

48A. Enforcement of Family Obligations.

CHAPTER 33. INSURANCE COMMISSIONER.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-3. Duties of the commissioner; employment of legal counsel.

- 1 (a) The commissioner shall enforce the provisions of
- 2 this chapter and section fifteen-a, article two of chapter
- 3 forty-eight and perform the duties required thereunder;

4 shall affix the commissioner's official seal to all
5 documents and papers required to be filed in other
6 states by domestic insurers and to other papers when an
7 official seal is required; and shall, on or before the tenth
8 day of each month, pay into the state treasury all fees
9 and moneys which he or she has received during the
10 preceding calendar month.

11 (b) Notwithstanding any provisions of this code to the
12 contrary, the commissioner may acquire such legal
13 services as are deemed necessary, including representa-
14 tion of the commissioner before any court or adminis-
15 trative body. Such counsel may be employed either on
16 a salaried basis or on a reasonable fee basis. In addition,
17 the commissioner may call upon the attorney general for
18 legal assistance and representation as provided by law.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAIN- TENANCE.

§48-2-15a. Medical support enforcement.

§48-2-15b. Withholding from income.

§48-2-15d. Child support beyond age eighteen; educational expenses.

§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, health maintenance
19 organization, self-funded group, multiple employer
20 welfare arrangement, hospital or medical services
21 corporation, trust or other entity which provides
22 insurance coverage.

23 (b) In every action to establish or modify an order
24 which requires the payment of child support, the court
25 shall ascertain the ability of each parent to provide
26 medical care for the children of the parties. In any
27 temporary or final order establishing an award of child
28 support or any temporary or final order modifying a
29 prior order establishing an award of child support, the
30 court shall order one or more of the following:

31 (1) The court shall order either parent or both parents
32 to provide insurance coverage for a child, if such
33 insurance coverage is available to that parent on a group
34 basis through an employer or through an employee's
35 union. If similar insurance coverage is available to both
36 parents, the court shall order the child to be insured
37 under the insurance coverage which provides more
38 comprehensive benefits. If such insurance coverage is
39 not available at the time of the entry of the order, the
40 order shall require that if such coverage thereafter
41 becomes available to either party, that party shall
42 promptly notify the other party of the availability of
43 insurance coverage for the child.

44 (2) If the court finds that insurance coverage is not
45 available to either parent on a group basis through an
46 employer, multi-employer trust or employees' union, or
47 that the group insurer is not accessible to the parties,
48 the court may order either parent or both parents to
49 obtain insurance coverage which is otherwise available
50 at a reasonable cost.

51 (3) Based upon the respective ability of the parents to
52 pay, the court may order either parent or both parents
53 to be liable for reasonable and necessary medical care
54 for a child. The court shall specify the proportion of the
55 medical care for which each party shall be responsible.

56 (4) If insurance coverage is available, the court shall
57 also determine the amount of the annual deductible on
58 insurance coverage which is attributable to the children
59 and designate the proportion of the deductible which
60 each party shall pay.

61 (5) The order shall require the obligor to continue to
62 provide the child advocate office with information as to
63 his or her employer's name and address and information
64 as to the availability of employer-related insurance
65 programs providing medical care coverage so long as
66 the child continues to be eligible to receive support.

67 (c) The cost of insurance coverage shall be considered
68 by the court in applying the child support guidelines
69 provided for in section eight, article two, chapter forty-
70 eight-a of this code.

71 (d) Within thirty days after the entry of an order
72 requiring the obligated parent to provide insurance
73 coverage for the children, that parent shall submit to the
74 custodian for the child written proof that the insurance
75 has been obtained or that an application for insurance
76 has been made. Such proof of insurance coverage shall
77 consist of, at a minimum:

78 (1) The name of the insurer;

79 (2) The policy number;

80 (3) An insurance card;

81 (4) The address to which all claims should be mailed;

82 (5) A description of any restrictions on usage, such as
83 prior approval for hospital admission, and the manner
84 in which to obtain such approval;

85 (6) A description of all deductibles; and

86 (7) Five copies of claim forms.

87 (e) The custodian for the child shall send the insurer
88 or the obligated parent's employer the children's address
89 and notice that the custodian will be submitting claims
90 on behalf of the children. Upon receipt of such notice,
91 or an order for insurance coverage under this section,
92 the obligated parent's employer, multi-employer trust or

93 union shall, upon the request of the custodian for the
94 child, release information on the coverage for the
95 children, including the name of the insurer.

96 (f) A copy of the court order for insurance coverage
97 shall not be provided to the obligated parent's employer
98 or union or the insurer unless ordered by the court, or
99 unless:

100 (1) The obligated parent, within thirty days of
101 receiving effective notice of the court order, fails to
102 provide to the custodian for the child written proof that
103 the insurance has been obtained or that an application
104 for insurance has been made;

105 (2) The custodian for the child serves written notice
106 by mail at the obligated parent's last known address of
107 intention to enforce the order requiring insurance
108 coverage for the child; and

109 (3) The obligated parent fails within fifteen days after
110 the mailing of the notice to provide written proof to the
111 custodian for the child that the child has insurance
112 coverage.

113 (g) (1) Upon service of the order requiring insurance
114 coverage for the children, the employer, multi-employer
115 trust or union shall enroll the child as a beneficiary in
116 the group insurance plan and withhold any required
117 premium from the obligated parent's income or wages.

118 (2) If more than one plan is offered by the employer,
119 multi-employer trust or union, the child shall be
120 enrolled in the most comprehensive plan otherwise
121 available to the obligated parent at a reasonable cost.

122 (3) Insurance coverage for the child which is ordered
123 pursuant to the provisions of this section shall not be
124 terminated except as provided in subsection (i) of this
125 section.

126 (h) (1) The signature of the custodian for the child
127 shall constitute a valid authorization to the insurer for
128 the purposes of processing an insurance payment to the
129 provider of medical care for the child.

130 (2) No insurer, employer or multi-employer trust in

131 this state may refuse to honor a claim for a covered
132 service when the custodian for the child or the obligated
133 parent submits proof of payment for medical bills for
134 the child.

135 (3) The insurer shall reimburse the custodian for the
136 child or the obligated parent who submits copies of
137 medical bills for the child with proof of payment.

138 (4) All insurers in this state shall provide insurance
139 coverage for the child of a covered employee notwith-
140 standing the amount of support otherwise ordered by
141 the court and regardless of the fact that the child may
142 not be living in the home of the covered employee.

143 (i) When an order for insurance coverage for a child
144 pursuant to this section is in effect and the obligated
145 parent's employment is terminated, or the insurance
146 coverage for the child is denied, modified or terminated,
147 the insurer shall, within ten days after the notice of
148 change in coverage is sent to the covered employee,
149 notify the custodian for the child and provide an
150 explanation of any conversion privileges available from
151 the insurer.

152 (j) A child of an obligated parent shall remain eligible
153 for insurance coverage until the child is emancipated or
154 until the insurer under the terms of the applicable
155 insurance policy terminates said child from coverage,
156 whichever is later in time, or until further order of the
157 court.

158 (k) If the obligated parent fails to comply with the
159 order to provide insurance coverage for the child, the
160 court shall:

161 (1) Hold the obligated parent in contempt for failing
162 or refusing to provide the insurance coverage, or for
163 failing or refusing to provide the information required
164 in subsection (d) of this section;

165 (2) Enter an order for a sum certain against the
166 obligated parent for the cost of medical care for the
167 child, and any insurance premiums paid or provided for
168 the child during any period in which the obligated
169 parent failed to provide the required coverage; and

170 (3) In the alternative, other enforcement remedies
171 available under sections two and three, article five,
172 chapter forty-eight-a of this code, or otherwise available
173 under law, may be used to recover from the obligated
174 parent the cost of medical care or insurance coverage
175 for the child.

176 (1) Proof of failure to maintain court ordered insu-
177 rance coverage for the child constitutes a showing of
178 substantial change in circumstances or increased need
179 pursuant to section fifteen of this article, and provides
180 a basis for modification of the child support order.

§48-2-15b. Withholding from income.

1 (a) Every order entered or modified under the
2 provisions of this article, not described in subsection (d)
3 of this section, which requires the payment of child
4 support or spousal support shall include a provision for
5 automatic withholding from income of the obligor, in
6 order to facilitate income withholding as a means of
7 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
43 office 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) On and after the first day of January, one thousand
50 nine hundred ninety-four, the wages of an obligor shall
51 be subject to withholding, regardless of whether child
52 support payments are in arrears, on the date the order
53 for child support is entered: *Provided*, That where one
54 of the parties demonstrates, and the court finds, that
55 there is good cause not to require immediate income
56 withholding, or in any case where there is filed with the
57 court a written agreement between the parties which
58 provides for an alternative arrangement, such order
59 shall not provide for income withholding to begin
60 immediately: *Provided, however*, That this subsection
61 shall have no force and effect, if prior to the first day
62 of January, one thousand nine hundred ninety-four, the
63 requirements regarding wage withholding imposed by
64 42 U.S.C. §666 are substantially modified by federal
65 statute or regulation.

66 (d) The supreme court of appeals shall make available
67 to the circuit courts standard language to be included

68 in all such orders, so as to conform such orders to the
69 applicable requirements of state and federal law
70 regarding the withholding from income of amounts
71 payable as support.

72 (e) Every support order entered by a circuit court of
73 this state prior to the effective date of this section shall
74 be considered to provide for an order of income
75 withholding, by operation of law, which complies with
76 the provisions of this section, notwithstanding the fact
77 that such support order does not in fact provide for such
78 order of withholding.

79 (f) The court shall consider the best interests of the
80 child in determining whether "good cause" exists under
81 this section. The court may also consider the obligor's
82 payment record in making child support payments in
83 making this determination.

§48-2-15d. Child support beyond age eighteen; educational expenses.

1 (a) An order for child support entered pursuant to
2 sections thirteen and fifteen of this article may provide
3 that payments of such support continue beyond the date
4 when the child reaches the age of eighteen, marries or
5 is sooner emancipated, so long as the child is making
6 substantial progress towards a degree and is enrolled as
7 a full-time student in a secondary school or vocational
8 school: *Provided*, That such payments may not extend
9 past the date that the child reaches the age of twenty.

10 (b) The court may make an award for educational and
11 related expenses for an adult child up to the age of
12 twenty-three who has been accepted or is enrolled and
13 making satisfactory progress in an educational program
14 at a certified or accredited college. The amount of these
15 payments shall be related to the ability of the parent to
16 make the payments. The payments shall be made to the
17 custodial parent when the adult child is residing with
18 that parent or to a third party as designated by the
19 court. If the child is not residing with a parent, the
20 payments shall be paid to the child or to such third
21 parties as so designated by the court.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article

- 1. General Provisions.
- 2. West Virginia Child Advocate Office.

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 applica-
 23 ble federal reporting requirements on a timely basis;
 24 and

25 (iv) Delinquency and enforcement activities;

26 (B) To control, account for and monitor the collection
 27 and distribution of support payments (both interstate
 28 and intrastate), the determination, collection and
 29 distribution of incentive payments (both interstate and
 30 intrastate), and the maintenance of accounts receivable

31 on all amounts owed, collected and distributed;

32 (C) To control, account for and monitor the costs of
33 all services rendered, either directly or by exchanging
34 information with state agencies responsible for main-
35 taining financial management and expenditure
36 information;

37 (D) To provide access to the records of the department
38 of health and human resources or aid to families with
39 dependent children in order to determine if a collection
40 of a support payment causes a change affecting eligibil-
41 ity for or the amount of aid under such program;

42 (E) To provide for security against unauthorized
43 access to, or use of, the data in such system;

44 (F) To facilitate the development and improvement of
45 the income withholding and other procedures designed
46 to improve the effectiveness of support enforcement
47 through the monitoring of support payments, the
48 maintenance of accurate records regarding the payment
49 of support, and the prompt provision of notice to
50 appropriate officials with respect to any arrearages in
51 support payments which may occur; and

52 (G) To provide management information on all cases
53 from initial referral or application through collection
54 and enforcement.

55 (2) "Chief judge" means the following:

56 (A) The circuit judge in a judicial circuit having only
57 one circuit judge; or

58 (B) The chief judge of the circuit court in a judicial
59 circuit having two or more circuit judges.

60 (3) "Child advocate office" means the office within the
61 department of health and human resources created
62 under the provisions of article two of this chapter,
63 intended by the Legislature to be the single and separate
64 organizational unit of state government administering
65 programs of child and spousal support enforcement and
66 meeting the staffing and organizational requirements of
67 the secretary of the federal department of health and
68 human services.

69 (4) "Children's advocate" or "advocate" means a
70 person appointed to such position under the provisions
71 of section two, article three of this chapter. The
72 children's advocate may be empowered to prosecute an
73 action brought pursuant to section twenty-nine, article
74 five, chapter sixty-one of this code when appointed by
75 a circuit judge pursuant to section eight, article seven,
76 chapter seven of this code.

77 (5) "Court" means a circuit court of this state, unless
78 the context in which such term is used clearly indicates
79 that reference to some other court is intended.

80 (6) "Court of competent jurisdiction" means a circuit
81 court within this state, or a court or administrative
82 agency of another state having jurisdiction and due legal
83 authority to deal with the subject matter of the
84 establishment and enforcement of support obligations.
85 Whenever in this chapter reference is made to an order
86 of a court of competent jurisdiction, or similar wording,
87 such language shall be interpreted so as to include
88 orders of an administrative agency entered in a state
89 where enforceable orders may by law be properly made
90 and entered by such administrative agency.

91 (7) "Custodial parent" or "custodial parent of a child"
92 means a parent who has been granted custody of a child
93 by a court of competent jurisdiction. "Noncustodial
94 parent" means a parent of a child with respect to whom
95 custody has been adjudicated with the result that such
96 parent has not been granted custody of the child.

97 (8) "Domestic relations matter" means any circuit
98 court proceeding involving child custody, child visita-
99 tion, child support or alimony.

100 (9) "Earnings" means compensation paid or payable
101 for personal services, whether denominated as wages,
102 salary, commission, bonus, or otherwise, and includes
103 periodic payments pursuant to a pension or retirement
104 program. "Disposable earnings" means that part of the
105 earnings of any individual remaining after the deduc-
106 tion from those earnings of any amounts required by law
107 to be withheld.

108 (10) "Employer" means any individual, sole proprie-
109 torship, partnership, association, public or private
110 corporation, the United States or any federal agency,
111 this state or any political subdivision of this state, any
112 other state or a political subdivision of another state, and
113 any other legal entity which hires and pays an individ-
114 ual for his services.

115 (11) "Guardian of the property of a child" means a
116 person lawfully invested with the power, and charged
117 with the duty, of managing and controlling the estate
118 of a child.

119 (12) "Income" includes, but is not limited to, the
120 following:

121 (A) Commissions, earnings, salaries, wages and other
122 income due or to be due in the future to an obligor from
123 his employer and successor employers;

124 (B) Any payment due or to be due in the future to an
125 obligor from a profit-sharing plan, a pension plan, an
126 insurance contract, an annuity, social security, unem-
127 ployment compensation, supplemental employment
128 benefits, workers' compensation benefits, state lottery
129 winnings and prizes, and overtime pay;

130 (C) Any amount of money which is owing to the
131 obligor as a debt from an individual, partnership,
132 association, public or private corporation, the United
133 States or any federal agency, this state or any political
134 subdivision of this state, any other state or a political
135 subdivision of another state, or any other legal entity
136 which is indebted to the obligor.

137 (13) "Individual entitled to support enforcement
138 services under the provisions of this chapter and the
139 provisions of Title IV-D of the Federal Social Security
140 Act" means:

141 (A) An individual who has applied for or is receiving
142 services from the child advocate office and who is the
143 custodial parent of a child, or the primary caretaker of
144 a child, or the guardian of the property of a child when:

145 (i) Such child has a parent and child relationship with
146 an obligor who is not such custodial parent, primary
147 caretaker or guardian; and

148 (ii) The obligor with whom the child has a parent and
149 child relationship is not meeting an obligation to support
150 the child, or has not met such obligation in the past; or

151 (B) An individual who has applied for or is receiving
152 services from the child advocate office and who is an
153 adult or an emancipated minor whose spouse or former
154 spouse has been ordered by a court of competent
155 jurisdiction to pay spousal support to the individual,
156 whether such support is denominated alimony or
157 separate maintenance, or is identified by some other
158 terminology, thus establishing a support obligation with
159 respect to such spouse, when the obligor required to pay
160 such spousal support is not meeting the obligation, or
161 has not met such obligation in the past; or

162 (C) Any individual who is an obligee in a support
163 order, entered by a court of competent jurisdiction after
164 the thirty-first day of December, one thousand nine
165 hundred ninety-three.

166 (14) "Master" or "family law master" means a person
167 appointed to such position under the provisions of
168 section one, article four of this chapter.

169 (15) "Obligee" means an individual to whom a duty
170 of support is owed, or the state of West Virginia or the
171 department of health and human resources, if support
172 has been assigned to the state or department.

173 (16) "Obligor" means a person who owes a legal duty
174 to support another person.

175 (17) "Office of the children's advocate" means the
176 office created in section two, article three of this
177 chapter.

178 (18) "Primary caretaker of a child" means a parent
179 or other person having actual physical custody of a child
180 without a court order granting such custody, and who
181 has been primarily responsible for exercising parental

182 rights and responsibilities with regard to such child.

183 (19) "Source of income" means an employer or
184 successor employer or any other person who owes or will
185 owe income to an obligor.

186 (20) "Support" means the payment of money including
187 interest:

188 (A) For a child or spouse, ordered by a court of
189 competent jurisdiction, whether the payment is ordered
190 in an emergency, temporary, permanent or modified
191 order, decree or judgment of such court, and the amount
192 of unpaid support shall bear interest from the date it
193 accrued, at a rate of ten dollars upon one hundred
194 dollars per annum, and proportionately for a greater or
195 lesser sum, or for a longer or shorter time;

196 (B) To third parties on behalf of a child or spouse,
197 including, but not limited to, payments to medical,
198 dental or educational providers, payments to insurers
199 for health and hospitalization insurance, payments of
200 residential rent or mortgage payments, payments on an
201 automobile, or payments for day care; and/or

202 (C) For a mother, ordered by a court of competent
203 jurisdiction, for the necessary expenses incurred by or
204 for the mother in connection with her confinement or of
205 other expenses in connection with the pregnancy of the
206 mother.

207 (21) "Support order" means any order of a court of
208 competent jurisdiction for the payment of support,
209 whether or not for a sum certain.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-19. Providing information to consumer reporting agencies.

1 (a) For purposes of this section, the term "consumer
2 reporting agency" means any person who, for monetary
3 fees, dues, or on a cooperative nonprofit basis, regularly
4 engages in whole or in part in the practice of assembling
5 or evaluating consumer credit information or other

6 information on consumers for the purpose of furnishing
7 consumer reports to third parties.

8 (b) The director shall propose and adopt a procedural
9 rule in accordance with the provisions of sections four
10 and eight, article three, chapter twenty-nine of this code,
11 establishing procedures whereby information regarding
12 the amount of overdue support owed by an obligor
13 residing in this state will be made available by the office
14 to any consumer reporting agency, upon the request of
15 such consumer reporting agency.

16 (c) (1) If the amount of any overdue support is equal
17 to or less than the amount of arrearage which would
18 cause the mailing of a notice as provided for in
19 subsection (b), section three, article five of this chapter,
20 information regarding such amount may not be made
21 available;

22 (2) If the amount of any overdue support exceeds the
23 amount of arrearage which would cause the mailing of
24 a notice as provided for in subsection (b), section three,
25 article five of this chapter, information regarding such
26 amount shall be made available.

27 (d) The procedural rule proposed and adopted shall
28 provide that any information with respect to an obligor
29 shall be made available only after notice has been sent
30 to such obligor of the proposed action, and such obligor
31 has been given a reasonable opportunity to contest the
32 accuracy of such information.

33 (e) The procedural rule proposed and adopted shall
34 afford the obligor with procedural due process prior to
35 making information available with respect to the
36 obligor.

37 (f) The information made available to the requesting
38 consumer reporting agency regarding overdue support
39 may be in the same form as information submitted to
40 the secretary of the treasury of the United States in
41 accordance with the provisions of section fifteen, article
42 two of this chapter.

43 (g) The office may impose a fee for furnishing such
44 information, not to exceed the actual cost thereof.

CHAPTER 40

(H. B. 2024—By Delegates L. White and Kiss)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to including a statement on the application for a marriage license that each applicant has protected rights in a marriage and that certain activities among spouses and other family members are crimes punishable by law.

Be it enacted by the Legislature of West Virginia:

That section six, article one, 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 1. MARRIAGE.

§48-1-6. Application for license; requirements for issuance of license.

1 Every license for marriage shall be issued by the
2 clerk of the county commission of the county in which
3 either party usually resides, except that where both
4 parties are nonresidents of the state of West Virginia,
5 the license shall be issued by the clerk of the county
6 commission of the county in which application is made.
7 The license shall be issued not sooner than three days
8 after the filing with the clerk of a written application
9 therefor. The day on which the application is filed shall
10 be counted as the first day, but two full days shall elapse
11 after the day of filing before the license shall be issued.
12 Before any license is issued, each applicant shall file
13 with the clerk a certificate or certificates from any
14 physician duly licensed in the state, stating that each
15 party has been given an examination, including a
16 standard serological test, as may be necessary for the
17 discovery of syphilis, made not more than thirty days
18 prior to the date on which license is issued, and stating
19 that in the opinion of the physician the applicant either

20 is not infected with syphilis or, if so infected, is not in
21 the state of the disease which is or may later become
22 communicable. The examinations and tests required by
23 this section may be given as provided by section
24 nineteen, article four, chapter sixteen of this code.

25 The application for a marriage license shall contain
26 a statement of the full names of both parties, their social
27 security account numbers, their respective ages and
28 their places of birth and residence. Effective the first
29 day of September, one thousand nine hundred ninety-
30 three, the application for a marriage license shall also
31 contain the following statement:

32 "The laws of this state affirm your right to enter into
33 this marriage and at the same time to live within the
34 marriage free from violence and abuse. Neither of you
35 is the property of the other. Physical abuse, sexual
36 abuse, battery and assault of a spouse or other family
37 member, as well as other provisions of the criminal laws
38 of this state, are applicable to spouses and other family
39 members and violations thereof are punishable by law."

40 It shall be signed by both of the parties to the
41 contemplated marriage, under oath before the clerk of
42 the county commission or before a person authorized to
43 administer oaths under the laws of this state. At the
44 time of the execution of the application, the clerk, or the
45 person administering the oath to the applicants, shall
46 require some evidence of the age of each of the
47 applicants. Evidence of the age of each applicant may
48 be in the form of a certified or photostatic copy of a birth
49 certificate, a voter's registration certificate, an opera-
50 tor's or chauffeur's license, an affidavit of both parents
51 or legal guardian of the applicant or other good and
52 sufficient evidence. Where such an affidavit is relied
53 upon as evidence of the age of an applicant, and one
54 parent is dead, the affidavit of the surviving parent or
55 of the guardian of the applicant shall suffice; if both
56 parents are dead, the affidavit of the guardian of the
57 applicant shall suffice. If the parents of the applicant
58 are living separate and apart, the affidavit of the parent
59 having custody of the applicant shall suffice. The
60 application shall be recorded in the register of mar-

61 riages provided for in section eleven of this article. The
 62 date of the filing of the application shall be noted in the
 63 register. The notation, or a certified copy thereof, is
 64 legal evidence of the facts therein contained.

65 To the extent otherwise provided by section six-c of
 66 this article, the provisions of this section do not apply.
 67 Applications for licenses may be received and licenses
 68 may be issued by the clerk of the county commission at
 69 anytime his or her office is officially open for the
 70 conduct of business.

CHAPTER 41

(Com. Sub. for H. B. 2427—By Delegates Brown, Trump, Kessel and Brum)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two-a, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating to telephone authorization for arrest for assault or battery in domestic violence matters; limited on-site arrest authority; limitations on officer liability; applicability of administrative rules; and bail conditions.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. PREVENTION OF DOMESTIC VIOLENCE.

§48-2A-14. Telephone authorization for arrest in domestic violence matters; conditions.

1 (a) Notwithstanding any provision of this code, where
 2 a family or household member is alleged to have
 3 committed a violation of the provisions of subsection (b)
 4 or subsection (c) of section nine, article two, chapter
 5 sixty-one of this code against another family or house-

6 hold member, in addition to any other authority to
7 arrest granted by this code, a law-enforcement officer
8 has authority to arrest the alleged perpetrator for said
9 offense when:

10 (1) The law-enforcement officer has observed credible
11 corroborative evidence that the offense has occurred;

12 (2) The law-enforcement officer has obtained a signed
13 statement which has been voluntarily and knowingly
14 executed, from the alleged victim setting forth the
15 essential elements of the offense or has received such a
16 statement from a witness to the alleged violation; and

17 (3) The law-enforcement officer investigating the
18 alleged offense or another law-enforcement officer
19 acting at the request of said officer has received oral or
20 telephonic authorization from a magistrate having
21 jurisdiction over the offense to arrest the alleged
22 perpetrator after the magistrate has been presented
23 with information sufficient to satisfy said magistrate
24 that probable cause exists to believe that the offense was
25 committed.

26 (b) Notwithstanding any provision of this section,
27 upon a determination by the law-enforcement officer
28 that credible corroborative evidence exists to believe
29 that a violation of subsection (b) or (c), section nine,
30 article two, chapter sixty-one has occurred, and upon
31 obtaining a signed statement from the alleged victim or
32 a witness setting forth the essential elements of either
33 offense, or prior to the obtaining of the signed statement
34 but having been earlier presented with verbal evidence
35 sufficient to establish the existence of the essential
36 elements of either offense and being informed of a
37 willingness to execute a signed statement as provided
38 for in subsection (a) of this section, the law-enforcement
39 officer may, if circumstances exist which convince the
40 law-enforcement officer that a danger exists to the
41 health and safety of the alleged victim, the law-
42 enforcement officer or another person, arrest the alleged
43 perpetrator at the scene of the alleged violation solely
44 for the purpose of protecting the health or safety of the
45 alleged victim, the law-enforcement officer or another

46 person at the scene of the violation in order to obtain
47 the signed statement and seek the magistrate's author-
48 ization for arrest.

49 (c) Any person arrested at the site of the alleged
50 criminal violation pursuant to the provisions of subsec-
51 tion (b) of this section shall be immediately released if
52 the magistrate fails to authorize arrest or if the alleged
53 victim or the witness refuses to execute the statement
54 provided for in this section. If the magistrate authorizes
55 arrest, all other provisions of this section shall then be
56 applicable.

57 (d) No law-enforcement officer shall be subject to any
58 civil or criminal action for false arrest or unlawful
59 detention for affecting an arrest pursuant to subsection
60 (b) of this section solely due to a magistrate's failure to
61 authorize arrest or due to the fact that the alleged
62 victim or the witness refuses to execute a signed
63 statement as provided for in this section.

64 (e) Whenever any person is arrested pursuant to
65 subsection (a) of this section, the arrested person shall
66 be taken before a magistrate within the county in which
67 the offense charged is alleged to have been committed
68 in a manner consistent with the provisions of Rule 1 of
69 the Administrative Rules for the Magistrate Courts of
70 West Virginia.

71 (f) Upon his or her appearance before the magistrate
72 or circuit court, the person arrested shall be supplied
73 with a written complaint setting forth the facts and
74 circumstances supporting the charge which complies
75 with the provisions of West Virginia Rule of Criminal
76 Procedure 3.

77 (g) The provisions of this section shall not authorize
78 any law-enforcement officer to make an arrest outside
79 of his or her jurisdiction unless otherwise authorized by
80 law.

81 (h) The consideration by a magistrate of a request for
82 arrest authorization made orally or by telephone shall
83 constitute responding in a domestic violence matter as
84 required by Rule 1 of the Administrative Rules for the
85 Magistrate Courts of West Virginia.

86 (i) Where an arrest for a violation of subsection (c) of
87 section nine, article two, chapter sixty-one of this code
88 is authorized pursuant to this section, such shall
89 constitute prima facie evidence that the person arrested
90 constitutes a threat or danger to the victim or other
91 family or household members for the purpose of setting
92 conditions of bail pursuant to section seventeen-c, article
93 one-c, chapter sixty-two of this code.

CHAPTER 42

(H. B. 2741—By Delegates Martin, Michael, Carper,
Louisos, Oliverio and Evans)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal articles two-a, two-c, five and six, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to repeal of economic development programs determined by the council for community and economic development of the West Virginia development office to be inactive or ineffective; repeal of the higher education-industry partnership program known as the Vandalia program; repeal of office of federal procurement assistance; repeal of the employee ownership assistance program; and repeal of the small business expansion assistance program.

Be it enacted by the Legislature of West Virginia:

- §1. Repeal of article creating higher education-industry partnership program.
 - §2. Repeal of article creating office of federal procurement assistance.
 - §3. Repeal of article creating employee ownership assistance program.
 - §4. Repeal of article creating the small business expansion assistance program.
- §1. **Repeal of article creating higher education-industry partnership program.**

1 Article two-a, chapter five-b of the code of West
2 Virginia, one thousand nine-hundred thirty-one, as
3 amended, is hereby repealed.

§2. Repeal of article creating office of federal procurement assistance.

1 Article two-c, chapter five-b of the code of West
2 Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

§3. Repeal of article creating employee ownership assistance program.

1 Article five, chapter five-b of the code of West
2 Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

§4. Repeal of article creating the small business expansion assistance program.

1 Article six, chapter five-b of the code of West
2 Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 43

(Com. Sub. for H. B. 2160—By Delegate Ashcraft)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT to repeal section five, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section six of said article; to amend and reenact section three, article one, chapter five-g of said code; to amend and reenact sections one-a, two and four, article five, chapter eighteen of said code; to further amend said article by adding thereto a new section, designated section fourteen; to amend and reenact sections two, three and six, article five-a of said chapter; to amend and reenact section three-a, article nine of said chapter; and to amend and reenact sections two and fourteen, article four, chapter eighteen-a of said code, all relating to repeal of obsolete language and clarification of statutory language relating to the election of county board of

education members; permitting county boards of education to start selection process over in original order of preference in negotiating for architect-engineer service bids; relating to the eligibility of members to serve and providing for the circuit court to remove a member who refuses to complete the required training; provides that members appointed to fill vacancies serve until the thirtieth day of June following the next primary election; requiring a public hearing on proposed county board budgets not less than ten days after the budget has been made available to the public and prior to submission of the budget to the state board for approval; requiring county boards to adopt enumerated policies; providing for election of members to local school improvement councils, changing election to September, setting an organizational meeting by the first day of October, providing for elected chair serving a one-year term and providing that members be elected for two-year terms on staggered election basis; authorizes school improvement councils to seek advisory opinions from the state board when a policy or rule waiver request is denied by or not acted upon by a county board and providing for records and reports of waivers which are requested; directing that curriculum teams be extended to all schools and making science and technology basic skills; changing the time for county boards to publish their financial statements to sixty days after the close of the fiscal year; and requiring planning periods during the school instructional day.

Be it enacted by the Legislature of West Virginia:

That section five, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section six of said article be amended and reenacted; that section three, article one, chapter five-g of said code be amended and reenacted; that sections one-a, two and four, article five, chapter eighteen of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section fourteen; that sections two, three and six, article five-a of said chapter be amended and reenacted; that section three-a, article nine of said chapter be amended and reenacted; and

that sections two and fourteen, article four, chapter eighteen-a of said code be amended and reenacted, all to read as follows:

Chapter

3. Elections.

5G. Procurement of Arthitect-Engineer Services by State and its Subdivisions.

18. Education.

18A. School Personnel.

CHAPTER 3. ELECTIONS.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-6. Election of county board of education members at primary elections.

1 (a) An election for the purpose of electing members
2 of the county board of education shall be held on the
3 same date as the primary elections, as provided by law,
4 but upon a nonpartisan ballot printed for the purpose.

5 (b) No more than two members may be elected or
6 serve from the same magisterial district. The eligibility
7 of candidates to be declared elected for full terms of four
8 years and for unexpired terms of two or more years
9 based on this limitation shall be determined at the time
10 of certification of the election.

11 (1) Such eligibility shall be based on the magisterial
12 district residence of incumbent members of the board
13 whose terms will continue beyond the first day of July
14 following the primary election.

15 (A) No person is eligible to be declared elected who
16 resides in a district which has two such incumbent
17 members.

18 (B) No more than one candidate is eligible to be
19 declared elected who resides in a district which has one
20 such incumbent member.

21 (C) A person with the highest number of votes may
22 be declared elected to an unexpired term notwithstand-
23 ing the fact that the person's magisterial district has two
24 representatives serving on the board at the time of the
25 election: *Provided*, That the number of representatives

26 from that magisterial district will be less than two as
27 of the first day of July following the primary.

28 (2) The person declared elected to an unexpired term
29 shall assume the duties of a member of the board of
30 education according to the provisions of section two,
31 article five, chapter eighteen of this code.

32 (c) In each nonpartisan election for board of education
33 the board of canvassers shall:

34 (1) Declare and certify the election of the required
35 number of eligible candidates receiving the highest
36 numbers of votes to fill any full terms;

37 (2) Declare and certify the election of the required
38 number of eligible candidates receiving the next highest
39 numbers of votes, after all full terms are filled, to fill
40 any unexpired terms.

41 (d) It is the intent of this statute that any person
42 declared to be elected under the preceding provisions of
43 this section shall take office as a duly elected member
44 or members, even though the person may not have
45 received a majority or plurality of all votes cast at such
46 election.

47 (e) In case of a tie vote for a seat on a county board
48 of education in any primary election, the provisions of
49 section twelve, article six of this chapter shall control
50 in breaking the tie.

CHAPTER 5G. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES BY STATE AND ITS SUBDIVISIONS.

ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.

§5G-1-3. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost two hundred fifty thousand dollars or more.

1 In the procurement of architectural and engineering
2 services for projects estimated to cost two hundred fifty
3 thousand dollars or more, the director of purchasing
4 shall encourage such firms engaged in the lawful

5 practice of the profession to submit an expression of
6 interest, which shall include a statement of qualifica-
7 tions and performance data, and may include antici-
8 pated concepts and proposed methods of approach to the
9 project. All such jobs shall be announced by public
10 notice published as a Class II legal advertisement in
11 compliance with the provisions of article three, chapter
12 fifty-nine of this code. A committee of three to five
13 representatives of the agency initiating the request shall
14 evaluate the statements of qualifications and perfor-
15 mance data and other material submitted by interested
16 firms and select a minimum of three firms which, in
17 their opinion, are best qualified to perform the desired
18 service. Interviews with each firm selected shall be
19 conducted and the committee shall conduct discussions
20 regarding anticipated concepts and proposed methods of
21 approach to the assignment. The committee shall then
22 rank, in order of preference, no less than three profes-
23 sional firms deemed to be the most highly qualified to
24 provide the services required, and shall commence scope
25 of service and price negotiations with the highest
26 qualified professional firm for architectural or engineer-
27 ing services or both. Should the agency be unable to
28 negotiate a satisfactory contract with the professional
29 firm considered to be the most qualified, at a fee
30 determined to be fair and reasonable, price negotiations
31 with the firm of second choice shall commence. Failing
32 accord with the second most qualified professional firm,
33 the committee shall undertake price negotiations with
34 the third most qualified professional firm. Should the
35 agency be unable to negotiate a satisfactory contract
36 with any of the selected professional firms, it shall select
37 additional professional firms in order of their compe-
38 tence and qualifications and it shall continue negotia-
39 tions in accordance with this section until an agreement
40 is reached: *Provided*, That county boards of education
41 may either elect to start the selection process over in the
42 original order of preference or it may select additional
43 professional firms in order of their competence and
44 qualifications and it shall continue negotiations in
45 accordance with this section until an agreement is
46 reached.

CHAPTER 18. EDUCATION.

Article

- 5. County Board of Education.
- 5A. Local School Involvement.
- 9. School Finances.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-1a. Eligibility of members.

§18-5-2. Filling vacancies.

§18-5-4. Meetings; employment and assignment of teachers; budget hearing; compensation of members; affiliation with state and national associations.

§18-5-14. Policies to promote school board effectiveness.

§18-5-1a. Eligibility of members.

1 No person shall be eligible for membership on any
2 county board who is not a citizen, resident in such
3 county, or who accepts a position as teacher or service
4 personnel in the school district in which he or she is a
5 resident or who is an elected or an appointed member
6 of any political party executive committee, or who
7 becomes a candidate for any other office than to succeed
8 oneself.

9 No member or member-elect of any board shall be
10 eligible for nomination, election or appointment to any
11 public office, other than to succeed oneself, or for
12 election or appointment as a member of any political
13 party executive committee, unless and until after that
14 membership on the board, or his status as member-elect
15 to the board, has been terminated at or before the time
16 of his filing for such nomination for, or appointment to,
17 such public office or committee.

18 Any person who is elected or appointed to a county
19 board on or after the fifth day of May, one thousand nine
20 hundred ninety-two, shall possess at least a high school
21 diploma or a general educational development (GED)
22 diploma: *Provided*, That this provision shall not apply
23 to members or members-elect who have taken office
24 prior to the fifth day of May, one thousand nine hundred
25 ninety-two, and who serve continuously therefrom.

26 No person elected to a county board after the first day
27 of July, one thousand nine hundred ninety, shall assume

28 the duties of board member unless he or she has first
29 attended and completed a course of orientation relating
30 to boardsmanship and governance effectiveness which
31 shall be given between the date of election and the
32 beginning of the member's term of office: *Provided,*
33 That a portion or portions of subsequent training such
34 as that offered in orientation may be provided to
35 members after they have commenced their term of
36 office: *Provided, however,* That attendance at the session
37 of orientation given between the date of election and the
38 beginning of the member's term of office shall permit
39 such member or members to assume the duties of board
40 member, as specified in this section. Members appointed
41 to the board shall attend and complete the next such
42 course offered following their appointment: *Provided*
43 *further,* That the provisions of this section relating to
44 orientation shall not apply to members who have taken
45 office prior to the first day of July, one thousand nine
46 hundred eighty-eight, and who serve continuously
47 therefrom.

48 Commencing on the effective date of this section,
49 members shall annually receive seven clock hours of
50 training in areas relating to boardsmanship and
51 governance effectiveness. Such orientation and training
52 shall be approved by the state board and conducted by
53 the West Virginia school board association or other
54 organization or organizations approved by the state
55 board. Failure to attend and complete such an approved
56 course of orientation and training relating to boards-
57 manship and governance effectiveness without good
58 cause as determined by legislative rules of the state
59 board shall constitute neglect of duty.

60 In the final year of any four-year term of office, a
61 member shall satisfy the annual training requirement
62 before the first day of January. The state board shall
63 petition the circuit court of Kanawha County to remove
64 any county board member who has failed to or who
65 refuses to attend and complete the approved course of
66 orientation and training. If the county board member
67 fails to show good cause for not attending the approved
68 course of orientation and training, the court shall

69 remove the member from office.

§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 the thirtieth day of June following the
20 primary election with the duly elected and certified
21 successor taking office on the first day of July following
22 the primary election and serving until the expiration of
23 the original term of office.

24 (3) When the vacancy occurs after the close of
25 candidate filing for the primary election and not later
26 than eighty-four days before the general election, the
27 vacancy shall be filled by election in the general
28 election, and the appointment shall continue until a
29 successor is elected and certified.

**§18-5-4. Meetings; employment and assignment of
teachers; budget hearing; compensation of
members; affiliation with state and national
associations.**

1 The board shall meet on the first Monday of January,
2 except that in the year one thousand nine hundred
3 eighty-two, and every year thereafter, the board shall
4 meet on the first Monday of July, and upon the dates

5 provided by law for the laying of levies, and at such
6 other times as the board may fix upon its records. At
7 any meeting as authorized above and in compliance with
8 the provisions of article four of this chapter, the board
9 may employ such qualified teachers, or those who will
10 qualify by the time of entering upon their duties,
11 necessary to fill existing or anticipated vacancies for the
12 current or next ensuing school year. At a meeting of the
13 board, on or before the first Monday of May, the
14 superintendent shall furnish in writing to the board a
15 list of those teachers to be considered for transfer and
16 subsequent assignment for the next ensuing school year;
17 all other teachers not so listed shall be considered as
18 reassigned to the positions held at the time of this
19 meeting. Such list of those recommended for transfer
20 shall be included in the minute record and the teachers
21 so listed shall be notified in writing, which notice shall
22 be delivered in writing, by certified mail, return receipt
23 requested, to such teachers' last-known addresses within
24 ten days following said board meeting, of their having
25 been so recommended for transfer and subsequent
26 assignment.

27 Special meetings may be called by the president or
28 any three members, but no business shall be transacted
29 other than that designated in the call.

30 In addition, a public hearing shall be held concerning
31 the preliminary operating budget for the next fiscal
32 year not less than ten days after such budget has been
33 made available to the public for inspection and within
34 a reasonable time prior to the submission of said budget
35 to the state board for approval and at such hearing
36 reasonable time shall be granted to any person or
37 persons who wish to speak regarding parts or all of such
38 budget. Notice of such hearing shall be published as a
39 Class I legal advertisement in compliance with the
40 provisions of article three, chapter fifty-nine of this code.

41 A majority of the members shall constitute the
42 quorum necessary for the transaction of official
43 business.

44 Board members may receive compensation at a rate

45 not to exceed eighty dollars per meeting attended. But
46 they shall not receive pay for more than fifty-two
47 meetings in any one fiscal year.

48 Members shall also be paid, upon the presentation of
49 an itemized sworn statement, for all necessary traveling
50 expenses, including all authorized meetings, incurred on
51 official business, at the order of the board.

52 When, by a majority vote of its members, a county
53 board deems it a matter of public interest, such board
54 may join the West Virginia school board association and
55 the national school board association, and may pay such
56 dues as may be prescribed by said associations and
57 approved by action of the respective county boards.
58 Membership dues and actual traveling expenses of
59 board members for attending meetings of the West
60 Virginia school board association may be paid by their
61 respective county boards out of funds available to meet
62 actual expenses of the members, but no allowance shall
63 be made except upon sworn itemized statements.

§18-5-14. Policies to promote school board effectiveness.

1 Prior to the first day of August, one thousand nine
2 hundred ninety-four, each county board in this state
3 shall adopt, and may modify thereafter as necessary,
4 policies that:

5 (a) Establish direct links between the board and its
6 local school improvement councils, and between the
7 board and its faculty senates, for the purpose of enabling
8 the board to receive information, comments and sugges-
9 tions directly from the councils and senates regarding
10 the broad guidelines for oversight procedures, standards
11 of accountability and planning for future needs required
12 by this section; and to further development of these
13 linkages, boards shall meet at least annually with the
14 full membership of each of their schools' local school
15 improvement councils, at a time and in a manner
16 determined by the board. For purposes of this provision,
17 full membership is defined as at least a quorum of the
18 members of each of the school improvement councils.

19 At the conclusion of the school year, each board shall

20 report to the state board details concerning such
21 meeting or meetings held with local school improvement
22 councils, as specified herein, and such information shall
23 become an indicator in the performance accreditation
24 process for each county.

25 Nothing herein shall prohibit boards from meeting
26 with representatives of local school improvement
27 councils: *Provided*, That at least one annual meeting is
28 held, as specified herein.

29 (b) Provide for the development of direct links
30 between the board and the community at large; allow
31 for community involvement at regular board meetings;
32 and specify how the board will regularly communicate
33 with the public regarding important issues;

34 (c) Provide for the periodic review of personnel
35 policies of the district in order to determine their
36 effectiveness;

37 (d) Set broad guidelines for the school district,
38 including the establishment of specific oversight
39 procedures, development and implementation of stand-
40 ards of accountability, and the development of long-
41 range plans to meet future needs required by this
42 section; and

43 (e) Use school-based accreditation and performance
44 data provided by the state board and other available
45 data in board decision making to meet the education
46 goals of the state and such other goals as the board may
47 establish.

ARTICLE 5A. LOCAL SCHOOL INVOLVEMENT.

§18-5A-2. Local school improvement councils; election.

§18-5A-3. Authority and procedures for local school improvement councils
to request waivers of certain rules, policies and interpre-
tations.

§18-5A-6. Establishment of school curriculum teams.

§18-5A-2. Local school improvement councils; election.

1 (a) A local school improvement council shall be
2 established at every school consisting of the following:

3 (1) The principal, who shall serve as an ex officio

4 member of the council and be entitled to vote;

5 (2) Three teachers elected by the faculty senate of the
6 school;

7 (3) Two school service personnel elected by the school
8 service personnel employed at the school;

9 (4) Three parents or legal guardians of students
10 enrolled at the school elected by the parent members of
11 the school's parent teacher organization: *Provided*, That
12 if there is no parent teacher organization, the parent or
13 legal guardian members shall be elected by the parents
14 and legal guardians of students enrolled at the school
15 in such manner as may be determined by the principal;

16 (5) Two at-large members appointed by the principal,
17 one of whom resides in the school's attendance area and
18 one of whom represents business or industry, neither of
19 whom is eligible for membership under any of the other
20 elected classes of members;

21 (6) In the case of vocational-technical schools, the
22 vocational director: *Provided*, That if there is no
23 vocational director, then the principal may appoint no
24 more than two additional representatives, one of whom
25 represents business and one of whom represents indus-
26 try;

27 (7) In the case of a school with students in grade seven
28 or higher, the student body president or other student
29 in grade seven or higher elected by the student body in
30 those grades.

31 (b) The principal shall arrange for such elections to
32 be held prior to the fifteenth day of September of each
33 school year to elect a council and shall give notice of the
34 elections at least one week prior to the elections being
35 held. To the extent practicable, all elections to select
36 council members shall be held within the same week.
37 Parents, teachers, and service personnel elected to the
38 council shall serve a two-year term, and elections shall
39 be arranged in such a manner that no more than two
40 teachers, no more than two parents or legal guardians,
41 and no more than one service person are elected in a
42 given year. All other non-ex-officio members shall serve

43 one-year terms. Council members may only be replaced
44 upon death, resignation, failure to appear at three
45 consecutive meetings of the council for which notice was
46 given, or a change in personal circumstances so that the
47 person is no longer representative of the class of
48 members from which appointed. In the case of replace-
49 ment, an election shall be held to elect another qualified
50 person to serve the unexpired term of the person being
51 replaced.

52 (c) As soon as practicable after the election of council
53 members, and no later than the first day of October of
54 each school year, the principal shall convene an
55 organizational meeting of the school improvement
56 council. The principal shall notify each member in
57 writing at least two employment days in advance of the
58 organizational meeting. At this meeting, the principal
59 shall provide each member with a copy of the current
60 applicable section of this code and any state board rule
61 or regulation promulgated pursuant to the operation of
62 these councils. The council shall elect from its member-
63 ship a chair and two members to assist the chair in
64 setting the agenda for each council meeting. The chair
65 shall serve a term of one year and no person may serve
66 as chair for more than two consecutive terms. If the
67 chair's position becomes vacant for any reason, the
68 principal shall call a meeting of the council to elect
69 another qualified person to serve the unexpired term.

70 (d) Once elected, the chair is responsible for notifying
71 each member of the school improvement council in
72 writing two employment days in advance of any council
73 meeting.

74 School improvement councils shall meet at least once
75 every nine weeks or equivalent grading period at the
76 call of the chair or by three fourths of its members.

77 (e) School improvement councils shall be considered
78 for the receipt of school of excellence awards under
79 section three of this article and competitive grant
80 awards under section twenty-nine, article two of this
81 chapter, and may receive and expend such grants for
82 the purposes provided in such section.

83 In any and all matters which may fall within the
84 scope of both the school improvement councils and the
85 school curriculum teams authorized in section five of
86 this article, the school curriculum teams shall be
87 deemed to have jurisdiction.

88 In order to promote innovations and improvements in
89 the environment for teaching and learning at the school,
90 a school improvement council shall receive cooperation
91 from the school in implementing policies and programs
92 it may adopt to:

93 (1) Encourage the involvement of parents in their
94 child's educational process and in the school;

95 (2) Encourage businesses to provide time for their
96 employees who are parents to meet with teachers
97 concerning their child's education;

98 (3) Encourage advice and suggestions from the
99 business community;

100 (4) Encourage school volunteer programs and mentor-
101 ship programs; and

102 (5) Foster utilization of the school facilities and
103 grounds for public community activities.

**§18-5A-3. Authority and procedures for local school
improvement councils to request waivers of
certain rules, policies and interpretations.**

1 The intent of this section is to establish a mechanism
2 which allows local school level initiatives to be designed
3 and implemented to meet local school needs and
4 circumstances. In accordance with this intent, a local
5 school improvement council established under the
6 provisions of this article may propose alternatives to the
7 operation of the public school which alternatives will
8 meet or exceed the high quality standards established
9 by the state board and will increase administrative
10 efficiency, enhance the delivery of instructional pro-
11 grams, promote community involvement in the local
12 school system or improve the educational performance
13 of the school generally. The proposal of the council shall
14 set forth the objective or objectives to be accomplished

15 under the proposal, how the accomplishment of such
16 objective or objectives will meet or exceed the standards
17 established by the state board, the indicators upon
18 which the meeting of such standards should be judged
19 and a projection of any funds to be saved by the proposal
20 and how such funds will be reallocated within the
21 school. The alternatives proposed by the council may
22 include matters which require the waiver of policies or
23 rules promulgated by the state or county board and state
24 superintendent interpretations: *Provided*, That such
25 request for waiver be submitted to the appropriate
26 board adopting said rule or policy and that board may
27 approve the waiver. When a county board does not act
28 within two months after receiving a request for waiver
29 of a county board policy or rule or disapproves such a
30 request, the local school improvement council may seek
31 an advisory opinion from the state board regarding the
32 waiver request. The county board shall furnish the state
33 board with copies of all waiver requests together with
34 their response thereto: *Provided, however*, That when a
35 local school improvement council votes to waive a state
36 superintendent's interpretation, the state superintendent
37 need only be notified that the local council intends to
38 waive the state superintendent's interpretation: *Pro-*
39 *vided further*, That notwithstanding any other provisions
40 of the law to the contrary, council is not prohibited from
41 permitting off-site classrooms to be developed in
42 conjunction with local businesses if those sites have met
43 the requirements established by the local board and if
44 sites are located off campus. For an alternative to be
45 proposed, at least two thirds of the members must vote
46 in favor thereof: *And provided further*, That if the
47 alternative to be proposed relates to a waiver of policies
48 or rules promulgated by the state or county board and
49 state superintendent interpretations affecting em-
50 ployees, then prior to the proposal of the alternative, a
51 majority of the local affected employee group involved
52 must agree.

53 A council may also submit a written statement, with
54 supporting reasons, to the legislative oversight commis-
55 sion on education accountability recommending a
56 waiver of a statute or legislative rule, which the

57 commission shall review and determine whether a
58 recommendation should be made to the Legislature to
59 waive such statute or rule.

60 When a council decides to propose an alternative, it
61 shall forward a copy of the proposal to the state board
62 and the affected local board. The state board shall
63 acknowledge receipt of the proposed alternative,
64 promptly review the proposed alternative in consulta-
65 tion with the county board or their agents and, in its
66 discretion, approve implementation of the alternative or
67 reply to the council within a reasonable time as to its
68 reasons for not approving the proposed alternative. If
69 the state board approves a proposed alternative, the
70 state board shall provide appropriate notice to the local
71 school improvement council and the county board and
72 shall establish a process for evaluation of the operation
73 of the alternative. Approval for the operation of the
74 alternative may be continued or revoked at any time
75 based on the results and findings of the evaluation.

76 The state board shall submit a report to the legislative
77 oversight commission on education accountability and
78 the governor on the first day of September of each year
79 summarizing the proposed alternatives received, ap-
80 proved or rejected, continued or revoked during the
81 preceding school year and the results and findings of the
82 evaluations. The report shall specifically identify all
83 policy, rule, and interpretation waiver requests includ-
84 ing those requests made to county boards by local school
85 improvement councils received during the preceding
86 year and the disposition of each.

§18-5A-6. Establishment of school curriculum teams.

1 There shall be established at each school in the state
2 a school curriculum team composed of the school
3 principal, the counselor designated to serve that school
4 and no fewer than three teachers representative of the
5 grades taught at the school and chosen by the faculty
6 senate.

7 The school curriculum team shall establish the
8 programs and methods for implementing a curriculum
9 based on state-approved instructional goals and objec-

10 tives based on the needs of the individual school with
11 a focus on reading, composition, mathematics, science
12 and technology. The curriculum thus established shall
13 be submitted to the county board for approval or for
14 return to the school for reconsideration.

15 The school curriculum team may apply through the
16 school's local school improvement council for a waiver
17 from the textbook adoption process established in article
18 two-a of this chapter if, in the judgment of the team,
19 materials necessary for the implementation of such
20 curriculum are not available through the normal
21 adoption process.

22 The school team may apply for a grant from the state
23 board for the development or implementation, or both,
24 of remedial and accelerated programs to meet the needs
25 of the students at the individual school.

ARTICLE 9. SCHOOL FINANCES.

§18-9-3a. Preparation, publication and disposition of financial statements by county boards of education.

1 The county board of every county, within sixty days
2 after the beginning of each fiscal year, shall prepare on
3 a form to be prescribed by the state tax commissioner
4 and the state superintendent of free schools, and cause
5 to be published a statement revealing (a) the receipts
6 and expenditures of the board during the previous fiscal
7 year arranged under descriptive headings, (b) the name
8 of each firm, corporation, and person who received more
9 than fifty dollars in the aggregate from all funds during
10 the previous fiscal year, together with the aggregate
11 amount received from all funds and the purpose for
12 which paid: *Provided*, That such statement shall not
13 include the name of any person who has entered into a
14 contract with this board pursuant to the provisions of
15 sections two, three, four and five, article two, chapter
16 eighteen-a of this code, and (c) all debts of the board,
17 the purpose for which each debt was contracted, its due
18 date, and to what date the interest thereon has been
19 paid. Such statement shall be published as a Class I-0
20 legal advertisement in compliance with the provisions of

21 article three, chapter fifty-nine of this code, and the
 22 publication area for such publication shall be the county.
 23 The county board shall pay the cost of publishing such
 24 statement from the maintenance fund of the board.

25 As soon as is practicable following the close of the
 26 fiscal year, a copy of the published statement herein
 27 required shall be filed by the county board with the
 28 state tax commissioner and with the state superintend-
 29 ent of free schools.

30 The county board shall transmit to any resident of the
 31 county requesting the same a copy of the published
 32 statement for the fiscal year designated, supplemented
 33 by a list of the names of all school personnel employed
 34 by the board during such fiscal year showing the
 35 amount paid to each, and a list of the names of each
 36 firm, corporation, and person who received less than
 37 fifty dollars from any fund during such fiscal year
 38 showing the amount paid to each and the purpose for
 39 which paid.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFIT.

§18A-4-2. State minimum salaries for teachers.

§18A-4-14. Duty-free lunch and daily planning period for certain employees.

§18A-4-2. State minimum salaries for teachers.

1 Effective the first day of July, one thousand nine
 2 hundred ninety-two and thereafter, each teacher shall
 3 receive the amount prescribed in the "state minimum
 4 salary schedule I" as set forth in this section, specific
 5 additional amounts prescribed in this section or article,
 6 and any county supplement in effect in a county
 7 pursuant to section five-a of this article during the
 8 contract year.

1 STATE MINIMUM SALARY SCHEDULE I

2	(1)	(2)	(3)	(4)	(5)	(6)	(7)
3	Years	4th	3rd	2nd		A.B.	
4	Exp.	Class	Class	Class	A.B.	+15	M.A.
5	0	16,816	17,453	17,708	18,918	19,653	21,361
6	1	17,032	17,669	17,924	19,318	20,053	21,761

7	2	17,248	17,886	18,141	19,718	20,453	22,161
8	3	17,465	18,102	18,357	20,118	20,853	22,561
9	4	17,917	18,554	18,810	20,754	21,489	23,197
10	5	18,133	18,771	19,026	21,154	21,889	23,597
11	6	18,350	18,987	19,242	21,554	22,289	23,997
12	7		19,203	19,459	21,954	22,689	24,397
13	8		19,420	19,675	22,354	23,089	24,797
14	9			19,891	22,754	23,489	25,197
15	10			20,107	23,155	23,890	25,598
16	11				23,555	24,290	25,998
17	12				23,955	24,690	26,398
18	13				24,355	25,090	26,798
19	14						27,198
20	15						27,598
21	16						27,998
22	17						
23	18						
24	19						

		(8)	(9)	(10)
	Years	M.A.	M.A.	Doc-
	Exp.	+15	+30	torate
25				
26				
27				
28	0	22,096	22,831	23,831
29	1	22,496	23,231	24,231
30	2	22,896	23,631	24,631
31	3	23,296	24,031	25,031
32	4	23,932	24,667	25,667
33	5	24,332	25,067	26,067
34	6	24,732	25,467	26,467
35	7	25,132	25,867	26,867
36	8	25,532	26,267	27,267
37	9	25,932	26,667	27,667
38	10	26,333	27,068	28,068
39	11	26,733	27,468	28,468
40	12	27,133	27,868	28,868
41	13	27,533	28,268	29,268
42	14	27,933	28,668	29,668
43	15	28,333	29,068	30,068
44	16	28,733	29,468	30,468
45	17		29,868	30,868
46	18		30,268	31,268
47	19		30,668	31,668

48 Six hundred dollars shall be paid annually to each
 49 classroom teacher who has at least twenty years of
 50 teaching experience. Such payments shall be in addition
 51 to any amounts prescribed in the "state minimum salary
 52 schedule I", shall be paid in equal monthly installments,
 53 and shall be deemed a part of the state minimum
 54 salaries for teachers.

55 Effective the first day of July, one thousand nine
 56 hundred ninety-four and thereafter, each teacher shall
 57 receive the amount prescribed in the "state minimum
 58 salary schedule II" as set forth in this section, specific
 59 additional amounts prescribed in this section or article,
 60 and any county supplement in effect in a county
 61 pursuant to section five-a of this article during the
 62 contract year.

1 STATE MINIMUM SALARY SCHEDULE II

2	(1)	(2)	(3)	(4)	(5)	(6)	(7)
3	Years	4th	3rd	2nd	A.B.	A.B.	
4	Exp.	Class	Class	Class	A.B.	+15	M.A.
5	0	16,816	17,453	17,708	18,918	19,653	21,361
6	1	17,032	17,669	17,924	19,318	20,053	21,761
7	2	17,248	17,886	18,141	19,718	20,453	22,161
8	3	17,465	18,102	18,357	20,118	20,853	22,561
9	4	17,917	18,554	18,810	20,754	21,489	23,197
10	5	18,133	18,771	19,026	21,154	21,889	23,597
11	6	18,350	18,987	19,242	21,554	22,289	23,997
12	7		19,203	19,459	21,954	22,689	24,397
13	8		19,420	19,675	22,354	23,089	24,797
14	9			19,891	22,754	23,489	25,197
15	10			20,107	23,155	23,890	25,598
16	11				23,555	24,290	25,998
17	12				23,955	24,690	26,398
18	13				24,355	25,090	26,798
19	14						27,198
20	15						27,598
21	16						27,998
22	17						
23	18						
24	19						

		(8)	(9)	(10)	(11)
	Years	M.A.	M.A.	M.A.	Doc-
	Exp.	+15	+30	+45	torate
28	0	22,096	22,831	23,566	24,566
29	1	22,496	23,231	23,966	24,966
30	2	22,896	23,631	24,366	25,366
31	3	23,296	24,031	24,766	25,766
32	4	23,932	24,667	25,402	26,402
33	5	24,332	25,067	25,802	26,802
34	6	24,732	25,467	26,202	27,202
35	7	25,132	25,867	26,602	27,602
36	8	25,532	26,267	27,002	28,002
37	9	25,932	26,667	27,402	28,402
38	10	26,333	27,068	27,803	28,803
39	11	26,733	27,468	28,203	29,203
40	12	27,133	27,868	28,603	29,603
41	13	27,533	28,268	29,003	30,003
42	14	27,933	28,668	29,403	30,403
43	15	28,333	29,068	29,803	30,803
44	16	28,733	29,468	30,203	31,203
45	17		29,868	30,603	31,603
46	18		30,268	31,003	32,003
47	19		30,668	31,403	32,403

48 Six hundred dollars shall be paid annually to each
 49 classroom teacher who has at least twenty years of
 50 teaching experience. Such payments shall be in addition
 51 to any amounts prescribed in the "state minimum salary
 52 schedule II", shall be paid in equal monthly install-
 53 ments, and shall be deemed a part of the state minimum
 54 salaries for teachers.

**§18A-4-14. Duty-free lunch and daily planning period
 for certain employees.**

1 (1) Notwithstanding the provisions of section seven,
 2 article two of this chapter, every teacher who is
 3 employed for a period of time more than one-half the
 4 class periods of the regular school day and every service
 5 personnel whose employment is for a period of more
 6 than three and one-half hours per day and whose pay
 7 is at least the amount indicated in the "state minimum
 8 pay scale" as set forth in section eight-a of this article

9 shall be provided a daily lunch recess of not less than
10 thirty consecutive minutes, and such employee shall not
11 be assigned any responsibilities during this recess. Such
12 recess shall be included in the number of hours worked,
13 and no county shall increase the number of hours to be
14 worked by an employee as a result of such employee
15 being granted a recess under the provisions of this
16 section.

17 (2) Every teacher who is regularly employed for a
18 period of time more than one-half the class periods of
19 the regular school day shall be provided at least one
20 planning period within each school instructional day to
21 be used to complete necessary preparations for the
22 instruction of pupils. Such planning period shall be the
23 length of the usual class period in the school to which
24 such teacher is assigned, and shall be not less than thirty
25 minutes. No teacher shall be assigned any responsibil-
26 ities during this period, and no county shall increase the
27 number of hours to be worked by a teacher as a result
28 of such teacher being granted a planning period
29 subsequent to the adoption of this section (March 13,
30 1982).

31 Principals, and assistant principals, where applicable,
32 shall cooperate in carrying out the provisions of this
33 subsection, including, but not limited to, assuming
34 control of the class period or supervision of students
35 during the time the teacher is engaged in the planning
36 period. Substitute teachers may also be utilized to assist
37 with classroom responsibilities under this subsection:
38 *Provided*, That any substitute teacher who is employed
39 to teach a minimum of two consecutive days in the same
40 position shall be granted a planning period pursuant to
41 this section.

42 (3) Nothing in this section shall be construed to
43 prevent any teacher from exchanging his lunch recess
44 or a planning period or any service personnel from
45 exchanging his lunch recess for any compensation or
46 benefit mutually agreed upon by the employee and the
47 county superintendent of schools or his agent: *Provided*,
48 That a teacher and the superintendent or his agent may
49 not agree to terms which are different from those

50 available to any other teacher granted rights under this
51 section within the individual school or to terms which
52 in any way discriminate among such teachers within the
53 individual school, and that service personnel granted
54 rights under this section and the superintendent or his
55 agent may not agree to terms which are different from
56 those available to any other service personnel within the
57 same classification category granted rights under this
58 section within the individual school or to terms which
59 in any way discriminate among such service personnel
60 within the same classification category within the
61 individual school.

CHAPTER 44

(Com. Sub. for H. B. 2224—By Delegates Proudfoot and Lindsey)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article five, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to whom public schools are open; and requiring county board approval prior to public school enrollment by student suspended or expelled from public or private school.

Be it enacted by the Legislature of West Virginia:

That section fifteen, 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.

§18-5-15. School term; exception; levies; ages of persons to whom schools are open.

1 (a) The board shall provide a school term for its
2 schools which shall be comprised of (1) an employment
3 term for teachers and (2) an instructional term for
4 pupils. Nothing in this section shall prohibit the
5 establishment of year-round schools in accordance with
6 rules to be established by the state board.

7 The employment term for teachers shall be no less
8 than ten months, a month to be defined as twenty
9 employment days exclusive of Saturdays and Sundays:
10 *Provided*, That the board may contract with all or part
11 of the personnel for a longer term. The employment
12 term shall be fixed within such beginning and closing
13 dates as established by the state board: *Provided*,
14 *however*, That the time between the beginning and
15 closing dates does not exceed forty-three weeks.

16 Within the employment term there shall be an
17 instructional term for pupils of not less than one
18 hundred eighty nor more than one hundred eighty-five
19 instructional days: *Provided*, That the minimum instruc-
20 tional term may be decreased, by order of the state
21 superintendent of schools, in any West Virginia county
22 declared to be a federal disaster area by the federal
23 emergency management agency. Instructional and
24 noninstructional activities may be scheduled during the
25 same employment day. Noninstructional interruptions
26 to the instructional day shall be minimized to allow the
27 classroom teacher to teach. The instructional term shall
28 commence no earlier than the first day of September
29 and shall terminate no later than the eighth day of June.

30 Noninstructional days in the employment term may
31 be used for making up canceled instructional days,
32 curriculum development, preparation for opening and
33 closing of the instructional term, in-service and profes-
34 sional training of teachers, teacher-pupil-parent confer-
35 ences, professional meetings and other related activities.
36 In addition, each board shall designate and schedule for
37 teachers and service personnel six days to be used by
38 the employee outside the school environment. However,
39 no more than eight noninstructional days, except
40 holidays, may be scheduled prior to the first day of
41 January in a school term.

42 Notwithstanding any other provisions of the law to the
43 contrary, if the board has canceled instructional days
44 equal to the difference between the total instructional
45 days scheduled and one hundred seventy-eight, each
46 succeeding instructional day canceled shall be resched-
47 uled, utilizing only the remaining noninstructional

48 days, except holidays, following such cancellation, which
49 are available prior to the second day before the end of
50 the employment term established by such county board.

51 Where the employment term overlaps a teacher's or
52 service personnel's participation in a summer institute
53 or institution of higher education for the purpose of
54 advancement or professional growth, the teacher or
55 service personnel may substitute, with the approval of
56 the county superintendent, such participation for not
57 more than five of the noninstructional days of the
58 employment term.

59 The board may extend the instructional term beyond
60 one hundred eighty-five instructional days provided the
61 employment term is extended an equal number of days.
62 If the state revenues and regular levies, as provided by
63 law, are insufficient to enable the board of education to
64 provide for the school term, the board may at any
65 general or special election, if petitioned by at least five
66 percent of the qualified voters in the district, submit the
67 question of additional levies to the voters. If at the
68 election a majority of the qualified voters cast their
69 ballots in favor of the additional levy, the board shall
70 fix the term and lay a levy necessary to pay the cost of
71 the additional term. The additional levy fixed by the
72 election shall not continue longer than five years without
73 submission to the voters. The additional rate shall not
74 exceed by more than one hundred percent the maximum
75 school rate prescribed by article eight, chapter eleven
76 of the code, as amended.

77 (b) The Legislature finds and declares that excess
78 levies as they currently exist create unequal educational
79 opportunities from county to county based on the
80 difference in the will of the voters and also based on the
81 differences in property wealth among the counties; that
82 prior to the first day of July, one thousand nine hundred
83 ninety-four, the Legislature shall proceed to equalize
84 educational opportunities over and above the opportuni-
85 ties afforded by each county's property values by
86 considering the existence or nonexistence of excess
87 levies as a factor in the distribution of equity moneys;
88 and that on and after the first day of July, one thousand

89 nine hundred ninety-four, the Legislature shall imple-
90 ment a plan for the equitable distribution of funds so
91 as to eliminate the inequities resulting from county
92 excess levies.

93 (c) The public schools shall be open for the full
94 instructional term to all persons who have attained the
95 entrance age as stated in section five, article two and
96 section eighteen, article five, chapter eighteen of this
97 code: *Provided*, That any student suspended or expelled
98 from public or private school shall only be permitted to
99 enroll in public school upon the approval of the
100 superintendent of the county where the student seeks
101 enrollment: *Provided, however*, That in making such
102 decision, the principal of the school in which the student
103 may enroll shall be consulted by the superintendent and
104 the principal may make a recommendation to the
105 superintendent concerning the student's enrollment in
106 his or her new school: *Provided further*, That if enroll-
107 ment to public school is denied by the superintendent,
108 the student may petition the board of education where
109 the student seeks enrollment.

110 Persons over the age of twenty-one may enter only
111 those programs or classes authorized by the state board
112 of education and deemed appropriate by the county
113 board of education conducting any such program or
114 class: *Provided*, That authorization for such programs or
115 classes shall in no way serve to affect or eliminate
116 programs or classes offered by county boards of
117 education at the adult level for which fees are charged
118 to support such programs or classes.

CHAPTER 45

(Com. Sub. for H. B. 2124—By Delegate Browning)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-five-b, article seven-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended,

relating to state teachers retirement system; and allowing members who have taken advantage of early retirement incentive program to teach up to twelve semester hours at free-standing community colleges if board of directors determines that such employment is in accordance with adjunct faculty policy.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-35b. Temporary early retirement incentives program; legislative declaration and finding of compelling state interest and public purpose; specifying eligible and ineligible members for incentives program; options, conditions and exceptions; certain positions abolished; special rule of eighty; effective, termination and notice dates.

1 The Legislature hereby finds and declares that a
2 compelling state interest exists in providing a tempor-
3 ary, early retirement incentives program for encourag-
4 ing the early, voluntary retirement of those public
5 employees who were current, active, contributing
6 members of this retirement system on the first day of
7 April, one thousand nine hundred eighty-eight, in the
8 reduction of the number of such employees and in
9 reduction of governmental costs therefor; that such
10 program constitutes a public purpose; and that the
11 special classifications and differentiations provided in
12 respect of such program are reasonable and equitable
13 ones for the accomplishment of such purpose and
14 program as enacted in Enrolled Committee Substitute
15 for H. B. No. 4672, regular session, one thousand nine
16 hundred eighty-eight, and as clarified and supple-
17 mented herein, retroactive to such beginning date,
18 aforesaid. The Legislature further finds that maintain-
19 ing an actuarially sound retirement fund is essential and

20 that the reemployment in any manner, including
21 reemployment on a contract basis, by the state of any
22 person who retires under this section is contrary to the
23 intent of the early retirement program and severely
24 threatens the fiscal integrity of the retirement fund.

25 (a) For the purposes of this section: (1) "Contract"
26 means any personal service agreement, not involving the
27 sale of commodities, that cannot be performed within
28 sixty days or for which the total compensation exceeds
29 two thousand five hundred dollars in any twelve-month
30 period. The term "contract" does not include any
31 agreement obtained by a retirant through a bidding
32 process and which is for the furnishing of any commod-
33 ity to a government agency; (2) "governmental entity"
34 means the state of West Virginia; a constitutional
35 branch or office of the state government, or any
36 subdivision thereof; a county, city or town in the state;
37 a county board of education; a separate corporation or
38 instrumentality established pursuant to a state statute;
39 any other entity currently permitted to participate in
40 any state public retirement system or the public
41 employees insurance agency; or any officer or official of
42 any entity listed above who is acting in his or her official
43 capacity; (3) "substitute teacher" means a teacher,
44 public school librarian, registered professional nurse
45 employed by the county board of education or any other
46 person employed for counselling or instructional pur-
47 poses in a public school in this state who is temporarily
48 fulfilling the duties of an existing real person employed
49 in a specific position who is temporarily absent from
50 that specific position; (4) "part-time elected or appointed
51 office" means any elected or appointed office that
52 compensates its members in an amount less than two
53 thousand five hundred dollars or requires less than sixty
54 days of service in any twelve-month period.

55 (b) Beginning on the first day of April, one thousand
56 nine hundred eighty-eight, and continuing through the
57 thirty-first day of December, one thousand nine hundred
58 eighty-eight (or as extended by contract or by eligibility
59 qualification requirement, as hereinafter specified),
60 eligible members, being those active, contributing

61 members actually and currently employed on such
62 beginning date, retiring pursuant to this section (except
63 disability retirees, but including those so employed on
64 said beginning date and leaving the system during the
65 incentive period and who are eligible for deferred
66 benefits), may elect to participate in this incentive
67 program and may elect any one of the three following
68 incentive options:

69 (1) Retirement incentive option one:

70 For the purpose of computing the member's annuity,
71 the normal final average salary shall be computed and
72 one eighth thereof shall be added thereto in arriving at
73 the true final average salary for use in actual compu-
74 tation of retirement benefit.

75 (2) Retirement incentive option two:

76 A member may elect a lump sum payment, in
77 addition to his regular retirement annuity, equal to ten
78 percent of his final average salary not to exceed five
79 thousand dollars, and in the case of a deferred retire-
80 ment electing this option, such lump sum payment shall
81 be receivable and deferred to the time of receipt of such
82 deferred retirement annuity.

83 (3) Retirement incentive option three:

84 A person shall be credited with an additional two
85 years of contributing service and an additional two
86 years of age. The years credited under this option shall
87 in no way add to a member's final average salary factor
88 of computation.

89 (c) Eligible, active, contributing members, aforesaid,
90 employed under agreement and rendering services
91 during school year one thousand nine hundred eighty-
92 eight—eighty-nine shall, if retiring pursuant to the
93 provisions of this section and the early retirement
94 incentive program set forth herein, make application for
95 retirement, including choice of their respective option,
96 and give notice to their respective county boards of
97 education by the thirty-first day of December, one
98 thousand nine hundred eighty-eight, but shall be
99 permitted to postpone actual retirement until imme-

100 diately after the close of such agreement period and said
101 school year; with proper credit to be granted for such
102 extended period.

103 Also, eligible, active, contributing members em-
104 ployed, not under agreement, who desire to retire under
105 this section but who are unable to retire by the thirty-
106 first day of December, one thousand nine hundred
107 eighty-eight, because an element of eligibility for
108 retirement, such as age or other element, will not be met
109 until a date after the thirty-first day of December, one
110 thousand nine hundred eighty-eight, and before the first
111 day of July, one thousand nine hundred eighty-nine,
112 shall be permitted to postpone actual retirement until
113 the date of fulfilling such element of eligibility and shall
114 retire on such date, before the temporary retirement
115 incentive program ends on the thirtieth day of June, one
116 thousand nine hundred eighty-nine; with proper credit
117 to be granted for such extended period: *Provided*, That
118 members eligible under the preceding paragraph and
119 this paragraph shall have made application for retire-
120 ment, including choice of their respective option, and
121 given notice to their respective employer by the thirty-
122 first day of December, one thousand nine hundred
123 eighty-eight, although postponing actual retirement, as
124 aforesaid: *Provided, however*, That an application for
125 retirement under the provisions of the preceding
126 paragraph and this paragraph shall be binding upon a
127 member unless the member provides the retirement
128 system and the local board of education or other
129 educational agency with written notification of his or
130 her decision not to retire by the first day of April, one
131 thousand nine hundred eighty-nine: *Provided further*,
132 That an eligible member under this paragraph or the
133 preceding paragraph who has a grievance or court
134 proceeding which is pending on the passage date of this
135 bill, shall be required to give final notice of decision not
136 to retire by the thirtieth day of June, one thousand nine
137 hundred eighty-nine: *And provided further*, That the
138 state teachers retirement board on or before the twenty-
139 fourth day of March, one thousand nine hundred eighty-
140 nine, shall provide calculations of anticipated retirement
141 benefits to those members who intend to retire pursuant

142 to the provisions of this section.

143 Eligible members, other than those covered under the
144 provisions of the two preceding paragraphs, desiring to
145 retire under this incentive program shall make their
146 option election prior to and take their respective
147 retirement by the close of the thirty-first day of
148 December, one thousand nine hundred eighty-eight.

149 Any eligible member who retires hereunder during
150 the school year (after the first day of July, one thousand
151 nine hundred eighty-eight, and on any date prior to the
152 thirtieth day of June, one thousand nine hundred eighty-
153 nine) shall have included such months of such school
154 year and the salary in respect thereof, if ones of higher
155 salary, in place of and for any like number of months
156 in his or her five-year period for computation of
157 annuities as provided for in section twenty-six of this
158 article.

159 (d) Any member participating in this retirement
160 incentive program is not eligible to accept further
161 employment or accept, directly or indirectly, work on a
162 contract basis from a governmental entity: *Provided*,
163 That nothing in this section shall effect any contract
164 entered into prior to the effective date of this section:
165 *Provided, however*, That the executive director may
166 approve, upon written request for good cause shown, an
167 exception allowing a retirant to perform work on a
168 contract basis: *Provided further*, That a person may
169 retire under this section and thereafter serve in an
170 elective office: *And provided further*, That he or she shall
171 not receive an incentive option under this section during
172 the term of service in said office, but shall receive his
173 or her annuity calculated on regular basis, as if
174 originally taken not under this section but on such
175 regular basis. At the end of such term and cessation of
176 service in such office, such incentive option shall
177 resume. In respect of an appointive office, as distin-
178 guished from an elective office, any person retiring
179 under this section and thereafter serving in such
180 appointive office shall not receive an incentive option
181 under this section during the term of service in said
182 office, but the same shall be suspended during such

183 period: *And provided further*, That at the end of such
184 term and cessation of service in such appointive office
185 the incentive option provided for under this section shall
186 be resumed: *And provided further*, That any person
187 elected or appointed to office by the state or any of its
188 political subdivisions who waives whatever salary, wage
189 or per diem compensation he or she may be entitled to
190 by virtue of service in such office and who does not
191 receive any income therefrom except such reimburse-
192 ment of out-of-pocket costs and expenses as may be
193 permitted by the statutes governing such office shall
194 continue to receive an incentive option under this
195 section. Such service shall not be counted as contributed
196 or credited service for purposes of computing retirement
197 benefits.

198 If such elected or appointed office is a part-time
199 elected or appointed office, a person electing retirement
200 under this section may serve in such elective or
201 appointive office with no loss of the benefits provided
202 under this section.

203 Prior to the initiation or renewal of any contract
204 entered into pursuant to this section or the acceptance
205 of any elective or appointive office, a person who has
206 elected to retire under the early retirement provisions
207 of this article shall complete a disclosure and waiver
208 statement executed under oath and acknowledged by a
209 notary public. The board shall promulgate rules,
210 pursuant to chapter twenty-nine-a of this code, regard-
211 ing the form and contents of the waiver and disclosure
212 statement. The disclosure and waiver statement shall be
213 forwarded to the appropriate state public retirement
214 system administrator who shall take action to ensure
215 that the early retirement incentive option benefit is
216 reduced in accordance with the provisions of this
217 section. The administrator shall then certify such action
218 in writing to the appropriate governmental entity.

219 In any event, an eligible member may retire under
220 this section and thereafter continue to receive his
221 incentive annuity and be employed as a substitute
222 teacher, as adjunct faculty, as a school service personnel
223 substitute, or as a part-time member of the faculty of

224 Southern West Virginia Community College or West
225 Virginia Northern Community College: *Provided*, That
226 the board of directors determines that the part-time
227 employment is in accordance with policies to be adopted
228 by the board regarding adjunct faculty. For purposes of
229 this section, a "part-time member of the faculty" means
230 an individual employed solely to provide instruction for
231 not more than twelve college credits per semester.

232 Any such incentive retirants, under this section, may
233 not thereafter receive such annuity and enter or reenter
234 any governmental retirement system established or
235 authorized to be established by the state, notwithstand-
236 ing any provision of the code to the contrary, unless
237 required by constitutional provision.

238 The additional annuity allowed for temporary early
239 retirement under these options is intended to be paid
240 from the retirement incentive account hereby created as
241 a special account in the state treasury and from the
242 funds therein established with moneys required to be
243 applied or transferred by heads of spending units from
244 the unused portion of salary and fringe benefits in their
245 budgets accruing in respect to such positions vacated
246 and subsequently canceled under this temporary early
247 retirement program. Salary and fringe benefit moneys
248 actually saved in a particular fiscal year shall constitute
249 the fund source. No such additional annuity shall be
250 disallowed even though initial receipts may not be
251 sufficient, with funds of the system to be applied for
252 such purpose, as for the base annuity.

253 (e) The executive secretary of the retirement system
254 shall provide forms for applicants. Such forms shall
255 include a detailed description of the incentive plan
256 options.

257 The executive secretary of the retirement system shall
258 file a report to the Legislature no later than the fifteenth
259 day of February, one thousand nine hundred eighty-
260 nine, and quarterly thereafter, detailing the number of
261 retirees who have elected to accept early retirement
262 incentive options, the dollar cost to date by option
263 selected, and the projected annual cost through the year

264 two thousand.

265 (f) Within every spending unit, department, board,
266 corporation, commission, or any other agency or entity
267 wherein two or multiples of two members elect to retire
268 either under the temporary early retirement incentives
269 set forth above, or under regular, voluntary retirement,
270 and countable on an agency-wide or entity-wide basis,
271 no more than one of such vacated positions may be filled,
272 with the second position being abolished upon the
273 effective day of the member's retirement: *Provided,*
274 That county boards of education in replacing employees
275 leaving under this temporary early retirement incentive
276 program shall be eligible to replace in that number as
277 authorized by the basic school aid formula and pursuant
278 to those guidelines in respect of number of positions lost
279 or projected to be lost due to declining enrollment,
280 changes in statutes, changes in state appropriations and
281 the other guidelines set forth and contained within said
282 basic school aid formula. The vacant position abolish-
283 ment requirement shall not apply to elective positions
284 or appointed public officers whose positions are estab-
285 lished by state constitutional or statutory provision. The
286 retirant's employing entity shall decide as to which of
287 the vacated positions made available through special
288 early retirement or through regular, voluntary retire-
289 ment are to be abolished and the head of such spending
290 unit shall immediately notify the state auditor, the
291 legislative auditor, and the commissioner of the depart-
292 ment of finance and administration of the decisions and
293 shall then apply and/or transfer, as aforesaid, the
294 remaining salary and fringe benefit appropriations:
295 *Provided, however,* That this vacant position abolishment
296 provision shall not apply to any county position, other
297 than those under the authority of county boards of
298 education, nor to any position or positions, whether
299 designated by spending unit, department, agency,
300 commission, entity or otherwise, which the governor
301 may exempt or amend under such abolishment provision
302 upon his recommendation that such exemption or
303 amendment is necessary to preserve the health, welfare
304 or safety of the people of West Virginia, and with the
305 prior concurrence of the joint committee on government

306 and finance in such recommendation, after the chairmen
307 thereof shall cause such committee to meet.

308 (g) *Special rule of eighty.* — Any active, contributing
309 member of the retirement system as of the first day of
310 April, one thousand nine hundred eighty-eight, who
311 selects one of the incentive options in this section, may
312 retire under the special early retirement provisions with
313 full pension rights, without reduction of benefits if the
314 sum of such member's age plus years of contributing
315 service equals or exceeds eighty: *Provided*, That such
316 person has at least twenty years of contributing service,
317 up to two years of which may be military service, or
318 prior service, or already paid and credited out-of-state
319 service (if so paid and credited by the first day of April,
320 one thousand nine hundred eighty-eight) or any combi-
321 nation thereof not exceeding an aggregate of two years.

322 (h) *Termination of temporary retirement incentives*
323 *program.* — The right to elect, choose, select or use any
324 of the options, special rule of eighty, or other benefits
325 set forth in this section shall terminate on the thirtieth
326 day of June, one thousand nine hundred eighty-nine.

CHAPTER 46

(Com. Sub. for H. B. 2482—By Mr. Speaker, Mr. Chambers, and
Delegates Mezzatesta, D. Miller, Bennett, Collins, Fealy and L. White)

[Passed April 10, 1993; in effect ninety days 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 ten-i, relating to providing supported employment services to persons with disabilities through the West Virginia division of rehabilitation services; setting forth findings; defining terms; establishing a model supported employment program; specifying services which may be provided under the program; setting forth eligibility criteria; setting forth the eligibility requirements and primary focus of the program; and providing

for the administration and implementation of the 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 ten-i, to read as follows:

ARTICLE 10I. WEST VIRGINIA SUPPORTED EMPLOYMENT PROGRAM.

§18-10I-1. Findings.

§18-10I-2. Definitions.

§18-10I-3. Supported employment program.

§18-10I-4. Eligibility; primary focus.

§18-10I-1. Findings.

1 (a) The West Virginia Legislature acknowledges that
2 persons with severe disabilities can be productive,
3 contributing members of the community, and that
4 supported employment is a way of accomplishing the
5 goal of employment for many persons with severe
6 disabilities.

7 (b) If persons with disabilities are afforded opportu-
8 nities to work in socially valued jobs with dignity,
9 opportunities for advancement, and fair pay and
10 compensation, then West Virginians with disabilities
11 will lead more independent and productive lives, pay
12 taxes, and decrease their need for public assistance.
13 Studies have shown that supported employment is cost
14 effective, and it is in the interest of the Legislature and
15 the citizens of West Virginia to experiment within
16 limited resources, through a model program of sup-
17 ported employment for persons with severe disabilities.

§18-10I-2. Definitions.

1 (a) "Competitive work" means work performed weekly
2 on a part-time or full-time basis, as determined in each
3 individualized written rehabilitation program, and for
4 which compensation is consistent with the wage stand-
5 ards provided for in the Fair Labor Standards Act.

6 (b) "Division of rehabilitation services" means the

7 state agency created by section one, article ten-a,
8 chapter eighteen of this code.

9 (c) "Integrated work setting" means job sites where
10 one or more nonhandicapped or nondisabled individuals
11 interact with one or more handicapped or disabled
12 employees on a regular basis in the performance of their
13 respective job duties.

14 (d) "Supported employment" means competitive work
15 in an integrated work setting with on-going support
16 services for persons with a severe disability for whom
17 competitive employment has not traditionally occurred
18 or has been interrupted or intermittent as a result of
19 severe handicaps.

20 (e) "Person with a severe disability" means an
21 individual who has a severe physical or mental impair-
22 ment which seriously limits one or more functional
23 capacities (such as mobility, work tolerance, self-care,
24 self-direction, or interpersonal, communication or work
25 skills) in terms of an employment outcome; and who will
26 require multiple vocational rehabilitation services over
27 an extended period of time.

§18-10I-3. Supported employment program.

1 (a) Within the available funds as appropriated by the
2 Legislature, the division of rehabilitation services shall
3 establish a model supported employment program in an
4 unserved area of the state. The model program shall be
5 selected through a request for proposal process includ-
6 ing proposal review and selection by the West Virginia
7 division of rehabilitation services in cooperation with the
8 state developmental disabilities planning council.

9 (b) The model supported program and existing
10 supported employment programs approved by the West
11 Virginia division of rehabilitation services shall promote
12 employment services to eligible individuals including:

13 (1) Job development services to secure competitive
14 jobs;

15 (2) Services to assist the person with a severe
16 disability in maintaining his or her supported employ-
17 ment position; and

18 (3) Other employment services not funded through the
19 West Virginia division of rehabilitation services federal
20 Title I and Title VI, Part C programs.

21 (c) An existing sheltered workshop shall implement
22 the model program selected to be established, with the
23 advice and consultation of the state developmental
24 disabilities planning council.

25 (d) The division of rehabilitation services shall
26 administer the supported employment program.

§18-10I-4. Eligibility; primary focus.

1 (a) The primary focus of the supported employment
2 program is providing employment supports for persons
3 with severe disabilities who have never worked or have
4 only worked intermittently due to their disability.

5 (b) To be eligible for the supported employment
6 program, a person must have a severe disability as
7 defined in section two of this article.

CHAPTER 47

**(Com. Sub. for S. B. 377—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)**

[Passed April 21, 1993; in effect from passage. Approved by the Governor.]

AN ACT to repeal article twenty-two-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section ten, article one, chapter eighteen-b of said code; to amend and reenact sections thirteen and fifteen, article two, chapter five-a of said code; to amend and reenact section two-a, article five, chapter ten of said code; to amend and reenact section eight, article three, chapter twelve of said code; to amend article one, chapter eighteen-b of said code by adding thereto three new sections, designated sections one-a, one-b and five-a; to amend and reenact sections two, five, seven and eight of said article; to amend and reenact sections one and three, article two of said chapter; to further amend said article by adding thereto a new section, designated section eight; to amend

and reenact sections one, three and four, article three of said chapter; to amend and reenact section two, article three-a of said chapter; to further amend said chapter by adding thereto a new article, designated article three-c; to amend and reenact sections one and two, article four of said chapter; to amend and reenact section two, article five of said chapter; to further amend said article by adding thereto a new section, designated section two-a; to amend and reenact section one, article six of said chapter; to amend and reenact sections one and five, article seven of said chapter; to further amend said article by adding thereto five new sections, designated sections six, seven, eight, nine and ten; to amend and reenact section three, article eight of said chapter; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact sections four and five, article nine of said chapter; to further amend said article by adding thereto a new section, designated section eleven; to amend and reenact sections one and fourteen, article ten of said chapter; to amend and reenact article thirteen of said chapter; to amend article fourteen of said chapter by adding thereto a new section, designated section three; to amend and reenact sections two and three, article seventeen of said chapter; and to amend chapter eighteen-c of said code by adding thereto a new article, designated article five, all relating to higher education; advancing certain recommendations of the higher education advocacy team; providing for quarterly allotment shortfalls through temporary special revenue transfers and special consideration by secretary of administration; stating legislative intent and goals regarding distance learning; placing secretary of education and the arts on distance learning council; placing council under jurisdiction of secretary of education and the arts; allowing term extension of chair of distance learning council; transferring funds of distance learning coordinating council to secretary of education and the arts; setting forth goals for post-secondary education; providing for implementation of said goals; redefining community college terms; requiring governing boards and state board of education to

provide secretary of education and the arts with requested information in timely manner; requiring post-secondary academic success score testing; authorizing distance learning pilot program; requiring specified periodic studies as part of five-year review; giving governing boards jurisdiction over teacher education programs; requiring presidential performance evaluations to be written; allowing governing boards to enter into contracts and consortium agreements for specified purposes; requiring rules for advance placement; requiring individuals to work with state auditor and treasurer and report to legislative oversight commission on education accountability regarding efficient expenditure methods that ensure payment within fifteen days of properly submitted requests therefor; requiring uniform method for conducting personnel transactions; allowing federal employees to serve on higher education governing boards; requiring boards and institutions to adopt salary policies; stating legislative intent to provide funds for salaries from appropriations; establishing consortium of comprehensive child development centers and providing generally therefor; giving Fairmont state and West Virginia institute of technology primary responsibility for technical preparation teacher training programs; specifying duties of board of directors regarding comprehensive community college system; requiring board of directors to delegate authority as deemed prudent to community college presidents; providing for joint administrative board for facilities shared by public and higher education; deleting vice chancellor for community colleges; replacing said vice chancellor with chancellor of board of directors on joint commission for vocational-technical-occupational education; creating governor's council on higher and other post-secondary education and providing generally therefor; setting forth powers and duties of council and limitations thereto; updating duties of senior administrator; requiring governing boards to establish resource allocation model and policies; requiring funds, including funds for salary increases, be distributed in accordance with policies; authorizing certain transfers of general and special revenue funds within and among certain

higher education accounts in accordance with stated procedure and with stated limitations; authorizing and providing generally for special efficiency surplus revolving fund which may be carried over to next fiscal year and expended only by line item appropriation; authorizing Legislature to transfer certain funds and redesignate same; requiring reports regarding line item transfer and surplus fund; requiring institutional board of advisors to provide advice and assistance to president relating to certain activities; authorizing administrative officer appointed to institutional board of advisors to serve more than two terms and coordinate institution's economic development activities; providing for preferential hiring of existing classified employees; requiring boards to establish policies, with assistance of faculty and/or classified employees, regarding continuing education and staff development, adjunct faculty, professional productivity, teaching and research duties of faculty-rank campus administrators and employment innovations; providing across-the-board annual salary increase of two thousand dollars for full-time faculty, including extension faculty, subject to appropriation; providing across-the-board annual salary increase of fifteen hundred dollars for full-time, nonclassified employees subject to appropriation of funds; setting forth timeline for approval and implementation of uniform employee classification system for classified employees without additional appropriation; stating need for emergency rule in regard thereto; declaring certain provisions null and void upon implementation of rule; providing across-the-board monthly salary increase of one hundred twenty-five dollars for full-time classified employees, including extension employees, subject to appropriations; providing classified employee salary increase be prorated for part-time classified employees as defined; allowing classified employees at maximum salary to receive limited salary increase; authorizing future salary increases for nonclassified and classified employees and faculty; stating goal for level of tuition and required fees for resident and nonresident students at state institutions of higher education; setting forth fees for off-campus courses; defining full-time enrol-

lment for fee purposes; providing alternative methods for payment of fees and extensions in cases of legal work stoppages; requiring boards to adopt standardized refund policy; requiring penalties, by rule, for excessive course registration; authorizing public interest research group fee; suggesting stated textbook policies in order to minimize costs; streamlining provision regarding higher education-industry partnerships; limiting tax credits and deferrals; requiring certain reports; authorizing southern West Virginia community college to sell real property as set forth; authorizing legislative rules; recodifying higher education grant program; removing administration from the state commission on higher education and placing it with senior administrator; requiring additional one and one-half million dollars appropriation each year for five years to that grant program; deleting obsolete code provision dealing with the task force on faculty salaries; and deleting or updating outdated code sections.

Be it enacted by the Legislature of West Virginia:

That article twenty-two-b, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section ten, article one, chapter eighteen-b of said code be repealed; that sections thirteen and fifteen, article two, chapter five-a of said code be amended and reenacted; that section two-a, article five, chapter ten of said code be amended and reenacted; that section eight, article three, chapter twelve of said code be amended and reenacted; that article one, chapter eighteen-b of said code be amended by adding thereto three new sections, designated sections one-a, one-b and five-a; that sections two, five, seven and eight of said article be amended and reenacted; that sections one and three, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eight; that sections one, three and four, article three of said chapter be amended and reenacted; that section two, article three-a of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article three-c; that sections one and two, article four of said chapter be amended and reenacted; that section two, article five of said chapter be

amended and reenacted; that said article be further amended by adding thereto a new section, designated section two-a; that section one, article six of said chapter be amended and reenacted; that sections one and five, article seven of said chapter be amended and reenacted; that said article be further amended by adding thereto five new sections, designated sections six, seven, eight, nine and ten; that section three, article eight of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section three-a; that sections four and five, article nine of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eleven; that sections one and fourteen, article ten of said chapter be amended and reenacted; that article thirteen of said chapter be amended and reenacted; that article fourteen of said chapter be amended by adding thereto a new section, designated section three; that sections two and three, article seventeen of said chapter be amended and reenacted; and that chapter eighteen-c of said code be amended by adding thereto a new article, designated article five, all to read as follows:

Chapter

- 5A. Department of Administration.**
- 10. Public Libraries; Public Recreation; Athletic Establishments; Monuments and Memorials; Roster of Servicemen; Educational Broadcasting Authority.**
- 12. Public Moneys and Securities.**
- 18B. Higher Education.**
- 18C. Student Loans; Scholarships and State Aid.**

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 2. FINANCE DIVISION.

- §5A-2-13. Examination and approval of expenditure schedules; amendments; copies to legislative auditor.**
- §5A-2-15. Requests for quarterly allotments; approval or reduction by governor.**
- §5A-2-13. Examination and approval of expenditure schedules; amendments; copies to legislative auditor.**

1 The secretary shall examine the expenditure schedule
2 of each spending unit, and if it conforms to the
3 appropriations made by the Legislature, the require-
4 ments of this article, and is in accordance with sound
5 fiscal policy, the secretary shall approve the schedule.
6 In addition, the secretary shall give special considera-
7 tion in the approval of expenditure schedules to accounts
8 in which the appropriations consist predominantly of
9 personal services funds so that the quarterly allotments
10 of funds to the various spending units pursuant to
11 section fifteen of this article are sufficient to pay such
12 personnel costs in the quarter in which they are due.

13 The expenditure of the appropriations made to a
14 spending unit shall be only in accordance with the
15 approved expenditure schedule unless the schedule is
16 amended with the consent of the secretary, or unless
17 appropriations are reduced in accordance with the
18 provisions of sections twenty to twenty-three, inclusive,
19 of this article. The spending officer of a spending unit
20 shall transmit to the legislative auditor a copy of each
21 and every requested amendment to such schedule at the
22 same time that such requested amendment is submitted
23 to the secretary. The secretary shall send to the
24 legislative auditor copies of any schedule amended with
25 the secretary's approval.

**§5A-2-15. Requests for quarterly allotments; approval or
reduction by governor.**

1 At least thirty days prior to the beginning of each
2 quarter of the fiscal year, each spending officer shall
3 submit to the secretary a request for an allotment of
4 public funds sufficient to operate the unit during the
5 ensuing quarter in accordance with the approved
6 expenditure schedule.

7 The secretary shall examine the requests, giving
8 special consideration to accounts in which the appropri-
9 ations consist predominantly of personal services funds
10 so that the quarterly allotments of funds to the various
11 spending units are sufficient to pay such personnel costs
12 in the quarter in which they are due, and, if the
13 secretary finds that the amounts requested are in

14 accordance with the approved expenditure schedules
15 and are in accordance with sound fiscal policy, the
16 secretary shall submit the requests to the governor. The
17 secretary shall also submit a summary statement
18 showing the amounts expended under the budget for
19 each preceding quarter of the fiscal year and the total
20 amount requested for allotment during the ensuing
21 quarter.

22 The governor shall consider the amount of requests
23 for allotment and the collection of revenues. If the
24 governor finds that the collection of revenue warrants
25 the expenditure of the amount requested in the allot-
26 ment, the governor shall approve the allotment of funds
27 for the ensuing quarter and send copies of the requests
28 to the legislative auditor after approval. If the governor
29 finds that the collection of revenue does not warrant the
30 allotment of the requested amount, the governor may
31 reduce the amount of allotments pending the collection
32 of sufficient revenue.

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC
RECREATION; ATHLETIC ESTABLISHMENTS;
MONUMENTS AND MEMORIALS; ROSTER OF
SERVICEMEN; EDUCATIONAL BROADCASTING
AUTHORITY.**

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

**§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
5 businesses, industry and the professions, are
6 immeasurable and that distance learning technology
7 offers an efficient means of delivering such education
8 and personnel development courses. The Legislature
9 further finds that distance learning technology requires
10 a substantial financial investment and the acquisition
11 and utilization of such technology should, therefore, be
12 coordinated 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, the department of
20 administration's division of information systems and
21 communications and the office of the secretary of
22 education and the arts. The chair elected by the council
23 shall serve a term of one year, at which time the council
24 shall elect a new chair. A member of the council may
25 not serve for more than two consecutive terms as chair,
26 except by unanimous vote of the council.

27 The council shall meet at least quarterly and shall
28 develop long-range plans to integrate the instructional
29 telecommunications system, to coordinate distance
30 learning in West Virginia and to clarify the roles of the
31 agencies involved in the state's distance learning
32 enterprise. The council shall submit an annual report to
33 the governor and the Legislature, which includes its
34 recommendations for achieving the best use of limited
35 resources in the development and operation of a distance
36 learning technology system.

37 (c) A goal of the council is the creation of a statewide
38 technology system linking universities and colleges,
39 schools, libraries and, eventually, homes with software,
40 data bases and video learning capabilities. In pursuit of
41 this goal, the council shall determine the most effective
42 and efficient ways to integrate the capabilities of the
43 state for producing, delivering and receiving electronic
44 instruction and establish a comprehensive long-range
45 plan to further the cooperation and coordination of the
46 various educational and other agencies of the state, and
47 the county boards of education, in establishing distance
48 learning technology.

49 (d) There is hereby created in the state treasury a
50 special fund designated the "Distance Learning Fund"
51 which shall be under the jurisdiction of the secretary of
52 education and the arts for use solely for the purposes of
53 the distance learning grant program as provided in this

54 section.

55 Appropriate guidelines for participation by school
56 districts, state institutions of higher education, public
57 libraries and public broadcasting stations, in the grant
58 program, shall be established by the distance learning
59 coordinating council subject to approval by the
60 legislative oversight commission on education
61 accountability. Such guidelines shall include application
62 procedures and shall establish policies for awarding
63 grants in the event that more grant applications are
64 received than there are funds available to honor the
65 applications in any fiscal year. In allocating funds to
66 applicants, the council may give due consideration to
67 revenues available from all other sources. The state
68 board of education shall approve courses offered
69 through this program at the elementary and secondary
70 education level. The higher education governing boards
71 shall approve courses taught at the post-secondary level.

72 (e) In any fiscal year moneys in the fund shall be used
73 first to ensure that any and all school districts, state
74 institutions of higher education, public libraries and
75 public television stations seeking aid under this
76 program shall receive telecommunications equipment
77 necessary to participate in the satellite learning process;
78 second, to provide the school districts and state
79 institutions of higher education with access to subjects
80 at the advanced level or the remedial level or which are
81 not taught in the schools of the district or the service
82 area or campus; and third, to provide enrichment
83 classes, continuing education and professional
84 development. However, the council may set aside a
85 portion of the funds to be used to contract with state
86 institutions of higher education, state institutions of
87 public education and public broadcasting stations to
88 develop instructional programs for grades kindergarten
89 through twelve. Funds may also be used for
90 undergraduate and graduate course work suitable for
91 broadcast to the school districts, state institutions of
92 higher education, as appropriate, for continuing
93 education and professional development for business and
94 industry seminars and to develop the capability to

95 transmit programs cited in this section.

96 (f) Participation by a local school district, a state
97 institution of higher education, a public library or a
98 public broadcasting station in the program established
99 by this section shall be voluntary. No school district,
100 state institution of higher education, public library or
101 public broadcasting station receiving funds under this
102 program shall use those funds for any purpose other
103 than that for which they were intended. Any school
104 district, state institution of higher education, public
105 library or public broadcasting station shall be eligible
106 to receive funds under this program regardless of its
107 curriculum, local wealth or previous contractual
108 arrangements to receive satellite broadcast instruction.

109 (g) The secretary of education and the arts on behalf
110 of the state of West Virginia may contract with
111 institutions of higher education and the state board of
112 education for the development or operation, or both, of
113 state employee training programs transmitted by
114 telecommunications technology.

115 Instructional programs developed under this section
116 which are transmitted one-way through the airwaves or
117 by cable shall be available to all residents of this state
118 without charge or fee to the extent permitted by the
119 West Virginia constitution. "Without charge or fee"
120 shall not require the providing of equipment to transmit
121 or receive telecommunications instruction or the
122 providing of commercial cable service. If the
123 instructional program involves two-way, interactive
124 communication between the instructor and the
125 participant, the district or institution operating the
126 program may prescribe academic prerequisites and
127 limit the number of persons who may enroll in the
128 specific program and give preference to residents of the
129 district or institutional attendance area who are age
130 twenty-one or younger but shall not discriminate against
131 any resident on any other basis. A fee may be charged
132 which will be paid directly by the individual participant
133 for the specific program, but the fee shall be equal for
134 all such participants. If a subscription fee is charged by
135 the originator of the program, the district or institution

136 may pay the subscription fee for all participants from
137 a grant under this section or from any other public or
138 private fund legally authorized to be used for this
139 purpose. Printed materials designed to facilitate or
140 complement telecommunications programs or electronic
141 reproduction thereof may be made available for loan by
142 the school district, institution of higher education
143 through the public library system or the curriculum
144 technology resource center, subject to the normal rules
145 and regulations of the lending system and in such
146 quantities as may be approved by the governing body
147 of the district or institution.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.

§12-3-8. Requisition on behalf of institutions to be accompanied by statement showing funds on hand.

1 No requisition shall be made upon the auditor for any
2 money appropriated for the penitentiary, the West
3 Virginia schools for the deaf and blind, state mental
4 health facilities, state hospitals, corrections facilities, or
5 for any other public institution for education, charity or
6 correction, institutions governed by the university of
7 West Virginia board of trustees and by the board of
8 directors of the state college system, unless such
9 requisition shall be accompanied by the statement in
10 writing of the treasurer or other financial officer of such
11 institution, showing the amount of money in his or her
12 hands to the credit of such institution, or otherwise in
13 its control, on the day such requisition is forwarded for
14 payment.

CHAPTER 18B. HIGHER EDUCATION.

Article

1. Governance.
2. University of West Virginia Board of Trustees.
3. Board of Directors of the State College System.
- 3A. West Virginia Joint Commission for Vocational-Technical-
Occupational Education.
- 3C. Governor's Council on Higher and Other Post-Secondary

Education.

4. **General Administration.**
5. **Higher Education Budgets and Expenditures.**
6. **Other Boards and Advisory Councils.**
7. **Personnel Generally.**
8. **Higher Education Full-Time Faculty Salaries.**
9. **Classified Employee Salary Schedule and Classification System.**
10. **Fees and Other Money Collected at State Institutions of Higher Education.**
13. **Higher Education-Industry Partnerships.**
14. **Miscellaneous.**
17. **Legislative Rules.**

ARTICLE 1. GOVERNANCE.

- §18B-1-1a. Goals for post-secondary education.
- §18B-1-1b. Implementation of findings, directives, goals and objectives.
- §18B-1-2. Definitions.
- §18B-1-5. Board of trustees and board of directors under department of education and the arts.
- §18B-1-5a. Pilot program of delivering educational services via distance learning.
- §18B-1-7. Supervision by governing boards; delegation to president.
- §18B-1-8. Powers and duties of governing boards generally.

§18B-1-1a. Goals for post-secondary education.

1 (a) *Findings and directives.* — The Legislature finds
2 that higher education is a vital force in the future of
3 West Virginia. For the state to realize its considerable
4 potential in the twenty-first century, West Virginia
5 should invest in its people through a strong and dynamic
6 higher education system.

7 The Legislature further finds that the people of West
8 Virginia have demonstrated their support for this
9 finding through their involvement and comments at
10 meetings held throughout the state pursuant to Senate
11 Concurrent Resolution No. 30 adopted at the regular
12 session of the West Virginia Legislature, one thousand
13 nine hundred ninety-two. The Legislature, also, endorses
14 the report submitted by the higher education advocacy
15 team pursuant to said resolution and directs the affected
16 educational agencies to implement unified strategies for
17 accomplishing the needed improvements.

18 (b) *Goals and objectives.* — In the pursuance of the
19 above findings, the following goals and objectives are
20 hereby adopted with respect to the investments which

21 are necessary for higher education in West Virginia to
22 contribute fully to the growth, development and quality
23 of life of the state and its citizens:

24 (1) Students should be better prepared in high school
25 to meet college standards jointly agreed upon by higher
26 education and the public schools as required under
27 subsection (c), section five of this article. Those
28 standards should be conveyed to students prior to
29 entering tenth grade;

30 (2) More students should obtain education beyond the
31 high school level for our individual and collective
32 economic development:

33 (A) The awareness of post-secondary educational
34 opportunities among the state's citizens should be
35 expanded and their motivation to take advantage of
36 available opportunities should be enhanced;

37 (B) Assistance in overcoming the financial barriers to
38 post-secondary education should be provided;

39 (C) A student-friendly environment should be created
40 within post-secondary education to encourage and
41 expand participation for the increasingly diverse
42 student population;

43 (3) Students should be prepared to compete in a global
44 economy in which the good jobs will require an
45 advanced education and level of skill which far
46 surpasses former requirements:

47 (A) Academic preparation should be improved to
48 ensure that students enrolling in programs of post-
49 secondary education are adequately prepared to be
50 successful in their selected fields of study and career
51 plans;

52 (B) College graduates should meet or exceed national
53 and international standards for skill levels in reading,
54 oral and written communications, mathematics, critical
55 thinking, science and technology, research and human
56 relations;

57 (C) College graduates should meet or exceed national
58 and international standards for performance in their

59 fields through national accreditation of programs and
60 through outcomes assessment of graduates;

61 (4) Resources should be focused on programs and
62 courses which offer the greatest opportunities for
63 students and the greatest opportunity for job creation
64 and retention in the state:

65 (A) An entrepreneurial spirit and flexibility should be
66 created within higher education to respond to the needs
67 of the current work force and other nontraditional
68 students for college-level skills upgrading and
69 retraining;

70 (B) A focus should be created on programs supportive
71 of West Virginia employment opportunities and the
72 emerging high technology industries;

73 (C) Closer linkages should be established among
74 higher education and business, labor, government,
75 community and economic development organizations;

76 (5) Resources should be used to their maximum
77 potential and faculty and technology should be combined
78 in a way that makes West Virginia higher education
79 more productive than similar institutions in other states:

80 (A) Institutional missions should be clarified and
81 resources should be shifted to programs which meet the
82 current and future work force needs of the state;

83 (B) Program duplication necessary for geographic
84 access should be determined and unnecessary
85 duplication should be eliminated;

86 (C) Systematic ongoing mechanisms should be
87 established for each state institution of higher education
88 to set goals, measure the extent to which those goals are
89 met and use results of quantitative evaluation processes
90 to improve institutional effectiveness;

91 (D) Institutional productivity and administrative
92 efficiency standards should be established to ensure that
93 state institutions of higher education are more
94 productive and efficient than similar institutions in
95 other states; and

96 (6) The compensation of faculty, staff and
97 administrators should be established at competitive
98 levels to attract and keep quality personnel at state
99 institutions of higher education:

100 (A) Faculty and staff classification and compensation
101 at state institutions of higher education should be
102 competitive with relevant market levels; and

103 (B) Available revenues should be distributed in an
104 equitable fashion which enables each state institution of
105 higher education to fulfill its mission and reward its
106 employees appropriately.

**§18B-1-1b. Implementation of findings, directives, goals
and objectives.**

1 The board of trustees and the board of directors shall
2 develop a plan for implementation of the legislative
3 findings, directives, goals and objectives set forth in
4 section one-a of this article and to ensure accountability
5 in implementing said findings, directives, goals and
6 objectives in consultation with the secretary of education
7 and the arts, the president of the state board of
8 education, the president of the West Virginia association
9 of private colleges, the president of the joint commission
10 for vocational-technical-occupational education and the
11 president of the West Virginia economic development
12 council. A written report of the plan required by this
13 section shall be submitted to the governor and the
14 legislative oversight commission on education
15 accountability by the first day of December, one
16 thousand nine hundred ninety-three.

§18B-1-2. Definitions.

1 The following words when used in this chapter and
2 chapter eighteen-c of this code shall have the meaning
3 hereafter ascribed to them unless the context clearly
4 indicates a different meaning:

5 (a) "Governing board" or "board" means the university
6 of West Virginia board of trustees or the board of
7 directors of the state college system, whichever is
8 applicable within the context of the institution or
9 institutions referred to in this chapter or in other

10 provisions of law;

11 (b) "Governing boards" or "boards" means both the
12 board of trustees and the board of directors;

13 (c) "Freestanding community colleges" means
14 southern West Virginia community college and West
15 Virginia northern community college, which shall not be
16 operated as branches or off-campus locations of any
17 other state institution of higher education;

18 (d) "Community colleges" means freestanding
19 community colleges, branches or off-campus locations of
20 state institutions of higher education within the state
21 college system and programs offered at state institutions
22 of higher education within the state college system
23 which are two years or less in duration;

24 (e) "Community college component" means any
25 program operated by a state institution of higher
26 education within the university system which is two
27 years or less in duration, which program may be offered
28 at the institution or at a branch or off-campus location;

29 (f) "Directors" or "board of directors" means the board
30 of directors of the state college system created pursuant
31 to article three of this chapter or the members thereof;

32 (g) "Higher educational institution" means any
33 institution as defined by Sections 401(f), (g) and (h) of
34 the federal Higher Education Facilities Act of 1963, as
35 amended;

36 (h) "Post-secondary vocational education programs"
37 means any college-level course or program beyond the
38 high school level provided through an institution of
39 higher education which results in or may result in the
40 awarding of a two-year associate degree, under the
41 jurisdiction of the board of directors;

42 (i) "Rule" or "rules" means a regulation, standard,
43 policy or interpretation of general application and
44 future effect;

45 (j) "Senior administrator" means the person hired by
46 the governing boards in accordance with section one,
47 article four of this chapter, with such powers and duties

48 as may be provided for in section two of said article;

49 (k) "State college" means Bluefield state college,
50 Concord college, Fairmont state college, Glenville state
51 college, Shepherd college, West Liberty state college,
52 West Virginia institute of technology or West Virginia
53 state college;

54 (l) "State college system" means the state colleges and
55 community colleges, and also shall include post-
56 secondary vocational education programs in the state, as
57 those terms are defined in this section;

58 (m) "State institution of higher education" means any
59 university, college or community college in the state
60 university system or the state college system as those
61 terms are defined in this section;

62 (n) "Trustees" and "board of trustees" means the
63 university of West Virginia board of trustees created
64 pursuant to article two of this chapter or the members
65 thereof;

66 (o) "University", "university of West Virginia" and
67 "state university system" means the multi-campus,
68 integrated university of the state, consisting of West
69 Virginia university including West Virginia university
70 at Parkersburg, Potomac state college of West Virginia
71 university and the West Virginia university school of
72 medicine; Marshall university including the Marshall
73 university school of medicine; the West Virginia
74 graduate college; and the West Virginia school of
75 osteopathic medicine.

**§18B-1-5. Board of trustees and board of directors under
department of education and the arts.**

1 (a) The board of trustees and the board of directors,
2 created in articles two and three of this chapter, are
3 under the jurisdiction of the department of education
4 and the arts created in article one, chapter five-f of this
5 code, and are subject to the supervision of the secretary
6 of education and the arts. Rules adopted by the
7 governing boards shall be subject to approval by the
8 secretary of education and the arts. The budget
9 submitted by each board pursuant to the provisions of

10 section eight of this article shall be subject to approval
11 of the secretary of the department of education and the
12 arts, all pursuant to the provisions of article two,
13 chapter five-f of this code.

14 (b) The secretary of education and the arts is
15 responsible for the coordination of policies and purposes
16 of the state university system and the state college
17 system and shall provide for and facilitate sufficient
18 interaction between the governing boards, and between
19 the governing boards and the state board of education,
20 to assure appropriate mission and program coordination
21 and cooperation among: (1) The state university system;
22 (2) the state college system, exclusive of the community
23 colleges; (3) the community colleges, including free-
24 standing community colleges, and community college
25 components; and (4) the vocational-technical centers in
26 the state, recognizing the inherent differences in the
27 missions and capabilities of these four categories of
28 institutions. The governing boards and the state board
29 of education shall provide any and all information
30 requested by the secretary of education and the arts and
31 legislators in a timely manner.

32 (c) The secretary of education and the arts, the
33 chancellors of the board of trustees and the board of
34 directors and the state superintendent of schools shall
35 develop standards and suggest implementation methods
36 for a standardized test to be used to predict post-
37 secondary educational success such as the test offered by
38 the American college testing program. The test,
39 hereinafter referred as the post-secondary academic
40 success score or PASS, is to be administered to all
41 students during the fall semester of the eighth grade.
42 The secretary of education and the arts, the chancellors
43 of the board of trustees and the board of directors, and
44 the state superintendent of schools shall submit a joint
45 report outlining their findings to the governor and the
46 legislative oversight commission on education
47 accountability by the first day of December, one
48 thousand nine hundred ninety-three.

§18B-1-5a. Pilot program of delivering educational services via distance learning.

1 (a) The intent of the Legislature in enacting this
2 section is to create the framework for establishing an
3 educational delivery system to address findings that:

4 (1) The strength of the economy of the state of West
5 Virginia is directly affected by the percentage of the
6 available work force possessing college degrees and/or
7 an advanced vocational-technical education from which
8 an employer may draw;

9 (2) Real and perceived barriers within West Virginia
10 and its systems of higher education, such as the cost of
11 a college education, the availability of appropriate
12 course work at locations and times convenient for
13 students with families and/or jobs, and inadequate
14 preparation for college-level work, have created road
15 blocks for West Virginians in achieving their
16 educational goals and, in turn, have limited the
17 economic opportunities available to them and the state
18 of West Virginia; and

19 (3) Because of the state's history of a low college-going
20 rate and a low percentage of state residents who hold
21 college degrees, meeting the current and future work
22 force needs of West Virginia will require attention to the
23 needs of working-age adults for upgrading their skills,
24 continuing their educations, preparing for new careers
25 and other lifelong learning pursuits, in addition to
26 attending to the educational needs of traditional college
27 age students.

28 (b) Such a delivery system should employ the best
29 available technology and qualified instructors to provide
30 courses of instruction to students at remote locations by
31 means of electronic transmission and computer assisted
32 instruction. The delivery system should make maximum
33 use of the currently existing resources, facilities,
34 equipment and personnel in the state's systems of public
35 and higher education and other educational and
36 administrative agencies and should be low-tuition,
37 commuter-oriented, open door admissions, serving
38 adults of all ages. The courses of instruction offered
39 through such a system should be relevant to the needs
40 of the target population as expressed in the major

41 findings listed in subsection (a) of this section and should
42 meet the several goals of helping students to prepare for
43 college level work, to increase their likelihood of
44 securing gainful employment given their other relevant
45 life circumstances, to obtain higher education core
46 curriculum course work that is universally accepted at
47 all state institutions of higher education with the grade
48 earned and to minimize the amount of additional course
49 work they will be required to take at less convenient
50 times and locations to achieve their educational goals.
51 The delivery system should also include adequate
52 student support services such as student advising,
53 career counseling, library access and immediate
54 interaction with peers and instructors.

55 (c) The secretary of education and the arts is
56 responsible for establishing a three-year pilot program
57 consisting of no more than eight sites within the state
58 for the delivery of educational programs consistent with
59 the goals established in this section. To assist in the
60 development of this program, the secretary shall appoint
61 an advisory committee comprised of persons from public
62 education, higher education, the West Virginia distance
63 learning coordinating council, the Legislature and the
64 business community. In consultation with the advisory
65 committee, the secretary shall contract with the
66 appropriate governing board or other body to offer
67 courses or programs of various levels and types to meet
68 the objectives of this section. The contracts shall specify
69 the pilot sites for offering the educational programs, the
70 various technologies for program delivery, the types of
71 courses to be offered, the course instructors and site
72 coordinators and their training, the fees to be charged,
73 the institutions in the state willing to enroll the student
74 participants, the collection of tuition and fees, a method
75 for accounting for the funds collected and expended and
76 other issues relevant to program administration. There
77 is hereby established in the state treasury a special
78 revolving fund within the account of the secretary of
79 education and the arts into which appropriations, course
80 fees, charitable contributions and other moneys received
81 by the secretary for the purposes of the program shall
82 be paid for expenditures in the operation of the pilot

83 program. During each year of the pilot program, the
84 secretary shall report to the governor and the
85 Legislature on the progress of the program, whether it
86 should be continued or discontinued, and, if continued,
87 any recommended modifications in program scope and
88 mission and any action which is necessary on behalf of
89 the governor or the Legislature to improve the success
90 of the program. At the end of the pilot program, the
91 secretary shall make a final report to the governor and
92 the Legislature as to whether the findings set forth in
93 this section are being addressed through such an
94 educational delivery system and shall recommend
95 whether it should become permanent. If the secretary
96 recommends that the delivery system should become
97 permanent, the secretary shall also recommend specific
98 structures for program support and administration,
99 instructional development and objectives, technology,
100 student support services and other relevant policy
101 issues.

§18B-1-7. Supervision by governing boards; delegation to president.

1 On and after the first day of July, one thousand nine
2 hundred eighty-nine, the governing boards shall
3 determine, control, supervise and manage all of the
4 policies and affairs of the state institutions of higher
5 education under their jurisdiction and shall exercise and
6 perform all such powers, duties and authorities
7 respecting those institutions as were previously
8 exercised and performed by the West Virginia board of
9 regents.

10 The governing boards have the general
11 determination, control, supervision and management of
12 the financial, business and educational policies and
13 affairs of all state institutions of higher education under
14 their jurisdiction. The board of trustees and the board
15 of directors shall seek the approval of the West Virginia
16 Legislature before either governing board takes action
17 that would result in the creation or closing of a state
18 institution of higher education.

19 Except as otherwise provided by law, each board's

20 responsibilities shall include, but shall not be limited to,
21 the making of studies and recommendations respecting
22 higher education in West Virginia; allocating among the
23 state institutions of higher education under their
24 jurisdiction specific functions and responsibilities;
25 submitting budget requests for such institutions; and
26 equitably allocating available state appropriated funds
27 between the boards and among such institutions in
28 accordance with the resource allocation model and
29 policies required by section two, article five of this
30 chapter.

31 Each board shall delegate, as far as is lawful, efficient
32 and fiscally responsible and within prescribed standards
33 and limitations, such part of its power and control over
34 financial, educational and administrative affairs of each
35 state institution of higher education to the president or
36 other administrative head of those institutions. This
37 shall not be interpreted to include the classification of
38 employees, lawful appeals made by students in
39 accordance with board policy, lawful appeals made by
40 faculty or staff or final review of new or established
41 academic or other programs.

§18B-1-8. Powers and duties of governing boards generally.

1 (a) Each governing board shall separately have the
2 power and duty to:

3 (1) Determine, control, supervise and manage the
4 financial, business and educational policies and affairs
5 of the state institutions of higher education under its
6 jurisdiction;

7 (2) Prepare a master plan for the state institutions of
8 higher education under its jurisdiction, setting forth the
9 goals, missions, degree offerings, resource requirements,
10 physical plant needs, state personnel needs, enrollment
11 levels and other planning determinates and projections
12 necessary in such a plan to assure that the needs of the
13 state for a quality system of higher education are
14 addressed: *Provided*, That the master plan for post-
15 secondary vocational education is subject to approval by
16 the joint commission for vocational-technical-

17 occupational education. The plan shall also address the
18 roles and missions of private post-secondary education
19 providers in the state. Each board shall involve the
20 executive and legislative branches of state government
21 and the general public in the development of all
22 segments of the plan for post-secondary education in the
23 state. The plan shall be established for periods of not less
24 than five nor more than ten years and shall be
25 periodically revised as necessary, including the addition
26 or deletion of degree programs as, in the discretion of
27 the boards, may be necessary. Whenever a state
28 institution of higher education desires to establish a new
29 degree program, such program proposal shall not be
30 implemented until the same is filed with both governing
31 boards. Upon objection thereto within sixty days by
32 either governing board, such program proposal shall be
33 filed with the secretary of education and the arts, who
34 shall approve or disapprove such proposal within one
35 year of the filing of said program proposal;

36 (3) Prescribe and allocate among the state institutions
37 of higher education under its jurisdiction, in accordance
38 with its master plan, specific functions and
39 responsibilities to meet the higher education needs of the
40 state and to avoid unnecessary duplication;

41 (4) Consult with the executive branch and the
42 Legislature in the establishment of funding parameters,
43 priorities and goals;

44 (5) Establish guidelines for and direct the preparation
45 of budget requests for each of the state institutions of
46 higher education under its jurisdiction, such requests to
47 relate directly to missions, goals and projections in its
48 state master plan;

49 (6) Consider, revise and submit to the appropriate
50 agencies of the executive and legislative branches of
51 state government separate budget requests on behalf of
52 the state institutions of higher education under its
53 jurisdiction or a single budget for the state institutions
54 of higher education under its jurisdiction: *Provided,*
55 That when a single budget is submitted, that budget
56 shall be accompanied by a tentative schedule of

57 proposed allocations of funds to the separate state
58 institutions of higher education under its jurisdiction;

59 (7) Prepare and submit to the speaker of the House
60 of Delegates and the president of the Senate, no later
61 than the first day of each regular session of the
62 Legislature, and to any member of the Legislature upon
63 request, an analysis of the budget request submitted
64 under subdivision (6) of this subsection. The analysis
65 shall summarize all amounts and sources of funds
66 outside of the general revenue fund anticipated to be
67 received by each state institution of higher education
68 under its jurisdiction and the effect of such funds on the
69 budget request;

70 (8) Prepare and submit to the legislative auditor, no
71 later than the first day of July of each year, the
72 approved operating budgets of each state institution of
73 higher education under its jurisdiction for the fiscal
74 year beginning on that date and, no later than the first
75 day of August, a summary of federal and other external
76 funds received at each such institution during the
77 previous fiscal year;

78 (9) Establish a system of information and data
79 management that can be effectively utilized in the
80 development and management of higher education
81 policy, mission and goals;

82 (10) Review, at least every five years, all academic
83 programs offered at the state institutions of higher
84 education under its jurisdiction. The review shall
85 address the viability, adequacy and necessity of the
86 programs in relation to its master plan and the
87 educational and work force needs of the state. As a part
88 of such review, each governing board shall require each
89 of its institutions to conduct periodic studies of its
90 graduates and their employers to determine placement
91 patterns and the effectiveness of the educational
92 experience. Where appropriate, these studies should
93 make use of the studies required of many academic
94 disciplines by their accrediting bodies. The governing
95 boards shall also ensure that the sequence and
96 availability of academic programs and courses is such

97 that students have the maximum opportunity to
98 complete programs in the time frame normally
99 associated with program completion, that the needs of
100 nontraditional college age students are appropriately
101 addressed, and that core course work completed at any
102 state institution of higher education is transferable to
103 another state institution of higher education for credit
104 with the grade earned. Notwithstanding any other
105 provision of this code to the contrary, after the effective
106 date of this section the appropriate governing board
107 shall have the exclusive authority to approve the teacher
108 education programs offered in the institutions under
109 their control. In order to permit graduates of teacher
110 education programs to receive a degree from a
111 nationally accredited program and in order to prevent
112 expensive duplication of program accreditation, the
113 boards may select and utilize one nationally recognized
114 teacher education program accreditation standard as
115 the appropriate standard for program evaluation;

116 (11) Utilize faculty, students and classified staff in
117 institutional level planning and decision making when
118 those groups are affected;

119 (12) Administer a uniform system of personnel
120 classification and compensation for all employees other
121 than faculty and policy level administrators;

122 (13) Establish a uniform system for the hearing of
123 employee grievances and appeals therefrom, so that
124 aggrieved parties may be assured of timely and
125 objective review;

126 (14) Solicit and utilize or expend voluntary support,
127 including financial contributions and support services,
128 for the state institutions of higher education;

129 (15) Appoint a president or other administrative head
130 for each institution of higher education from candidates
131 submitted by the search and screening committees of
132 the institutional boards of advisors pursuant to section
133 one, article six of this chapter;

134 (16) Conduct written performance evaluations of each
135 institution's president in every fourth year of

136 employment as president, recognizing unique
137 characteristics of the institution and utilizing
138 institutional personnel, institutional boards of advisors,
139 staff of the appropriate governing board and persons
140 knowledgeable in higher education matters who are not
141 otherwise employed by a governing board;

142 (17) Submit to the joint committee on government and
143 finance, no later than the first day of December of each
144 year, an annual report of the performance of the system
145 of higher education under its jurisdiction during the
146 previous fiscal year as compared to stated goals in its
147 master plan and budget appropriations for that fiscal
148 year; and

149 (18) The governing boards shall have the power and
150 authority to enter into contracts or consortium
151 agreements with the public schools, private schools or
152 private industry to provide technical, vocational, college
153 preparatory, remedial and customized training courses
154 at locations either on campuses of public institutions of
155 higher education or at off-campus locations in such
156 institutions' regional educational service areas. To
157 accomplish this goal, the boards are permitted to share
158 resources among the various groups in the community.
159 The governing boards shall promulgate uniform
160 legislative rules providing for entering into said
161 contracts and consortium agreements and for
162 determining and granting credit for work experience
163 for courses offered by the consortium.

164 (b) The power, herein given to each governing board
165 to prescribe and allocate among the state institutions of
166 higher education under its jurisdiction specific functions
167 and responsibilities to meet the higher educational needs
168 of the state and avoid unnecessary duplication, shall not
169 be restricted by any provision of law assigning specified
170 functions and responsibilities to designated state
171 institutions of higher education, and such power shall
172 supersede any such provision of law: *Provided*, That
173 each governing board may delegate, with prescribed
174 standards and limitations, such part of its power and
175 control over the business affairs of a particular state
176 institution of higher education to the president or other

177 administrative head of such state institution of higher
178 education in any case where it deems such delegation
179 necessary and prudent in order to enable such
180 institution to function in a proper and expeditious
181 manner: *Provided, however,* That such delegation shall
182 not be interpreted to include classification of employees,
183 lawful appeals made by students in accordance with the
184 appropriate governing board's policy, lawful appeals
185 made by faculty or staff or final review of new or
186 established academic or other programs. Any such
187 delegation of power and control may be rescinded by the
188 appropriate governing board at any time, in whole or
189 in part.

190 (c) The governing boards shall promulgate uniform
191 legislative rules by the first day of September, one
192 thousand nine hundred ninety-three, setting forth
193 standards for acceptance of advanced placement credit
194 for their respective institutions. Individual departments
195 at institutions of higher education may, upon approval
196 of the institutional faculty senate, require higher scores
197 on the advanced placement test than scores designated
198 by the appropriate governing board when the credit is
199 to be used toward meeting a requirement of the core
200 curriculum for a major in that department.

201 (d) Each governing board and/or an individual
202 appointed by the president of each institution shall
203 consult, cooperate and work with the state treasurer and
204 the state auditor to develop an efficient and cost-
205 effective system for the financial management and
206 expenditure of special revenue and appropriated state
207 funds for higher education that ensures that properly
208 submitted requests for payment be paid within fifteen
209 days of receipt in the state auditor's office. The system
210 shall be established and implemented as soon as
211 practical and the governing boards shall report to the
212 legislative oversight commission on education
213 accountability prior to the first day of January, one
214 thousand nine hundred ninety-four, regarding the
215 efficacy of the system.

216 (e) The governing boards shall implement by the first
217 day of July, one thousand nine hundred ninety-four, a

218 uniform and consistent method of conducting personnel
219 transactions including, but not limited to, hiring,
220 dismissal, promotions and transfers at all institutions
221 under their jurisdiction. Each such personnel
222 transaction shall be accompanied by the appropriate
223 standardized system or forms which will be submitted
224 to the respective governing boards, secretary of
225 education and the arts, department of finance and
226 administration and the legislative oversight commission
227 on education accountability.

ARTICLE 2. UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES.

§18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18B-2-3. Additional duties of board of trustees.

§18B-2-8. Consortium of comprehensive child development centers; establishment and operation of a consortium of comprehensive child development centers.

§18B-2-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

1 (a) The board of trustees shall consist of seventeen
2 persons, of whom one shall be the chancellor of the
3 board of directors of the state college system, ex officio,
4 who shall not be entitled to vote; one shall be the state
5 superintendent of schools, ex officio, who shall not be
6 entitled to vote; one shall be the chairman of the
7 advisory council of students, ex officio, who shall be
8 entitled to vote; one shall be the chairman of the
9 advisory council of faculty, ex officio, who shall be
10 entitled to vote; and one shall be the chairman of the
11 advisory council of classified employees, ex officio, who
12 shall be entitled to vote. The other twelve trustees shall
13 be citizens of the state, appointed by the governor, by
14 and with the advice and consent of the Senate.

15 Each of the trustees appointed to the board by the
16 governor shall represent the public interest and shall be
17 especially qualified in the field of higher education by
18 virtue of the person's knowledge, learning, experience or

19 interest in the field.

20 Except for the ex officio trustees, no person shall be
21 eligible for appointment to membership on the board of
22 trustees who is an officer, employee or member of an
23 advisory board of any state college or university, an
24 officer or member of any political party executive
25 committee, the holder of any other public office or
26 public employment under the government of this state
27 or any of its political subdivisions or an appointee or
28 employee of the board of trustees or the board of
29 directors: *Provided*, That if there are no ethical
30 restrictions under state or federal law, a federal
31 employee may serve as a member of the board of
32 trustees. Of the twelve trustees appointed by the
33 governor from the public at large, not more than six
34 thereof shall belong to the same political party and at
35 least two trustees shall be appointed from each
36 congressional district.

37 Except as provided in this section, no other person
38 may be appointed to the board.

39 (b) The governor shall appoint twelve trustees as soon
40 after the first day of July, one thousand nine hundred
41 eighty-nine, as is practicable, and the original terms of
42 all trustees shall commence on that date.

43 The terms of the trustees appointed by the governor
44 shall be for overlapping terms of six years, except, of
45 the original appointments, four shall be appointed to
46 terms of two years, four shall be appointed to terms of
47 four years and four shall be appointed to terms of six
48 years. Each subsequent appointment which is not for the
49 purpose of filling a vacancy in an unexpired term shall
50 be for a term of six years.

51 The governor shall appoint a trustee to fill any
52 vacancy among the twelve trustees appointed by the
53 governor, by and with the advice and consent of the
54 Senate, which trustee appointed to fill such vacancy
55 shall serve for the unexpired term of the vacating
56 trustee. The governor shall fill the vacancy within sixty
57 days of the occurrence of the vacancy.

58 All trustees appointed by the governor shall be
59 eligible for reappointment: *Provided*, That a person who
60 has served as a trustee or director during all or any part
61 of two consecutive terms shall be ineligible to serve as
62 a trustee or director for a period of three years
63 immediately following the second of the two consecutive
64 terms.

65 The chairman of the advisory council of students, ex
66 officio; the chairman of the advisory council of faculty,
67 ex officio; and the chairman of the advisory council of
68 classified employees, ex officio, shall serve the terms for
69 which they were elected by their respective advisory
70 councils. These members shall be eligible to succeed
71 themselves.

72 (c) Before exercising any authority or performing any
73 duties as a trustee, each trustee shall qualify as such by
74 taking and subscribing to the oath of office prescribed
75 by section five, article IV of the constitution of West
76 Virginia, and the certificate thereof shall be filed with
77 the secretary of state.

78 (d) No trustee appointed by the governor shall be
79 removed from office by the governor except for official
80 misconduct, incompetence, neglect of duty or gross
81 immorality, and then only in the manner prescribed by
82 law for the removal of the state elective officers by the
83 governor.

§18B-2-3. Additional duties of board of trustees.

1 (a) The trustees shall govern the university of West
2 Virginia. The trustees shall develop a master
3 educational plan for the university system in the state,
4 establish research policies for the several institutions
5 within the university system and shall oversee graduate,
6 professional and medical education at the appropriate
7 institutions of higher education under their jurisdiction
8 to the end of avoiding duplication in advanced study,
9 specialty institutes and research.

10 (b) The board of trustees shall adopt a faculty salary
11 program with an overall goal of attaining salaries equal
12 to the average faculty salaries within similar groups of

13 disciplines and program levels at comparable peer
14 institutions within member states of the southern
15 regional educational board Four-Year 1 at West
16 Virginia university; Four-Year 3 at Marshall university;
17 and appropriate levels at the West Virginia graduate
18 college, Potomac state college of West Virginia
19 university, West Virginia university at Parkersburg and
20 the school of osteopathic medicine as determined by the
21 board of trustees. It is the intent of the Legislature,
22 limited by the extent of appropriations provided
23 specifically therefor, to provide the board of trustees
24 with sufficient funds to meet this goal by fiscal year one
25 thousand nine hundred ninety-six.

**§18B-2-8. Consortium of comprehensive child
development centers; establishment and
operation of a consortium of
comprehensive child development centers.**

1 (a) There is hereby established a consortium of
2 comprehensive child development centers under the
3 auspices of the board of trustees and under the direction
4 and administration of the vice chancellor for health
5 sciences. The goals of the consortium include, but are
6 not limited to:

7 (1) Recommending a comprehensive diagnostic and
8 technical support system to assist faculty and students
9 in providing educational programs for students with
10 disabilities;

11 (2) Providing a system for the comprehensive
12 interdisciplinary diagnosis, treatment and follow-up of
13 children and young adults with special needs and their
14 families;

15 (3) Offering programs for the training of parents and
16 families;

17 (4) Creating significant links between disciplines,
18 departments, schools, colleges, universities and agencies;

19 (5) Providing all services (clinical, training, technical
20 assistance and consultation) at child development
21 centers and at strategically planned outreach sites,
22 including institutions of higher education;

23 (6) Planning and implementing a statewide system of
24 care for children with special needs and their families;

25 (7) Providing family-centered, community-based,
26 culturally sensitive, coordinated care;

27 (8) Assuring interdisciplinary, interagency
28 cooperation;

29 (9) Linking community-based health and educational
30 services with institutions of higher education;

31 (10) Establishing a statewide comprehensive
32 diagnostic support team and advisory boards at each
33 center composed of agency representatives, physicians,
34 education providers, center personnel, parents and
35 others; and

36 (11) Facilitating significant parent and family
37 participation, including parents as members of the
38 statewide team and representing a majority of the
39 membership of each center's advisory boards.

40 (b) Subject to appropriations by the Legislature, the
41 board of trustees is authorized and directed to establish
42 at least four comprehensive child development sites at
43 existing university health science centers located at
44 Morgantown, Charleston, Huntington and Lewisburg.
45 Planning of at least these four centers and the
46 establishment of advisory boards shall be completed by
47 the first day of July, one thousand nine hundred ninety-
48 three. The board of trustees shall establish at least these
49 four sites prior to the first day of January, one thousand
50 nine hundred ninety-four.

51 The board of trustees may enter into a contractual
52 relationship with each child development center, which
53 shall be in accordance with laws that apply to publicly
54 funded partnerships with private, nonprofit entities and
55 the provisions of section three, article five of this
56 chapter.

ARTICLE 3. BOARD OF DIRECTORS OF THE STATE COLLEGE SYSTEM.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

§18B-3-3. Additional duties of board of directors.

§18B-3-4. Community colleges.

§18B-3-1. Composition of board; terms and qualifications of members; vacancies; eligibility for reappointment; oath of office; removal from office.

1 (a) The board of directors of the state college system
2 shall consist of seventeen persons, of whom one shall be
3 the chancellor of the university of West Virginia board
4 of trustees, ex officio, who shall not be entitled to vote;
5 one shall be the state superintendent of schools, ex
6 officio, who shall not be entitled to vote; one shall be the
7 chairman of the advisory council of students, ex officio,
8 who shall be entitled to vote; one shall be the chairman
9 of the advisory council of faculty, ex officio, who shall
10 be entitled to vote; and one shall be the chairman of the
11 advisory council of classified employees, ex officio, who
12 shall be entitled to vote. The other twelve directors shall
13 be citizens of the state, appointed by the governor, by
14 and with the advice and consent of the Senate.

15 Each of the directors appointed to the board by the
16 governor shall represent the public interest and shall be
17 especially qualified in the field of higher education by
18 virtue of the person's knowledge, learning, experience or
19 interest in the field.

20 Except for the ex officio directors, no person shall be
21 eligible for appointment to membership on the board of
22 directors who is an officer, employee or member of an
23 advisory board of any state college or university, an
24 officer or member of any political party executive
25 committee, the holder of any other public office or
26 public employment under the government of this state
27 or any of its political subdivisions, or an appointee or
28 employee of the board of trustees or board of directors:
29 *Provided*, That if there are no ethical restrictions under
30 state or federal law, a federal employee may serve as
31 a member of the board of directors. Of the twelve
32 directors appointed by the governor from the public at
33 large, not more than six thereof shall belong to the same
34 political party and at least two directors of the board

35 shall be appointed from each congressional district.

36 Except as provided in this section, no other person
37 may be appointed to the board.

38 (b) The governor shall appoint twelve directors as
39 soon after the first day of July, one thousand nine
40 hundred eighty-nine, as is practicable, and the original
41 terms of all directors shall commence on that date. The
42 terms of the directors appointed by the governor shall
43 be for overlapping terms of six years, except, of the
44 original appointments, four shall be appointed to terms
45 of two years, four shall be appointed to terms of four
46 years and four shall be appointed to terms of six years.
47 Each subsequent appointment which is not for the
48 purpose of filling a vacancy in an unexpired term shall
49 be appointed to a term of six years.

50 The governor shall appoint a director to fill any
51 vacancy among the twelve directors appointed by the
52 governor, by and with the advice and consent of the
53 Senate, which director appointed to fill such vacancy
54 shall serve for the unexpired term of the vacating
55 director. The governor shall fill the vacancy within sixty
56 days of the occurrence of the vacancy.

57 All directors appointed by the governor shall be
58 eligible for reappointment: *Provided*, That a person who
59 has served as a director or trustee during all or any part
60 of two consecutive terms shall be ineligible to serve as
61 a director for a period of three years immediately
62 following the second of the two consecutive terms.

63 The chairman of the advisory council of students, ex
64 officio; the chairman of the advisory council of faculty,
65 ex officio; and the chairman of the advisory council of
66 classified employees, ex officio, shall serve the terms for
67 which they were elected by their respective advisory
68 councils. These members shall be eligible to succeed
69 themselves.

70 (c) Before exercising any authority or performing any
71 duties as a director, each director shall qualify as such
72 by taking and subscribing to the oath of office
73 prescribed by section five, article IV of the constitution

74 of West Virginia, and the certificate thereof shall be
75 filed with the secretary of state.

76 (d) No director appointed by the governor shall be
77 removed from office by the governor except for official
78 misconduct, incompetence, neglect of duty or gross
79 immorality, and then only in the manner prescribed by
80 law for the removal by the governor of the state elective
81 officers.

§18B-3-3. Additional duties of board of directors.

1 (a) The board of directors of the state college system
2 shall govern the state college system.

3 (b) The board of directors shall determine programs
4 to be offered by state institutions of higher education
5 under its jurisdiction, shall clarify the missions of the
6 institutions under its jurisdiction, and, in so doing,
7 ensure that Fairmont state and West Virginia institute
8 of technology are given primary responsibility for
9 technical preparation teacher training programs.

10 (c) The board of directors shall govern community
11 colleges and shall organize eight community college
12 service areas in accordance with section four of this
13 article.

14 (d) The board of directors shall adopt a faculty salary
15 program with an overall goal of attaining salaries equal
16 to the average faculty salaries within similar groups of
17 disciplines and program levels at comparable peer
18 institutions within member states of the southern
19 regional education board. It is the intent of the
20 Legislature, limited by the extent of appropriations
21 made specifically therefor, to provide the board of
22 directors with sufficient funds to meet this goal by fiscal
23 year one thousand nine hundred ninety-six.

§18B-3-4. Community colleges.

1 (a) Effective the first day of July, one thousand nine
2 hundred eighty-nine, the following institutions are
3 hereby established or continued as freestanding
4 community colleges: southern West Virginia community
5 college and West Virginia northern community college.

6 Such freestanding community colleges shall not be
7 operated as branches or off-campus locations of any
8 other state institution of higher education.

9 (b) The directors, in accordance with article two-b,
10 chapter eighteen of this code, shall cooperate with the
11 state board of education, the state council of vocational-
12 technical education and the joint commission for
13 vocational-technical-occupational education to develop a
14 comprehensive system of academic, vocational, technical
15 and career development programs to serve the
16 educational needs of adults for college preparatory, two-
17 year associate degree, continuing education, work force
18 training and retraining, and other such programs
19 within the state. The board of directors shall delegate
20 such authority as they deem prudent to the community
21 college presidents, or other administrative heads, to
22 work with campus level advisory committees to assess
23 the work force needs of business and industry within
24 their service areas, regularly review and revise
25 curricula to ensure that the work force needs are met,
26 develop new programs and phase out or modify existing
27 programs as appropriate to meet such needs, provide
28 professional development opportunities for faculty and
29 staff, establish cooperative programs and student
30 internships with business and industry, streamline
31 procedures for designing and implementing customized
32 training programs and to accomplish such other
33 complements of a quality comprehensive community
34 college. In developing such a system, the various
35 educational agencies shall establish cooperative
36 relationships to utilize existing community colleges and
37 programs, public school vocational centers and other
38 existing facilities to serve the identified needs within the
39 service area. The community colleges, including
40 freestanding community colleges, shall be organized
41 into eight community college service areas which shall
42 have the same boundaries as the regional educational
43 service agencies established by the state board of
44 education pursuant to section twenty-six, article two,
45 chapter eighteen of this code: *Provided*, That any
46 community college and the branches thereof existing on
47 the effective date of this section may be located in more

48 than one community college service area created
49 pursuant to this section and shall not be affected by such
50 service area boundary.

51 (c) A separate division of community colleges shall be
52 established under the board of directors. Programs at
53 community colleges shall be two years or less in
54 duration.

55 (d) The board of directors may fix tuition and
56 establish and set such other fees to be charged students
57 as it deems appropriate, and shall pay such tuition and
58 fees collected into a revolving fund for the partial or full
59 support, including the making of capital improvements,
60 of any community college established, continued or
61 designated hereunder. Funds collected at any such
62 community college may be used only for the benefit of
63 that community college. The board of directors may also
64 establish special fees for such purposes as, including,
65 but not limited to, health services, student activities,
66 student recreation, athletics or any other
67 extracurricular purposes. Such special fees shall be paid
68 into special funds and used only for the purposes for
69 which collected.

70 Moneys collected at a branch college or off-campus
71 location of a state institution of higher education which
72 is subsequently designated as a community college shall
73 be transferred to and vested in the successor community
74 college.

75 (e) The board of directors may allocate funds from the
76 appropriations for the state college system for the
77 operation and capital improvement of any community
78 college continued, established or designated under
79 authority of this section and may accept federal grants
80 and funds from county boards of education, other local
81 governmental bodies, corporations or persons. The
82 directors may enter into memoranda of agreements with
83 such governmental bodies, corporations or persons for
84 the use or acceptance of local facilities and/or the
85 acceptance of grants or contributions toward the cost of
86 the acquisition or construction of such facilities. Such
87 local governmental bodies may convey capital

88 improvements, or lease the same without monetary
89 consideration, to the board of directors for the use by
90 the community college, and the board of directors may
91 accept such facilities, or the use or lease thereof, and
92 grants or contributions for such purposes from such
93 governmental bodies, the federal government or any
94 corporation or person.

95 (f) To facilitate the administration, operation and
96 financing of programs in shared facilities of the state
97 college system or the university of West Virginia system
98 and a county board or boards of education, the affected
99 governing board and county board or boards of
100 education may appoint a joint administrative board
101 consisting of five members to be appointed as follows:
102 The county board of education shall appoint two
103 members in consultation with the county superintendent
104 of schools; the appropriate governing board shall
105 appoint two members in consultation with the president
106 of the affected state institution of higher education; and
107 one at-large member, who shall chair the joint
108 administrative board, shall be appointed by mutual
109 agreement of the respective boards in consultation with
110 their superintendent and president. When two or more
111 county boards of education are participating in such
112 shared program, such county board appointments shall
113 be made by mutual agreement of each of the
114 participating county boards in consultation with their
115 respective superintendents. Members shall serve for
116 staggered terms of three years. With respect to initial
117 appointments, one member appointed by the county
118 board or boards of education and one member appointed
119 by the governing board shall serve for one year, one
120 member appointed by the county board or boards of
121 education and one member appointed by the governing
122 board shall serve for two years, and the at-large
123 member shall serve for three years. Subsequent
124 appointments shall be for three years. A member may
125 not serve more than two consecutive terms. Members
126 shall be reimbursed for reasonable and necessary
127 expenses actually incurred in the performance of their
128 duties as board members from funds allocated to the
129 shared facility, except that members who are employed

130 by a board of education, governing board or state
131 institution of higher education shall be reimbursed by
132 their employer.

**ARTICLE 3A. WEST VIRGINIA JOINT COMMISSION FOR
VOCATIONAL-TECHNICAL-OCCUPATIONAL
EDUCATION.**

**§18B-3A-2. Composition of commission; terms of
members; qualifications of members.**

1 The members appointed by the governor shall include
2 all of the following:

3 (a) Seven individuals who shall be representatives
4 from business, industry and agriculture, including one
5 member representing small business concerns, one
6 member of whom shall represent the West Virginia
7 development office, one member of whom shall
8 represent proprietary schools and one member of whom
9 shall represent labor organizations. In selecting private
10 sector individuals under this subdivision, the governor
11 shall give due consideration to the appointment of
12 individuals who serve on a private industry council or
13 other appropriate state agencies.

14 (b) Six individuals, three of whom shall be
15 representatives of secondary vocational-technical-
16 occupational education appointed by the governor, with
17 advice from the state superintendent of schools, and
18 three of whom shall be representatives of post-secondary
19 vocational-technical-occupational education appointed
20 by the governor, with advice from the chancellor of the
21 board of directors.

22 In addition to the members appointed by the
23 governor, the state superintendent of schools and the
24 chancellor of the board of directors shall serve as ex
25 officio members.

26 Members of the commission shall serve for
27 overlapping terms of four years, except that the original
28 appointments to the commission shall be for staggered
29 terms allocated in the following manner: One member
30 recommended for appointment by the chancellor, one
31 member recommended for appointment by the state

32 superintendent of schools and two members appointed
33 by the governor for terms of two years; one member
34 recommended for appointment by the chancellor, one
35 member recommended for appointment by the state
36 superintendent of schools and two members appointed
37 by the governor for terms of three years; and one
38 member recommended for appointment by the state
39 superintendent of schools, one member recommended
40 for appointment by the chancellor and three members
41 appointed by the governor for terms of four years.

**ARTICLE 3C. GOVERNOR'S COUNCIL ON HIGHER AND OTHER
POST-SECONDARY EDUCATION.**

- §18B-3C-1. Legislative findings; statement of purpose.
§18B-3C-2. Governor's council on higher and other post-secondary education established.
§18B-3C-3. Powers and authority of council generally.
§18B-3C-4. Funding and budgetary needs for higher and other post-secondary education.
§18B-3C-5. Increased enrollment.
§18B-3C-6. Student financing and cost of providing higher and other post-secondary education.
§18B-3C-7. Succeeding in higher and other post-secondary education endeavors.
§18B-3C-8. Interaction among the state's education professionals.
§18B-3C-9. Assistance for students with disabilities.

§18B-3C-1. Legislative findings; statement of purpose.

1 (a) The Legislature finds that West Virginia's
2 economic future depends in part on the number of
3 citizens with higher and other post-secondary education.
4 In today's knowledge-based economy, higher education
5 or other training beyond the high school level is
6 required for most jobs that allow our citizens to
7 maintain or improve their standard of living. To that
8 end, access to higher and other post-secondary education
9 must be expanded for students currently enrolled in
10 school, as well as nontraditional students. This requires
11 adequate planning and preparation, as well as the
12 acquisition of strong basic skills, thinking and learning
13 skills and human relation skills, so that the education
14 may be successfully completed.

15 The Legislature further finds that real and perceived
16 barriers within West Virginia's education systems

17 hamper West Virginians from achieving their
18 educational goals and limit citizens' economic
19 opportunities. To overcome these barriers, the education
20 providers must address issues such as cost and
21 availability of courses at locations and times convenient
22 to students with families and jobs, as well as adequate
23 preparation.

24 The Legislature further finds that clear expectations
25 and objectives among the institutions, boards and other
26 entities providing higher and post-secondary education
27 can be improved, with a view toward accountability,
28 efficiency and productivity. The state board of
29 education, the governing board of the state college
30 system, the governing board of the university system,
31 the joint commission on vocational-technical-
32 occupational education and the administrations of the
33 many private colleges and universities and private,
34 proprietary schools are all important components in the
35 delivery of higher and other post-secondary education in
36 this state and will play a vital role in meeting the
37 challenges of the future. Cooperation and planning
38 among the public and private institutions is necessary
39 for effective work force preparation.

40 The Legislature further intends, by this article, to
41 extend post-secondary and higher educational
42 opportunities to diverse populations, thereby requiring
43 sensitivity to regional, cultural, ethnic, economic, age
44 and other differences so as to enhance West Virginians
45 preparedness for, awareness of, interest in and access to
46 such education and to eliminate barriers to receiving
47 such education. The emphasis must be to meet the needs
48 of all West Virginians.

49 (b) To that end, the Legislature intends to regularly
50 convene those persons at the highest legislative and
51 education policy-making levels of state government, as
52 well as private educational institutions and economic
53 development entities, to fulfill the responsibilities set
54 forth in this article, as well as to adopt other strategies
55 to meet the goals set forth in this article.

56 The Legislature intends this council to be an advisory,

57 coordinating council with no governing authority over
58 the state's educational institutions.

§18B-3C-2. Governor's council on higher and other post-secondary education established.

1 There is hereby created the governor's council on
2 higher and other post-secondary education, hereinafter
3 referred to as the "HOPE council" or the "council". In
4 addition to such other persons as the governor may
5 appoint to the HOPE council, the council shall include
6 the secretary of education and the arts, the chairs of
7 each of the higher education governing boards, the
8 president of the state board of education, the president
9 of the association of independent colleges, the president
10 of the joint commission on vocational-technical-
11 occupational education, the president of the council on
12 economic development and the chairs of the education
13 committees of both the Senate and the House of
14 Delegates, both of whom shall serve in an advisory
15 capacity only.

16 The HOPE council shall be chaired by the governor
17 and shall convene at least quarterly. The HOPE council
18 shall establish bylaws which govern its decision making.

§18B-3C-3. Powers and authority of council generally.

1 (a) In addition to all other powers granted to the
2 HOPE council in this article and elsewhere by law, the
3 HOPE council shall have the power and authority to:

4 (1) Make such budget recommendations as may be
5 necessary for financing the work coordinated or
6 facilitated by the council, such recommendation to be
7 submitted to the governor for inclusion in the executive
8 budget in one or more appropriate existing accounts;

9 (2) Promote the work of the HOPE council in order
10 to engender strong support from the community,
11 education providers, the Legislature and business
12 leaders;

13 (3) Report annually to the Legislature and to such
14 other entities as the HOPE council may deem
15 appropriate on issues relating to higher and other post-

16 secondary education and develop a means of
17 communication with education providers and advisory
18 councils and with community members and business
19 leaders who are involved in activities which further the
20 goals, objectives and duties set forth in this article;

21 (4) Facilitate written agreements and procedures
22 between and among the higher education governing
23 boards, the state board of education, county boards of
24 education, the joint commission for vocational-technical-
25 occupational education, the distance learning
26 coordinating council and other boards, agencies and
27 entities involved in activities which further the goals,
28 objectives and duties set forth in this article;

29 (5) Review any rules, policies and procedures to the
30 extent that they impact on or create barriers to higher
31 or post-secondary education;

32 (6) Solicit proposals in furtherance of any program or
33 service required by this article, especially for the
34 implementation of pilot programs, and direct such
35 proposals to the appropriate entity for possible
36 implementation;

37 (7) Solicit grants, gifts, bequests, donations and other
38 funds for the benefit of any board, agency, commission
39 or other public entity best suited to administer or
40 facilitate the purpose of the grant, gift, bequest,
41 donation or other funds; and

42 (8) Report to the Legislature not later than the first
43 day of January, one thousand nine hundred ninety-four,
44 a common protocol for the education and certification of
45 teachers in the public schools of this state which shall
46 be developed with input from the center for professional
47 development.

48 (b) The HOPE council shall not have the authority to
49 hire personnel, nor shall the council have a separate
50 budget or direct control over any state funds.

**§18B-3C-4. Funding and budgetary needs for higher and
other post-secondary education.**

1 (a) The HOPE council shall analyze the accounts in

2 the state budget that address or impact upon higher
3 education and other post-secondary educational
4 opportunities, review budgetary needs and revenue
5 sources and make recommendations regarding the
6 governor's proposed budget and the redirection of
7 resources. In making such recommendations, the HOPE
8 council shall educate themselves on the availability of
9 and eligibility for federal, local and private funding,
10 with the goal of maximizing federal, local and private
11 revenues for enhancing higher education and other post-
12 secondary educational opportunities.

13 (b) The HOPE council shall consider statutory
14 changes necessary to further the intent of this article:
15 *Provided*, That any legislative recommendation shall be
16 accompanied by a proposal or plan for sufficient
17 funding. In exploring all aspects of funding possibilities,
18 the HOPE council shall consider innovative, flexible
19 funding such as inter-board and inter-agency funding
20 and reimbursement and joint funding pools.

21 (c) The HOPE council shall recommend fiscal
22 incentives for institutions offering higher and other
23 post-secondary education that adopt and implement
24 policies and programs that result in substantial cost
25 savings. Any resulting savings shall be identified,
26 deposited in a special revenue account and expended in
27 accordance with legislative appropriation: *Provided*,
28 That any resulting savings shall be retained by the
29 school, state institution of higher education, board,
30 commission or other public entity responsible for the
31 savings: *Provided, however*, That the governing boards
32 may redirect no more than fifty percent of savings
33 identified by specific institutions of higher education if
34 the appropriate governing board decides that the
35 savings should not be retained by the institution:
36 *Provided further*, That any savings accruing to accounts
37 which are subject to appropriation by the Legislature
38 shall remain in said appropriated accounts and may be
39 expended only upon subsequent appropriation by the
40 Legislature.

§18B-3C-5. Increased enrollment.

1 (a) The HOPE council shall work to increase all West
2 Virginians' preparedness for, awareness of, interest in
3 and access to higher and other post-secondary education
4 through effective means that include, but are not limited
5 to, recommending or coordinating:

6 (1) Marketing programs and other means of
7 disseminating information illustrating the benefits of
8 higher and other post-secondary education, including
9 information regarding lifetime earning potential
10 projections and specific job opportunities which require
11 higher or other post-secondary education;

12 (2) Clear definitions of expectations and needs
13 regarding academic competencies required for success
14 in higher and other post-secondary educational
15 programs;

16 (3) Utilization of students, alumni, advisory councils
17 and business and community leaders to promote the
18 importance of education;

19 (4) Coordinated information systems and examples of
20 forms, including admission and other forms, designed to
21 provide people with complete, easy-to-read information
22 on higher and other post-secondary education and to
23 simplify the admissions process;

24 (5) Public information whereby citizens can receive
25 information on higher and other post-secondary
26 education which may include television programs,
27 public service announcements and any other effective
28 means of providing information on, communicating or
29 promoting higher and other post-secondary education,
30 including an expansion of "Project Go" and other
31 computerized services intended to designate appropriate
32 institutions of higher education to meet the goals, needs
33 and abilities of potential students; and

34 (6) Support, assistance and encouragement to
35 currently enrolled students and other citizens, especially
36 in minority or other groups under-represented in the
37 post-secondary student population, who may need same
38 to begin or return to higher or other post-secondary
39 education, which shall include an expansion of the

40 federally-funded talent search project.

41 (b) As to students currently enrolled in elementary
42 and secondary school programs, the council shall work
43 to increase their preparedness for, awareness of, interest
44 in and access to higher and other post-secondary
45 education through effective means that include, but are
46 not limited to, facilitating:

47 (1) Having college student volunteers tutor in the
48 elementary and secondary schools;

49 (2) Providing career counseling to each student, with
50 at least two in-depth sessions, including one during the
51 middle or junior high school years;

52 (3) Emphasizing strong basic skills in math, science
53 and communication, together with total wellness
54 concepts that recognize the link between good physical
55 health and mental aptitude;

56 (4) Eliminating the general curriculum and, instead,
57 focusing on college preparation, technical preparation
58 ("tech prep") or occupational preparation;

59 (5) Developing and signing onto a high school
60 curriculum plan for each eighth grade student that
61 steers each student into appropriate career directions
62 without setting up limitations and educational and
63 career barriers for any student;

64 (6) Organizing at least annually career day programs
65 and career fairs and inviting guest lecturers in careers
66 requiring higher or other post-secondary education;

67 (7) Developing an early warning system for
68 elementary and secondary school students to identify
69 academic deficiencies, which includes an opportunity for
70 each student to be evaluated and assesses each student's
71 progress regarding potential entry into post-secondary
72 education by each student's tenth grade year;

73 (8) Providing sequential assessment in junior and
74 senior high school to periodically measure student
75 academic achievement, utilizing such means of
76 assessment as the education planning and assessment
77 system (EPAS) offered by American college testing

78 (ACT);

79 (9) Providing information on financing post-secondary
80 education to each sixth grade student;

81 (10) Extending by the one thousand nine hundred
82 ninety-three—ninety-four school year to students
83 entering the ninth grade the warranty of proficiency
84 that is given in the form of a certificate of proficiency
85 in basic skills to public school system graduates that
86 enables them to return to the public school system to
87 receive additional schooling in the areas where
88 proficiency is lacking;

89 (11) Informing each eleventh grade student, by the
90 mid-point of the eleventh grade year, of standardized
91 test-taking requirements for college entrance, providing
92 instruction on how to prepare for such tests, explaining
93 college application procedures and providing financial
94 aid information;

95 (12) Assisting students in the twelfth grade and their
96 parents with admission and financial aid forms;

97 (13) Exposing each student to a college campus
98 through at least one academic visit to a college campus
99 and providing opportunities for high school juniors and
100 seniors to spend time on campus; and

101 (14) Expanding college courses offered in high schools
102 and enrolling advanced high school students in college
103 courses.

104 (c) As to nontraditional students, the council shall
105 work to increase their preparedness for, awareness of,
106 interest in and access to higher and other post-secondary
107 education through effective means that include, but are
108 not limited to, facilitating:

109 (1) Outreach in familiar environments by community
110 organizations and by employment services and public
111 assistance organizations;

112 (2) Development of a retraining fund for persons who
113 have been in the work force for four or more years;

114 (3) Provision of child care services;

- 115 (4) College recruitment programs for retired military
116 personnel;
- 117 (5) Advisory groups of employees and trade councils;
- 118 (6) Institution of courses attractive and available to
119 business and industry employees and employers who
120 require advanced training or retraining;
- 121 (7) Funding for rapid responses to the needs of
122 business and industry, making courses available when
123 needed and where needed without developing
124 permanent programs, in an amount to be appropriated
125 by the Legislature to the West Virginia development
126 office for a competitive grant program;
- 127 (8) Courses at locations and times convenient for
128 students with families and/or jobs, such as modular
129 courses in nontraditional formats and at nontraditional
130 times such as on weekends;
- 131 (9) Work toward an amendment of federal law to
132 allow unemployed workers to become full-time students
133 without losing benefits;
- 134 (10) Sensitivity training for faculty, staff and students
135 regarding cultural diversity; and
- 136 (11) Coordinating in-service training for all faculty
137 and staff to inform them of the requirements of Public
138 Law 101-336, the Americans with Disabilities Act, and
139 any amendments thereto, to sensitize them to the needs
140 of individuals with disabilities.

**§18B-3C-6. Student financing and cost of providing
higher and other post-secondary
education.**

- 1 (a) In addition to other provisions in this article and
2 code relating to student financing of higher and other
3 post-secondary education, the HOPE council shall
4 address issues regarding the cost of higher and other
5 post-secondary education in an attempt to render such
6 education more affordable and shall utilize effective
7 means that include, but are not limited to:
- 8 (1) Recommending increases in available funds

9 subject to legislative appropriation for grants and loans,
10 including the higher education grant program created
11 pursuant to article five, chapter eighteen-c of this code;

12 (2) Encouraging new student aid funded primarily
13 from local community resources in return for the future
14 performance of public service jobs by students receiving
15 such aid;

16 (3) Facilitating the sale or offering of bonds pursuant
17 to the individual higher education savings plan program
18 set forth in section five, article nine-d, chapter eighteen
19 of this code;

20 (4) Publicizing the availability of unsubsidized
21 guaranteed loans;

22 (5) Arranging for the publication of brochures about
23 applying for financial aid and make same widely
24 available in convenient locations;

25 (6) Addressing the financial needs and sources of
26 funds for state institutions of higher education with a
27 goal that tuition and fees for state residents are
28 approximately the median of the average of fees for
29 comparable institutions within the southern regional
30 education board area and so that, beginning with the
31 school year beginning on the first day of July, one
32 thousand nine hundred ninety-five, and continuing
33 thereafter, tuition and fees for nonresident students
34 covers the full cost of instruction at state institutions of
35 higher education;

36 (7) Assisting the governing boards with the
37 development of flexible means for the payment of tuition
38 and fees, including installment payment plans, and
39 payment by credit card or other commonly accepted
40 form of credit;

41 (8) Assisting the governing boards with the
42 development of policies which minimize textbook
43 changes, utilize textbooks system-wide and statewide to
44 the extent possible and require that each campus
45 implement a textbook exchange program, which
46 program shall be extended system-wide and statewide;
47 and

48 (9) Exploring ways that students can earn money
49 while having higher and other post-secondary
50 educational opportunities.

51 (b) In addition to other provisions in this article and
52 code relating to fiscal efficiency and accountability in
53 the provision of higher and other post-secondary
54 education, the HOPE council shall address issues
55 regarding the cost of higher and other post-secondary
56 education in an attempt to reduce the cost of providing
57 such education and shall utilize effective means that
58 include, but are not limited to:

59 (1) Assisting with the expansion of computer-assisted
60 instruction and technological delivery, including the
61 expanded use of public libraries for this delivery; the
62 integration to the greatest extent possible of the higher
63 education, public education and public library systems;
64 the delivery of the general education core curriculum by
65 technology-based instruction; and other distance
66 learning technologies set forth in section two-a, article
67 five, chapter ten of this code;

68 (2) As regards the general education core curriculum,
69 facilitating the establishment of standards and
70 strategies for assessing student learning of the
71 technology-based instruction, including standards for
72 minimum competencies in basic skill areas, higher
73 order thinking skills, and general knowledge, utilizing
74 the college assessment of academic proficiency (CAAP)
75 component of the educational planning and assessment
76 system (EPAS) offered by American college testing
77 (ACT); and

78 (3) Recommending the elimination of unnecessary
79 duplicate programs and courses.

§18B-3C-7. Succeeding in higher and other post-secondary education endeavors.

1 (a) The HOPE council shall facilitate the adoption of
2 policies and the implementation of programs that assist
3 students currently enrolled in higher education and
4 other post-secondary educational programs in
5 completing such programs, such policies and programs

6 to include, but not be limited to:

7 (1) Standard systems for assessing students and their
8 proficiency for entrance and placement in either college-
9 level credit courses or noncredit development courses
10 and periodic evaluations of these systems;

11 (2) Procedures to monitor individual student progress
12 and assess student proficiencies during the second year
13 of enrollment;

14 (3) Counseling and academic advising services that
15 give students an understanding of the academic
16 program requirements necessary for successful
17 program or degree completion, with a view toward each
18 student's career goals, which services should be
19 accessible to the student in terms of the hours that
20 student service offices are open and the location of such
21 services;

22 (4) Other student support services such as library
23 access, prompt interaction with peers and instructors
24 and peer mentoring for new students;

25 (5) Course reviews intended to assure that full-time
26 undergraduate students can earn degrees in a
27 reasonable length of time, to minimize the amount of
28 additional course work that must be taken at less
29 convenient times and locations before an undergraduate
30 degree may be completed, and to ensure that the
31 sequence and availability of academic programs and
32 courses is such that students have the maximum
33 opportunity to complete programs in the time frame
34 normally associated with program completion; and

35 (6) Transferability of course work credits, especially
36 core course work credits, among the state institutions of
37 higher education in each system, between the systems
38 and with private colleges and universities, including
39 transferability of core course work completed at any
40 state institution of higher education to another state
41 institution of higher education at the grade earned.

42 (b) The HOPE council shall facilitate the adoption of
43 policies and the implementation of programs that assist
44 students currently enrolled in higher education and

45 other post-secondary educational programs in
46 completing such programs, such policies and programs
47 to include, but not be limited to:

48 (1) A smooth transition from secondary and post-
49 secondary vocational programs to associate degree
50 programs, including the provision of enough resources
51 to meet the influx of students from vocational programs;

52 (2) Encouragement to each student to complete the
53 associate degree even if that student intends to earn a
54 higher education bachelor's degree through appropriate
55 counseling services;

56 (3) Encouragement to each student, after completion
57 of the associate degree, to continue toward a higher
58 education bachelor's degree through appropriate
59 counseling services; and

60 (4) Facilitation of the completion of the associate
61 degree and the continuation of education to completion
62 of a higher education bachelor's degree by providing
63 more "two plus two" programs which combine two-year
64 associate degree programs with two more years of study
65 toward a bachelor's degree.

66 (c) While encouraging all students to receive as much
67 higher or other post-secondary education as their means
68 and circumstances may allow, the HOPE council shall
69 recognize the appropriateness of technical certificates
70 and associate degrees, shall not treat the programs as
71 second-class programs and shall give attention to such
72 programs through effective means that include, but are
73 not limited to:

74 (1) Cooperation between private, public and higher
75 education in the delivery of vocational, occupational and
76 technical programs and courses, including the sharing
77 of advanced technology;

78 (2) Competitive grants administered by the joint
79 commission on vocational-technical-occupational
80 education as set forth in article three-a of this chapter,
81 with priority given to grants intended to match state
82 and federal funds for expansion of technical preparation
83 programs; and

84 (3) Definitions regarding expectations for secondary
85 and associate degree levels programs and the successful
86 completion thereof.

87 (d) The HOPE council shall assure that the higher
88 and other post-secondary education offered in this state
89 prepares the student for entering the work force
90 through effective means that include, but are not limited
91 to:

92 (1) Utilizing campus-level, system-wide and statewide
93 advisory groups, assess work force, business and
94 industry and market needs; prepare students for
95 specialized and other careers that meet these needs;
96 regularly review and revise programs and curricula
97 designed to train for specialized and other careers that
98 meet the work force needs; and develop new programs
99 and phase out or modify existing programs as
100 appropriate to meet work force, business and industry
101 and market needs;

102 (2) Emphasizing science and technology courses;

103 (3) Encouraging the establishment of courses and
104 programs which incorporate into the curriculum field
105 placements, internships, cooperative or apprenticeship
106 components, on-the-job training, service internships
107 and/or work experiences;

108 (4) Facilitating the study of the placement of the
109 patterns of students receiving a general education
110 degree to assess the effectiveness of the general
111 education experience, using studies required of
112 accrediting bodies;

113 (5) Assuring that graduates meet performance
114 standards through national accreditation and through
115 outcome assessments of graduates determined through
116 such means as follow-up studies of performances on
117 licensure exams and other objective indicia of meeting
118 performance standards and surveys and interviews with
119 subsequent employers; and

120 (6) Recommending ways to streamline procedures for
121 designing and implementing customized training
122 programs to meeting the needs of employers for specific

123 programs of limited duration.

124 (e) The HOPE council shall assist students who have
125 completed higher and other post-secondary education in
126 finding suitable employment through effective means
127 that include, but are not limited to:

128 (1) Coordinating the maintenance of a statewide job
129 bank for persons holding vocational, associate and
130 college degrees;

131 (2) Inviting committees of private citizens and
132 business leaders to identify work force needs, expand
133 opportunities and aid in job placement;

134 (3) Making recommendations regarding resource
135 placement based on economic realities and job
136 opportunities;

137 (4) Periodically assessing employee supply and job
138 demands in order to make recommendations regarding
139 the adjustment of programs to accommodate
140 employment needs and produce appropriate number of
141 graduates;

142 (5) Assisting with the development of systems for
143 enrollment management so that the number of students
144 corresponds to the demand for graduates in that area
145 of training; and

146 (6) Recommending increases in admission and
147 graduation standards in programs producing too many
148 graduates.

149 (f) The HOPE council shall facilitate the provision of
150 evaluative feedback to the public and private secondary
151 schools in this state to determine the effectiveness of the
152 educational experience and the performance of their
153 alumni through periodic studies of its graduates and
154 reports to the schools, which feedback shall include
155 information relating to:

156 (1) The graduates' general readiness for higher and
157 other post-secondary educational experiences;

158 (2) Student performance levels; and

159 (3) Job offers and job placement to the extent such

160 information is available.

161 (g) The HOPE council shall facilitate the provision of
162 evaluative feedback to higher education institutions and
163 other post-secondary schools in this state to determine
164 the effectiveness of the educational experience and the
165 job placement of their alumni through periodic studies
166 of its graduates and reports to the schools, which
167 feedback shall, where appropriate, make use of studies
168 required of many academic disciplines by their
169 accrediting bodies and shall include information
170 relating to:

171 (1) The graduates' general readiness for additional
172 higher and other post-secondary educational experiences
173 or for entry into the work force;

174 (2) Job offers and job placement; and

175 (3) General evaluative information regarding the
176 graduates' employment performance levels.

§18B-3C-8. Interaction among the state's education professionals.

1 (a) The HOPE council shall encourage interaction
2 among elementary, secondary, post-secondary and
3 higher education faculty and counselors through
4 effective means that include, but are not limited to:

5 (1) Communications and academic alliances among
6 educators in similar academic fields, especially among
7 middle and high school counselors and higher education
8 personnel in student advising roles, regarding academic
9 standards, expectations and needs; and

10 (2) Strategies to ensure that school counselors are well
11 informed about the efforts of the council to help students
12 prepare for, be aware of and interested in and have
13 access to, higher education and other post-secondary
14 educational opportunities.

15 (b) The HOPE council shall facilitate the coordination
16 of secondary, post-secondary and higher education
17 programs through effective means that include, but are
18 not limited to:

- 19 (1) Administration of community colleges and
20 technical schools in a single system;
- 21 (2) Post-baccalaureate courses for teachers that are
22 more subject-matter based; and
- 23 (3) Professional development opportunities.

§18B-3C-9. Assistance for students with disabilities.

- 1 (a) The HOPE council shall coordinate efforts among
2 the state institutions of higher education to work with
3 educational professionals in the public and private
4 elementary and secondary schools to increase training,
5 education and awareness regarding individuals with
6 disabilities and to develop and implement the adolescent
7 plan for transition services.
- 8 (b) The HOPE council shall encourage schools and
9 educational institutions to solicit input, advice and
10 consultation regarding issues that impact individuals
11 with disabilities through an advisory disability council
12 established at the schools and institutions. Membership
13 on the disability council should include individuals with
14 disabilities, teachers and faculty members, parents,
15 agency representatives, principals or other
16 administrative personnel, counselors and others whose
17 input would be helpful to the council. The HOPE council
18 shall encourage that each school or institution with an
19 advisory council make every effort to coordinate with
20 existing community networks and give them
21 appropriate representation on the council.
- 22 (c) The HOPE council shall make recommendations
23 regarding teacher education training to enable future
24 teachers to meet the unique educational needs of
25 individuals with disabilities.
- 26 (d) The HOPE council shall coordinate the
27 dissemination of information about programs, services
28 and activities for individuals with disabilities and shall
29 make recommendations to facilitate the development of
30 a public relations program regarding services available
31 for individuals with disabilities.
- 32 (e) The HOPE council shall recommend funding

33 sources for services and equipment for individuals with
34 disabilities and shall facilitate written agreements
35 between or among agencies and foundations that
36 provide direct or support services to individuals with
37 disabilities.

38 (f) The HOPE council shall examine and make
39 recommendations for the modification of existing
40 enrollment procedures to better facilitate timely
41 identification of students with disabilities who should be
42 provided the opportunity of higher and other post-
43 secondary education and the resources necessary to meet
44 that objective.

45 (g) The HOPE council shall encourage the
46 development of an orientation program for education
47 professionals, students and parents concerning student
48 disabilities and availability of services.

49 (h) The HOPE council shall encourage education
50 personnel to assist students with disabilities by
51 monitoring the performance of students, making
52 referrals for counseling and services and developing a
53 system that provides students on probation with
54 counseling and assessment services.

ARTICLE 4. GENERAL ADMINISTRATION.

§18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.

§18B-4-2. Senior administrator's powers and duties generally.

§18B-4-1. Officers of governing boards; employment of chancellors and senior administrator; offices.

1 (a) At its annual meeting in June of each year, each
2 governing board shall elect from its members appointed
3 by the governor a president and such other officers as
4 it may deem necessary or desirable: *Provided*, That the
5 initial annual meeting shall be held during July, one
6 thousand nine hundred eighty-nine. The president and
7 such other officers shall be elected for a one-year term
8 commencing on the first day of July following the
9 annual meeting and ending on the thirtieth day of June
10 of the following year. The president of the board shall

11 serve no more than two consecutive terms.

12 (b) Each governing board shall employ a chancellor
13 who shall serve at the will and pleasure of the employing
14 board and shall assist the governing board in the
15 performance of its duties and responsibilities. No
16 chancellor may hold or retain any other administrative
17 position within the system of higher education while
18 employed as chancellor. Each chancellor is responsible
19 for carrying out the directives of the governing board
20 by which employed and shall work with such board in
21 developing policy options. For the purpose of developing
22 or evaluating policy options, the chancellors may request
23 the assistance of the presidents of the institutions under
24 their jurisdiction and their staffs. The respective
25 chancellors shall jointly agree to, and shall hire, one
26 senior administrator who shall serve at their will and
27 pleasure in accordance with section two of this article.

28 (c) The director of health shall serve as the vice
29 chancellor for health affairs, who shall coordinate the
30 West Virginia university school of medicine, the
31 Marshall university school of medicine and the West
32 Virginia school of osteopathic medicine. The vice
33 chancellor for health affairs shall conduct a special
34 study of the West Virginia university school of medicine,
35 the Marshall university school of medicine and the West
36 Virginia school of osteopathic medicine to determine the
37 role and mission of said institutions in the reorganized
38 system of higher education in the state. The special
39 study shall include, but is not limited to, coordinating
40 medical education, training and delivery of health
41 services in the state; preparing nurse midwives, nurse
42 practitioners, medical technologists and other members
43 of the allied health professions; and providing for rural
44 health care. The vice chancellor shall submit a report
45 on said study to the governor and to the Legislature by
46 the first day of December, one thousand nine hundred
47 eighty-nine.

48 (d) Suitable offices for the senior administrator and
49 other staff shall be provided in Charleston.

§18B-4-2. Senior administrator's powers and duties generally.

1 (a) The senior administrator has a ministerial duty,
2 in consultation with and under direction of the chancel-
3 lers, to perform such functions, tasks and duties as may
4 be necessary to carry out the policy directives of the
5 governing boards and such other duties as may be
6 prescribed by law.

7 (b) The senior administrator may employ and dis-
8 charge, and shall supervise, such professional, adminis-
9 trative, clerical and other employees as may be neces-
10 sary to these duties and shall delineate staff responsi-
11 bilities as deemed desirable and appropriate. The senior
12 administrator shall fix the compensation and emolu-
13 ments of such employees: *Provided*, That effective the
14 first day of July, one thousand nine hundred ninety,
15 those employees whose job duties meet criteria listed in
16 the system of job classifications as stated in article nine
17 of this chapter shall be accorded the job title, compen-
18 sation and rights established in said article as well as
19 all other rights and privileges accorded classified
20 employees by the provisions of this code.

21 (c) The senior administrator shall follow state and
22 national educational trends and gather data on higher
23 educational needs.

24 (d) The senior administrator, in accordance with
25 established guidelines and in consultation with and
26 under the direction of the chancellors, shall administer,
27 oversee or monitor all state and federal student assist-
28 ance and support programs administered on the state
29 level, including those provided for in chapter eighteen-
30 c of this code.

31 (e) The senior administrator has a fiduciary respon-
32 sibility to administer the tuition and registration fee
33 capital improvement revenue bond accounts of the
34 governing boards.

35 (f) The senior administrator shall administer the
36 purchasing system or systems of the governing boards.

37 (g) The senior administrator shall be responsible for

38 the management of the West Virginia network for
39 educational telecomputing (WVNET). The senior ad-
40 ministrator shall establish a computer policy board,
41 which shall be representative of both the university
42 system and the college system. It shall be the respon-
43 sibility of the computer policy board to recommend to
44 the secretary of the department of education and the
45 arts policies for a statewide shared computer system.

46 (h) Any program or service authorized or required to
47 be performed by the governing boards and not specif-
48 ically assigned to the board of trustees or the board of
49 directors may be administered by the senior administra-
50 tor. Such program or service may include, but shall not
51 be limited to, telecommunications activities and other
52 programs and services provided for under grants and
53 contracts from federal and other external funding
sources.

ARTICLE 5. HIGHER EDUCATION BUDGETS AND EXPENDI- TURES.

§18B-5-2. Resource allocation model and policies; allocation of appropriations.

§18B-5-2a. Authorizing certain transfers within and among general and special revenue accounts for state institutions of higher education.

§18B-5-2. Resource allocation model and policies; allocation of appropriations.

1 (a) To promote the missions and achieve the goals and
2 objectives of the systems under their jurisdiction and to
3 provide information and guidance for the allocation of
4 funding between the two systems in an equitable
5 manner, the governing boards, through the central
6 office, shall develop a resource allocation model for the
7 allocation of general revenue funds appropriated for the
8 state system of higher education. In developing the
9 resource allocation model, the boards shall consider such
10 factors as peer institution information, enrollment
11 information and such other data as shall further an
12 equitable distribution of general revenue funds for
13 higher education. The governing boards, through the
14 central office, shall develop the model prior to the first
15 day of July, one thousand nine hundred ninety-three,

16 and may modify the model thereafter: *Provided*, That
17 such modifications are subject to the provisions of article
18 three-a, chapter twenty-nine-a of this code.

19 At such time as budget information for the next fiscal
20 year shall be due, each year the governing boards shall
21 make allocation decisions for the upcoming fiscal year
22 in accordance with the model then in effect and shall
23 inform the secretary of education and the arts of the
24 division of the recommended appropriation for higher
25 education for submission to the appropriate state agency
26 for incorporation in the executive budget. The governing
27 boards shall provide such other information as may be
28 requested by the secretary of education and the arts to
29 support the allocation division. Prior to the first day of
30 January of each year, the governing boards shall present
31 this and any other appropriate information to the
32 Legislature to support the proposed allocation of
33 appropriation as between the governing boards.

34 (b) To promote the missions and achieve the goals and
35 objectives of the institutions under the jurisdiction of the
36 board of trustees and board of directors and to provide
37 information and guidance for the allocation of funding
38 among the institutions in the separate systems in an
39 equitable manner in relation to their missions, goals and
40 objectives, the board of trustees and the board of
41 directors shall each develop a resource allocation policy
42 based on comparative information which includes the
43 following factors:

44 (1) Full-time equivalent enrollment;

45 (2) Average state appropriations per full-time-
46 equivalent student at similar institutions in the southern
47 regional education board; and

48 (3) Other relevant factors.

49 The Legislature finds that an emergency situation
50 exists and therefore, the governing boards are hereby
51 authorized to establish by emergency rule a resource
52 allocation policy for each governing board prior to the
53 first day of January, one thousand nine hundred ninety-
54 four. Either governing board may modify its policy

55 thereafter, such modification to be submitted to the
56 legislative oversight commission on education accounta-
57 bility subject to the provisions of article three-a, chapter
58 eighteen-a of this code.

59 Upon approval of the resource allocation policy, each
60 governing board, prior to the first day of January of
61 each year, shall present information to the secretary of
62 education and the arts and the Legislature which sets
63 forth the allocation decisions made by the respective
64 governing boards for the then current fiscal year based
65 on the policy then in effect, and the allocation decisions
66 proposed for the next year, based on the policy in effect
67 for the next succeeding fiscal year.

68 (c) From appropriations to the institutional control
69 accounts of the respective governing boards for alloca-
70 tion to the state institutions of higher education under
71 their jurisdiction, the governing boards shall allocate all
72 such funds above the amounts actually allocated from
73 appropriations for fiscal year one thousand nine
74 hundred ninety-three to their respective institutions
75 proportional to such amounts as are indicated by
76 application of the resource allocation policy then in
77 effect.

78 For fiscal year one thousand nine hundred ninety-
79 four, all funds that are in excess of the funds received
80 by the governing boards for expenditure by the state
81 institutions of higher education for fiscal year one
82 thousand nine hundred ninety-three shall be allocated in
83 accordance with the governing boards' resource alloca-
84 tion model and each governing board's institutional
85 resource allocation policy to the extent that a policy is
86 in place, whether or not the policy has been approved
87 in accordance with the provisions of subsection (b) of
88 this section.

89 (d) Beginning with fiscal year one thousand nine
90 hundred ninety-five, each governing board shall apply
91 its resource allocation policy to existing base budgets in
92 order to effect an equalization of the institutional state
93 funding differences at twenty percent per year over a
94 five-year period until such time as the percentage of

95 institutional differences as determined by the resource
96 allocation policy for that system are equalized. After a
97 five-year phase-in period, all appropriations to the
98 institutional accounts of the respective governing boards
99 shall be allocated to their respective institutions
100 proportional to such amounts as are indicated by
101 application of the resource allocation policy for that
102 system.

103 (e) From appropriations for the higher education
104 governing boards, the governing boards shall jointly
105 allocate funds for the operation of the central office
106 under the senior administrator and shall share equally
107 the cost of suitable offices for the senior administrator
108 and other staff in Charleston.

109 (f) Any tuition and registration fee collections paid
110 into tuition and registration fee special capital improve-
111 ment funds and special revenue bond funds which
112 accrue in excess of the amounts necessary to protect the
113 interests of all holders of obligations for which such fees
114 were pledged by the board of regents and shall remain
115 pledged under the governing boards, shall be allocated
116 to each governing board in proportion to the amounts
117 of such fees collected through the institutions under its
118 jurisdiction and shall be deposited in special capital
119 improvement funds in the state treasury under the name
120 of the governing board for expenditure for capital
121 improvements at the institutions under the appropriate
122 board's jurisdiction.

**§18B-5-2a. Authorizing certain transfers within and
among general and special revenue ac-
counts of state institutions of higher
education.**

1 (a) In accordance with the provisions of section
2 seventeen, article two, chapter five-a of this code, the
3 transfer of amounts between items of appropriations, or
4 the transfer of moneys in a special account established
5 for a particular purpose into another account for
6 expenditure for another purpose, are specifically
7 authorized for a spending unit under the jurisdiction of
8 the governing boards subject to the following conditions:

9 (1) The president or other administrative head of a
10 state institution of higher education submits a written
11 request to the appropriate governing board. The
12 appropriate governing board approves the request for
13 the transfer and submits a written request for the
14 transfer to the secretary of education and the arts. The
15 legislative auditor and the legislative oversight commis-
16 sion on education accountability are to be furnished a
17 copy of the request;

18 (2) The secretary of education and the arts, after
19 consultation with the appropriate governing board,
20 gives written approval to a request for a transfer and
21 follows such procedures as may be required by the
22 secretary of administration, the auditor and the treas-
23 urer to effect the transfer prior to any expenditure of
24 the moneys so transferred;

25 (3) Such a transfer does not:

26 (A) Expand a program, establish a new program or
27 provide capital for an expense that cannot be paid
28 during the current fiscal year; or

29 (B) Increase the moneys allocated or appropriated to
30 personal services unless:

31 (i) Such transfer to personal services is made on an
32 emergency basis for the employment of personnel for
33 summer school, and then only in such amounts as
34 mandated for salary purposes by articles eight and nine
35 of this chapter: *Provided*, That moneys transferred for
36 the employment of personnel for summer school shall be
37 separately accounted for to indicate which of the
38 accounts appropriated by the Legislature are increased
39 or reduced as a result of the transfer; or

40 (ii) A quarterly allotment of funds pursuant to section
41 fifteen, article two, chapter five-a of this code is
42 insufficient to meet the appropriated personal services
43 budget of the spending unit in that fiscal quarter, in
44 which case a transfer may only be made to meet the
45 insufficiency and shall be accompanied by a pledge to
46 replace funds in the original accounts by the end of that
47 fiscal year;

48 (4) Not more than five percent of the total allocation
49 or appropriation in any general revenue account of a
50 state institution of higher education may be transferred
51 between the items of allocation or appropriation thereof
52 or between the accounts established for such institution;

53 (5) The transfer of moneys in a special account
54 established for a particular purpose into another
55 account for expenditure for another purpose shall not
56 exceed such amounts as are determined by the president
57 or other administrative head of the institution to be in
58 excess of that reasonably required to accomplish the
59 purposes for which the account was established, unless
60 such excess balances are insufficient to provide the
61 amounts necessary for a temporary transfer in the case
62 of a quarterly allotment which is insufficient to meet the
63 appropriated personal services budget;

64 (6) Funds in any general or special account estab-
65 lished for a specific state institution of higher education
66 shall not be transferred pursuant to this section for use
67 by another state institution of higher education.

68 (b) Notwithstanding the procedures and restrictions
69 set forth in subsection (a) of this section, except to the
70 extent that the section explicitly relates to transfers due
71 to quarterly allotment insufficiencies, and notwithstand-
72 ing any other provision of this code to the contrary, if
73 a quarterly allocation of appropriations from the
74 general revenue fund to the respective governing boards
75 is insufficient to meet the cash flow needs within their
76 respective systems to meet their payroll requirements,
77 the boards may authorize the institutions to transfer
78 funds from the various special revenue accounts under
79 their jurisdiction to meet these needs, except funds
80 whose use is governed by bonding covenants: *Provided*,
81 That the legislative auditor shall be notified by the
82 institution at the time of transfer and shall be provided
83 whatever documentation that may be required to
84 maintain records of the amounts transferred and
85 subsequently restored: *Provided, however*, That the
86 amounts of funds so transferred shall be restored to the
87 accounts from which the transfers were made by the end
88 of the fiscal year in which the transfers occurred:

89 *Provided further*, That if the records in the office of the
90 legislative auditor indicate any amounts transferred
91 have not been restored by the end of the fiscal year, the
92 legislative auditor shall notify the secretary of admin-
93 istration, auditor and treasurer, and thereafter no funds
94 appropriated or allocated to the institution shall be
95 encumbered or expended until such amounts are
96 replaced: *And provided further*, That the respective
97 spending units have first pursued appropriate adminis-
98 trative remedies to avoid anticipated cash flow shor-
99 tages: *And provided further*, That nothing herein
100 restricts the ability of the boards to respond to reduc-
101 tions of appropriations imposed in accordance with
102 article two, chapter five-a of this code within the
103 restoration period.

104 (c) If, due to increased efficiency in operations, a state
105 institution of higher education accumulates balances in
106 any of its accounts, or accounts established for the
107 institution by its governing board, which are in excess
108 of the amounts needed to accomplish the purposes for
109 which the accounts were established, either general or
110 special revenue, the institution may employ the transfer
111 provisions established in subdivisions (1) and (2),
112 subsection (a) of this section to transfer such excess
113 balances into a special efficiency surplus revolving fund
114 which shall be created in the state treasury for the
115 institution and which shall be carried forward into the
116 subsequent fiscal years: *Provided*, That expenditures
117 from any special efficiency surplus fund shall only be
118 made upon line item appropriation by the Legislature.
119 In the case of such transfers, the president shall, in
120 addition to the request for a transfer, also submit to the
121 secretary of education and the arts, the appropriate
122 governing board, the legislative auditor and the legis-
123 lative oversight commission on education accountability,
124 documentation of the efficiencies accomplished which
125 resulted in the excess balance. Funds transferred into
126 the special surplus fund of an institution shall be
127 budgeted by the president or other administrative head
128 of the institution in consultation with the faculty senate,
129 classified staff and student government organization to
130 meet the highest academic priorities of the institution:

131 *Provided, however,* That such funds may not be used to
132 support a continuing operation or expense unless the
133 efficiencies which resulted in such funds becoming
134 available are likewise continuing: *Provided further,* That
135 the restrictions on fund transfers set forth in subdivi-
136 sions (3), (4) and (5) of said subsection shall not apply
137 to transfers to the efficiency surplus revolving fund:
138 *And provided further,* That the restriction set forth in
139 subdivision (6) of said subsection shall apply to such
140 transfers.

141 (d) If the Legislature finds that amounts deposited in
142 any fund created pursuant to this section or transferred
143 to any fund exceed the amounts needed to effectuate any
144 of the purposes set forth in this section, such amounts
145 may be transferred to other accounts or funds and
146 redesignated for other purposes upon appropriation by
147 the Legislature.

148 (e) Reports setting forth the exercise of any authority
149 granted by this section shall be submitted with speci-
150 ficity to the legislative commission on oversight accoun-
151 tability and the joint committee on government and
152 finance on the first day of January of any year in which
153 such authority was exercised during the prior twelve-
154 month period.

ARTICLE 6. OTHER BOARDS AND ADVISORY COUNCILS.

§18B-6-1. Institutional boards of advisors.

1 (a) There shall be established at each state institution
2 of higher education, hereinafter referred to as the
3 "institution", excluding centers and branches thereof, an
4 institutional board of advisors. The board of advisors
5 shall consist of eleven members, including an adminis-
6 trative officer of the institution appointed by the
7 president of the institution; a full-time member of the
8 faculty with the rank of instructor or above duly elected
9 by the faculty; a member of the student body in good
10 academic standing, enrolled for college credit work and
11 duly elected by the student body; a member of the
12 institutional classified staff duly elected by the classified
13 staff; and, appointed by the appropriate governing
14 board, seven lay citizens of the state who have demon-

15 strated a sincere interest in and concern for the welfare
16 of that institution and who are representative of its
17 population and fields of study, including at least two
18 alumni of the institution. Of the seven lay citizen
19 members, no more than four may be of the same
20 political party.

21 The administrative officer, faculty member, student
22 member and classified staff member shall serve for a
23 term of one year, and the seven lay citizen members
24 shall serve terms of four years each. All members,
25 except the administrative officer, shall be eligible to
26 succeed themselves for no more than one additional
27 term. A vacancy in an unexpired term of a member
28 shall be filled within sixty days of the occurrence thereof
29 in the same manner as the original appointment or
30 election. Except in the case of a vacancy, all elections
31 shall be held and all appointments shall be made no
32 later than the thirtieth day of April preceding the
33 commencement of the term.

34 Each board of advisors shall hold a regular meeting
35 at least quarterly, commencing in July of each year.
36 Additional meetings may be held upon the call of the
37 chairman, president of the institution or upon the
38 written request of at least four members. A majority of
39 the members shall constitute a quorum for conducting
40 the business of the board of advisors.

41 (b) One of the seven lay citizen members shall be
42 elected as chairman by the board of advisors in July of
43 each year: *Provided*, That no member shall serve as
44 chairman for more than two consecutive years at a time.

45 The president of the institution shall make available
46 resources of the institution for conducting the business
47 of the board of advisors. The members of the board of
48 advisors shall be reimbursed for all reasonable and
49 necessary expenses actually incurred in the perfor-
50 mance of their official duties under this section upon
51 presentation of an itemized sworn statement thereof. All
52 expenses incurred by the board of advisors and the
53 institution under this section shall be paid from funds
54 allocated to the institution for such purpose.

55 (c) The board of advisors shall review, prior to the
56 submission by the president to its governing board, all
57 proposals of the institution in the areas of mission,
58 academic programs, budget, capital facilities and such
59 other matters as requested by the president of the
60 institution or its governing board or otherwise assigned
61 to it by law. The board of advisors shall comment on
62 each such proposal in writing, with such recommenda-
63 tions for concurrence therein or revision or rejection
64 thereof as it deems proper. Such written comments and
65 recommendations shall accompany the proposal to the
66 governing board and the governing board shall include
67 such comments and recommendations in its considera-
68 tion of and action on the proposal. The governing board
69 shall promptly acknowledge receipt of the comments
70 and recommendations and shall notify the board of
71 advisors in writing of any action taken thereon.

72 (d) The board of advisors shall review, prior to their
73 implementation by the president, all proposals regard-
74 ing institution-wide personnel policies. The board of
75 advisors may comment on such proposals in writing.

76 (e) The board of advisors shall provide advice and
77 assistance to the president in establishing closer
78 connections between higher education and business,
79 labor, government, community and economic develop-
80 ment organizations to give students greater opportuni-
81 ties to experience the world of work, such as business
82 and community service internships, apprenticeships and
83 co-operative programs; to communicate better and serve
84 the current work force and work force development
85 needs of their service area, including the needs of
86 nontraditional students for college-level skills upgrading
87 and retraining and the needs of employers for specific
88 programs of limited duration; and to assess the perfor-
89 mance of the institution's graduates and assist in job
90 placement. The administrative officer of the institution
91 serving on the advisory council may be assigned the
92 responsibility for coordinating the institution's activities
93 related to economic development.

94 (f) Upon the occurrence of a vacancy in the office of
95 president of the institution, the board of advisors shall

96 serve as a search and screening committee for candi-
 97 dates to fill the vacancy under guidelines established by
 98 its governing board. When serving as a search and
 99 screening committee, the board of advisors and its
 100 governing board are each authorized to appoint up to
 101 three additional persons to serve on the committee as
 102 long as the search and screening process is in effect. The
 103 three additional appointees of the board of advisors shall
 104 be faculty members of the institution. Only for the
 105 purposes of the search and screening process, such
 106 additional members shall possess the same powers and
 107 rights as the regular members of the board of advisors,
 108 including reimbursement for all reasonable and neces-
 109 sary expenses actually incurred. Following the search
 110 and screening process, the committee shall submit the
 111 names of at least three candidates to the governing
 112 board for consideration and appointment. If the govern-
 113 ing board rejects all candidates so submitted, the
 114 committee shall submit the names of at least three
 115 additional candidates, and this process shall be repeated
 116 until the governing board appoints one of the candidates
 117 so submitted. The governing board shall provide all
 118 necessary staff assistance to the board of advisors in its
 119 role as a search and screening committee.

ARTICLE 7. PERSONNEL GENERALLY.

- §18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.
- §18B-7-5. Faculty and classified employee continuing education and development program.
- §18B-7-6. Adjunct faculty; part-time and temporary classified employees.
- §18B-7-7. Professional productivity.
- §18B-7-8. Campus administrators.
- §18B-7-9. Employment innovations.
- §18B-7-10. Salary increases for cooperative extension workers.

§18B-7-1. Seniority for full-time classified personnel; seniority to be observed in reducing work force; preferred recall list; renewal of listing; notice of vacancies.

- 1 (a) Definitions for terms used in this section shall be
 2 in accordance with those provided in section two, article
 3 nine of this chapter except that the provisions of this

4 section shall apply only to classified employees whose
5 employment, if continued, shall accumulate to a min-
6 imum total of one thousand forty hours during a
7 calendar year and extend over at least nine months of
8 a calendar year.

9 (b) All decisions by the appropriate governing board
10 or their agents at state institutions of higher education
11 concerning reductions in work force of full-time
12 classified personnel, whether by temporary furlough or
13 permanent termination, shall be made in accordance
14 with this section. For layoffs by classification for reason
15 of lack of funds or work, or abolition of position or
16 material changes in duties or organization and for recall
17 of employees so laid off, consideration shall be given to
18 an employee's seniority as measured by permanent
19 employment in the service of the state system of higher
20 education. In the event that the institution wishes to lay
21 off a more senior employee, the institution must
22 demonstrate that the senior employee cannot perform
23 any other job duties held by less senior employees of that
24 institution in the same job class or any other equivalent
25 or lower job class for which the senior employee is
26 qualified: *Provided*, That if an employee refuses to
27 accept a position in a lower job class, such employee
28 shall retain all rights of recall hereinafter provided. If
29 two or more employees accumulate identical seniority,
30 the priority shall be determined by a random selection
31 system established by the employees and approved by
32 the institution.

33 (c) Any employee laid off during a furlough or
34 reduction in work force shall be placed upon a preferred
35 recall list and shall be recalled to employment by the
36 institution on the basis of seniority. An employee's
37 listing with an institution shall remain active for a
38 period of one calendar year from the date of termination
39 or furlough or from the date of the most recent renewal.
40 If an employee fails to renew the listing with the
41 institution, the employee's name may be removed from
42 the list. An employee placed upon the preferred list shall
43 be recalled to any position opening by the institution
44 within the classification(s) in which the employee had

45 previously been employed or to any lateral position for
46 which the employee is qualified. An employee on the
47 preferred recall list shall not forfeit the right to recall
48 by the institution if compelling reasons require such
49 employee to refuse an offer of reemployment by the
50 institution.

51 The institution shall be required to notify all em-
52 ployees maintaining active listings on the preferred
53 recall list of all position openings that from time to time
54 exist. Such notice shall be sent by certified mail to the
55 last known address of the employee. It shall be the duty
56 of each employee listed to notify the institution of any
57 change in address and to timely renew the listing with
58 the institution. No position openings shall be filled by
59 the institution, whether temporary or permanent, until
60 all employees on the preferred recall list have been
61 properly notified of existing vacancies and have been
62 given an opportunity to accept reemployment.

63 (d) A nonexempt classified employee, including a
64 nonexempt employee who has not accumulated a
65 minimum total of one thousand forty hours during the
66 calendar year or whose contract does not extend over at
67 least nine months of a calendar year, who meets the
68 minimum qualifications for a job opening at the
69 institution where the employee is currently employed,
70 whether the job be a lateral transfer or a promotion, and
71 applies for same shall be transferred or promoted before
72 a new person is hired unless such hiring is affected by
73 mandates in affirmative action plans or the require-
74 ments of Public Law 101-336, the Americans with
75 Disabilities Act. If more than one qualified, nonexempt
76 classified employee applies, the best-qualified non-
77 exempt classified employee shall be awarded the
78 position. In instances where such classified employees
79 are equally qualified, the nonexempt classified employee
80 with the greatest amount of continuous seniority at that
81 state institution of higher education shall be awarded
82 the position. A nonexempt classified employee is one to
83 whom the provisions of the federal Fair Labor Stand-
84 ards Act, as amended, apply.

§18B-7-5. Faculty and classified employee continuing

education and development program.

1 (a) Each state institution of higher education shall
2 have the authority to establish and operate a faculty and
3 classified employee continuing education and develop-
4 ment program under rules adopted by the appropriate
5 governing board. Funds allocated or made available
6 may be used to compensate and pay expenses for faculty
7 or classified employees who are pursuing additional
8 academic study or training to better equip themselves
9 for their duties at the state institutions of higher
10 education.

11 (b) Before the first day of January, one thousand nine
12 hundred ninety-four, each governing board, with the
13 advice and assistance of the faculty senates, staff
14 councils and other groups representing classified
15 employees, shall adopt policies which encourage contin-
16 uing education and staff development. The policies shall
17 require that selection shall be made on a nonpartisan
18 basis, using fair and meaningful criteria which will
19 afford all faculty and classified employees with oppor-
20 tunities to enhance their skills. Such policies may also
21 include reasonable provisions for the continuation or
22 return of any faculty or classified employee receiving
23 the benefits of such education or training, or for
24 reimbursement by the state for expenditures incurred
25 on behalf of such faculty or classified employee.

**§18B-7-6. Adjunct faculty; part-time and temporary
classified employees.**

1 (a) Before the first day of January, one thousand nine
2 hundred ninety-four, each governing board, with the
3 advice and assistance of the faculty senates, shall
4 establish a policy pursuant to the provisions of article
5 three-a, chapter twenty-nine-a of this code regarding the
6 role of adjunct faculty at state institutions of higher
7 education and define an appropriate balance between
8 full-time and adjunct faculty members.

9 (b) Before the first day of January, one thousand nine
10 hundred ninety-four, each governing board, with the
11 advice and assistance of the staff councils and other
12 groups representing classified employees, shall establish

13 a policy pursuant to the provisions of article three-a,
14 chapter twenty-nine-a of this code regarding the role of
15 part-time classified employees at state institutions of
16 higher education. Such policy shall discourage the
17 hiring of part-time employees solely to avoid the
18 payment of benefits or in lieu of full-time employees and
19 shall provide all qualified classified employees with
20 nine-month or ten-month contracts with the opportunity
21 to accept part-time or full-time summer employment
22 before new persons are hired for the part-time or full-
23 time employment.

§18B-7-7. Professional productivity.

1 Before the first day of January, one thousand nine
2 hundred ninety-four, each governing board, with the
3 advice and assistance of the faculty senates, shall
4 establish a policy pursuant to the provisions of article
5 three-a, chapter twenty-nine-a of this code regarding
6 productivity of faculty and administrators, which policy
7 shall require faculty productivity that is ten percent
8 more than the average of similar institutions in other
9 states by the fiscal year one thousand nine hundred
10 ninety-five, such productivity to be based on the average
11 number of student credit hours taught, and administra-
12 tive productivity that is ten percent more than the
13 average of similar institutions in other states by the
14 fiscal year one thousand nine hundred ninety-five.

§18B-7-8. Campus administrators.

1 Before the first day of January, one thousand nine
2 hundred ninety-four, each governing board, with the
3 advice and assistance of the faculty senates, shall
4 establish a policy pursuant to the provisions of article
5 three-a, chapter twenty-nine-a of this code requiring all
6 campus administrators holding faculty rank to teach at
7 least one course during each eighteen-month employ-
8 ment period or to perform on-going research in lieu of
9 teaching.

§18B-7-9. Employment innovations.

1 Before the first day of January, one thousand nine
2 hundred ninety-four, each governing board, with the

3 advice and assistance of the staff councils and other
4 groups representing classified employees, shall establish
5 a policy pursuant to the provisions of article three-a,
6 chapter twenty-nine-a of this code that discourages
7 temporary, nonemergency, institutionally-imposed
8 changes in an employee's work schedule; that maintains
9 reasonable continuity in working schedules and condi-
10 tions for employees; and that requires institutions to
11 consider feasible and innovative ways to most efficiently
12 utilize the institution's classified employees, such
13 innovations to include flexibility in employee schedul-
14 ing, job-sharing and four-day work weeks.

§18B-7-10. Salary increases for cooperative extension workers.

1 (a) Subject to appropriation by the Legislature
2 therefor, each full-time cooperative extension worker
3 employed pursuant to the provisions of section one,
4 article eight, chapter nineteen of this code who is
5 considered to be extension faculty shall be granted an
6 annual salary increase of two thousand dollars effective
7 the first day of July, one thousand nine hundred ninety-
8 three, and the salary increases authorized in subsection
9 (b), section three-a, article eight of this chapter.

10 (b) Subject to appropriation by the Legislature
11 therefor, each full-time, nonfaculty cooperative exten-
12 sion worker employed pursuant to the provisions of
13 section one, article eight, chapter nineteen of this code
14 shall be granted a monthly salary increase of one
15 hundred twenty-five dollars effective the first day of
16 July, one thousand nine hundred ninety-three, and the
17 salary increases authorized in section eleven, article
18 nine of this chapter.

ARTICLE 8. HIGHER EDUCATION FULL-TIME FACULTY SALARIES.

§18B-8-3. Assignment to salary schedule; actual salary.

§18B-8-3a. Institutional salary policies; distribution of faculty salary increases; distribution of nonclassified administrative salary increases.

§18B-8-3. Assignment to salary schedule; actual salary.

1 (a) On or before the first day of July of each year, each

2 faculty member then employed shall be given notice by
3 the appropriate governing board of the placement on the
4 minimum salary schedule which is appropriate to such
5 faculty member's years of experience and to which such
6 individual has been assigned, notwithstanding the
7 actual salary paid under the provisions of this article.

8 (b) Each full-time faculty member employed as of the
9 effective date of this section shall receive for full-time
10 employment at the same academic rank during the
11 academic year one thousand nine hundred ninety-three
12 —ninety-four, and thereafter, a salary which is no less
13 than the salary being paid such faculty member for the
14 academic year one thousand nine hundred ninety-two—
15 ninety-three. No full-time faculty member shall receive
16 a salary which is less than the salary for zero years of
17 experience for the appropriate academic rank as set
18 forth in section two of this article.

19 (c) Effective the first day of July, one thousand nine
20 hundred ninety-three, subject to appropriation by the
21 Legislature therefor, each full-time faculty member
22 shall receive an annual salary increase of two thousand
23 dollars. The Legislature may by general appropriation,
24 or the secretary of the department of education and the
25 arts may allocate through authority set forth under the
26 provisions of chapter five-f of this code, funds to be
27 distributed for the purpose of accommodating market
28 and equity conditions within the system. Any remaining
29 funds shall be applied in accordance with the provisions
30 of subsection (d) of this section.

31 (d) Funds remaining after meeting the salary of each
32 full-time faculty member in accordance with subsections
33 (b) and (c) of this section shall be used to pay that
34 amount that is the difference between such salary and
35 the appropriate salary for each full-time faculty
36 member's appropriate placement on the schedule:
37 *Provided*, That such amount may be reduced proportion-
38 ately based upon the amount of funds available for such
39 purpose.

40 (e) The salary of any full-time faculty member shall
41 not be reduced by the provisions of this article.

42 (f) Upon promotion in rank, placement on the min-
43 imum salary schedule shall be such as to provide a
44 salary increase of at least ten percent and shall be at
45 least the amount prescribed for the appropriate aca-
46 demic rank to which promoted at zero years of
experience.

**§18B-8-3a. Institutional salary policies; distribution of
faculty salary increases; distribution of
nonclassified administrative salary in-
creases.**

1 (a) Beginning with the fiscal year commencing on the
2 first day of July, one thousand nine hundred ninety-four,
3 faculty salary increases shall be distributed within each
4 state institution of higher education, to the extent of
5 legislative appropriation therefor in accordance with a
6 written institutional salary policy which achieves or
7 moves toward the following goals:

8 (1) Each full-time faculty member receives at least
9 the amount indicated by the minimum salary schedules
10 pursuant to section two of this article;

11 (2) Each full-time faculty member within a discipline
12 group receives a salary which is competitive with those
13 in similar disciplines at peer institutions;

14 (3) Faculty are recognized for outstanding
15 performance;

16 (4) Equity among salaries is maintained; and

17 (5) The institution's faculty are effectively involved in
18 the administration of the campus-level faculty salary
19 policy.

20 (b) To the extent of legislative appropriation therefor,
21 for the fiscal year commencing on the first day of July,
22 one thousand nine hundred ninety-four, an amount
23 averaging one thousand dollars per full-time faculty
24 member is recommended to be appropriated and
25 distributed in that fiscal year for salary increases for
26 full-time faculty members, and, for the fiscal year
27 commencing on the first day of July, one thousand nine
28 hundred ninety-five, an amount averaging two thousand

29 dollars per full-time faculty member is recommended to
30 be appropriated and distributed in that fiscal year for
31 salary increases for full-time faculty members, such
32 distribution to be in accordance with the resource
33 allocation policies developed pursuant to the provisions
34 of section two, article five of this chapter and the salary
35 policies required in subsection (a) of this section.

36 (c) Subject to appropriation by the Legislature
37 therefor, each full-time nonclassified administrative
38 staff person shall be granted an annual salary increase
39 for the fiscal year commencing on the first day of July,
40 one thousand nine hundred ninety-three, of one thousand
41 five hundred dollars; for the fiscal year commencing on
42 the first day of July, one thousand nine hundred ninety-
43 four, seven hundred fifty dollars and for the fiscal year
44 commencing on the first day of July, one thousand nine
45 hundred ninety-five, one thousand five hundred dollars.

ARTICLE 9. CLASSIFIED EMPLOYEE SALARY SCHEDULE AND CLASSIFICATION SYSTEM.

§18B-9-4. Establishment of personnel classification system; assignment to
classification and to salary schedule.

§18B-9-5. Classified employee salary.

§18B-9-11. Institutional salary policies; salary increase authorization.

§18B-9-4. Establishment of personnel classification system; assignment to classification and to salary schedule.

1 (a) Before the first day of January, one thousand nine
2 hundred ninety-four, the governing boards shall estab-
3 lish by rule and implement an equitable system of job
4 classifications, with the advice and assistance of staff
5 councils and other groups representing classified
6 employees, each classification to consist of related job
7 titles and corresponding job descriptions for each
8 position within a classification, together with the
9 designation of an appropriate pay grade for each job
10 title, which system shall be the same for corresponding
11 positions in institutions under both boards: *Provided,*
12 That before implementing the classification system,
13 each classified employee is given an opportunity in a
14 public hearing setting to address decisions affecting his
15 or her classification assignment and pay scale. The

16 system of job classifications shall be submitted to the
17 secretary of education and the arts for review and
18 approval prior to implementation.

19 By such date and with consideration to recommenda-
20 tions of the institutions, the appropriate governing
21 board shall furnish each classified employee written
22 confirmation of the assignment to the appropriate
23 classification, job title and pay grade and of the proper
24 placement on a salary schedule. Such assignment may
25 be appealed in accordance with article twenty-nine,
26 chapter eighteen of this code and all agencies are
27 directed to expedite and give priority to grievances
28 regarding the employee's initial assignment under the
29 terms of this section: *Provided*, That nothing herein
30 shall nullify or void any personnel classification system
31 in effect immediately prior to the first day of July, one
32 thousand nine hundred eighty-nine.

33 (b) Beginning with the fiscal year commencing on the
34 first day of July, one thousand nine hundred ninety-four,
35 classified staff salary increases distributed within each
36 state institution of higher education shall be in accor-
37 dance with a uniform employee classification system
38 and salary policy which is adopted by the respective
39 governing boards and approved in accordance with the
40 provisions of article three-a, chapter twenty-nine-a of
41 this code.

42 (c) The Legislature finds that an emergency situation
43 exists and, therefore, the governing boards are hereby
44 authorized to establish by emergency rule, under the
45 procedures of article three-a, chapter twenty-nine-a of
46 this code, a rule to implement the provisions of this
47 article, after approval by the legislative oversight
48 commission on education accountability, which shall
49 receive said proposed rule by the first day of November,
50 one thousand nine hundred ninety-three. Upon approval
51 of such emergency rule by the legislative oversight
52 commission on education accountability, and the effec-
53 tive date of the implementation of said rule, the salary
54 schedule set out in section three of this article shall be
55 deemed null and void and without the force and effect
56 of law. Any other provisions of this article inconsistent

57 with said rule shall be deemed null and void and without
58 the force and effect of law. Any other provisions of this
59 article inconsistent with said rule shall be deemed null
60 and void upon lawful implementation of the rule:
61 *Provided*, That nothing in this subsection shall be
62 interpreted to require that the Legislature appropriate
63 any additional funds for such implementation.

§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-three, shall receive for the same
4 employment at the same pay grade during the fiscal
5 year commencing on such date and thereafter, subject
6 to an appropriation by the Legislature therefor, and in
7 addition to the experience increment increase provided
8 for in subsection (b) of this section, a monthly salary
9 which is at least one hundred twenty-five dollars more
10 than the final base monthly salary paid such classified
11 employee for the fiscal year commencing on the first day
12 of July, one thousand nine hundred ninety-two, to be
13 paid in equal installments within the regular pay
14 periods and to be prorated for classified employees
15 working less than thirty-seven and one-half hours per
16 week.

17 (b) Commencing with the fiscal year beginning on the
18 first day of July, one thousand nine hundred ninety-one,
19 and each fiscal year thereafter, each classified employee
20 with three or more years of experience shall receive an
21 annual salary increase equal to thirty-six dollars times
22 the employee's years of experience: *Provided*, That such
23 annual salary increase shall not exceed the amount
24 granted for the maximum of twenty years of experience.
25 These incremental increases shall be in lieu of any
26 salary increase received pursuant to section two, article
27 five, chapter five of this code; shall be in addition to any
28 across-the-board, cost-of-living or percentage salary
29 increases which may be granted in any fiscal year by
30 the Legislature; and shall be paid in like manner as the
31 annual payment to eligible state employees of the
32 incremental salary increases based on years of service
33 under the provisions of said section.

34 (c) Each classified employee whose monthly salary
35 under subsections (a) and (b) of this section is less than
36 the minimum monthly salary for zero years of expe-
37 rience for the appropriate pay grade as set forth in
38 section three of this article shall receive additional
39 compensation such that the monthly salary is at least the
40 minimum amount prescribed for the appropriate pay
41 grade at zero years of experience: *Provided*, That such
42 amounts may be reduced proportionately based upon the
43 amount of funds available for such purpose.

44 (d) Any funds remaining after increasing the monthly
45 salary of each classified employee to at least the
46 minimum amount prescribed for the appropriate pay
47 grade at zero years of experience shall be used to place
48 classified employees on the salary schedule at their
49 appropriate years of experience: *Provided*, That such
50 amount may be reduced proportionately based upon the
51 amount of funds available for such purpose.

52 (e) Any classified employee may receive merit
53 increases and/or salary adjustments in accordance with
54 policies established by the board: *Provided*, That funds
55 for such increases and/or adjustments shall be distrib-
56 uted in accordance with rules of the appropriate
57 governing board and shall be available to all state
58 institutions of higher education on an equitable basis.

59 (f) The current monthly salary of any classified
60 employee may not be reduced by the provisions of this
61 article nor by any other action inconsistent with the
62 provisions of this article, and nothing in this article shall
63 be construed to prohibit promotion of any classified
64 employee to a job title carrying a higher pay grade if
65 such promotion is in accordance with the provisions of
66 this article and the personnel classification system
67 established by the appropriate governing board.

§18B-9-11. Institutional salary policies; salary increase authorization.

1 (a) Beginning with the fiscal year commencing on the
2 first day of July, one thousand nine hundred ninety-four,
3 classified employee salary increases shall be distributed
4 within each state institution of higher education, to the

5 extent of legislative appropriation therefor, in accor-
6 dence with a written institutional salary policy which
7 does not conflict with the uniform employee classifica-
8 tion system and which achieves or moves toward the
9 following goals:

10 (1) Each classified employee receives at least the
11 amount indicated by the minimum salary schedules
12 pursuant to section three of this article;

13 (2) Each classified employee within a classification
14 group receives a salary which will achieve salary equity
15 as defined in the uniform employee classification system
16 established pursuant to subsection (b), section four of
17 this article;

18 (3) Classified employees are recognized for outstand-
19 ing performance;

20 (4) Equity among salaries is maintained; and

21 (5) The institution's classified employees are effec-
22 tively involved in the administration of the campus-level
23 classified employee salary policy.

24 (b) Subject to an appropriation by the Legislature
25 therefor, for the fiscal year commencing on the first day
26 of July, one thousand nine hundred ninety-four, an
27 amount equal to seven hundred fifty dollars per full-
28 time classified employee is recommended to be approp-
29 riated and distributed in that fiscal year for salary
30 increases for classified employees, and, for the fiscal
31 year commencing on the first day of July, one thousand
32 nine hundred ninety-five, an amount equal to one
33 thousand five hundred dollars per full-time classified
34 employee is recommended to be appropriated and
35 distributed in that fiscal year for salary increases for
36 classified employees, such distribution to be in accor-
37 dance with the resource allocation policies developed
38 pursuant to the provisions of section two, article five of
39 this chapter and the salary policies required in subsec-
40 tion (a) of this section: *Provided*, That nothing in this
41 section shall be construed to prohibit future salary
42 increases for classified employees determined to be at
43 the maximum for their pay grade under any new

44 classification system promulgated in accordance with
45 subsection (b), section four of this article and in
46 accordance with policies which shall be adopted by each
47 governing board relating to salary increases for classi-
48 fied employees determined to be at maximum salary:
49 *Provided, however,* That such policies shall provide that,
50 when there is a system-wide, mandated salary increase,
51 those employees determined to be at the maximum shall
52 receive a percentage or across-the-board salary increase
53 in an amount equal to not less than one half of the
54 percentage or across-the-board increase granted to the
55 employee within the same pay grade receiving the
56 smallest percentage or across-the-board increase.

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT
STATE INSTITUTIONS OF HIGHER EDUCA-
TION.**

§18B-10-1. Enrollment; tuition and other fees at educational institutions;
refund of fees.

§18B-10-14. Bookstores.

**§18B-10-1. Enrollment, tuition and other fees at educa-
tional institutions; refund of fees.**

1 (a) Each governing board shall fix tuition and other
2 fees for each school term for the different classes or
3 categories of students enrolling at each state institution
4 of higher education under its jurisdiction and may
5 include among such fees any one or more of the
6 following: (1) Health service fees; (2) infirmary fees; (3)
7 student activities, recreational, athletic and extracurric-
8 ular fees, which said fees may be used to finance a
9 student's attorney to perform legal services for students
10 in civil matters at such institutions: *Provided,* That such
11 legal services shall be limited to only those types of
12 cases, programs or services approved by the administra-
13 tive head of such institution where such legal services
14 are to be performed; and (4) graduate center fees and
15 branch college fees, or either, if the establishment and
16 operations of graduate centers or branch colleges are
17 otherwise authorized by law. All fees collected at any
18 graduate center or at any branch college shall be paid
19 into special funds and shall be used solely for the
20 maintenance and operation of the graduate center or

21 branch college at which they were collected: *Provided,*
22 *however,* That the governing boards shall use the median
23 of the average tuition and required fees at similarly
24 classified institutions in member states of the southern
25 regional education board as a goal in establishing tuition
26 and required fee levels for residents at state institutions
27 of higher education under their jurisdiction: *Provided*
28 *further,* That the governing boards shall use the actual
29 instructional cost as the same shall be determined in
30 accordance with board rule, in establishing nonresident
31 undergraduate fees, with the goal of having tuition and
32 fees cover the actual cost by fiscal year one thousand
33 nine hundred ninety-six: *And provided further,* That
34 students enrolled in undergraduate courses offered at
35 off-campus locations shall pay an off-campus instruction
36 fee and shall not pay the athletic fee and the student
37 activity fee. The off-campus instruction fee shall be used
38 solely for the support of off-campus courses offered by
39 the institution. Off-campus locations for each institution
40 shall be defined by the appropriate governing board.
41 The schedule of all fees, and any changes therein, shall
42 be entered in the minutes of the meeting of the
43 appropriate governing board, and the board shall file
44 with the legislative auditor a certified copy of such
45 schedule and changes.

46 (b) In addition to the fees mentioned in the preceding
47 paragraph, each governing board may impose and
48 collect a student union building fee. All such building
49 fees collected at an institution shall be paid into a special
50 student union building fund for such institution, which
51 is hereby created in the state treasury, and shall be used
52 only for the construction, operation and maintenance of
53 a student union building or a combination student union
54 and dining hall building or for the payment of the
55 principal of and interest on any bond issued to finance
56 part or all of the construction of a student union
57 building or a combination student union and dining hall
58 building or the renovation of an existing structure for
59 use as a student union building or a combination student
60 union and dining hall building, all as more fully
61 provided in section ten of this article. Any moneys in
62 such funds not immediately needed for such purposes

63 may be invested in any such bonds or other securities
64 as are now or hereafter authorized as proper invest-
65 ments for state funds.

66 (c) The boards shall establish the rates to be charged
67 full-time students enrolled during a regular academic
68 term. For fee purposes a full-time undergraduate
69 student shall be one enrolled for twelve or more credit
70 hours in a regular term, and a full-time graduate
71 student shall be one enrolled for nine or more credit
72 hours in a regular term. Undergraduate students taking
73 fewer than twelve credit hours in a regular term shall
74 have their fees reduced pro rata based upon one twelfth
75 of the full-time rate per credit hour, and graduate
76 students taking fewer than nine credit hours in a
77 regular term shall have their fees reduced pro rata
78 based upon one ninth of the full-time rate per credit
79 hour.

80 Fees for students enrolled in summer terms or other
81 nontraditional time periods shall be prorated based
82 upon the number of credit hours for which the student
83 enrolls in accordance with the above provisions.

84 (d) All fees are due and payable by the student upon
85 enrollment and registration for classes except as
86 provided for in this subsection:

87 (1) The governing boards shall permit fee payments
88 to be made in up to three installments over the course
89 of the academic term. The payments shall include
90 interest at a rate set by the governing board: *Provided*,
91 That all fees must be paid prior to the awarding of
92 course credit at the end of the academic term.

93 (2) The governing boards shall also authorize the
94 acceptance of credit cards or other payment methods
95 which may be generally available to students for the
96 payment of fees: *Provided*, That the governing boards
97 may charge the students for the reasonable and custom-
98 ary charges incurred in accepting credit cards and other
99 methods of payment.

100 (3) If a governing board determines that any student
101 was adversely, financially affected by a legal work

102 stoppage that commenced on or after the first day of
103 January, one thousand nine hundred ninety-three, it
104 may allow the student an additional six months to pay
105 the fees for any academic term: *Provided*, That the
106 governing board shall determine if a student was
107 adversely, financially affected on a case-by-case basis.

108 (e) The governing boards shall establish legislative
109 rules regarding the refund of any fees upon the
110 voluntary or involuntary withdrawal from classes of any
111 student which rules shall comply with all applicable
112 state and federal laws and shall be uniformly applied
113 throughout the systems.

114 (f) The governing boards shall establish legislative
115 rules using the fee structure or other penalties to
116 provide a disincentive for students to register for classes
117 in excess of the typical full-time course load, that being
118 from twelve to eighteen credit hours for an undergrad-
119 uate student and from nine to fifteen credit hours for
120 a graduate student, and then to withdraw from such
121 excess classes after the semester has begun.

122 (g) In addition to the fees mentioned in the preceding
123 subsections, each governing board may impose, collect
124 and distribute a fee to be used to finance a nonprofit,
125 student-controlled public interest research group:
126 *Provided*, That the students at such institution demon-
127 strate support for the increased fee in a manner and
128 method established by that institution's elected student
129 government: *Provided, however*, That such fees shall not
130 be used to finance litigation against the institution.

§18B-10-14. Bookstores.

1 The appropriate governing board of each state
2 institution of higher education shall have the authority
3 to establish and operate a bookstore at the institution.
4 The bookstore shall be operated for the use of the
5 institution itself, including each of its schools and
6 departments, in making purchases of books, stationery
7 and other school and office supplies generally carried in
8 college stores, and for the benefit of students and faculty
9 members in purchasing such products for their own use,
10 but no sales shall be made to the general public. The

11 prices to be charged the institution, the students and the
12 faculty for such products shall be fixed by the governing
13 board, shall not be less than the prices fixed by any fair
14 trade agreements, and shall in all cases include in
15 addition to the purchase price paid by the bookstore a
16 sufficient handling charge to cover all expenses in-
17 curred for personal and other services, supplies and
18 equipment, storage, and other operating expenses, to the
19 end that the prices charged shall be commensurate with
20 the total cost to the state of operating the bookstore.

21 Each governing board shall also ensure that book-
22 stores operated at institutions under its jurisdiction
23 meet the additional objective of minimizing the costs to
24 students of purchasing textbooks by adopting policies
25 which may require the repurchase and resale of
26 textbooks on an institutional or a statewide basis and
27 provide for the use of certain basic textbooks for a
28 reasonable number of years.

29 All moneys derived from the operation of the store
30 shall be paid into a special revenue fund as provided in
31 section two, article two, chapter twelve of this code.
32 Each governing board shall, subject to the approval of
33 the governor, fix and, from time to time, change the
34 amount of the revolving fund necessary for the proper
35 and efficient operation of each bookstore.

36 Moneys derived from the operation of the bookstore
37 shall be used first to replenish the stock of goods and
38 to pay the costs of operating and maintaining the store.
39 From any balance in the Marshall university bookstore
40 fund not needed for operation and maintenance and
41 replenishing the stock of goods, the governing board of
42 that institution shall have authority to expend a sum not
43 to exceed two hundred thousand dollars for the construc-
44 tion of quarters to house the bookstore in the university
45 center at Marshall university. Until such quarters for
46 housing the bookstore are completed, the governing
47 board of Marshall university and the governor shall take
48 this authorization into account in fixing the amount of
49 the revolving fund for the Marshall university book-
50 store.

ARTICLE 13. HIGHER EDUCATION-INDUSTRY PARTNERSHIPS.

- §18B-13-1. Legislative purpose.
§18B-13-2. Higher education-industry collaboration and technical assistance.
§18B-13-3. Powers and duties.
§18B-13-4. High-Tech 2000 research zones and parks; tax exemptions.
§18B-13-5. Use of state property and equipment; faculty.

§18B-13-1. Legislative purpose.

1 A pressing need exists for collaborative research and
2 development between institutions of higher education
3 and industry. This need also extends to assisting
4 companies to develop and adapt to new technology. A
5 commitment by the state to support cooperative univer-
6 sity-industry partnerships will preserve existing jobs
7 and create new jobs; promote development of business
8 enterprises and help them become competitive; and
9 enable West Virginia to achieve the goals of economic
10 growth and full employment by revitalizing and
11 diversifying the West Virginia economy. Focused
12 research and technical assistance efforts related to West
13 Virginia industry will speed such development, improve
14 technology transfer, assist companies in becoming
15 growth leaders and link basic research and technologi-
16 cal developments to economic advancement.

17 It is the purpose of the Legislature to have as the
18 state's goals the movement of the state of West Virginia
19 into the forefront of science and technology by the year
20 two thousand; the attraction of business, federal
21 contracts and industry; and the creation of jobs for the
22 people of this state, through applied science and
23 technology and partnership programs.

§18B-13-2. Higher education-industry collaboration and technical assistance.

1 Institutions of higher education shall develop a plan
2 to engage in collaborative projects designed to assist
3 business to adapt or develop new technology under this
4 article.

§18B-13-3. Powers and duties.

1 The West Virginia state development council in

2 consultation with the higher education governing boards
3 is hereby authorized and directed to develop a strategic
4 comprehensive plan and grant program to attract new
5 science and high technology industries, to retain and
6 expand current state industries through technology and
7 other processes and to increase research grants, con-
8 tracts, matching funds and procurement arrangements
9 from the federal government, private industry and other
10 agencies. Such initial, and annually updated, strategic
11 comprehensive plan shall be developed and annually
12 filed with the governor and Legislature.

13 The West Virginia state development council in
14 consultation with the higher education governing boards
15 shall review the work and projects undertaken by the
16 center of regional progress, the center for economic
17 research, the institute for international trade develop-
18 ment and the West Virginia foundation for science and
19 technology.

**§18B-13-4. High-Tech 2000 research zones and parks;
tax exemptions.**

1 (a) The state development council shall work with the
2 county commissions, the municipalities and local
3 development authorities where state colleges and
4 universities are located and shall develop a plan and
5 program for the establishment and operation of quali-
6 fying High-Tech 2000 research zones, parks and
7 technology centers on or near the campuses of selected
8 universities and colleges to attract local business and
9 industry engaged in science and technology related
10 research.

11 The state development council shall coordinate the
12 development of such plan and program, which shall
13 include qualifications for eligible High-Tech 2000
14 research zones, parks and research centers and which
15 qualifications shall require a minimum partnership
16 commitment from the private sector either in the
17 construction, operation or location of the research parks
18 or zones or technology centers; and the West Virginia
19 economic development authority shall have authority to
20 enter into agreements with state institutions of higher

21 education, private developers or other interested
22 businesses or persons to acquire, finance, construct,
23 operate, own, lease or otherwise manage any research
24 park or zone and to collect rentals or other forms of
25 payment for the operation of the research parks or zones
26 or technology centers.

27 The West Virginia economic development authority is
28 hereby authorized either singularly or in conjunction
29 with any county commission, municipality or local
30 development authority to issue special High-Tech 2000
31 bonds for the purpose of this section, including, but not
32 limited to, special project revenue bonds and special
33 user bonds limited to the actual cost of construction and
34 start-up of any qualifying and approved research park
35 or zone or technology centers, and improvements
36 necessary thereto, pursuant to article twelve-b, chapter
37 eighteen of this code.

38 (b) Notwithstanding any other provision of this code
39 to the contrary relating to any other exemptions or
40 credits to which any business may be entitled under this
41 code, the following exemptions shall only apply to
42 qualified, approved High-Tech 2000 research park or
43 zone or technology center:

44 (1) The enterprise zone tax exemptions as provided in
45 section five, article two-b, chapter five-b of this code;

46 (2) A tax credit for qualified business, in the amount
47 of the workers' compensation premium paid in accor-
48 dance with article two, chapter twenty-three of this
49 code, which credit shall be credited against any
50 corporate net income tax or personal income tax of the
51 qualified business or liability of the owners of the
52 qualified business which is a proprietorship or a
53 partnership;

54 (3) The deferral for qualified business of all state
55 corporate net income tax, business and occupation tax,
56 telecommunications tax, severance tax, business fran-
57 chise tax or other state income tax liability for the start-
58 up period of the business not to exceed three years, and
59 qualified business shall be entitled to an exemption from
60 any such deferred tax if such business both employs at

61 least seven persons on a full-time basis as of the due date
62 of the deferred tax liability, and the qualified business
63 maintains an average employment of at least seven full-
64 time employees over the last two years of the three year
65 start-up period.

66 Notwithstanding any other provision herein to the
67 contrary, the amount of total credits and deferrals
68 allowable under this section or section five, article two-
69 b, chapter five-b of this code shall not exceed two and
70 one-half million dollars in any one fiscal year for all
71 eligible businesses: *Provided*, That the credits allowed
72 by this section are nonrefundable so that a taxpayer
73 shall not claim a total credit amount that reduces the
74 taxpayer's tax liability to less than zero.

§18B-13-5. Use of state property and equipment; faculty.

1 (a) The governing boards are authorized to provide for
2 the low cost and economical use and sharing of state
3 property and equipment, including computers, research
4 labs and other scientific and necessary equipment to
5 assist any qualified business within an approved
6 research park or zone or technology center. The
7 governing boards shall approve a schedule of nominal
8 or reduced cost reimbursements to the state for such
9 use.

10 (b) The governing boards shall develop and provide
11 for a program of release time, sabbaticals or other forms
12 of faculty involvement or participation with any
13 qualifying business.

14 (c) The Legislature finds that cooperation, commun-
15 ication and coordination are integral components of
16 higher education's involvement in economic develop-
17 ment. In order to proceed in a manner that is cost
18 effective and time efficient, it shall be the duty of the
19 governing boards to review and coordinate such aspects
20 of the programs administered by the governing boards.
21 Such review and coordination shall not operate so as to
22 adversely affect sources of funding nor shall it affect any
23 statutory characterization of any program as an
24 independent entity. The governing boards shall report
25 on an annual basis to the Legislature and the governor.

- 26 The report shall contain the following information:
- 27 (1) The number of seminars and workshops
28 conducted;
- 29 (2) The subject matter addressed in each seminar and
30 workshop;
- 31 (3) The number of feasibility studies conducted and
32 the subject matter contained in each study;
- 33 (4) An accounting of the cost of all travel expenses,
34 seminars, workshops and feasibility studies; and
- 35 (5) The extent to which the authority provided for in
36 subsection (b) of this section has been exercised, with
37 specificity as to the institution and faculty member
38 involved in the program.

ARTICLE 14. MISCELLANEOUS.

**§18B-14-3. Southern West Virginia community college
authorization to sell property; use of net
proceeds.**

1 Notwithstanding the provisions of article one-a,
2 chapter twenty of this code, southern West Virginia
3 community college, with the approval of the board of
4 directors, is hereby authorized and empowered to sell
5 any surplus real property and deposit the net proceeds
6 into a special revenue account to be utilized for the
7 purchase of additional real property or for capital
8 improvements: *Provided*, That prior to such action the
9 board of directors shall have the property appraised by
10 two licensed appraisers and shall not sell the property
11 for less than the average of the two appraisals: *Provided*,
12 *however*, That the net proceeds which exceed the funds
13 needed for the purchase of real property or for capital
14 improvements may be transferred to other accounts or
15 funds and redesignated for other purposes by appropri-
16 ation of the Legislature.

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Board of trustees.

§18B-17-3. Board of directors.

§18B-17-2. Board of trustees.

1 (a) The legislative rules filed in the state register on
2 the third day of December, one thousand nine hundred
3 ninety-one, modified by the board of trustees to meet the
4 objections of the legislative oversight commission on
5 education accountability and refiled in the state register
6 on the twenty-first day of January, one thousand nine
7 hundred ninety-two, relating to the board of trustees
8 (report card), are authorized.

9 (b) The legislative rules filed in the state register on
10 the thirteenth day of July, one thousand nine hundred
11 ninety-one, relating to the board of trustees (equal
12 opportunity and affirmative action), are authorized.

13 (c) The legislative rules filed in the state register on
14 the eighth day of September, one thousand nine hundred
15 ninety-two, relating to the board of trustees (holidays),
16 are authorized.

17 (d) The legislative rules filed in the state register on
18 the third day of April, one thousand nine hundred
19 ninety-two, relating to the board of trustees (alcoholic
20 beverages on campuses), are authorized.

§18B-17-3. Board of directors.

1 (a) The legislative rules filed in the state register on
2 the sixteenth day of December, one thousand nine
3 hundred ninety-one, modified by the board of directors
4 to meet the objections of the legislative oversight
5 commission on education accountability and refiled in
6 the state register on the twenty-first day of January, one
7 thousand nine hundred ninety-two, relating to the board
8 of directors (report card), are authorized.

9 (b) The legislative rules filed in the state register on
10 the twenty-seventh day of September, one thousand nine
11 hundred ninety-one, relating to the board of directors
12 (equal opportunity and affirmative action), are
13 authorized.

14 (c) The legislative rules filed in the state register on
15 the fourth day of December, one thousand nine hundred
16 ninety-one, relating to the board of directors (holiday
17 policy), are authorized.

18 (d) The legislative rules filed in the state register on
19 the nineteenth day of March, one thousand nine hundred
20 ninety-two, as modified and refiled in the state register
21 on the tenth day of July, one thousand nine hundred
22 ninety-two, relating to the board of directors (presiden-
23 tial appointments, responsibilities and evaluations), are
24 authorized.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.

- §18C-5-1. Declaration of public need for grant assistance; establishment of grant program.
- §18C-5-2. Definitions.
- §18C-5-3. Grant program to be administered by senior administrator; higher education grant fund created.
- §18C-5-4. Powers and duties of senior administrator.
- §18C-5-5. Eligibility for a grant.
- §18C-5-6. Recipients, awards and distribution of awards of grants; authority of senior administrator to enter into reciprocal agreements with other states concerning grants.

§18C-5-1. Declaration of public need for grant assistance; establishment of grant program.

1 The Legislature declares that although enrollments in
2 institutions of higher education in this state and
3 throughout the nation continue to increase at a rapid
4 pace, and although the state now provides a limited
5 grant program for students attending an institution of
6 higher education in West Virginia, there continues to
7 exist an underdevelopment of the state's human talent
8 and resources because of the inability of many able but
9 needy students to finance a higher educational program.

10 The Legislature further declares that the state can
11 achieve its full economic and social potential only if
12 every individual has the opportunity to contribute to the
13 full extent of the individual's capabilities and only if the
14 state assists in removing such financial barriers to the
15 individual's educational goals as may remain after the
16 individual has utilized all resources and work opportun-
17 ities available to him.

18 It is therefore the policy of the Legislature and the

19 purpose of this article to establish, within the limits of
20 appropriations made therefor from time to time by the
21 Legislature, a broad-scale state grant program designed
22 to guarantee that the most able and needy students from
23 all sectors of the state are given the opportunity to
24 continue their program of self-improvement in an
25 approved institution of higher education of their choice
26 located in this state.

§18C-5-2. Definitions.

1 (a) "Approved institution of higher education" means
2 a state institution of higher education as defined in
3 section two, article one, chapter eighteen-b of this code,
4 and Alderson-Broaddus college, Appalachian bible
5 college, Bethany college, the college of West Virginia,
6 Davis and Elkins college, Ohio Valley college, Salem-
7 Teikyo college, the university of Charleston, West
8 Virginia Wesleyan college and Wheeling Jesuit college,
9 all in West Virginia, and any other institution of higher
10 education in this state, public or private, approved by
11 the senior administrator.

12 (b) "Grant" or "grant program" means a grant or the
13 grant program authorized and established by the
14 provisions of this article.

15 (c) "Senior administrator" means the senior adminis-
16 trator defined in section two, article one, chapter
17 eighteen-b of this code.

**§18C-5-3. Grant program to be administered by senior
administrator; higher education grant fund
created.**

1 The grant program established and authorized by this
2 article shall be administered by the senior administra-
3 tor. Moneys appropriated or otherwise available for such
4 purpose shall be allocated by line item to an appropriate
5 account.

6 In addition to an amount no less than the amount of
7 funds available for the higher education grant program
8 pursuant to the repealed sections of article twenty-two-
9 b, chapter eighteen of this code prior to the effective
10 date of this section, there may be appropriated by the

11 Legislature by line item, to the extent that funds may
12 be available, an additional one and one-half million
13 dollars per year for the next five years, beginning with
14 the fiscal year beginning on the first day of July, one
15 thousand nine hundred ninety-three.

§18C-5-4. Powers and duties of senior administrator.

1 Subject to the provisions of this article and within the
2 limits of appropriations made by the Legislature, the
3 senior administrator is authorized and empowered: (1)
4 To prepare and supervise the issuance of public
5 information concerning the grant program; (2) to
6 prescribe the form and regulate the submission of
7 applications for grants; (3) administer or contract for
8 the administration of such examinations as may be
9 prescribed by the senior administrator; (4) select
10 qualified recipients of grants; (5) award grants; (6)
11 accept grants, gifts, bequests and devises of real and
12 personal property for the purposes of the grant pro-
13 gram; (7) administer federal and state financial loan
14 programs; (8) cooperate with approved institutions of
15 higher education in the state and their governing boards
16 in the administration of the grant program; (9) make the
17 final decision pertaining to residency of an applicant for
18 grant or renewal of grant; (10) employ or engage such
19 professional and administrative employees as may be
20 necessary to assist the senior administrator in the
21 performance of the duties and responsibilities, who shall
22 serve at the will and pleasure and under the direction
23 and control of the senior administrator; (11) employ or
24 engage such clerical and other employees as may be
25 necessary to assist the senior administrator in the
26 performance of the duties and responsibilities, who shall
27 be under the direction and control of the senior
28 administrator; (12) prescribe the duties and fix the
29 compensation of all such employees; and (13) promulgate
30 reasonable rules and regulations not inconsistent with
31 the provisions of this article relating to the administra-
32 tion of the grant program.

§18C-5-5. Eligibility for a grant.

1 A person shall be eligible for consideration for a grant

2 if the person:

3 (1) Is a citizen of the United States;

4 (2) Has been a resident of the state for one year
5 immediately preceding the date of application for a
6 grant or a renewal of a grant;

7 (3) Meets the admission requirements of the approved
8 institution of higher education to which admission is
9 sought or meets the admission requirements of a three-
10 year registered nurse diploma program which is offered
11 by a nonprofit West Virginia hospital and approved by
12 the West Virginia board of examiners for registered
13 professional nurses and is subsequently admitted;

14 (4) Satisfactorily meets the qualifications of financial
15 need and academic promise, as well as academic
16 achievement, as established by the senior administrator.

**§18C-5-6. Recipients, awards and distribution of awards
of grants; authority of senior administrator
to enter into reciprocal agreements with
other states concerning grants.**

1 The grant recipient shall be free to attend any
2 approved institution of higher education in this state or
3 any three-year registered nurse diploma program which
4 is approved by the West Virginia board of examiners
5 for registered professional nurses and which is offered
6 at a nonprofit West Virginia hospital.

7 The institution is not required to accept the grant
8 recipient for enrollment, but is free to exact compliance
9 with its own admission requirements, standards and
10 policies.

11 Grants shall only be made to undergraduate students
12 and to students enrolled in approved three-year regis-
13 tered nurse diploma programs, as provided in this
14 article.

15 Each grant is renewable until the course of study is
16 completed, but not to exceed an additional three
17 academic years beyond the first year of the award.
18 These may not necessarily be consecutive years, and the
19 grant will be terminated if the student receives a degree

20 in a shorter period of time. Qualifications for renewal
21 will include maintaining satisfactory academic stand-
22 ing, making normal progress toward completion of the
23 course of study and continued eligibility, as determined
24 by the senior administrator.

25 Grant awards shall be made without regard to the
26 applicant's race, creed, color, sex, national origin or
27 ancestry; and in making grant awards, the senior
28 administrator shall treat all approved institutions of
29 higher education in a fair and equitable manner.

30 The senior administrator from time to time shall
31 identify areas of professional, vocational and technical
32 expertise that are, or will be, of critical need in this state
33 and, to the extent feasible, may direct grants to students
34 that are pursuing instruction in those areas.

35 The senior administrator may enter into reciprocal
36 agreements with state grant and grant program
37 agencies in other states which provide financial assist-
38 ance to their residents attending institutions of higher
39 education located in West Virginia. In connection
40 therewith, the senior administrator may authorize
41 residents of West Virginia to use financial assistance
42 under this article to attend institutions of higher
43 education in such other states. Residents of West
44 Virginia requesting financial assistance to attend
45 institutions of higher education located in any such
46 states must meet all of the eligibility standards set forth
47 in section five of this article.

48 Grant awards shall be limited to the lesser of the
49 payment of tuition and those related compulsory fees
50 charged by an institution to all West Virginia under-
51 graduate students or an amount equal to the average
52 state general fund support for each full-time equivalent
53 student at state institutions of higher education for the
54 preceding academic year as calculated by the senior
55 administrator. Payments of grants shall be made
56 directly to the institution.

57 In the event that a grant recipient transfers from one
58 approved institution of higher education or approved
59 three-year registered nurse diploma program to another

60 approved institution of higher education or approved
 61 three-year registered nurse diploma program, the grant
 62 shall be transferable only with the approval of the senior
 63 administrator.

64 Should the recipient terminate enrollment for any
 65 reason during the academic year, the unused portion of
 66 the grant shall be returned by the institution to the
 67 appropriate governing board in accordance with the
 68 governing board's policy for issuing refunds, for
 69 transfer to the appropriate account and allocation for
 70 expenditure pursuant to the provisions of this article.

CHAPTER 48

(H. B. 2460—By Delegates Prezioso, Adkins, Overington,
 Paxton and Schoonover)

[Passed March 17, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article four, chapter eighteen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to reductions in force of professional educators; requiring that such reductions be based solely on seniority; and requiring local boards to adopt policy defining lateral positions.

Be it enacted by the Legislature of West Virginia:

That section seven-a, 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:

§18A-4-7a. Employment, promotion and transfer of professional personnel; seniority.

1 A county board of education shall make decisions
 2 affecting the hiring of professional personnel other than
 3 classroom teachers on the basis of the applicant with the
 4 highest qualifications. Further, the county board shall
 5 make decisions affecting the hiring of new classroom
 6 teachers on the basis of the applicant with the highest
 7 qualifications. In judging qualifications, consideration

8 shall be given to each of the following: Appropriate
9 certification and/or licensure; amount of experience
10 relevant to the position or, in the case of a classroom
11 teaching position, the amount of teaching experience in
12 the subject area; the amount of course work and/or
13 degree level in the relevant field and degree level
14 generally; academic achievement; relevant specialized
15 training; past performance evaluations conducted
16 pursuant to section twelve, article two of this chapter;
17 and other measures or indicators upon which the
18 relative qualifications of the applicant may fairly be
19 judged. If one or more permanently employed instruc-
20 tional personnel apply for a classroom teaching position
21 and meet the standards set forth in the job posting, the
22 county board of education shall make decisions affecting
23 the filling of such positions on the basis of the following
24 criteria: Appropriate certification and/or licensure; total
25 amount of teaching experience; the existence of teaching
26 experience in the required certification area; degree
27 level in the required certification area; specialized
28 training directly related to the performance of the job
29 as stated in the job description; receiving an overall
30 rating of satisfactory in evaluations over the previous
31 two years; and seniority. Consideration shall be given to
32 each criterion with each criterion being given equal
33 weight. If the applicant with the most seniority is not
34 selected for the position, upon the request of the
35 applicant a written statement of reasons shall be given
36 to the applicant with suggestions for improving the
37 applicant's qualifications.

38 The seniority of classroom teachers as defined in
39 section one, article one of this chapter with the exception
40 of guidance counselors shall be determined on the basis
41 of the length of time the employee has been employed
42 as a regular full-time certified and/or licensed profes-
43 sional educator by the county board of education and
44 shall be granted in all areas that the employee is
45 certified and/or licensed.

46 Upon completion of one hundred thirty-three days of
47 employment in any one school year, substitute teachers
48 shall accrue seniority exclusively for the purpose of

49 applying for employment as a permanent, full-time
50 professional employee. One hundred thirty-three days or
51 more of said employment shall be prorated and shall
52 vest as a fraction of the school year worked by the
53 permanent, full-time teacher.

54 Guidance counselors and all other professional
55 employees, as defined in section one, article one of this
56 chapter, except classroom teachers, shall gain seniority
57 in their nonteaching area of professional employment on
58 the basis of the length of time the employee has been
59 employed by the county board of education in that area:
60 *Provided*, That if an employee is certified as a classroom
61 teacher, the employee accrues classroom teaching
62 seniority for the time that that employee is employed in
63 another professional area. For the purposes of accruing
64 seniority under this paragraph, employment as princi-
65 pal, supervisor or central office administrator, as
66 defined in section one, article one of this chapter, shall
67 be considered one area of employment.

68 Employment for a full employment term shall equal
69 one year of seniority, but no employee may accrue more
70 than one year of seniority during any given fiscal year.
71 Employment for less than the full employment term
72 shall be prorated. A random selection system estab-
73 lished by the employees and approved by the board shall
74 be used to determine the priority if two or more
75 employees accumulate identical seniority: *Provided*,
76 That when two or more principals have accumulated
77 identical seniority, decisions on reductions in force shall
78 be based on qualifications.

79 Whenever a county board is required to reduce the
80 number of professional personnel in its employment, the
81 employee with the least amount of seniority shall be
82 properly notified and released from employment pursu-
83 ant to the provisions of section two, article two of this
84 chapter: *Provided*, That all persons employed in a
85 certification area to be reduced who are employed under
86 a temporary permit shall be properly notified and
87 released before a fully certified employee in such a
88 position is subject to release: *Provided, however*, That an
89 employee subject to release shall be employed in any

90 other professional position where such employee is
91 certified and was previously employed or to any lateral
92 area for which such employee is certified and/or
93 licensed, if such employee's seniority is greater than the
94 seniority of any other employee in that area of certifi-
95 cation and/or licensure: *Provided further*, That, if an
96 employee subject to release holds certification and/or
97 licensure in more than one lateral area and if such
98 employee's seniority is greater than the seniority of any
99 other employee in one or more of those areas of
100 certification and/or licensure, the employee subject to
101 release shall be employed in the professional position
102 held by the employee with the least seniority in any of
103 those areas of certification and/or licensure.

104 For the purpose of this article, all positions which
105 meet the definition of classroom teacher as defined in
106 section one, article one of this chapter, shall be lateral
107 positions. For all other professional positions the county
108 board of education shall adopt a policy by the thirty-first
109 day of October, one thousand nine hundred ninety-three,
110 and may modify said policy thereafter as necessary,
111 which defines which positions shall be lateral positions.
112 The board shall submit a copy of its policy to the state
113 board within thirty days of adoption or any modifica-
114 tion, and the state board shall compile a report and
115 submit same to the legislative oversight commission on
116 education accountability by the thirty-first day of
117 December, one thousand nine hundred ninety-three, and
118 by such date in any succeeding year in which any county
119 board submits a modification of its policy relating to
120 lateral positions. In adopting such a policy, the board
121 shall give consideration to the rank of each position in
122 terms of title, nature of responsibilities, salary level,
123 certification and/or licensure, and days in the period of
124 employment.

125 After the fifth day prior to the beginning of the
126 instructional term, or after the first day of the second
127 half of the instructional term, no person employed and
128 assigned to a professional position may transfer to
129 another professional position in the county during that
130 half of the instructional term: *Provided*, That such

131 person may apply for any posted, vacant positions with
132 the successful applicant assuming the position at the
133 beginning of the next half of the instructional term:
134 *Provided, however,* That professional personnel who have
135 been on an approved leave of absence may fill these
136 vacancies prior to the next semester. The superintendent
137 may fill a position before the next instructional term
138 when it is determined to be in the best interest of the
139 students.

140 All professional personnel whose seniority with the
141 county board is insufficient to allow their retention by
142 the county board during a reduction in work force shall
143 be placed upon a preferred recall list. As to any
144 professional position opening within the area where they
145 had previously been employed or to any lateral area for
146 which they have certification and/or licensure, such
147 employee shall be recalled on the basis of seniority if no
148 regular, full-time professional personnel, or those
149 returning from leaves of absence with greater seniority,
150 are qualified, apply for and accept such position. Before
151 position openings that are known or expected to extend
152 for twenty consecutive employment days or longer for
153 professional personnel may be filled by the board, the
154 board shall be required to notify all qualified profes-
155 sional personnel on the preferred list and give them an
156 opportunity to apply, but failure to apply shall not cause
157 such employee to forfeit any right to recall. The notice
158 shall be sent by certified mail to the last known address
159 of the employee, and it shall be the duty of each
160 professional personnel to notify the board of continued
161 availability annually of any change in address or of any
162 change in certification and/or licensure.

163 Boards shall be required to post and date notices of
164 all openings in established, existing or newly created
165 positions in conspicuous working places for all profes-
166 sional personnel to observe for at least five working
167 days. The notice shall be posted within twenty working
168 days of such position openings and shall include the job
169 description. Any special criteria or skills that are
170 required by the position shall be specifically stated in
171 the job description and directly related to the perfor-

172 mance of the job. No vacancy shall be filled until after
173 the five-day minimum posting period. If one or more
174 applicants meets the qualifications listed in the job
175 posting, the successful applicant to fill the vacancy shall
176 be selected by the board within thirty working days of
177 the end of the posting period: *Provided*, That a position
178 held by a certified and/or licensed teacher who has been
179 issued a permit for full-time employment and is working
180 toward certification in the permit area shall not be
181 subject to posting if the certificate is awarded within
182 five years. Nothing provided herein shall prevent the
183 county board of education from eliminating a position
184 due to lack of need.

185 Notwithstanding any other provision of the code to the
186 contrary, where the total number of classroom teaching
187 positions in an elementary school does not increase from
188 one school year to the next, but there exists in that
189 school a need to realign the number of teachers in one
190 or more grade levels, kindergarten through six, teachers
191 at the school may be reassigned to grade levels for which
192 they are certified without that position being posted:
193 *Provided*, That the employee and the county board of
194 education mutually agree to the reassignment.

195 When the total number of classroom teaching posi-
196 tions in an elementary school needs to be reduced, such
197 reduction shall be made on the basis of seniority with
198 the least senior classroom teacher being recommended
199 for transfer: *Provided*, That a specified grade level
200 needs to be reduced and the least senior employee in the
201 school is not in that grade level, the least senior
202 classroom teacher in the grade level that needs to be
203 reduced shall be reassigned to the position made vacant
204 by the transfer of the least senior classroom teacher in
205 the school without that position being posted: *Provided*,
206 *however*, That the employee is certified and/or licensed
207 and agrees to the reassignment.

208 Any board failing to comply with the provisions of
209 this article may be compelled to do so by mandamus and
210 shall be liable to any party prevailing against the board
211 for court costs and reasonable attorney fees as deter-
212 mined and established by the court. Further, employees

213 denied promotion or employment in violation of this
214 section shall be awarded the job, pay and any applicable
215 benefits retroactive to the date of the violation and
216 payable entirely from local funds. Further, the board
217 shall be liable to any party prevailing against the board
218 for any court reporter costs including copies of trans-
219 cripts.

CHAPTER 49

(H. B. 2782—By Delegate Ashcraft)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article four, chapter eighteen-a 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 eight-g; and to amend and reenact sections two and eight, article five of said chapter, all relating to providing additional compensation for certain service personnel who work interrupted schedules; redefining "director or coordinator of services"; eliminating the provision authorizing the state board of education to establish other class titles and providing the attendant pay grades; providing additional methods of determining and further specifying service personnel seniority; designating West Virginia Day as a legal school holiday; and deleting a provision addressing the basis upon which an aide may be hired.

Be it enacted by the Legislature of West Virginia:

That section eight, article four, chapter eighteen-a 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 eight-g; and that sections two and eight, article five of said chapter be amended and reenacted, all to read as follows:

Article

4. Salaries, Wages and Other Benefits.
5. Authority; Rights; Responsibility.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

§18A-4-8g. Determination of seniority for service personnel.

§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.

10 Service personnel employed on a yearly or twelve-
11 month basis may be employed by calendar months.
12 Whenever there is a change in job assignment during
13 the school year, the minimum pay scale and any county
14 supplement shall be applicable.

15 Service personnel employed in the same classification
16 for more than the two hundred day minimum employ-
17 ment term shall be paid for additional employment at
18 a daily rate of not less than the daily rate paid for the
19 two hundred day minimum employment term.

20 No service employee, without his agreement, shall be
21 required to report for work more than five days per
22 week and no part of any working day may be accum-
23 ulated by the employer for future work assignments,
24 unless the employee agrees thereto.

25 Should an employee whose regular work week is
26 scheduled from Monday through Friday agree to
27 perform any work assignments on a Saturday or
28 Sunday, the employee shall be paid for at least one-half
29 day of work for each such day he reports for work, and
30 if the employee works more than three and one-half
31 hours on any Saturday or Sunday, he shall be paid for
32 at least a full day of work for each such day.

33 Custodians, aides, maintenance, office and school

34 lunch employees required to work a daily work schedule
35 that is interrupted, that is, who do not work a continuous
36 period in one day, shall be paid additional compensation
37 which shall be equal to at least one eighth of their total
38 salary as provided by their state minimum salary and
39 any county pay supplement, and payable entirely from
40 county funds: *Provided*, That when engaged in duties of
41 transporting students exclusively, aides shall not be
42 regarded as working an interrupted schedule.

43 Upon the change in classification or upon meeting the
44 requirements of an advanced classification of or by any
45 employee, his salary shall be made to comply with the
46 requirements of this article, and to any county salary
47 schedule in excess of the minimum requirements of this
48 article, based upon his advanced classification and
49 allowable years of employment.

50 An employee's contract as provided in section five,
51 article two of this chapter shall state the appropriate
52 monthly salary the employee is to be paid, based on the
53 class title as provided in this article and any county
54 salary schedule in excess of the minimum requirements
55 of this article.

56 The column heads of the state minimum pay scale and
57 class titles, set forth in section eight-a of this article, are
58 defined as follows:

59 "Pay grade" means the monthly salary applicable to
60 class titles of service personnel.

61 "Years of employment" means the number of years
62 which an employee classified as service personnel has
63 been employed by a board of education in any position
64 prior to or subsequent to the effective date of this section
65 and including service in the armed forces of the United
66 States if the employee were employed at the time of his
67 induction. For the purpose of section eight-a of this
68 article, years of employment shall be limited to the
69 number of years shown and allowed under the state
70 minimum pay scale as set forth in section eight-a of this
71 article.

72 "Class title" means the name of the position or job held

73 by service personnel.

74 "Accountant I" means personnel employed to main-
75 tain payroll records and reports and perform one or
76 more operations relating to a phase of the total payroll.

77 "Accountant II" means personnel employed to main-
78 tain accounting records and to be responsible for the
79 accounting process associated with billing, budgets,
80 purchasing and related operations.

81 "Accountant III" means personnel who are employed
82 in the county board of education office to manage and
83 supervise accounts payable and/or payroll procedures.

84 "Aide I" means those personnel selected and trained
85 for teacher-aide classifications such as monitor aide,
86 clerical aide, classroom aide or general aide.

87 "Aide II" means those personnel referred to in the
88 "Aide I" classification who have completed a training
89 program approved by the state board of education, or
90 who hold a high school diploma or have received a
91 general educational development certificate. Only
92 personnel classified in an Aide II class title shall be
93 employed as an aide in any special education program.

94 "Aide III" means those personnel referred to in the
95 "Aide I" classification who hold a high school diploma
96 or a general educational development certificate, and
97 have completed six semester hours of college credit at
98 an institution of higher education or are employed as an
99 aide in a special education program and have one year's
100 experience as an aide in special education.

101 "Aide IV" means personnel referred to in the "Aide
102 I" classification who hold a high school diploma or a
103 general educational development certificate and who
104 have completed eighteen hours of state board-approved
105 college credit at a regionally accredited institution of
106 higher education, or who have completed fifteen hours
107 of state board-approved college credit at a regionally
108 accredited institution of higher education and success-
109 fully completed an in-service training program deter-
110 mined by the state board to be the equivalent of three
111 hours of college credit.

112 "Audiovisual technician" means personnel employed
113 to perform minor maintenance on audiovisual equip-
114 ment, films, supplies and the filling of requests for
115 equipment.

116 "Auditor" means personnel employed to examine and
117 verify accounts of individual schools and to assist schools
118 and school personnel in maintaining complete and
119 accurate records of their accounts.

120 "Autism mentor" means personnel who work with
121 autistic students and who meet standards and expe-
122 rience to be determined by the state board: *Provided,*
123 That the state board shall determine these standards
124 and experience on or before the first day of July, one
125 thousand nine hundred ninety-two.

126 "Braille or sign language specialist" means personnel
127 employed to provide braille and/or sign language
128 assistance to students.

129 "Bus operator" means personnel employed to operate
130 school buses and other school transportation vehicles as
131 provided by the state board of education.

132 "Buyer" means personnel employed to review and
133 write specifications, negotiate purchase bids and
134 recommend purchase agreements for materials and
135 services that meet predetermined specifications at the
136 lowest available costs.

137 "Cabinetmaker" means personnel employed to con-
138 struct cabinets, tables, bookcases and other furniture.

139 "Cafeteria manager" means personnel employed to
140 direct the operation of a food services program in a
141 school, including assigning duties to employees, approv-
142 ing requisitions for supplies and repairs, keeping
143 inventories, inspecting areas to maintain high standards
144 of sanitation, preparing financial reports and keeping
145 records pertinent to food services of a school.

146 "Carpenter I" means personnel classified as a carpen-
147 ter's helper.

148 "Carpenter II" means personnel classified as a
149 journeyman carpenter.

150 "Chief mechanic" means personnel employed to be
151 responsible for directing activities which ensure that
152 student transportation or other board-owned vehicles
153 are properly and safely maintained.

154 "Clerk I" means personnel employed to perform
155 clerical tasks.

156 "Clerk II" means personnel employed to perform
157 general clerical tasks, prepare reports and tabulations
158 and operate office machines.

159 "Computer operator" means qualified personnel
160 employed to operate computers.

161 "Cook I" means personnel employed as a cook's helper.

162 "Cook II" means personnel employed to interpret
163 menus, to prepare and serve meals in a food service
164 program of a school and shall include personnel who
165 have been employed as a "Cook I" for a period of four
166 years, if such personnel have not been elevated to this
167 classification within that period of time.

168 "Cook III" means personnel employed to prepare and
169 serve meals, make reports, prepare requisitions for
170 supplies, order equipment and repairs for a food service
171 program of a school system.

172 "Crew leader" means personnel employed to organize
173 the work for a crew of maintenance employees to carry
174 out assigned projects.

175 "Custodian I" means personnel employed to keep
176 buildings clean and free of refuse.

177 "Custodian II" means personnel employed as a
178 watchman or groundsman.

179 "Custodian III" means personnel employed to keep
180 buildings clean and free of refuse, to operate the heating
181 or cooling systems and to make minor repairs.

182 "Custodian IV" means personnel employed as head
183 custodians. In addition to providing services as defined
184 in "Custodian III," their duties may include supervising
185 other custodian personnel.

186 “Director or coordinator of services” means personnel
187 not defined as professional personnel or professional
188 educators in section one, article one of this chapter, who
189 are assigned to direct a department or division.

190 “Draftsman” means personnel employed to plan,
191 design and produce detailed architectural/engineering
192 drawings.

193 “Electrician I” means personnel employed as an
194 apprentice electrician helper or who holds an electrician
195 helper license issued by the state fire marshal.

196 “Electrician II” means personnel employed as an
197 electrician journeyman or who holds a journeyman
198 electrician license issued by the state fire marshal.

199 “Electronic technician I” means personnel employed
200 at the apprentice level to repair and maintain electronic
201 equipment.

202 “Electronic technician II” means personnel employed
203 at the journeyman level to repair and maintain elec-
204 tronic equipment.

205 “Executive secretary” means personnel employed as
206 the county school superintendent’s secretary or as a
207 secretary who is assigned to a position characterized by
208 significant administrative duties.

209 “Food services supervisor” means qualified personnel
210 not defined as professional personnel or professional
211 educators in section one, article one of this chapter,
212 employed to manage and supervise a county school
213 system’s food service program. The duties would include
214 preparing in-service training programs for cooks and
215 food service employees, instructing personnel in the
216 areas of quantity cooking with economy and efficiency,
217 and keeping aggregate records and reports.

218 “Foremen” means skilled persons employed for
219 supervision of personnel who work in the areas of repair
220 and maintenance of school property and equipment.

221 “General maintenance” means personnel employed as
222 helpers to skilled maintenance employees and to
223 perform minor repairs to equipment and buildings of a

- 224 county school system.
- 225 "Glazier" means personnel employed to replace glass
226 or other materials in windows and doors and to do minor
227 carpentry tasks.
- 228 "Graphic artist" means personnel employed to pre-
229 pare graphic illustrations.
- 230 "Groundsmen" means personnel employed to perform
231 duties that relate to the appearance, repair and general
232 care of school grounds in a county school system.
233 Additional assignments may include the operation of a
234 small heating plant and routine cleaning duties in
235 buildings.
- 236 "Handyman" means personnel employed to perform
237 routine manual tasks in any operation of the county
238 school system.
- 239 "Heating and air conditioning mechanic I" means
240 personnel employed at the apprentice level to install,
241 repair and maintain heating and air conditioning plants
242 and related electrical equipment.
- 243 "Heating and air conditioning mechanic II" means
244 personnel employed at the journeyman level to install,
245 repair and maintain heating and air conditioning plants
246 and related electrical equipment.
- 247 "Heavy equipment operator" means personnel em-
248 ployed to operate heavy equipment.
- 249 "Inventory supervisor" means personnel who are
250 employed to supervise or maintain operations in the
251 receipt, storage, inventory and issuance of materials and
252 supplies.
- 253 "Key punch operator" means qualified personnel
254 employed to operate key punch machines or verifying
255 machines.
- 256 "Locksmith" means personnel employed to repair and
257 maintain locks and safes.
- 258 "Lubrication man" means personnel employed to
259 lubricate and service gasoline or diesel-powered equip-
260 ment of a county school system.

- 261 "Machinist" means personnel employed to perform
262 machinist tasks which include the ability to operate a
263 lathe, planer, shaper, threading machine and wheel
264 press. Such personnel should also have ability to work
265 from blueprints and drawings.
- 266 "Mail clerk" means personnel employed to receive,
267 sort, dispatch, deliver or otherwise handle letters,
268 parcels and other mail.
- 269 "Maintenance clerk" means personnel employed to
270 maintain and control a stocking facility to keep ade-
271 quate tools and supplies on hand for daily withdrawal
272 for all school maintenance crafts.
- 273 "Mason" means personnel employed to perform tasks
274 connected with brick and block laying and carpentry
275 tasks related to such laying.
- 276 "Mechanic" means personnel employed who can
277 independently perform skilled duties in the maintenance
278 and repair of automobiles, school buses and other
279 mechanical and mobile equipment to use in a county
280 school system.
- 281 "Mechanic assistant" means personnel employed as a
282 mechanic apprentice and helper.
- 283 "Multi-classification" means personnel employed to
284 perform tasks that involve the combination of two or
285 more class titles in this section or as created by the West
286 Virginia board of education. In such instances the
287 minimum salary scale shall be the higher pay grade of
288 the class titles involved.
- 289 "Office equipment repairman I" means personnel
290 employed as an office equipment repairman apprentice
291 or helper.
- 292 "Office equipment repairman II" means personnel
293 responsible for servicing and repairing all office
294 machines and equipment. Personnel shall be responsible
295 for parts being purchased necessary for the proper
296 operation of a program of continuous maintenance and
297 repair.
- 298 "Painter" means personnel employed to perform

299 duties of painting, finishing and decorating of wood,
300 metal and concrete surfaces of buildings, other struc-
301 tures, equipment, machinery and furnishings of a
302 county school system.

303 "Paraprofessional" means a person certified pursuant
304 to section two-a, article three of this chapter to perform
305 duties in a support capacity including, but not limited
306 to, facilitating in the instruction and direct or indirect
307 supervision of pupils under the direction of a principal,
308 a teacher, or another designated professional educator:
309 *Provided*, That no person employed on the effective date
310 of this section in the position of an aide may be reduced
311 in force or transferred to create a vacancy for the
312 employment of a paraprofessional.

313 "Plumber I" means personnel employed as an ap-
314 prentice plumber and helper.

315 "Plumber II" means personnel employed as a journey-
316 man plumber.

317 "Printing operator" means personnel employed to
318 operate duplication equipment, and as required, to cut,
319 collate, staple, bind and shelve materials.

320 "Printing supervisor" means personnel employed to
321 supervise the operation of a print shop.

322 "Programmer" means personnel employed to design
323 and prepare programs for computer operation.

324 "Roofing/sheet metal mechanic" means personnel
325 employed to install, repair, fabricate and maintain roofs,
326 gutters, flashing and duct work for heating and
327 ventilation.

328 "Sanitation plant operator" means personnel em-
329 ployed to operate and maintain a water or sewage
330 treatment plant to ensure the safety of the plant's
331 effluent for human consumption or environmental
332 protection.

333 "School bus supervisor" means qualified personnel
334 employed to assist in selecting school bus operators and
335 routing and scheduling of school buses, operate a bus
336 when needed, relay instructions to bus operators, plan

337 emergency routing of buses and promoting good
338 relationships with parents, pupils, bus operators and
339 other employees.

340 "Secretary I" means personnel employed to transcribe
341 from notes or mechanical equipment, receive callers,
342 perform clerical tasks, prepare reports and operate
343 office machines.

344 "Secretary II" means personnel employed in any
345 elementary, secondary, kindergarten, nursery, special
346 education, vocational or any other school as a secretary.
347 The duties may include performing general clerical
348 tasks, transcribing from notes or stenotype or mechan-
349 ical equipment or a sound-producing machine, prepar-
350 ing reports, receiving callers and referring them to
351 proper persons, operating office machines, keeping
352 records and handling routine correspondence. There is
353 nothing implied herein that would prevent such em-
354 ployees from holding or being elevated to a higher
355 classification.

356 "Secretary III" means personnel assigned to the
357 county board of education office administrators in
358 charge of various instructional, maintenance, transpor-
359 tation, food services, operations and health departments,
360 federal programs or departments with particular
361 responsibilities of purchasing and financial control or
362 any personnel who have served in a position which meets
363 the definition of "Secretary II" or "Secretary III" herein
364 for eight years.

365 "Supervisor of maintenance" means skilled personnel
366 not defined as professional personnel or professional
367 educators as in section one, article one of this chapter.
368 The responsibilities would include directing the upkeep
369 of buildings and shops, issuing instructions to subordi-
370 nates relating to cleaning, repairs and maintenance of
371 all structures and mechanical and electrical equipment
372 of a board of education.

373 "Supervisor of transportation" means qualified
374 personnel employed to direct school transportation
375 activities, properly and safely, and to supervise the
376 maintenance and repair of vehicles, buses, and other

377 mechanical and mobile equipment used by the county
378 school system.

379 "Switchboard operator-receptionist" means personnel
380 employed to refer incoming calls, to assume contact with
381 the public, to direct and to give instructions as neces-
382 sary, to operate switchboard equipment and to provide
383 clerical assistance.

384 "Truck driver" means personnel employed to operate
385 light or heavy duty gasoline and diesel-powered vehicles.

386 "Warehouse clerk" means personnel employed to be
387 responsible for receiving, storing, packing and shipping
388 goods.

389 "Watchman" means personnel employed to protect
390 school property against damage or theft. Additional
391 assignments may include operation of a small heating
392 plant and routine cleaning duties.

393 "Welder" means personnel employed to provide
394 acetylene or electric welding services for a school
395 system.

396 In addition to the compensation provided for in
397 section eight-a of this article, for service personnel, each
398 service employee shall, notwithstanding any provisions
399 in this code to the contrary, be entitled to all service
400 personnel employee rights, privileges and benefits
401 provided under this or any other chapter of this code
402 without regard to such employee's hours of employment
403 or the methods or sources of compensation.

404 Service personnel whose years of employment exceed
405 the number of years shown and provided for under the
406 state minimum pay scale set forth in section eight-a of
407 this article may not be paid less than the amount shown
408 for the maximum years of employment shown and
409 provided for in the classification in which he is
410 employed.

411 The county boards shall review each service personnel
412 employee job classification annually and shall reclassify
413 all service employees as required by such job classifi-
414 cations. The state superintendent of schools is hereby

415 authorized to withhold state funds appropriated pursu-
416 ant to this article for salaries for service personnel who
417 are improperly classified by such county boards.
418 Further, he shall order county boards to correct
419 immediately any improper classification matter and
420 with the assistance of the attorney general shall take any
421 legal action necessary against any county board to
422 enforce such order.

423 No service employee, without his written consent, may
424 be reclassified by class title, nor may a service employee,
425 without his written consent, be relegated to any
426 condition of employment which would result in a
427 reduction of his salary, rate of pay, compensation or
428 benefits earned during the current fiscal year or which
429 would result in a reduction of his salary, rate of pay,
430 compensation or benefits for which he would qualify by
431 continuing in the same job position and classification
432 held during said fiscal year and subsequent years.

433 Any board failing to comply with the provisions of
434 this article may be compelled to do so by mandamus,
435 and shall be liable to any party prevailing against the
436 board for court costs and his reasonable attorney fee, as
437 determined and established by the court.

438 Notwithstanding any provisions in this code to the
439 contrary, service personnel who hold a continuing
440 contract in a specific job classification and are physi-
441 cally unable to perform the job's duties as confirmed by
442 a physician chosen by the employee shall be given
443 priority status over any employee not holding a contin-
444 uing contract in filling other service personnel job
445 vacancies if qualified as provided in section eight-e of
446 this article.

**§18A-4-8g. Determination of seniority for service per-
sonnel.**

1 The seniority for service personnel shall be deter-
2 mined in the following manner:

3 Seniority accumulation for a regular school service
4 employee shall begin on the date such employee enters
5 upon regular employment duties pursuant to a contract

6 as provided in section five, article two of this chapter
7 and shall continue until the employee's employment as
8 a regular employee is severed with the county board of
9 education. Seniority shall not cease to accumulate when
10 an employee is absent without pay as authorized by the
11 county board or the absence is due to illness or other
12 reasons over which the employee has no control as
13 authorized by the county board. Seniority accumulation
14 for a substitute employee shall begin upon the date the
15 employee enters upon the duties of a substitute as
16 provided in section fifteen, article four of this chapter,
17 after executing with the board a contract of employment
18 as provided in section five, article two of this chapter.
19 The seniority of a substitute employee, once established,
20 shall continue until such employee enters into the duties
21 of a regular employment contract as provided in section
22 five, article two of this chapter or employment as a
23 substitute with the county board of education is severed.
24 Seniority of a regular or substitute employee shall
25 continue to accumulate except during the time when an
26 employee is willfully absent from employment duties
27 because of a concerted work stoppage or strike or is
28 suspended without pay.

29 For all purposes including the filling of vacancies and
30 reduction in force, seniority shall be accumulated within
31 particular classification categories of employment as
32 those classification categories are referred to in section
33 eight-e of this article: *Provided*, That when implement-
34 ing a reduction in force, an employee with the least
35 seniority within a particular classification category shall
36 be properly released and placed on the preferred recall
37 list. The particular classification title held by an
38 employee within the classification category shall not be
39 taken into consideration when implementing a reduction
40 in force.

41 On or before the first day of September and the
42 fifteenth day of January of each school year, county
43 boards of education shall post at each county school or
44 working station the current seniority list or lists of each
45 school service classification. Each list shall contain the
46 name of each regularly employed school service person-

47 nel employed in each classification and the date that
48 each employee began performing his assigned duties in
49 each classification. Current seniority lists of substitute
50 school service personnel shall be available to employees
51 upon request at the county board of education office.

52 The seniority of an employee who transfers out of a
53 class title or classification category of employment and
54 subsequently returns to said class title or classification
55 category of employment shall be calculated as follows:

56 The county board of education shall establish the
57 number of calendar days between the date the employee
58 left the class title or category of employment in question
59 and the date of return to the class title or classification
60 category of employment. This number of days shall be
61 added to the employee's initial seniority date to establish
62 a new beginning seniority date within the class title or
63 classification category. The employee shall then be
64 considered as having held uninterrupted service within
65 the class title or classification category from the newly
66 established seniority date. The seniority of an employee
67 who has had a break in the accumulation of seniority
68 as a result of being willfully absent from employment
69 duties because of a concerted work stoppage or strike
70 shall be calculated in a like manner.

71 A substitute school service employee may acquire
72 regular employment status and seniority if said em-
73 ployee receives a position pursuant to section fifteen,
74 subsections (2) and (5), article four of this chapter.
75 County boards of education shall not be prohibited from
76 providing any benefits of regular employment for
77 substitute employees, but such benefits shall not include
78 regular employee status and seniority.

79 If two or more employees accumulate identical
80 seniority, the priority shall be determined by a random
81 selection system established by the employees and
82 approved by the county board.

83 A board of education shall conduct such random
84 selection within thirty days upon said employees
85 establishing an identical seniority date. All employees
86 with an identical seniority date within the same class

87 title or classification category shall participate in the
88 random selection. As long as the affected employees hold
89 identical seniority within the same classification
90 category, the initial random selection conducted by the
91 board of education shall be permanent for the duration
92 of the employment within the same classification
93 category of said employees by the board of education.
94 This random selection priority shall apply to the filling
95 of vacancies and to the reduction in force of school
96 service personnel.

97 Service personnel who are employed in a classification
98 category of employment at the time when a vacancy is
99 posted in the same classification category of employment
100 shall be given first opportunity to fill such vacancy.

101 Seniority acquired as a substitute and as a regular
102 employee shall be calculated separately and shall not be
103 combined for any purpose. Seniority acquired within
104 different classification categories shall be calculated
105 separately: *Provided*, That when a school service
106 employee makes application for a position outside of the
107 classification category currently held, if the vacancy is
108 not filled by an applicant within the classification
109 category of the vacancy, the applicant shall combine all
110 regular employment seniority acquired for the purposes
111 of bidding on the position.

112 School service personnel who hold multi-classification
113 titles shall accrue seniority in each classification
114 category of employment which said employee holds and
115 shall be considered an employee of each classification
116 category contained within his multi-classification title.
117 Multi-classified employees shall be subject to reduction
118 in force in any category of employment contained within
119 their multi-classification title based upon the seniority
120 accumulated within said category of employment:
121 *Provided*, That if a multi-classified employee is reduced
122 in force in one classification category, said employee
123 shall retain employment in any of the other classifica-
124 tion categories that he holds within his multi-classifica-
125 tion title. In such a case, the county board of education
126 shall delete the appropriate classification title or
127 classification category from the contract of the multi-

128 classified employee.

129 When applying to fill a vacancy outside the classifi-
130 cation categories held by the multi-classified employee,
131 seniority acquired simultaneously in different classifica-
132 tion categories shall be calculated as if accrued in one
133 classification category only.

134 The seniority conferred herein shall apply retroac-
135 tively to all affected school service personnel, but the
136 rights incidental thereto shall commence as of the
137 effective date of this section.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-2. Holidays; closing of schools; time lost because of such; special Saturday classes.

§18A-5-8. Authority of certain aides to exercise control over pupils; compensation; transfers.

§18A-5-2. Holidays; closing of schools; time lost because of such; special Saturday classes.

1 Schools shall not be kept open on any Saturday nor
2 on the following days which are designated as legal
3 school holidays, namely: Independence Day, Labor Day,
4 Veterans Day, Thanksgiving Day, Christmas Day, New
5 Year's Day, Martin Luther King's birthday, Memorial
6 Day, West Virginia Day, and any day on which a
7 primary election, general election or special election is
8 held throughout the state or school district and any day
9 appointed and set apart by the president or the governor
10 as a holiday of special observance by the people of the
11 state.

12 When any such holiday falls within the employment
13 term, it shall be considered as a day of the employment
14 term and the full-time school personnel shall receive his
15 or her pay for same. When any of the above designated
16 holidays, except a special election, falls on Saturday, the
17 schools shall be closed on the preceding Friday; when
18 any such falls on Sunday, the schools shall be closed on
19 the following Monday.

20 Special classes may be conducted on Saturdays,
21 provided they are conducted on a voluntary basis, for
22 pupils and by teachers and service personnel, and that

23 such teachers and service personnel shall be remunerated in ratio to the regularly contracted pay.

25 Any school or schools may be closed by proper
26 authorities on account of the prevalence of contagious
27 disease, conditions of weather or any other calamitous
28 cause over which the board has no control. Under any
29 or all of the above provisions, the time lost by the closing
30 of schools is counted as days of employment and as
31 meeting a part of the requirements of the minimum
32 term of one hundred eighty days of instruction. On such
33 day or days, county boards of education may provide
34 appropriate alternate work schedules for professional
35 and service personnel affected by the closing of any
36 school or schools under any or all of the above provisions.
37 Professional and service personnel shall receive pay the
38 same as if school were in session. Insofar as funds are
39 available or can be made available during the school
40 year, the board may extend the employment term for
41 the purpose of making up time that might affect the
42 instructional term.

43 In addition to any other provisions of this chapter, the
44 board is further authorized to provide in its annual
45 budget for meetings, workshops, vacation time or other
46 holidays through extended employment of personnel at
47 the same rate of pay.

§18A-5-8. Authority of certain aides to exercise control over pupils; compensation; transfers.

1 (a) Within the limitations provided herein, any aide
2 who agrees to do so shall stand in the place of the parent
3 or guardian and shall exercise such authority and
4 control over pupils as is required of a teacher as defined
5 and provided in section one of this article. The principal
6 shall designate such aides in the school who agree to
7 exercise such authority on the basis of seniority as an
8 aide and shall enumerate the instances in which such
9 authority shall be exercised by an aide when requested
10 by the principal, assistant principal or professional
11 employee to whom the aide is assigned: *Provided*, That
12 such authority does not extend to suspending or
13 expelling any pupil, participating in the administration
14 of corporal punishment or performing instructional

15 duties as a teacher or substitute teacher.

16 An aide designated by the principal under this
17 subsection shall receive a salary not less than one pay
18 grade above the minimum salary to which said aide
19 would otherwise be entitled under section eight-a,
20 article four of this chapter, and any county salary
21 schedule in excess of the minimum requirements of this
22 article.

23 (b) An aide shall not be required by the operation of
24 this section to perform noninstructional duties for an
25 amount of time which exceeds that required under the
26 aide's contract of employment or that required of other
27 aides in the same school, unless the assignment of such
28 duties is mutually agreed upon by the aide and the
29 county superintendent, or the superintendent's desig-
30 nated representative, subject to board approval. The
31 terms and conditions of such agreement shall be in
32 writing, signed by both parties, and may include
33 additional benefits. Such agreement shall be uniform as
34 to aides assigned similar duties for similar amounts of
35 time within the same school. Aides shall have the option
36 of agreeing to supervise students and of renewing
37 related assignments annually: *Provided*, That should an
38 aide elect not to renew the previous agreement to
39 supervise students, the minimum salary of such aide
40 shall revert to the pay grade specified in section eight-
41 a, article four of this chapter for the classification title
42 held by the aide and any county salary schedule in
43 excess of the minimum requirements of this article.

44 (c) For the purposes of this section, aide shall mean
45 and include any aide class title as defined in section
46 eight, article four of this chapter, regardless of numeric
47 classification.

48 (d) An aide may transfer to another position of
49 employment one time only during any half of a school
50 term, unless otherwise mutually agreed upon by the aide
51 and the county superintendent, or the superintendent's
52 designee, subject to board approval: *Provided*, That
53 during the first year of employment as an aide, an aide
54 shall not transfer to another position of employment
55 during the first one-half school term of employment,

56 unless mutually agreed upon by the aide and county
57 superintendent, subject to board approval.

58 (e) Regular service personnel employed in a category
59 of employment other than aide who seek employment as
60 an aide shall be required to hold a high school diploma
61 or have received a general educational development
62 certificate and shall have opportunity to receive
63 appropriate training pursuant to subsection (10), section
64 thirteen, article five, chapter eighteen of this code and
65 section two, article twenty of said chapter.

CHAPTER 50

(Com. Sub. for S. B. 315—By Senators Minard, Bailey,
Sharpe, Claypole and Wagner)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-eight, twenty-nine, thirty and forty-six, article one, 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 thirty-a; to amend article one-a of said chapter by adding thereto a new section, designated section eight; to amend and reenact section forty-one, article two of said chapter; to amend and reenact sections one, two, two-a, two-b, three, five, five-a, five-b, five-c, seven and twelve, article three of said chapter; to amend and reenact sections thirteen, fourteen and twenty-four, article four of said chapter; to amend and reenact sections eleven, eleven-a, fourteen, fifteen and twenty-seven, article four-a of said chapter; to amend and reenact sections ten, fifteen and sixteen, article five of said chapter; to amend and reenact sections three, five, six and eight, article six of said chapter; and to further amend said article by adding thereto a new section, designated section four-a, all relating to elections generally; providing for the eligibility requirements of election officials; clarifying certain qualifications and setting forth prohibitions; establishing grounds and procedures for suspension of

election officials; refining definitions of various election officials; providing for an expanded receiving board; when such expanded receiving board to serve; reducing size of paper ballot precincts where optional counting board may serve; requiring county commissions to designate number and types of boards and to notify executive committees of number of officials needed to serve; clarifying nomination procedure for election officials; prescribing method and time periods in which executive committees may file nominations; providing procedure for notice of appointment of election officials; how vacancies filled on election day; eliminating certain archaic provisions; prescribing oath to be taken by election officials; establishing procedure for substitution, exchange or removal of election officials; modifying training program requirements; authorizing qualified employees of the secretary of state to conduct investigations and to enforce election and criminal laws; modifying procedure for postcard registration; clarifying exemptions for absentee voting identification requirements; authorizing special early absentee voting; empowering county commissions to adopt policies for absentee voting at nursing homes; rewriting certain code provisions for stylistic purposes; removing certain forms from statutory provisions and authorizing the secretary of state to prescribe certain forms; modifying form of absentee envelopes; eliminating requirement for physician's affidavit; establishing distances for access to absentee voting booths and prohibiting campaign literature from within three hundred feet therefrom; providing for absentee voting by physically disabled persons; modifying requirements for special absentee voting list; modifying procedures for voting absentee ballots in person and by mail; establishing a procedure for federal postcard registration; modifying provisions for voting by special write-in absentee ballots; changing certain terminology; establishing procedure for absentee voting in nursing homes; modifying procedure for delivery of absentee ballots at polling places; requiring secretary of state to supply county and circuit clerks with provisions of overseas voting act; authorizing secretary of state to establish procedures for special

absentee voting; codifying changes in law governing precincts using voting machines, consistent with other modifications; modifying requirements for the publication of ballots for all voting systems; clarifying the identification of persons who may observe the counting of votes; authorizing a representative of a group supporting or opposing an issue to be present; modifying the procedure for the counting of write-in votes for all voting systems; clarifying the requirements of ballot labels used in electronic voting systems to accommodate write-in voting; prescribing and clarifying procedures for the counting of write-in and other votes; revising procedure for the return of election supplies following primary elections; providing for the filing requirements of official write-in candidates; limiting the counting of write-in votes to only official candidates; and providing for criminal penalties.

Be it enacted by the Legislature of West Virginia:

That sections twenty-eight, twenty-nine, thirty and forty-six, article one, 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 thirty-a; that article one-a of said chapter be amended by adding thereto a new section, designated section eight; that section forty-one, article two of said chapter be amended and reenacted; that sections one, two, two-a, two-b, three, five, five-a, five-b, five-c, seven and twelve, article three of said chapter be amended and reenacted; that sections thirteen, fourteen and twenty-four, article four of said chapter be amended and reenacted; that sections eleven, eleven-a, fourteen, fifteen and twenty-seven, article four-a of said chapter be amended and reenacted; that sections ten, fifteen and sixteen, article five of said chapter be amended and reenacted; that sections three, five, six and eight, article six of said chapter be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section four-a, all to read as follows:

Article

1. **General Provisions and Definitions.**
- 1A. **State Election Commission and Secretary of State.**
2. **Registration of Voters.**
3. **Voting by Absentees.**

4. **Voting Machines.**
- 4A. **Electronic Voting Systems.**
5. **Primary Elections and Nominating Procedures.**
6. **Conduct and Administration of Elections.**

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

- §3-1-28. Election officials; eligibility, suspension of eligibility.
- §3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.
- §3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.
- §3-1-30a. Oaths of election commissioners and poll clerks, substitution of persons.
- §3-1-46. Training program for election officials.

§3-1-28. Election officials; eligibility, suspension of eligibility.

1 (a) To be eligible to be appointed or serve as an
 2 election official in any state, county or municipal
 3 election held in West Virginia, a person:

4 (1) Must be a registered voter of the county for
 5 elections held throughout the county, and a registered
 6 voter of the municipality for elections held within the
 7 municipality;

8 (2) Must be registered as affiliated with the political
 9 party for which appointed; except that, persons regis-
 10 tered without party affiliation or as adherents to a
 11 political group other than the two majority political
 12 parties then recognized are eligible to serve in nonpar-
 13 tisan elections;

14 (3) Must be able to read and write the English
 15 language;

16 (4) May not be a candidate on the ballot in the
 17 election;

18 (5) May not be the parent, child, sibling or spouse of
 19 a candidate on the ballot in the precinct where the
 20 official serves;

21 (6) May not be a person prohibited from serving as
 22 an election official pursuant to any other federal or state
 23 statute;

24 (7) May not have been previously convicted of a
25 violation of any election law; and

26 (8) May not be a person who has served as deputy
27 sheriff within six months prior to the election.

28 (b) The county commission may, upon majority vote,
29 suspend the eligibility to serve as election official in any
30 election for four years, for the following reasons:

31 (1) Failure to appear at the polling place at the
32 designated time without proper notice and just cause;

33 (2) Failure to perform the duties of an election official
34 as required by law;

35 (3) Improper interference with a voter casting a
36 ballot, or violating the secrecy of the voter's ballot;

37 (4) Being under the influence of alcohol or drugs while
38 serving as election official; or

39 (5) Having anything wagered or bet on an election.

40 (c) The county commission may, upon majority vote,
41 suspend the eligibility to serve as an election official in
42 any election for two years, upon petition of twenty-five
43 registered voters of the precinct where the official last
44 served and upon presentation of evidence of any of the
45 grounds set forth in subsection (b) hereof, providing the
46 petition requesting the suspension of the election official
47 is filed with the county commission at least ninety days
48 prior to an election date. The names of those persons
49 signing such petition shall be kept confidential.

§3-1-29. Boards of election officials; definitions, composition of boards, determination of number and type.

1 (a) For the purpose of this article:

2 (1) The term "standard receiving board" means those
3 election officials charged with conducting the process of
4 voting within a precinct and consists of five persons,
5 including one team of poll clerks, one team of election
6 commissioners for the ballot box and one additional
7 election commissioner;

8 (2) The term "expanded receiving board" means a
9 standard receiving board as defined in subdivision (1)
10 hereof and one additional team of poll clerks;

11 (3) The term "counting board" means those election
12 officials charged with counting the ballots at the
13 precinct in counties using paper ballots and includes one
14 team of poll clerks, one team of election commissioners
15 and one additional commissioner; and

16 (4) The term "team of poll clerks" or "team of election
17 commissioners" means two persons of opposite political
18 parties appointed to perform the specific functions of the
19 office.

20 (b) The composition of boards of election officials shall
21 be as follows:

22 (1) In any primary, general or special election other
23 than a presidential primary or presidential general
24 election, each election precinct shall have one standard
25 receiving board;

26 (2) In presidential primary and presidential general
27 elections, each election precinct shall have one receiving
28 board, as follows:

29 (A) For precincts of less than five hundred registered
30 voters, one standard receiving board;

31 (B) For precincts of five hundred to seven hundred
32 registered voters, one standard receiving board or, at
33 the discretion of the county commission, one expanded
34 receiving board; and

35 (C) For precincts of more than seven hundred
36 registered voters, one expanded receiving board;

37 (3) In any election conducted using paper ballots,
38 counting boards may be allowed, disallowed or required
39 as follows:

40 (A) For any state, county or municipal special
41 election, no counting board may be allowed;

42 (B) In a statewide primary or general election, one
43 counting board shall be required for any precinct of
44 more than four hundred registered voters, and one

45 counting board may be allowed, at the discretion of the
46 county commission for any precinct of at least two
47 hundred but no more than four hundred registered
48 voters; and

49 (C) In a municipal primary or general election, one
50 counting board may be allowed, at the discretion of the
51 municipal governing body for any precinct of more than
52 two hundred registered voters.

53 (c) For each primary and general election in the
54 county, the county commission shall designate the
55 number and type of election boards for the various
56 precincts according to the provisions of this section. At
57 least eighty-four days before such election, the county
58 commission shall notify the county executive committees
59 of the two major political parties in writing of the
60 number of nominations which may be made for poll
61 clerks and election commissioners.

62 (d) For each municipal election, the governing body
63 of the municipality shall perform the duties of the
64 county commission as provided in this section.

**§3-1-30. Nomination and appointment of election officials
and alternates; notice of appointment; ap-
pointment to fill vacancies in election boards.**

1 (a) For any primary, general or special election held
2 throughout a county, poll clerks and election commis-
3 sioners may be nominated as follows:

4 (1) The county executive committee for each of the two
5 major political parties may, by a majority vote of the
6 committee at a duly called meeting, nominate one
7 qualified person for each team of poll clerks and one
8 qualified person for each team of election commissioners
9 to be appointed for the election;

10 (2) The appointing body shall select one qualified
11 person as the additional election commissioner for each
12 board of election officials;

13 (3) Each county executive committee may also
14 nominate as many qualified persons as alternates as
15 there are precincts in the county, which alternates may

16 be called upon to serve in the event any of the persons
17 originally appointed fail to accept appointment or fail
18 to appear for the required training or for the prepara-
19 tion or execution of their duties;

20 (4) When an executive committee nominates qualified
21 persons as poll clerks, election commissioners or
22 alternates, the committee, or its chairman or secretary
23 on their behalf, shall file in writing with the appointing
24 body, no later than the fifty-sixth day before the
25 election, a list of those persons nominated and the
26 positions for which they are designated.

27 (b) For any municipal primary, general or special
28 election, the poll clerks and election commissioners may
29 be nominated as follows:

30 (1) In municipalities which have municipal executive
31 committees for the two major political parties in the
32 municipality, each such committee may nominate
33 election officials in the manner provided for the
34 nomination of election officials by county executive
35 committees in subsection (a) of this section;

36 (2) In municipalities which do not have executive
37 committees, the governing body shall provide by
38 ordinance for a method of nominating election officials;
39 or shall nominate as many eligible persons as are
40 required, giving due consideration to any recommenda-
41 tions made by voters of the municipality or by candi-
42 dates on the ballot.

43 (c) The governing body responsible for appointing
44 election officials shall be:

45 (1) The county commission for any primary, general
46 or special election ordered by the county commission
47 and any joint county and municipal election;

48 (2) The board of education for any special election
49 ordered by the board of education conducted apart from
50 any other election;

51 (3) The municipal governing body for any primary,
52 general or special municipal election ordered by the
53 governing body.

54 (d) The appropriate governing body shall appoint the
55 election officials for each designated election board no
56 later than the forty-ninth day before the election as
57 follows:

58 (1) Those eligible persons whose nominations for poll
59 clerk and election commissioner were timely filed by the
60 executive committees and those additional persons
61 selected to serve as an election commissioner shall be
62 appointed;

63 (2) The governing body shall fill any positions for
64 which no nominations were filed.

65 (e) At the same time as the appointment of election
66 officials, or at a subsequent meeting, the governing body
67 shall appoint persons as alternates: *Provided*, That no
68 alternate may be eligible for compensation for election
69 training unless the alternate is subsequently appointed
70 as an election official, or is instructed to attend and
71 actually attends training as an alternate and, if called
72 to do so, also serves at the polls on election day.
73 Alternates shall be appointed and serve as follows:

74 (1) Those alternates nominated by the executive
75 committees, shall be appointed;

76 (2) The governing body may appoint additional
77 alternates, who may be called upon to fill vacancies after
78 all alternates designated by the executive committees
79 have been assigned, have declined to serve or have failed
80 to attend training; and

81 (3) The governing body may determine the number of
82 persons who may be instructed to attend training as
83 alternates.

84 (f) The clerk of the county commission shall appoint
85 qualified persons to fill all vacancies existing after all
86 previously appointed alternates have been assigned,
87 have declined to serve or have failed to attend training.

88 (g) Within seven days following appointment, the
89 clerk of the county commission shall notify, by first-class
90 mail, all election commissioners, poll clerks and
91 alternates of the fact of their appointment, and include

92 with such notice a response notice form for the ap-
93 pointed person to return indicating whether or not he
94 or she agrees to serve in the specified capacity in the
95 election.

96 (h) The position of any person so notified of appoint-
97 ment who fails to return the response notice or otherwise
98 confirm to the clerk of the county commission his or her
99 agreement to serve within fourteen days following the
100 date of appointment shall be considered vacant and the
101 clerk shall proceed to fill the vacancies according to the
102 provisions of this section.

103 (i) If an appointed election official fails to appear at
104 the polling place by forty-five minutes past five o'clock
105 a.m. on election day, the election officials present shall
106 contact the office of the clerk of the county commission
107 for assistance in filling the vacancy and the clerk shall
108 proceed as follows:

109 (1) The clerk may attempt to contact the person
110 originally appointed, may assign an alternate of the
111 same political party as the person absent if one is
112 available or, if no alternate is available, may appoint
113 another eligible person of the same political party;

114 (2) If the election officials present are unable to
115 contact the clerk within a reasonable time, they shall
116 diligently attempt to fill the position with an eligible
117 person of the same political party as the person absent
118 until a qualified person has agreed to serve;

119 (3) If two teams of election officials, as defined in
120 section twenty-nine of this article, are present at the
121 polling place, the person appointed to fill a vacancy in
122 the position of the additional commissioner may be of
123 either political party.

124 (j) In a municipal election, the recorder or other
125 official designated by charter or ordinance to perform
126 election responsibilities shall perform the duties of the
127 clerk of the county commission as provided in this
128 section.

**§3-1-30a. Oaths of election commissioners and poll clerks,
substitution of persons.**

1 (a) Each commissioner of election and poll clerk, as
 2 defined in this article, before entering upon his or her
 3 duties, shall take orally and subscribe to the appropriate
 4 oath, as prescribed herein. Such oath may be taken
 5 before and administered by one of the election commis-
 6 sioners or poll clerks, who in turn may take the same
 7 before another election commissioner or poll clerk. For
 8 the purposes of this article, all election commissioners
 9 and poll clerks, having first been sworn, are authorized
 10 to administer oaths.

11 (1) The oath for members of the receiving board shall
 12 be as follows:

13 State of West Virginia

14 _____ County

15 I, _____, a qualified and registered
 16 voter of the county affiliated with the _____
 17 Party, do solemnly swear that I will faithfully and
 18 honestly discharge my duties as _____
 19 (poll clerk or election commissioner) of the receiving
 20 board according to the requirements of law in this
 21 election; that I will not knowingly permit any person to
 22 vote an unchallenged ballot who is not a resident of the
 23 precinct and a properly registered voter qualified to
 24 vote the ballot provided; that I will not challenge a ballot
 25 without just cause; that I will not cause any unnecessary
 26 delay in voting; that I will not disclose to any person how
 27 any voter has voted, nor how any ballot has been folded,
 28 marked, printed or stamped; that I do not have any
 29 agreement, understanding or arrangement that I will
 30 receive any money, position or other benefit for service
 31 in the election apart from my official pay; that I do not
 32 have any agreement, understanding or arrangement
 33 that I will perform any act for the benefit of any
 34 candidate in the election; and that I have nothing
 35 wagered or bet on the result of this election.

36 _____

37 Subscribed and sworn to before me this _____ day
 38 of _____, 19 _____.

39

40

41

Signature and official title of
person before whom sworn

42 (2) The oath for the members of the counting board
43 shall be as follows:

44 State of West Virginia

45 _____ County

46 I, _____, a qualified and registered
47 voter of the county affiliated with the _____
48 Party, do solemnly swear that I will faithfully and
49 honestly discharge my duties as _____
50 (poll clerk or election commissioner) of the counting
51 board according to the requirements of law in this
52 election; that I will carefully and accurately read and
53 record the votes cast on each ballot voted in the election
54 which contains the signatures of both poll clerks; that
55 I will not disclose to any person how any voter has voted,
56 nor how any ballot has been folded, marked, printed or
57 stamped; that I will not disclose the votes cast for any
58 candidate or any other information about the result of
59 the election prior to the posting of the precinct returns
60 on the door of the polling place; that I do not have any
61 agreement, understanding or arrangement that I will
62 receive any money, position or other benefit for service
63 in the election apart from my official pay; that I do not
64 have any agreement, understanding or arrangement
65 that I will perform any act for the benefit of any
66 candidate in the election; and that I have nothing
67 wagered or bet on the result of this election.

68

69 _____
69 Subscribed and sworn to before me this _____ day
70 of _____, 19_____.

71

72

73

Signature and official title
of person before whom sworn

74 (3) The secretary of state may prescribe the form of
75 such oaths.

76 (b) When any election official is unable to perform the

77 duties for which he or she was appointed, a substitution
78 may be made, as follows:

79 (1) An eligible person of the same political party shall
80 assume the duties after taking the oath. One of the
81 election commissioners shall make an entry in the space
82 provided on the oath form, indicating the name of the
83 official being replaced, the reason for the change, the
84 name of the person assuming the duties, the time at
85 which the change occurred and the poll slip number of
86 the last voter who signed a poll slip before the change
87 occurred;

88 (2) If it is necessary for a poll clerk of one political
89 party to exchange duties with an election commissioner
90 of the same political party, the change of duties for each
91 person shall be recorded in the same manner;

92 (3) If an election commissioner or poll clerk is unable
93 or fails to perform the duties of the office adequately
94 and according to the requirements of law to the extent
95 such failure interferes with the conduct of the election,
96 the clerk of the county commission may order the
97 exchange of duties with another official of the same
98 party, or if necessary, remove the official. The fact of
99 that order shall be entered on the record, along with the
100 information required in subdivision (1) of this
101 subsection.

102 (c) In a municipal election, the recorder or other
103 official designated by charter or ordinance to perform
104 election responsibilities shall perform the duties of the
105 clerk of the county commission specified in this section.

§3-1-46. Training program for election officials.

1 (a) The secretary of state in conjunction with the state
2 election commission shall produce one or more audio-
3 visual programs which shall explain and illustrate the
4 procedures for conducting elections, the duties of the
5 various election officials and the methods of voting on
6 each voting system in use in the state.

7 (b) One copy of the appropriate training program
8 shall be distributed to and kept and preserved by the
9 clerk of the county commission of each county. The

10 program shall be shown to all election officials before
11 each election as part of their instructional program. The
12 clerk of the county commission shall conduct an
13 adequate number of sessions to train all election officials
14 and shall schedule the regular sessions not less than
15 seven days before each election and shall notify all
16 election officials of the exact date, time and place such
17 instructional program will be conducted.

18 (c) No person shall serve as an election commissioner
19 or poll clerk in any election unless he or she has attended
20 such instructional program. A person to replace any
21 election official who fails to attend the instructional
22 program shall be appointed in the same manner as
23 persons are appointed under the provisions of section
24 thirty of this article to replace election officials refusing
25 to serve, and the clerk of the county commission shall
26 conduct an additional instructional program within the
27 seven days prior to the election for any such person or
28 persons so appointed: *Provided*, That in cases of
29 emergency when no person who has attended the
30 instructional program for that election is available to fill
31 a vacancy on the election board, the clerk of the county
32 commission may appoint such person as a commissioner
33 or poll clerk notwithstanding that such person has not
34 received the instruction.

35 (d) The requirements of this section shall apply to all
36 elections conducted by municipalities, except that the
37 recorder or municipal clerk responsible for the election
38 shall perform the duties of the clerk of the county
39 commission defined herein. The clerk of the county
40 commission may assist the recorder or municipal clerk
41 in conducting the instructional program.

42 (e) While such program is not being used by the clerk
43 for instructional purposes, it shall be available to any
44 duly organized civic, religious, educational or charitable
45 group without charge, except that the clerk shall
46 require a cash deposit on such use in an amount to be
47 determined by the secretary of state.

48 (f) The secretary of state shall cause such program to
49 be amended, edited or reproduced whenever he or she

50 is of the opinion such revision is necessary in light of
51 changes in the election laws of this state.

52 (g) No elected official shall appear in such program
53 either in person or by visual image or by name.

ARTICLE 1A. STATE ELECTION COMMISSION AND SECRETARY OF STATE.

§3-1A-8. Investigators for the secretary of state.

1 An employee of the secretary of state, who has
2 attended a course of instruction at the state police
3 academy or its equivalent, has all the lawful powers
4 delegated to members of the department of public safety
5 to enforce the provisions of this chapter and the criminal
6 laws of the state in any county or municipality of this
7 state. An employee shall, before entering upon the
8 discharge of his or her duties, execute a bond with
9 security in the sum of three thousand five hundred
10 dollars, payable to the state of West Virginia, condi-
11 tioned for the faithful performance of his or her duties,
12 as such, and such bond shall be approved as to form by
13 the attorney general, and the bond shall be filed with
14 the secretary of state and preserved in his or her office.
15 The department of public safety, and any county sheriff
16 or deputy sheriff or any municipal police officer, upon
17 request by the secretary of state or his or her appointee,
18 is authorized to assist the secretary of state or his or her
19 appointee in enforcing the provisions of this chapter and
20 the criminal laws of the state.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-41. Registration and transfer of registration by mail; form to be required and distribution thereof; receipt by clerk thirty days prior to election before applicant entitled to vote therein; clerk to forward application if applicant outside jurisdiction, but resident of state; application forms to be made widely available by clerk; form of application and information required.

1 (a) In addition to any procedures which may be used
2 in effecting the biennial checkup as provided under

3 section twenty-one of this article, central registration
4 and transfer as provided under sections twenty-two and
5 twenty-seven of this article, and the provision with
6 respect to registration of absentee voters under section
7 twenty-three of this article, any qualified person may
8 register or transfer his or her registration by mail.

9 (b) Completed applications, when received by any
10 clerk of the county commission not later than thirty-five
11 days and by the appropriate clerk of the county
12 commission not later than thirty days before the
13 following primary, general or special election, entitle
14 the applicant to vote in such election if he or she is
15 otherwise qualified. Any clerk receiving an application
16 from a person who does not reside in his or her county
17 but who does reside elsewhere in the state shall
18 forthwith forward such application to the proper clerk.
19 Each clerk shall make an entry on such application of
20 the date it is received by such clerk, and the application
21 shall remain on file in the office of the clerk for at least
22 two years from the date it was received.

23 (c) Applications for use pursuant to this section shall
24 be made available by the clerk of the county commission
25 to every adult person of the county, not registered, and
26 to any registered voter of the county upon request. The
27 application for use pursuant to this section shall be a
28 uniform statewide application in a form to be prescribed
29 by the secretary of state and shall include the informa-
30 tion required under the form provisions of section
31 nineteen of this article. The form, which shall be self-
32 addressed, is to be as widely and freely distributed as
33 possible and shall be a bifold self-mailer which shall be
34 compatible with local systems of voter registration data
35 collection and storage.

36 (d) In addition to the information required under the
37 form provisions of section nineteen of this article, the
38 form shall contain such other information as the
39 secretary of state may reasonably require and shall also
40 include the following information:

41 (1) Notice that those currently registered do not need
42 to reregister unless they have moved or failed to vote

43 at least once during a period covering two statewide
44 primary and two general elections as indicated by their
45 registration records;

46 (2) Instructions on how to fill out and submit the form
47 and that the form must be received by the appropriate
48 county clerk at least thirty days prior to the election at
49 which the applicant may vote;

50 (3) Notice that registration or transfer is not complete
51 until the form is received by the appropriate clerk of
52 the county commission;

53 (4) Notice of a voter's right to register centrally;

54 (5) A warning to the voter that it is a crime to procure
55 a false registration and notice of the felony offenses
56 provided for in section forty-two of this article;

57 (6) Notice that political party enrollment is optional
58 but, in order to vote in a primary election of a political
59 party, a voter must enroll in that political party;

60 (7) Notice that the applicant must be a citizen of the
61 United States, at least seventeen years old and will be
62 eighteen years old on or before the next general election,
63 and a resident of the county to which application is
64 made;

65 (8) Notice that a voter notification form will be mailed
66 to those applicants whose complete form is received;

67 (9) A space for the applicant to indicate whether or
68 not he or she has ever been registered before and, if so,
69 his or her name and address at the time of prior
70 registration;

71 (10) A space for the applicant to indicate his or her
72 choice of party, if any, in which space the names of all
73 parties are provided so that the applicant can check one
74 with a clear alternative provided for an applicant to
75 decline to affiliate with any party;

76 (11) A space for the applicant to indicate his or her
77 social security number; and

78 (12) A place for the applicant to execute the applica-
79 tion on a line which is clearly labeled "signature of

80 applicant" and contained in the following specific form
81 of oath or affirmation:

82 "I do solemnly swear or affirm that the information
83 provided in the preceding uniform statewide application
84 is true to the best of my knowledge, information and
85 belief, and I understand that if I willingly provide false
86 information concerning a material matter or thing
87 therein, I shall be deemed guilty of the felony offense
88 of perjury and shall be subject to the penalties for
89 perjury.

90

91

Signature of Applicant

92 Subscribed and sworn (or affirmed) to before me, this
93 _____ day of _____, 19____.

94

95 _____"
96 which oath or affirmation shall be administered by a
97 person authorized to perform notarial acts under the
98 provisions of article one or one-a, chapter thirty-nine of
99 this code. The person administering the oath or affirma-
100 tion shall not charge a fee for such act and the uniform
101 statewide application shall inform the person adminis-
102 tering such oath or affirmation that no fee is to be
charged.

103 (e) Any person who has registered or reregistered
104 pursuant to this section shall be required to make his
105 or her first vote in person at the poll or appear in person
106 at the office of the clerk of the circuit court to vote an
107 absentee ballot during a period covering two statewide
108 primary elections and two general elections in order to
109 make such registration valid: *Provided*, That any person
110 who has registered or reregistered pursuant to this
111 section and who has qualified for placement on the
112 special absentee voting list pursuant to section two-b,
113 article three of this chapter, who has qualified to vote
114 an absentee ballot by mail pursuant to subdivision (1),
115 paragraph (B) of subdivision (2), or subdivision (3),
116 subsection (d), or subsection (e), section one, article three
117 of this chapter, shall not have his or her ballot in that
118 election challenged for failure to present identification.

119 Any such person required by this section to make his
120 or her first vote in person in order to make the

121 registration valid shall present valid identification and
122 proof of age to the clerks at the poll or the clerk in the
123 office of the circuit clerk of the county in which he or
124 she is registered before casting his or her first ballot.

125 (f) The uniform statewide application prescribed in
126 this section may refer to various public officials by title
127 or official position (e.g., clerk of the county commission,
128 secretary of state), but in no case may the actual name
129 of the officeholder be printed or otherwise appear on
130 such form: *Provided*, That nothing contained in this
131 subsection shall prohibit a public official, otherwise
132 qualified, from administering the oath or affirmation in
133 accordance with the provisions of subdivision (12),
134 subsection (d) of this section, and affixing his or her
135 signature thereto.

136 (g) It shall be the duty of the secretary of state to
137 create and commence distribution of the forms for the
138 uniform statewide application within six months
139 following the effective date of this section.

140 (h) Notwithstanding any other provision of this
141 section, persons specified in subdivision (2), subsection
142 (d), section one, article three of this chapter may register
143 by mail using the federal postcard application issued
144 pursuant to the authority of the Uniformed and Over-
145 seas Citizens Absentee Voting Act of 1986 (Public Law
146 99-410, 42 U.S.C. 1973, et seq.).

147 The oath of the applicant using the federal postcard
148 application shall not be required to be administered by
149 a person authorized to perform notarial acts. Any
150 federal postcard application received by the county
151 clerk or circuit clerk which has been designated by the
152 applicant as both an application for registration and a
153 request for an absentee ballot shall be accepted for both
154 purposes if all legal requirements are met.

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

§3-3-2. Authority to conduct absentee voting; absentee voting application;
form.

§3-3-2a. Voting booths within public view to be provided by clerk;
prohibition against display of campaign material.

§3-3-2b. Special absentee voting list.

- §3-3-3. Voting an absentee ballot in person.
- §3-3-5. Voting an absentee ballot by mail; penalties.
- §3-3-5a. Processing federal postcard applications.
- §3-3-5b. Procedures for voting a special write-in absentee ballot by qualified persons.
- §3-3-5c. Procedures for voting an emergency absentee ballot by qualified voters.
- §3-3-7. Delivery of absentee ballots to polling places.
- §3-3-12. Rules, regulations, orders, instructions, forms, lists and records pertaining to absentee voting.

§3-3-1. Persons eligible to vote absentee ballots.

1 (a) Duly registered and otherwise qualified voters of
2 the county who for authorized reasons as provided in
3 this article are unable to vote in person at the polling
4 place on the day of a primary, general or special election
5 may vote an absentee ballot according to the provisions
6 of this article.

7 (b) Voters in the following circumstances shall be
8 authorized to vote an absentee ballot and shall be
9 required to vote that absentee ballot in person in the
10 office of the clerk of the circuit court during the period
11 of regular absentee voting in person:

12 (1) Any voter who is within the county and physically
13 able to vote in person during regular business hours of
14 the clerk's office during the prescribed period for
15 absentee voting but is unable to vote in person on
16 election day because of: (A) Anticipated or scheduled
17 commitment to a hospital, institution or other confine-
18 ment for medical reasons; (B) absence from the county
19 during the entire time the polls are open; (C) appoint-
20 ment as an election official in a precinct other than the
21 one in which the voter is registered; or (D) the inaccess-
22 sibility of the polling place to the voter because of his
23 or her physical disability; and

24 (2) Any voter who is a member of a religious
25 denomination with an established history of observing
26 Saturday as the Sabbath, when the election is scheduled
27 to be held on Saturday.

28 (c) Voters in the following circumstances shall be
29 authorized to vote an absentee ballot under special
30 affidavit and shall be required to vote that absentee

31 ballot in person in the office of the clerk of the circuit
32 court during the period of special absentee voting in
33 person:

34 (1) Any voter who will be absent from the county
35 throughout the regular period and available hours for
36 voting in person at the polls or at the clerk's office
37 because of personal or business travel or employment,
38 who will be unable to receive an absentee ballot by mail
39 at an address outside the county during that absence,
40 and who will be present within the county between the
41 forty-second day before the election and the fifteenth
42 day before the election.

43 (d) Voters in the following circumstances shall be
44 authorized to vote an absentee ballot by mail:

45 (1) Any voter who is confined to a specific location and
46 prevented from voting in person throughout the period
47 of voting in person because of: (A) Illness, injury or other
48 medical reason; (B) physical disability or immobility due
49 to extreme advanced age; or (C) incarceration or home
50 detention when not under conviction of a felony, treason
51 or bribery in an election; and

52 (2) Any voter who is absent from the county through-
53 out the period and available hours for voting in person
54 because of: (A) Personal or business travel; (B) attend-
55 ance at a college, university or other place of education
56 or training; or (C) employment which because of hours
57 worked and distance from the county seat make voting
58 in person impossible; and

59 (3) Any voter absent from the county throughout the
60 period and available hours for voting in person and who
61 is an absent uniformed services voter or overseas voter,
62 as defined by the Uniformed and Overseas Citizens
63 Absentee Voting Act of 1986 (Public Law 99-410, 42
64 U.S.C. 1973, et seq.). Members of the uniformed services
65 on active duty, members of the merchant marine,
66 spouses and dependents of those members on active
67 duty, and persons who reside outside the United States
68 and are qualified to vote in the last place in which the
69 person was domiciled before leaving the United States
70 are included in the above definition; and

71 (4) Any voter who is required to dwell temporarily
72 outside the county and is absent from the county
73 throughout the time for voting in person because of: (A)
74 Serving as an elected or appointed federal or state
75 officer; or (B) serving in any other documented employ-
76 ment assignment of specific duration of four years or
77 less; and

78 (5) Any voter for whom both the office of the circuit
79 clerk and the polling place are inaccessible to the voter
80 because of his or her physical disability.

81 (e) Voters in the following circumstances shall be
82 authorized to vote an emergency absentee ballot, subject
83 to the availability of the services as provided in this
84 article:

85 (1) Any voter who is admitted for emergency medical
86 treatment on or after the seventh day next preceding the
87 election and who anticipates continued confinement in
88 a hospital or other duly licensed health care within the
89 county of residence or other authorized area, as provided
90 in this article; and

91 (2) Any voter who resides in a nursing home within
92 the county of residence and would be otherwise unable
93 to vote in person, providing the county commission has
94 authorized such services.

**§3-3-2. Authority to conduct absentee voting; absentee
voting application; form.**

1 (a) Absentee voting shall be supervised and conducted
2 by the proper official for the political division in which
3 the election is held, in conjunction with the ballot
4 commissioners appointed from each political party, as
5 follows:

6 (1) The clerk of the circuit court, for any election held
7 throughout the county, within a political subdivision or
8 territory other than a municipality, or within a munic-
9 ipality when the municipal election is conducted in
10 conjunction with a county election; or

11 (2) The municipal recorder or other officer authorized
12 by charter or ordinance provisions to conduct absentee

13 voting, for any election held entirely within the munic-
14 ipality, or in the case of annexation elections, within the
15 area affected. The terms "clerk" or "circuit clerk" used
16 elsewhere in this article shall be taken to refer to such
17 recorder or other officer in the case of municipal
18 elections.

19 (b) A person authorized and desiring to vote an
20 absentee ballot in any primary, general or special
21 election shall make application in writing in the proper
22 form to the proper official.

23 (1) The completed application shall be on a form
24 prescribed by the secretary of state, and shall contain
25 the name, date of birth and political affiliation of the
26 voter, his or her residence address within the county, the
27 address to which the ballot is to be mailed, the
28 authorized reason for which the absentee ballot is
29 requested, and, if the reason is illness or hospitalization,
30 the name and telephone number of the attending
31 physician, the signature of the voter to a declaration
32 made under the penalties for false swearing as provided
33 in section three, article nine of this chapter that the
34 statements and declarations contained in the application
35 are true, any additional information which the voter is
36 required to supply, any affidavit which may be re-
37 quired, and an indication as to whether it is an
38 application for voting in person or by mail; or

39 (2) For any person authorized to vote an absentee
40 ballot under the provisions of the Uniformed and
41 Overseas Citizens Absentee Voting Act of 1986 (Public
42 Law 99-410, 42 U.S.C. 1973, et seq.), the completed
43 application may be on the federal postcard application
44 for absentee ballot form issued under authority of that
45 act; or

46 (3) For any person unable to obtain the official form
47 for absentee balloting at a reasonable time before the
48 deadline for an application for an absentee ballot by
49 mail to be received by the proper official, the completed
50 application may be in a form set out by the voter,
51 provided all information required to meet the provisions
52 of this article is set forth and the application is signed

53 by the voter requesting the ballot.

§3-3-2a. Voting booths within public view to be provided by clerk; prohibition against display of campaign material.

1 Throughout the period of absentee voting in person in
2 the clerk's office as provided in this article, the circuit
3 clerk shall make the following provisions for voting:

4 (a) The clerk shall provide a sufficient number of
5 voting booths or devices appropriate to the voting
6 system at which voters may prepare their ballots. The
7 booths or devices shall be in an area separate from but
8 within clear view of the public entrance area of the
9 clerk's office, and shall be arranged to ensure the voter
10 complete privacy in casting the ballot.

11 (b) The clerk shall make the voting area secure from
12 interference with the voter and shall ensure that voted
13 and unvoted ballots are at all times secure from
14 tampering. No person, other than a person lawfully
15 assisting the voter according to the provisions of this
16 chapter, may be permitted to come within five feet of
17 the voting booth while the voter is voting. No person,
18 other than the clerk or deputy clerks or members of the
19 board of ballot commissioners assigned to conduct
20 absentee voting, shall enter the area or room set aside
21 for voting.

22 (c) When the voting area of the office of the clerk is
23 not fully accessible to voters with physical disabilities,
24 the clerk shall request the county commission to
25 designate an accessible room within the same building
26 as a portion of the clerk's office for the purpose of
27 absentee voting only by persons unable to use the
28 regular area. The area shall be subject to the same
29 requirements as the regular voting area.

30 (d) No person may do any electioneering, nor may any
31 person display or distribute in any manner, or authorize
32 the display or distribution of, any literature, posters or
33 material of any kind which tends to influence the voting
34 for or against any candidate or any public question
35 within the whole area of the clerk's office or within three

36 hundred feet thereof during the entire period of
37 absentee voting. The clerk is hereby authorized to
38 remove such material and to direct the sheriff of the
39 county to enforce the prohibition.

§3-3-2b. Special absentee voting list.

1 (a) Any person who is registered and otherwise
2 qualified to vote and who is permanently and totally
3 physically disabled and who is unable to vote in person
4 at the polls in an election may apply to the clerk of the
5 circuit court for placement on the special absentee
6 voting list.

7 (b) The application shall be on a form prescribed by
8 the secretary of state which shall include the voter's
9 name and signature, residence address, a statement that
10 the voter is permanently and totally physically disabled
11 and would be unable to vote in person at the polls in
12 any election, a description of the nature of that
13 disability, and a statement signed by a physician to that
14 effect.

15 (c) Upon receipt of a properly completed application,
16 the circuit clerk shall enter the name on the special
17 absentee voting list, which shall be maintained in a
18 secure and permanent record. The person's name shall
19 remain active on such list until: (1) The person requests
20 in writing that his or her name be removed; (2) the
21 person removes his or her residence from the county, is
22 purged from the voter registration books or otherwise
23 becomes ineligible to vote; (3) a ballot mailed to the
24 address provided on the application is returned undeliv-
25 erable by the United State postal service; or (4) the
26 death of the person.

27 (d) The clerk shall mail an application for an absentee
28 ballot by mail to each person active on the special
29 absentee voting list not later than forty-two days before
30 each election.

§3-3-3. Voting an absentee ballot in person.

1 (a) Regular absentee voting in person shall be
2 conducted during regular business hours in the office of
3 the clerk of the circuit court beginning on the fifteenth

4 day before the election and continuing through the
5 Saturday before the election for any election held on a
6 Tuesday, or continuing through the third day before the
7 election for any election held on another day.

8 (b) Special absentee voting in person for persons
9 eligible to vote an absentee ballot under the provisions
10 of subsection (c), section one of this article shall be
11 conducted during regular business hours in the office of
12 the clerk of the circuit court beginning on the forty-
13 second day before the election and continuing until the
14 first day when regular absentee voting in person begins.
15 Any person seeking to vote absentee under this subsec-
16 tion shall first give an affidavit, on a form prescribed
17 by the secretary of state, stating under oath the specific
18 circumstances which prevent voting absentee during the
19 period for regular absentee voting in person or by mail.

20 (c) Upon oral request, the clerk of the circuit court
21 shall provide the voter with the appropriate application
22 for voting absentee in person, as provided in this article.
23 The voter shall complete and sign the application in his
24 or her own handwriting or, if the voter is unable to
25 complete the application because of illiteracy or physical
26 disability, the person assisting the voter and witnessing
27 the mark of the voter shall sign his or her name in the
28 space provided. Upon completion, the application shall
29 be immediately returned to the clerk, who shall
30 determine:

31 (1) Whether the application has been completed as
32 required by law;

33 (2) Whether the applicant is duly registered to vote
34 in the precinct of his or her residence, and, in a primary
35 election, is qualified to vote the ballot of the political
36 party requested; and

37 (3) Whether the applicant is authorized for the
38 reasons given in the application to vote an absentee
39 ballot by personal appearance at the time of the
40 application.

41 If the clerk determines the above conditions have not
42 been met, or has evidence that any of the information

43 contained in the application is not true, the clerk shall
44 challenge the voter's absentee ballot as provided in this
45 article.

46 (d) The clerk shall provide each person voting an
47 absentee ballot in person the following: (1) One of each
48 type of official absentee ballot the voter is eligible to
49 vote, prepared according to law; (2) one envelope,
50 unsealed, which shall have no marks except the desig-
51 nation "Absent Voter's Ballot Envelope No. 1" and
52 printed instructions to the voter; and (3) one envelope,
53 unsealed, designated "Absent Voter's Ballot Envelope
54 No. 2" and printed as prescribed by the secretary of
55 state.

56 (e) The voter shall enter the voting booth alone and
57 there mark the ballot: *Provided*, That the voter may
58 have assistance in voting according to the provisions of
59 section four of this article. After the voter has voted the
60 ballot or ballots, the voter shall: (1) Place the ballot or
61 ballots in envelope No. 1 and seal that envelope; (2) place
62 the sealed envelope No. 1 in envelope No. 2 and seal that
63 envelope; (3) complete and sign the forms on envelope
64 No. 2; and (4) return that envelope to the circuit clerk.

65 (f) Upon receipt of the sealed envelope, the circuit
66 clerk shall: (1) Enter onto the envelope any other
67 required information; (2) enter the challenge, if any, to
68 the ballot; (3) enter the required information into the
69 permanent record of persons applying for and voting an
70 absentee ballot in person; and (4) place the sealed
71 envelope in a secure location in the clerk's office, to
72 remain until delivered to the polling place or, in the case
73 of a challenged ballot, to the board of canvassers.

§3-3-5. Voting an absentee ballot by mail; penalties.

1 (a) Upon oral or written request, the clerk of the
2 circuit court shall provide to any voter of the county, in
3 person or by mail, the appropriate application for voting
4 absentee by mail, as provided in this article. The voter
5 shall complete and sign the application in his or her own
6 handwriting or, if the voter is unable to complete the
7 application because of illiteracy or physical disability,
8 the person assisting the voter and witnessing the mark

9 of the voter shall sign his or her name in the space
10 provided.

11 (b) Completed applications for voting an absentee
12 ballot by mail shall be accepted when received by the
13 clerk within the following times:

14 (1) For persons eligible to vote an absentee ballot
15 under the provisions of subdivision (3), subsection (d),
16 section one of this article, relating to absent uniformed
17 services and overseas voters, not earlier than the first
18 day of January of an election year, or eighty-four days
19 preceding the election, whichever is earlier, and not
20 later than the sixth day preceding the election, which
21 application shall, upon the voter's request, be accepted
22 as an application for the ballots for all elections in the
23 calendar year;

24 (2) For all other persons eligible to vote an absentee
25 ballot by mail, not earlier than eighty-four days
26 preceding the election and not later than the sixth day
27 preceding the election.

28 (c) Upon acceptance of a completed application, the
29 circuit clerk shall determine whether the following
30 requirements have been met:

31 (1) The application has been completed as required by
32 law;

33 (2) The applicant is duly registered to vote in the
34 precinct of his or her residence and, in a primary
35 election, is qualified to vote the ballot of the political
36 party requested;

37 (3) The applicant is authorized for the reasons given
38 in the application to vote an absentee ballot by mail;

39 (4) The address to which the ballot is to be mailed is
40 an address outside the county if the voter is applying
41 to vote by mail under the provisions of subdivision (2),
42 (3) or (4), subsection (d), section one of this article;

43 (5) The applicant is not making his or her first vote
44 after having registered by postcard registration under
45 the provisions of section forty-one, article two of this
46 chapter or, if the applicant is making the first vote

47 under these provisions, the applicant is exempt from
48 these requirements;

49 (6) No regular and repeated pattern of applications
50 for an absentee ballot by mail for the reason of being
51 out of the county during the entire period of voting in
52 person exists to suggest that the applicant is no longer
53 a resident of the county.

54 If the clerk determines the required conditions have
55 not been met, or has evidence that any of the informa-
56 tion contained in the application is not true, the clerk
57 shall give notice to the voter that the voter's absentee
58 ballot will be challenged as provided in this article, and
59 shall enter that challenge.

60 (d) Within one day after the clerk has both the
61 completed application and the ballot, the clerk shall
62 mail to the voter at the address given on the application
63 the following: (1) One of each type of official absentee
64 ballot the voter is eligible to vote, prepared according
65 to law; (2) one envelope, unsealed, which shall have no
66 marks except the designation "Absent Voter's Ballot
67 Envelope No. 1" and printed instructions to the voter;
68 (3) one postage paid envelope, unsealed, designated
69 "Absent Voter's Ballot Envelope No. 2" and printed as
70 prescribed by the secretary of state; (4) instructions for
71 voting absentee by mail; and (5) any other supplies
72 required for voting in the particular voting system.

73 (e) The voter shall mark the ballot alone: *Provided*,
74 That the voter may have assistance in voting according
75 to the provisions of section six of this article. After the
76 voter has voted the ballot or ballots, the voter shall: (1)
77 Place the ballot or ballots in envelope No. 1 and seal that
78 envelope; (2) place the sealed envelope No. 1 in envelope
79 No. 2 and seal that envelope; (3) complete and sign the
80 forms on envelope No. 2; and (4) return that envelope
81 to the clerk.

82 (f) Absentee ballots returned by United States mail
83 or other express shipping service shall be accepted if:
84 (1) The ballot is received by the clerk no later than the
85 close of the polls on election day; or (2) the ballot bears
86 a postmark of the United States postal service dated no

87 later than election day and the ballot is received by the
88 clerk no later than the hour at which the board of
89 canvassers convenes to begin the canvass.

90 Ballots received after the proper time which cannot
91 be accepted shall be placed unopened in an envelope
92 marked for the purpose and kept secure for twenty-two
93 months following the election, after which time they
94 shall be destroyed without being opened.

95 (g) Absentee ballots which are hand delivered to the
96 clerk shall be accepted if they are received by the circuit
97 clerk no later than the day preceding the election:
98 *Provided*, That no person may hand deliver more than
99 two absentee ballots in any election, and any person
100 hand delivering an absentee ballot shall be required to
101 certify that he or she has not examined or altered the
102 ballot. Any person who makes a false certification shall
103 be in violation of the penalty provisions of article nine
104 of this chapter and subject to those provisions.

105 (h) Upon receipt of the sealed envelope, the clerk
106 shall: (1) Enter onto the envelope any other required
107 information; (2) enter the challenge, if any, to the ballot;
108 (3) enter the required information into the permanent
109 record of persons applying for and voting an absentee
110 ballot in person; and (4) place the sealed envelope in a
111 secure location in the clerk's office, to remain until
112 delivered to the polling place or, in the case of a
113 challenged ballot, to the board of canvassers.

§3-3-5a. Processing federal postcard applications.

1 (a) When a federal postcard registration and absentee
2 ballot request (FPCA), as defined in subdivision (2),
3 subsection (b), section two of this article, is received by
4 the clerk of the circuit court, the clerk shall examine
5 the application and take the following steps:

6 (1) The clerk shall first enter the name of the
7 applicant in the permanent absentee voter's record for
8 each election for which a ballot is requested, make a
9 photocopy of the application for each such election and
10 place the separate copies in secure files to be maintained
11 for use in the various elections.

12 (2) The clerk shall then determine if the applicant is
13 registered to vote at the residence address listed in the
14 voting residence section of the application. If the
15 applicant is properly registered, the clerk shall main-
16 tain the original application. If the applicant is not
17 registered, or not registered at the address given, the
18 clerk shall deliver the original FPCA to the clerk of the
19 county commission for processing as an application for
20 registration and, if such application is received after the
21 close of voter registration for the next succeeding
22 election, the clerk of the circuit court shall challenge the
23 absentee ballot for that election.

24 (3) Except as provided herein, the federal application
25 for an absentee ballot received from a person qualified
26 to use the application as provided in section two of this
27 article shall be processed as all other applications and
28 the ballot or ballots for each election for which ballots
29 are requested by the applicant shall be mailed to the
30 voter on the first day on which both the application and
31 the ballot are available.

32 (b) When a federal postcard registration and absentee
33 ballot request (FPCA) is received by the clerk of the
34 county commission, the clerk of the county commission
35 shall examine the application and take the following
36 steps:

37 (1) The clerk shall determine if the applicant is
38 registered to vote at the residence address listed in the
39 voting residence section of the application. If the
40 applicant is properly registered, the clerk shall deliver
41 the original FPCA to the clerk of the circuit court for
42 processing as an application for absentee voting. If the
43 applicant is not registered, or not registered at the
44 address given, the clerk of the county commission shall
45 make a photocopy of such application and deliver the
46 photocopy to the clerk of the circuit court for processing
47 as an application for absentee voting, and shall register
48 the voter and maintain the original copy in the regis-
49 tration files. If the application for registration is
50 received after the close of registration for the next
51 succeeding election, the clerk of the county commission
52 shall hold the application to be entered into the

53 registration records after that election and shall
54 forward a copy of the application to the clerk of the
55 circuit court, along with a notice that the absentee ballot
56 for that election shall be challenged.

57 (2) Upon receiving the original or the photocopy of the
58 application from the clerk of the county commission, the
59 clerk of the circuit court shall process the application
60 as prescribed in subsection (a) of this section.

§3-3-5b. Procedures for voting a special write-in absentee ballot by qualified persons.

1 (a) Notwithstanding any other provisions of this
2 chapter, a person qualified to vote an absentee ballot in
3 accordance with subdivision (3), subsection (d), section
4 one of this article may apply not earlier than the first
5 day of January of an election year for a special write-
6 in absentee ballot for a primary or general election, in
7 conjunction with the application for a regular absentee
8 ballot or ballots. If the application is received after the
9 forty-ninth day preceding the election, the clerk of the
10 circuit court shall honor only the application for the
11 regular ballot. The special write-in ballot shall be for
12 presidential preference or nomination of members of
13 Congress in a primary election and for the election of
14 presidential electors, United States senator and repre-
15 sentative in Congress in a general election.

16 (b) The application for a special write-in absentee
17 ballot may be made on the federal postcard application
18 form.

19 (c) In order to qualify for a special write-in absentee
20 ballot, the voter must state that he or she is unable to
21 vote by regular absentee ballot or in person due to
22 requirements of military service or due to living in
23 isolated areas or extremely remote areas of the world.
24 This statement may be made on the federal postcard
25 application or on a form prepared by the secretary of
26 state and supplied and returned with the special write-
27 in absentee ballot.

28 (d) Upon receipt of said application within the time
29 required, the clerk shall issue the special write-in

30 absentee ballot which shall be the same ballot issued
31 under the provisions of the Uniformed and Overseas
32 Citizens Absentee Voting Act of 1986 (Public Law 99-
33 410, 42 U.S.C. 1973, et seq.). Such ballot shall permit
34 the elector to vote in a primary election by indicating
35 his or her political party affiliation and the names of the
36 specific candidates for each office, and in a general
37 election by writing in a party preference for each office,
38 the names of specific candidates for each office, or the
39 name of the person whom the voter prefers for each
40 office.

41 (e) When a special federal write-in ballot is received
42 by the clerk from a voter: (1) Who mailed the write-in
43 ballot from any location within the United States; (2)
44 who did not apply for a regular absentee ballot; (3) who
45 did not apply for a regular absentee ballot by mail; or
46 (4) whose application for a regular absentee ballot by
47 mail was received less than thirty days before the
48 election, the write-in ballot shall not be counted.

49 (f) Any write-in absentee ballot must be received by
50 the clerk prior to the close of the polls on election day
51 or it may not be counted.

**§3-3-5c. Procedures for voting an emergency absentee
ballot by qualified voters.**

1 (a) Notwithstanding any other provision of this
2 chapter, a person qualified to vote an emergency
3 absentee ballot, as provided in subsection (e), section one
4 of this article may vote an emergency absentee ballot
5 under the procedures established in this section. The
6 county commission may adopt a policy extending the
7 emergency absentee voting procedures to: (1) Hospitals
8 or other duly licensed health care facilities within an
9 adjacent county or within thirty-five miles of the county
10 seat; or (2) nursing homes within the county: *Provided,*
11 That the policy shall be adopted by the county commis-
12 sion at least ninety days prior to the election that will
13 be affected and a copy of such policy shall be filed with
14 the secretary of state.

15 (b) On or before the fifty-sixth day preceding the date
16 on which any election is to be held, the clerk of the

17 circuit court of each county shall notify the county
18 commission of the number of sets of emergency absentee
19 ballot commissioners which he or she deems necessary
20 to perform the duties and functions hereinafter set forth.

21 (c) A set of emergency absentee ballot commissioners
22 at-large shall consist of two persons, appointed by the
23 county commission in accordance with the procedure
24 prescribed for the appointment of election commission-
25 ers under the provisions of article one of this chapter.
26 Emergency absentee ballot commissioners shall have
27 the same qualifications and rights and take the same
28 oath required under the provisions of this chapter for
29 commissioners of elections. Such commissioners shall be
30 compensated for services and expenses in the same
31 manner as commissioners of election obtaining and
32 delivering election supplies under the provisions of
33 section forty-four, article one of this chapter.

34 (d) Upon request of the voter or a member of the
35 voter's immediate family or, when the county commis-
36 sion has adopted a policy to provide emergency absentee
37 voting services to nursing home residents within the
38 county, upon request of a staff member of the nursing
39 home, the clerk of the circuit court, upon receiving a
40 proper request for voting an emergency absentee ballot
41 no earlier than the seventh day next preceding the
42 election and no later than noon of election day, shall
43 supply to the emergency absentee ballot commissioners
44 the application for voting an emergency absentee ballot
45 and the balloting materials. The emergency absentee
46 ballot application shall be prescribed by the secretary
47 of state and shall include the name, residence address
48 and political party affiliation of the voter, the date,
49 location and reason for confinement in the case of an
50 emergency, and the name of the attending physician.

51 If the person applying for an emergency absentee
52 ballot is unable to sign his or her application because
53 of illiteracy, he or she shall make his or her mark on
54 the signature line above provided for an illiterate
55 applicant which mark shall be witnessed.

56 A declaration is to be completed and signed by each
57 of the emergency absentee ballot commissioners, stating
58 their names, the date on which they appeared at the
59 place of confinement, and the particulars of the
60 confinement.

61 (e) At least one of the emergency absentee ballot
62 commissioners receiving the balloting materials shall
63 sign a receipt which shall be attached to the application
64 form. Each of the emergency absentee ballot commis-
65 sioners shall deliver the materials to the absent voter,
66 await his or her completion of the application and then
67 the ballot and return the same to the circuit clerk and,
68 upon delivering the application and the voted ballot to
69 the clerk of the court, sign an oath that no person other
70 than the absent voter voted the ballot. The application
71 and the voted ballot shall be returned to the clerk of the
72 circuit court prior to the close of the polls on election
73 day. Any ballots received by the clerk after the time that
74 delivery may reasonably be made but before the closing
75 of the polls shall be delivered to the canvassing board
76 along with the absentee ballots challenged in accordance
77 with the provisions of section ten of this article.

78 (f) Upon receiving the application and emergency
79 absentee ballot, the clerk of the circuit court shall
80 ascertain whether the application is complete, whether
81 the voter appears to be eligible to vote an emergency
82 absentee ballot, and whether the voter is properly
83 registered to vote with the office of the clerk of the
84 county commission. If the voter is found to be properly
85 registered in the precinct shown on the application, the
86 ballot shall be delivered to the precinct election
87 commissioner pursuant to section seven of this article.
88 If the voter is found not to be registered or is otherwise
89 ineligible to vote an emergency ballot, then the ballot
90 shall be challenged for the appropriate reason provided
91 for in section ten of this article.

92 (g) If either or both of the emergency absentee ballot
93 commissioners should refuse to sign any application for
94 voting an emergency absentee ballot, then the voter
95 shall be permitted to vote as an emergency absentee and
96 any such ballot shall be challenged in accordance with

97 the provisions of section ten of this article, in addition
98 to those absentee ballots subject to challenge as enumer-
99 ated therein.

100 (h) Any voter who receives assistance in voting an
101 emergency absentee ballot shall comply with the
102 provisions of section six of this article. Any other
103 provisions of this chapter relating to absentee ballots not
104 altered by the provisions of this section shall govern the
105 treatment of emergency absentee ballots.

§3-3-7. Delivery of absentee ballots to polling places.

1 (a) Except as otherwise provided in this article, the
2 absentee ballots of each precinct, together with the
3 applications therefor, the affidavits made in connection
4 with assistance in voting, and such forms, lists and
5 records as may be designated by the secretary of state,
6 shall be delivered in a sealed carrier envelope to the
7 election commissioner of the precinct at the time he
8 picks up the official ballots and other election supplies
9 as provided in section twenty-four, article one of this
10 chapter.

11 (b) Absentee ballots received after the election
12 commissioner has picked up the official ballots and
13 other election supplies for the precinct shall be delivered
14 to the election commissioner of the precinct who has
15 been so designated pursuant to section twenty-four,
16 article one of this chapter, by the clerk in person, or by
17 messenger, before the closing of the polls, provided such
18 ballots are received by the clerk in time to make such
19 delivery. Any ballots received by the clerk after the time
20 that delivery may reasonably be made but within the
21 time required as provided in subsection (f), section five
22 of this article, shall be delivered to the board of
23 canvassers along with the challenged ballots.

**§3-3-12. Rules, regulations, orders, instructions, forms,
lists and records pertaining to absentee
voting.**

1 The secretary of state shall make, amend and rescind
2 such rules, regulations, orders and instructions, and
3 prescribe such forms, lists and records, and consolida-

4 tion of such forms, lists and records as may be necessary
5 to carry out the policy of the Legislature as contained
6 in this article and as may be necessary to provide for
7 an effective, efficient and orderly administration of the
8 absentee voter law of this state. In the case of West
9 Virginia voters residing outside the continental United
10 States, the secretary of state shall promulgate rules and
11 regulations necessary to implement procedures relating
12 to absentee voters contained in the Uniformed and
13 Overseas Citizens Absentee Voting Act of 1986 (P.L. 99-
14 410, 42 U.S.C. 1973, et seq.) and shall forward a copy
15 of the act to all clerks of the circuit courts and clerks
16 of the county commissions before the first day of
17 January of each even-numbered year.

18 The secretary of state may establish special proce-
19 dures to allow absentee voting for those categories of
20 registered voters who, because of special circumstances,
21 would otherwise be unable to vote in the election.

22 It shall be the duty of all clerks of the circuit court,
23 other county officers, and all election commissioners and
24 poll clerks to abide by such rules, regulations, orders
25 and instructions and to use such forms, lists and records
26 which, without limiting the foregoing, may include or
27 relate to:

28 (a) The consolidation of the two application forms
29 provided for herein into one form;

30 (b) The size and form of Absent Voter's Ballot
31 Envelope Nos. 1 and 2, and carrier envelopes;

32 (c) The information which shall be placed on Absent
33 Voter's Ballot Envelope No. 1 and the forms and
34 information which shall be placed on Absent Voter's
35 Ballot Envelope No. 2;

36 (d) The forms and manner of making the challenges
37 to absentee ballots authorized by this article;

38 (e) The forms of, information to be contained in, and
39 consolidation of lists and records pertaining to applica-
40 tions for, and voting of, absentee ballots and assistance
41 to persons voting absentee ballots;

- 42 (f) The supplying of application forms, envelopes,
 43 challenge forms, lists, records and other forms;
- 44 (g) The keeping and security of voted absentee ballots
 45 in the office of the clerk of the circuit court.

ARTICLE 4. VOTING MACHINES.

§3-4-13. Election boards where voting machines used.

§3-4-14. Instructions and help to voters; voting machine models; facsimile diagrams; sample ballots; legal ballot advertisements.

§3-4-24. Closing polls; counting and reporting returns; duties and procedures.

§3-4-13. Election boards where voting machines used.

1 One receiving board, as defined in article one of this
 2 chapter, shall conduct the election in each precinct in
 3 which voting machines are used. The provisions of
 4 article one of this chapter relating to the qualifications,
 5 appointment, substitution, training and compensation of
 6 election officers, and to the procedure for filling
 7 vacancies, shall apply.

§3-4-14. Instructions and help to voters; voting machine models; facsimile diagrams; sample ballots; legal ballot advertisements.

1 For the instruction of the voters on any election day
 2 there shall be provided for each polling place one
 3 instruction model for each voting machine. Each such
 4 instruction model shall be constructed so as to provide
 5 a replica of a portion of the face of the voting machine,
 6 and shall contain the arrangement of the ballot labels,
 7 party columns or rows, office columns or rows and
 8 questions. Fictitious names shall be inserted in the
 9 ballot labels of the models. Such models shall be located
 10 on the election officers' tables or in some other place in
 11 which the voter must pass to reach the voting machine.
 12 Each voter, upon request, before voting, shall be offered
 13 instruction by the election officers in the operation of the
 14 voting machine by use of the instruction model and each
 15 voter shall be given ample opportunity to operate the
 16 model himself.

17 The ballot commissioners shall also provide facsimile
 18 diagrams, at least two of which shall be posted on the

19 walls of each polling place. The facsimile diagrams shall
20 be exact diagrams of the face of the voting machines to
21 the end that the voter may become familiar with the
22 location of the parties, offices, candidates and questions
23 as they appear on the voting machine to be used in his
24 precinct. Ballot labels may be affixed to the diagrams
25 to ensure that the position of the names of the candidates
26 in each office division shall appear accurately on the
27 diagrams of each precinct.

28 The ballot commissioners may, with the consent of the
29 county commission, or the county commission may
30 prepare and mail to each qualified voter at his or her
31 address as shown on the registration books a facsimile
32 sample of the ballot for his or her precinct.

33 In counties where voting machines have been adopted,
34 the legal ballot advertisements required by articles five
35 and six of this chapter which specify the publication of
36 a facsimile sample ballot shall consist of a facsimile of
37 the face of the voting machine with the names of the
38 candidates and the offices for which they are running
39 shown in their proper positions.

**§3-4-24. Closing polls; counting and reporting returns;
duties and procedures.**

1 (a) As soon as the polls are closed, and the last voter
2 has voted, the election officers shall first process the
3 absentee ballots according to the provisions of section
4 eight, article three of this chapter. After the absentee
5 ballots to be counted have been entered on the voting
6 machine, the election officers shall immediately lock and
7 seal the operating lever or mechanism of the machine
8 so that the voting and counting mechanism will be
9 prevented from operation, and shall then compare the
10 number of voters, as shown by the public counter of the
11 machine, with the number of those who have voted, as
12 shown by the protective or accumulative counter or
13 device. The election officers of each precinct shall then
14 sign a certificate stating: (1) That the machine has been
15 locked against voting and sealed; (2) the number of
16 voters, as shown by the public counters; (3) the number
17 registered on the protective or accumulative counter or

18 device, if any; and (4) the number or other designation
19 of the voting machine; and such certificate shall be
20 returned by the precinct election officers to the ballot
21 commissioners.

22 (b) Before proceeding, the election officers shall admit
23 the following persons who may witness and check the
24 recording of the votes shown on the counters:

25 (1) Any candidate, or any one person representing a
26 candidate who presents a written authorization signed
27 by the candidate for the purpose;

28 (2) Any one person representing a registered political
29 committee formed for the purpose of advocating or
30 opposing an issue on the ballot who presents a written
31 authorization signed by the committee treasurer; and

32 (3) Any one member of the county executive commit-
33 tee of an established political party.

34 (c) The election officers shall then make visible the
35 registering counters, and for that purpose shall unlock
36 and open the doors or other covering concealing the
37 same, giving full view to all witnesses of all the counter
38 numbers.

39 (1) The election officers shall, under the scrutiny of
40 such representatives, if any, and in the order of the
41 offices as their titles are arranged on the machine, read
42 and announce, in distinct tones, the results as shown by
43 the counter numbers for each candidate and for and
44 against each question voted on. The counters shall not
45 be read consecutively along the party rows or columns
46 but shall always be read along the office columns or
47 rows, completing the canvass for each office or question
48 before proceeding to the next.

49 (2) The election officers shall also open the doors
50 covering the paper roll and shall proceed to read and
51 record the votes entered thereon for any official write-
52 in candidate for election to the office represented by the
53 position on the paper roll, except delegate to national
54 convention. Official write-in candidates are those who
55 have filed a write-in candidate's certificate of announce-
56 ment and have been certified according to the provisions

57 of section four-a, article six of this chapter. Write-in
58 votes for nomination to any office or for any person other
59 than an official write-in candidate shall be disregarded.

60 (3) The vote as registered shall be entered by the
61 election officers, in ink, on triplicate return sheets, and
62 also on a general return sheet and statement, all of
63 which, after the count is completed, shall be signed by
64 the election officers. The total vote cast for each
65 candidate, and for and against each question, shall then
66 be computed and entered on the general and triplicate
67 return sheets and statement. There shall also be entered
68 on the general return sheet and statement the number
69 of voters who have voted, as shown by the poll books,
70 and the number who have voted on each machine, as
71 shown by the public counters, and also the number
72 registered on the protective counter on each machine
73 immediately prior to the opening of the polls and
74 immediately after the closing thereof and sealing of the
75 machine. The number or other designation of each
76 machine used shall also be entered thereon. In the case
77 of primary elections, triplicate return sheets shall be
78 prepared for each party. The registering counters of the
79 voting machine shall remain exposed to view until the
80 returns and all other reports have been fully completed.

81 (d) The proclamation of the results of the votes cast
82 shall be announced distinctly and audibly by one of the
83 election officers, who shall read the name of and votes
84 cast for each candidate, and the votes cast for and
85 against each question submitted. During such proclama-
86 tion, ample opportunity shall be given to any person
87 lawfully present to compare the results so announced
88 with the counter dials of the machine, and any necessary
89 corrections shall then and there be made by election
90 officers, after which the doors or other cover of the
91 voting machine shall be closed and locked and the
92 return sheets shall be signed by each of the election
93 officers. If any election officer shall decline to sign such
94 return, he or she shall state the reason in writing, and
95 enclose the statement with the return. Each of the
96 return sheets shall be enclosed in a separate envelope,
97 which shall be securely sealed, and each of the election

98 officers shall write his or her name across the fold of
 99 the envelope. One of the sealed envelopes containing the
 100 returns shall be delivered to the clerk of the circuit
 101 court and two shall be delivered to the clerk of the
 102 county commission who shall within forty-eight hours
 103 mail one of the sealed returns for each precinct by
 104 certified mail to the secretary of state. The general
 105 return sheet and statement shall be directed and
 106 immediately delivered to the clerk of the county
 107 commission. The envelope shall have endorsed thereon
 108 a certificate of the election officers, stating the number
 109 of the machine, the precinct where it has been used, the
 110 number of the seal and the number registered on the
 111 protective counter at the close of the polls.

112 (e) As soon as possible after the completion of the
 113 count, the election officers shall return to the county
 114 commission and the ballot commissioners the keys to the
 115 voting machine received and receipted for by them, and
 116 the clerk of the county commission shall have the voting
 117 machine properly boxed or securely covered and
 118 removed from the polling place to a proper and secure
 119 place of storage.

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-11. Ballot labels, instructions and other supplies; procedure and requirements.

§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.

§3-4A-14. Election boards where electronic voting systems used.

§3-4A-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

§3-4A-27. Proceedings at the central counting center.

§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. The secretary of state shall assign uniform
37 numbers which shall be used by all counties using
38 electronic voting for all straight party tickets and for
39 all candidates running for offices to be voted upon by
40 all of the voters of the state. After taking into account
41 the numbers so assigned by the secretary of state, the
42 clerk of the circuit court shall arrange the offices and
43 the candidates within each office as prescribed by said
44 section, and shall assign the appropriate number for
45 each candidate. When one candidate is to be elected and
46 only two parties are on the ballot, the ballot label and
47 the arrangement of the ballot shall conform as nearly
48 as practical to the following example:

49	Democratic Ticket	Republican Ticket
50	For Governor	For Governor
51	(Vote for One)	(Vote for One)
52	(candidate's name) 10 →	
53	(residence, county)	
54		← 11 (candidate's name)
55		(residence, county)

56 When more than two parties are on the ballot for an
 57 office, the arrangement of the ballot shall be specified
 58 by the secretary of state, and may conform to the
 59 following example if practical:

60			
61	For Governor		
62	(Vote for One)		
63			
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:

73	Democratic Ticket	Republican Ticket
74	For House of Delegates	For House of Delegates
75	First Delegate District	First Delegate District

<p>76 (Vote For Not More Than Two)</p> <p>77 [If you marked a straight</p> <p>78 ticket and you mark any</p> <p>79 candidate in a different</p> <p>80 party for this office, you</p> <p>81 must mark all your choices</p> <p>82 because your straight ticket</p> <p>83 vote will not be counted</p> <p>84 for this office.]</p>	<p>(Vote For Not More Than Two)</p> <p>[If you marked a straight</p> <p>ticket and you mark any</p> <p>candidate in a different</p> <p>party for this office, you</p> <p>must mark all your choices</p> <p>because your straight ticket</p> <p>vote will not be counted</p> <p>for this office.]</p>
---	--

85 (candidate's name) 69 →

86 (residence, county)

87 ← 70 (candidate's name)

88 (residence, county)

89 (candidate's name) 71 →

90 (residence, county)

91 ← 72 (candidate's name)

92 (residence, county)

93 (e) Any nonpartisan office such as board of education

94 and any question to be voted on shall be placed on a

95 separate page or otherwise separated from the partisan

96 ballots, which separate page shall constitute a separate

97 ballot where required.

98 (f) In elections in which voters are authorized to vote

99 for official write-in candidates whose names do not

100 appear on the ballot label, there shall be provided, as

101 described herein, a write-in position on the ballot label

102 for the voter to indicate his or her preference for a

103 write-in candidate and a form on the inside of the

104 secrecy envelope to permit a voter to enter the title of

105 the office and the names of official write-in candidates

106 for whom he or she wishes to vote.

107 For an office to be filled by election in a primary,

108 except delegate to national convention, and for each
109 office in a general election, the ballot label shall include,
110 following all candidates for the office, a single num-
111 bered position with an arrow indicating the location to
112 punch the ballot card to indicate a preference for a
113 write-in candidate. The following instructions shall be
114 printed beside the arrow in at least ten point type. "TO
115 WRITE-IN FOR THIS OFFICE: Punch here and put
116 name of office and candidate on inside of secrecy
117 envelope. DO NOT put name here."

118 (g) In addition to all other equipment and supplies
119 required by the provisions of this article, the ballot
120 commissioners shall cause to be printed a supply of
121 instruction cards, sample ballots, facsimile diagrams of
122 the vote recording device ballot and official printed
123 ballots or ballot cards adequate for the orderly conduct
124 of the election in each precinct in their county. In
125 addition they shall provide all other materials and
126 equipment necessary to the conduct of the election,
127 including voting booths, appropriate facilities for the
128 reception and safekeeping of ballot cards, the ballots of
129 absentee and of challenged voters and of such "inde-
130 pendent" voters who shall, in primary elections, cast
131 their votes on nonpartisan candidates and public
132 questions submitted to the voters.

**§3-4A-11a. Ballots tabulated electronically; arrange-
ment, quantity to be printed, ballot stub
numbers.**

1 (a) The board of ballot commissioners in counties
2 using ballots upon which votes may be recorded by
3 means of marking with electronically sensible ink or
4 pencil and which marks are tabulated electronically
5 shall cause the ballots to be printed for use in elections.

6 (b) (1) The heading of the ballot, the arrangement of
7 offices in columns, the spaces for marking votes, the
8 printing of offices, instructions and candidates names
9 shall conform as nearly as possible to that prescribed in
10 this chapter for paper ballots, except that the secretary
11 of state may prescribe necessary modifications to
12 accommodate the tabulating system. Nonpartisan

13 elections for board of education and any question to be
14 voted upon shall be separated from the partisan ballot
15 and separately headed in display type with a title clearly
16 identifying the purpose of the election, and such
17 separate section shall constitute a separate ballot
18 wherever a separate ballot is required under the
19 provisions of this chapter.

20 (2) Both the face and the reverse side of the ballot may
21 contain the names of candidates, only if means to ensure
22 the secrecy of the ballot are provided and lines for the
23 signatures of the poll clerks on the ballot are printed on
24 a portion of the ballot which is deposited in the ballot
25 box and upon which marks do not interfere with the
26 proper tabulation of the votes.

27 (3) The arrangement of candidates within each office
28 shall be determined in the same manner as for other
29 electronic voting systems, as prescribed in this chapter.
30 On the general election ballot for all offices, and on the
31 primary election ballot only for those offices to be filled
32 by election, except delegate to national convention, lines
33 for entering write-in votes shall be provided below the
34 names of candidates for each office, and the number of
35 lines provided for any office shall equal the number of
36 persons to be elected, or three, whichever is fewer. The
37 words "WRITE-IN, IF ANY" shall be printed directly
38 under each line for write-ins. Such lines shall be
39 opposite a position to mark the vote.

40 (c) The ballot shall be printed in black ink on paper
41 suitable for automatic tabulation and in the color
42 specified by the secretary of state, and shall contain a
43 perforated stub at the top or bottom of the ballot which
44 shall be numbered sequentially in the same manner as
45 provided in this article for ballots upon which votes are
46 recorded by means of perforating. The number of ballots
47 printed and the packaging of ballots for the precincts
48 shall conform to the requirements for paper ballots as
49 provided in this chapter.

50 (d) In addition to the official ballots, the ballot
51 commissioners shall provide all other materials and
52 equipment necessary to the proper conduct of the
53 election.

§3-4A-14. Election boards where electronic voting systems used.

1 One receiving board, as defined in article one of this
2 chapter, shall conduct the election in each precinct in
3 which electronic voting systems are used. The provisions
4 of article one of this chapter relating to the qualifica-
5 tions, appointment, substitution, training and compen-
6 sation of election officers and to the procedure for filling
7 vacancies shall apply.

§3-4A-15. Instructions and help to voters; vote recording device models; facsimile diagrams; sample ballots; legal ballot advertisements.

1 (a) For the instruction of the voters on any election
2 day in counties utilizing an electronic voting system
3 where votes are to be recorded by means of perforating,
4 there shall be provided for each polling place one
5 instruction model for each vote recording device. Each
6 such instruction model shall be constructed so as to
7 provide a replica of a vote recording device, and shall
8 contain the arrangement of the ballot labels, party
9 columns or rows, office columns or rows, and questions.
10 Fictitious names shall be inserted in the ballot labels of
11 the models. Such models shall be located on the election
12 officers' tables or in some other place in which the voter
13 must pass to reach the vote recording device. Each
14 voter, upon request, before voting, shall be offered
15 instruction by the election officers in the operation of the
16 vote recording device by use of the instruction model,
17 and each voter shall be given ample opportunity to
18 operate the model himself.

19 (b) The ballot commissioners shall also provide
20 facsimile ballots or ballot labels, as may be appropriate,
21 at least two of which, or complete sets of which, shall
22 be posted on the walls of each polling place. The
23 facsimile diagrams shall be exact diagrams of the
24 ballots or ballot labels or paper ballots to the end that
25 the voter may become familiar with the location of the
26 parties, offices, candidates and questions as they appear
27 on the ballot to be used in his or her precinct.

28 (c) The ballot commissioners may, with the consent of
29 the county commission, or the county commission may,
30 prepare and mail to each qualified voter at the address
31 shown on the registration books a facsimile sample of
32 the ballot or ballot labels for his or her precinct.

33 (d) In counties where an electronic voting system has
34 been adopted, the legal ballot advertisements required
35 by articles five and six of this chapter which specify the
36 publication of a facsimile sample ballot, shall consist of
37 a facsimile of the ballot or ballot labels with the names
38 of the candidates and the offices for which they are
39 running shown in their proper positions.

§3-4A-27. Proceedings at the central counting center.

1 (a) All proceedings at the central counting center
2 shall be under the supervision of the clerk of the county
3 commission, and shall be conducted under circumstan-
4 ces which allow observation from a designated area by
5 all persons entitled to be present. The proceedings shall
6 take place in a room of sufficient size and satisfactory
7 arrangement to permit such observation. Those persons
8 entitled to be present shall include all candidates whose
9 names appear on the ballots being counted, or if such
10 candidate be absent, a representative of such candidate
11 who presents a written authorization signed by the
12 candidate for the purpose, and two representatives of
13 each political party on such ballot, who shall be chosen
14 by the county executive committee chairperson. A
15 reasonable number of the general public shall also be
16 freely admitted to the room. In the event all members
17 of the general public desiring admission to the room
18 cannot be admitted at one time, the county commission
19 shall provide for a periodic and convenient rotation of
20 admission to the room for observation, to the end that
21 each member of the general public desiring admission
22 shall, during the proceedings at the central counting
23 center, be granted such admission for reasonable
24 periods of time for observation: *Provided*, That no
25 person except those authorized for the purpose shall
26 touch any ballot or ballot card or other official records
27 and papers utilized in the election during such obser-
28 vation.

29 (b) All persons who are engaged in processing and
30 counting of the ballots shall work in teams consisting of
31 two persons of opposite political parties, and shall be
32 deputized in writing and take an oath that they will
33 faithfully perform their assigned duties. Such deputies
34 shall be issued an official badge or identification card
35 which shall be assigned an identity control number, and
36 such deputies shall prominently wear on his or her outer
37 garments the issued badge or identification card. Upon
38 completion of the deputies' duties, the badges or
39 identification cards shall be returned to the county
40 clerk.

41 (c) Ballots shall be handled and tabulated and the
42 write-in votes tallied according to procedures estab-
43 lished by the secretary of state, subject to the following
44 requirements:

45 (1) In systems using punch card ballots, the ballot
46 cards and secrecy envelopes for a precinct shall be
47 removed from the box and examined for write-in votes
48 before being separated and stacked for delivery to the
49 tabulator. Immediately after valid write-in votes are
50 tallied, the ballot cards shall be delivered to the
51 tabulator. No write-in vote shall be counted for an office
52 unless the voter has punched the write-in voting position
53 for that office and entered the name of that office and
54 the name of an official write-in candidate for that office
55 on the inside of the secrecy envelope, either by writing,
56 affixing a sticker or label or placing an ink-stamped
57 impression thereon;

58 (2) In systems using ballots marked with electroni-
59 cally sensible ink, ballots shall be removed from the
60 boxes and stacked for the tabulator, which shall
61 separate ballots containing marks for a write-in
62 position. Immediately after tabulation, the valid write-
63 in votes shall be tallied. No write-in vote shall be
64 counted for an office unless the voter has marked the
65 write-in voting position for that office and entered the
66 name of an official write-in candidate for that office on
67 the line provided, either by writing, affixing a sticker
68 or placing an ink-stamped impression thereon;

69 (3) When more than one person is to be elected to an
70 office and the voter desires to cast write-in votes for
71 more than one official write-in candidate for that office,
72 a single punch or mark, as appropriate for the voting
73 system, in the write-in location for that office shall be
74 sufficient for all write-in choices. When there are
75 multiple write-in votes for the same office and the
76 combination of choices for candidates on the ballot and
77 write-in choices for the same office exceed the number
78 of candidates to be elected, the ballot shall be duplicated
79 or hand counted, with all votes for that office rejected;

80 (4) Write-in votes for nomination for any office and
81 write-in votes for any person other than an official
82 write-in candidate shall be disregarded;

83 (5) When a voter casts a straight ticket vote and also
84 punches or marks the location for a write-in vote for an
85 office, the straight ticket vote for that office shall be
86 rejected, whether or not a vote can be counted for a
87 write-in candidate; and

88 (6) Official write-in candidates are those who have
89 filed a write-in candidate's certificate of announcement
90 and have been certified according to the provisions of
91 section four-a, article six of this chapter.

92 (d) If any ballot card is damaged or defective so that
93 it cannot properly be counted by the automatic tabulat-
94 ing equipment, a true duplicate copy shall be made of
95 the damaged ballot card in the presence of representa-
96 tives of each political party on the ballot and substituted
97 for the damaged ballot card. All duplicate ballot cards
98 shall be clearly labeled "duplicate" and shall bear a
99 serial number which shall be recorded on the damaged
100 or defective ballot card and on the replacement ballot
101 card.

102 (e) The returns printed by the automatic tabulating
103 equipment at the central counting center, to which have
104 been added write-in and other valid votes, shall, when
105 certified by the clerk of the county commission,
106 constitute the official preliminary returns of each
107 precinct or election district. Further, all such returns
108 shall be printed on a precinct basis. Periodically

109 throughout and upon completion of the count, the
110 returns shall be open to the public by posting such
111 returns as have been tabulated precinct by precinct at
112 the central counting center. Upon completion of the
113 canvass, the returns shall be posted in the same manner.

114 (f) If for any reason it becomes impracticable to count
115 all or a part of the ballots with tabulating equipment,
116 the county commission may direct that they be counted
117 manually, following as far as practicable the provisions
118 governing the counting of paper ballots.

119 (g) As soon as possible after the completion of the
120 count, the clerk of the county commission shall have the
121 vote recording devices properly boxed or securely
122 covered and removed to a proper and secure place of
123 storage.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PRO- CEDURES.

§3-5-10. Publication of sample ballots and lists of candidates.

§3-5-15. Ascertaining and certifying primary election results.

§3-5-16. Return of supplies and certificates.

§3-5-10. Publication of sample ballots and lists of candidates.

1 (a) The ballot commissioners of each county shall
2 prepare a sample official primary ballot for each party,
3 and, as the case may be, for the nonpartisan candidates
4 to be voted for at the primary election, according to the
5 provisions of articles four, four-a and five, chapter three,
6 as appropriate to the voting system. If any ballot issue
7 is to be voted on in the primary election, the ballot
8 commissioners shall likewise prepare a sample official
9 ballot for that issue according to the provisions of law
10 authorizing such election.

11 (b) The facsimile sample ballot for each political party
12 and for nonpartisan candidates or ballot issues shall be
13 published as follows:

14 (1) For counties in which two or more qualified
15 newspapers publish a daily newspaper, not more than
16 fourteen nor less than eight days preceding the primary
17 election, the ballot commissioners shall publish each

18 sample official primary election ballot as a Class I-0
19 legal advertisement in the two qualified daily newspap-
20 ers of different political parties within the county
21 having the largest circulation in compliance with the
22 provisions of article three, chapter fifty-nine of this code;

23 (2) For counties having no more than one daily
24 newspaper, or having only one or more qualified
25 newspapers which publish weekly, not more than
26 fourteen nor less than eight days preceding the primary
27 election, the ballot commissioners shall publish the
28 sample official primary election ballot as a Class I legal
29 advertisement in the qualified newspaper within the
30 county having the largest circulation in compliance with
31 the provisions of article three, chapter fifty-nine of this
32 code; and

33 (3) Each facsimile sample ballot shall be a photogra-
34 phic reproduction of the official sample ballot or ballot
35 pages, and shall be printed in a size no less than eighty
36 percent of the actual size of the ballot, at the discretion
37 of the ballot commissioners: *Provided*, That when the
38 ballots for the precincts within the county contain
39 different senatorial, delegate, magisterial or executive
40 committee districts or when the ballots for precincts
41 within a city contain different municipal wards, the
42 facsimile shall be altered to include each of the various
43 districts in the appropriate order. If, in order to
44 accommodate the size of each ballot, the ballot or ballot
45 pages must be divided onto more than one page, the
46 arrangement and order shall be made to conform as
47 nearly as possible to the arrangement of the ballot. The
48 publisher of the newspaper shall submit a proof of the
49 ballot and the arrangement to the ballot commissioners
50 for approval prior to publication.

51 (c) The ballot commissioners of each county shall
52 prepare, in the form and manner prescribed by the
53 secretary of state, an official list of offices and candi-
54 dates for each office which will appear on the primary
55 election ballot for each party, and, as the case may be,
56 for the nonpartisan candidates to be voted for at such
57 primary election. All information which appears on the
58 ballot, including instructions as to the number of

59 candidates for whom votes may be cast for the office,
60 any additional language which will appear on the ballot
61 below the name of the office, any identifying informa-
62 tion relating to the candidates, such as residence,
63 magisterial district or presidential preference and the
64 ballot numbers of the candidates for punch card
65 systems, shall be included in the list, in the same order
66 in which it appears on the ballot. Following the names
67 of all candidates, the list shall include the full title, text
68 and voting positions of any issue to appear on the ballot.

69 (d) The official list of candidates and issues as
70 provided in subsection (c) of this section shall be
71 published as follows:

72 (1) For counties in which two or more qualified
73 newspapers publish a daily newspaper, on the last day
74 on which a newspaper is published immediately preced-
75 ing the primary election, the ballot commissioners shall
76 publish the official list of candidates and issues as a
77 Class I-0 legal advertisement in the two qualified daily
78 newspapers of different political parties within the
79 county having the largest circulation in compliance with
80 the provisions of article three, chapter fifty-nine of this
81 code;

82 (2) For counties having no more than one daily
83 newspaper, or having only one or more qualified
84 newspapers which publish weekly, on the last day on
85 which a newspaper is published immediately preceding
86 the primary election, the ballot commissioners shall
87 publish the sample official primary election ballot as a
88 Class I legal advertisement in the qualified newspaper
89 within the county having the largest circulation in
90 compliance with the provisions of article three, chapter
91 fifty-nine of this code;

92 (3) The publication of the official list of candidates for
93 each party and for nonpartisan candidates shall be in
94 single or double columns, as required to accommodate
95 the type size requirements as follows: (A) The words
96 "Official List of Candidates", the name of the county, the
97 words "Primary Election", the date of the election, the
98 name of the political party or the designation of

99 nonpartisan candidates shall be printed in all capital
100 letters and in bold type no smaller than fourteen point.
101 The designation of the national, state, district or other
102 tickets shall be printed in all capital letters in type no
103 smaller than fourteen point; (B) the title of the office
104 shall be printed in bold type no smaller than twelve
105 point and any voting instructions or other language
106 printed below the title shall be printed in bold type no
107 smaller than ten point; and (C) the names of the
108 candidates shall be printed in all capital letters in bold
109 type no smaller than ten point, and the residence
110 information shall be printed in type no smaller than ten
111 point; and

112 (4) When any ballot issue is to appear on the ballot,
113 the title of that ballot shall be printed in all capital
114 letters in bold type no smaller than fourteen point. The
115 text of the ballot issue shall appear in no smaller than
116 ten point type. The ballot commissioners may require
117 the publication of the ballot issue under this subsection
118 in the facsimile sample ballot format in lieu of the
119 alternate format.

§3-5-15. Ascertaining and certifying primary election results.

1 When the polls are closed in an election precinct
2 where only a single election board has served, the
3 receiving board shall perform all of the duties pres-
4 cribed in this section. When the polls are closed in an
5 election precinct where two election boards have served,
6 both the receiving and counting boards shall together
7 conclude the counting of the votes cast, the tabulating
8 and summarizing of the number of the votes cast, unite
9 in certifying and attesting to the returns of the election,
10 and join in making out the certificates of the result of
11 the election provided for in this article. They shall not
12 adjourn until the work is completed.

13 In all election precincts, as soon as the polls are closed
14 and the last voter has voted, the receiving board shall
15 first process the absentee ballots according to the
16 provisions of section eight, article three of this chapter.
17 After the absentee ballots to be counted have been

18 deposited in the ballot box, the election officers shall
19 proceed to ascertain the result of the election in the
20 following manner:

21 (a) The receiving board shall ascertain from the poll
22 books and record separately on the proper form the total
23 number of voters of each party and nonpartisan voters
24 who have voted.

25 (1) The number of challenged ballots of each party
26 shall be counted and subtracted from the number of
27 voters of the same party, which result should equal the
28 number of ballots of that party deposited in the ballot
29 box.

30 (2) The total of all voters, including both partisan and
31 nonpartisan voters, minus the total of all challenged
32 ballots, should equal the number of nonpartisan ballots
33 deposited in the ballot box.

34 (3) The commissioners and clerks shall also report,
35 over their signatures, the number of each type of ballots
36 spoiled and the number of each type of ballots not voted.

37 (b) The procedure for counting ballots, whether
38 performed throughout the day by the counting board, as
39 provided in section thirty-three, article one of this
40 chapter, or after the close of the polls by the receiving
41 board or by the two boards together, shall be as follows:

42 (1) The ballot box shall be opened and all votes shall
43 be tallied in the presence of the entire election board;

44 (2) One of the commissioners shall take one ballot
45 from the box at a time and shall determine if the ballot
46 is properly signed by the two poll clerks of the receiving
47 board. If not properly signed, the ballot shall be placed
48 in an envelope for the purpose, without unfolding it. If
49 properly signed, the commissioner shall announce which
50 type of ballot it is, and hand the ballot to a team of
51 commissioners of opposite politics, who shall together
52 read the votes marked on the ballot for each office.
53 Write-in votes for nomination for any office and write-
54 in votes for election for any person other than an official
55 write-in candidate shall be disregarded;

56 (3) The commissioner responsible for removing the
57 ballots from the box shall keep a tally of the number
58 of ballots of each party and any nonpartisan ballot as
59 they are removed, and whenever the number of ballots
60 of a particular party shall equal the number of voters
61 entered on the poll book for that party minus the
62 number of challenged ballots of that party, as deter-
63 mined according to subsection (a) of this section, any
64 other ballot found in the ballot box shall be placed in
65 the same envelope with unsigned ballots not counted,
66 without unfolding the same, or allowing anyone to
67 examine or know the contents thereof, and the number
68 of excess ballots of each party shall be recorded on the
69 envelope;

70 (4) Each poll clerk shall keep an accurate tally of the
71 votes cast by marking in ink on tally sheets, which shall
72 be provided for the purpose, so as to show the number
73 of votes received by each candidate for each office;

74 (5) When the votes have been read from a ballot, the
75 ballot shall be immediately strung on a thread, with
76 separate threads for each party's ballots and for
77 nonpartisan ballots.

78 (c) As soon as the results at the precinct are ascer-
79 tained, the commissioners and clerks shall make out and
80 sign four certificates of result, for each party repres-
81 ented, of the vote for all candidates of each party
82 represented, on a form prescribed by the secretary of
83 state, giving the complete returns of the election at the
84 polling place, which form shall include the following
85 oath:

86 "We, the undersigned commissioners and poll clerks
87 of the primary election held at precinct No. _____ of
88 _____ district of _____ County, W.Va., on
89 the _____ day of _____, 19____, do
90 hereby certify that having been first duly sworn, we
91 have carefully and impartially ascertained the result of
92 said election at said precinct for the candidates on the
93 official ballot of the _____
94 party, and the same is as follows:"

95 The election officers shall enter the name of each

96 office and the full name of each candidate on the ballot,
 97 and the number of votes, in words and numbers,
 98 received by each. The election officers shall also enter
 99 the full name of every official write-in candidate for
 100 election to offices to be filled in the primary, except
 101 delegate to national convention, and the number of votes
 102 for each. Three of such certificates of result of election,
 103 for each party, shall then be sealed in separately
 104 addressed envelopes, furnished for the purpose, and
 105 shall be disposed of by the precinct commissioners as
 106 follows: One of the sealed envelopes containing the
 107 returns of each party shall be delivered to the clerk of
 108 the circuit court and two shall be delivered to the clerk
 109 of the county commission, who shall within forty-eight
 110 hours mail one of the sealed returns for each precinct
 111 by certified mail to the secretary of state. The one not
 112 sealed up shall be posted on the outside of the front door
 113 of the polling place.

114 (d) All ballots voted for candidates of each party shall
 115 be sealed up in separate envelopes and the commission-
 116 ers and clerks shall each sign across the seal.

§3-5-16. Return of supplies and certificates.

1 Immediately after completion of the count, tabulation
 2 and the posting of the certificate of result of the primary
 3 election in each precinct, one of the commissioners or
 4 poll clerks of each party at such precinct, designated for
 5 that purpose, shall return to the clerk of the county
 6 commission the ballot boxes, registration books and the
 7 several packages of ballots, poll books, tally sheets,
 8 certificates and all other election supplies and returns,
 9 except they shall deliver to the clerk of the circuit court,
 10 at the same time, packages containing one tally sheet
 11 and one certificate of result of each political party
 12 prepared and sealed as provided in the next preceding
 13 section.

ARTICLE 6. CONDUCT AND ADMINISTRATION OF ELECTIONS.

- §3-6-3. Publication of sample ballots and lists of candidates.
- §3-6-4a. Filing requirements for write-in candidates.
- §3-6-5. Rules and procedures in election other than primaries.
- §3-6-6. Ballot counting procedures in paper ballot systems.
- §3-6-8. Precinct returns; certificates; procedures.

§3-6-3. Publication of sample ballots and lists of candidates.

1 (a) The ballot commissioners of each county shall
2 prepare a sample official general election ballot for all
3 political party or independent nominees, nonpartisan
4 candidates for election, if any, and all ballot issues to
5 be voted for at the general election, according to the
6 provisions of articles four, four-a and six of this chapter,
7 as appropriate to the voting system, and for any ballot
8 issue, according to the provisions of law authorizing
9 such election.

10 (b) The facsimile sample general election ballot shall
11 be published as follows:

12 (1) For counties in which two or more qualified
13 newspapers publish a daily newspaper, not more than
14 fourteen nor less than eight days preceding the general
15 election, the ballot commissioners shall publish the
16 sample official general election ballot as a Class I-0 legal
17 advertisement in the two qualified daily newspapers of
18 different political parties within the county having the
19 largest circulation in compliance with the provisions of
20 article three, chapter fifty-nine of this code;

21 (2) For counties having no more than one daily
22 newspaper, or having only one or more qualified
23 newspapers which publish weekly, not more than
24 fourteen nor less than eight days preceding the primary
25 election, the ballot commissioners shall publish the
26 sample official general election ballot as a Class I legal
27 advertisement in the qualified newspaper within the
28 county having the largest circulation in compliance with
29 the provisions of article three, chapter fifty-nine of this
30 code; and

31 (3) Each facsimile sample ballot shall be a photogra-
32 phic reproduction of the official sample ballot or ballot
33 pages, and shall be printed in a size no less than eighty
34 percent of the actual size of the ballot, at the discretion
35 of the ballot commissioners: *Provided*, That when the
36 ballots for the precincts within the county contain
37 different senatorial, delegate, magisterial or executive
38 committee districts or when the ballots for precincts

39 within a city contain different municipal wards, the
40 facsimile shall be altered to include each of the various
41 districts in the appropriate order. If, in order to
42 accommodate the size of each ballot, the ballot or ballot
43 pages must be divided onto more than one page, the
44 arrangement and order shall be made to conform as
45 nearly as possible to the arrangement of the ballot. The
46 publisher of the newspaper shall submit a proof of the
47 ballot and the arrangement to the ballot commissioners
48 for approval prior to publication.

49 (c) The ballot commissioners of each county shall
50 prepare, in the form and manner prescribed by the
51 secretary of state, an official list of offices and nominees
52 for each office which will appear on the general election
53 ballot for each political party, or as independent
54 nominees, and, as the case may be, for the nonpartisan
55 candidates to be voted for at the general election.

56 (1) All information which appears on the ballot,
57 including the names of parties for which a straight
58 ticket may be cast, instructions relating to straight
59 ticket voting, instructions as to the number of candi-
60 dates for whom votes may be cast for the office, any
61 additional language which will appear on the ballot
62 below the name of the office, any identifying informa-
63 tion relating to the candidates, such as residence,
64 magisterial district, or presidential preference, and the
65 ballot numbers of the candidates for punch card
66 systems, shall be included in the list, in the order
67 specified in subdivision (2) of this subsection. Following
68 the names of all candidates, the list shall include the full
69 title, text and voting positions of any issue to appear on
70 the ballot.

71 (2) The order of the straight ticket positions, offices
72 and candidates for each office, and the manner of
73 designating the parties, shall be as follows: (A) The
74 straight ticket positions shall be designated "Straight
75 (Party Name) Ticket", with the parties listed in the
76 order in which they appear on the ballot, from left to
77 right or from top to bottom, as the case may be; (B) the
78 offices shall be listed in the same order in which they
79 appear on the ballot; (C) the candidates within each

80 office for which one is to be elected shall be listed in
81 the order they appear on the ballot, from left to right
82 or from top to bottom, as the case may be, and the
83 candidate's political party affiliation or independent
84 status shall be indicated by the one or two letter initial
85 specifying the affiliation, placed in parenthesis to the
86 right of the candidate's name; and (D) the candidates
87 within each office for which more than one is to be
88 elected shall be arranged by political party groups in
89 the order they appear on the ballot, and the candidate's
90 affiliation shall be indicated as provided in part (C) of
91 this subdivision.

92 (d) The official list of candidates and issues as
93 provided in subsection (c) of this section shall be
94 published as follows:

95 (1) For counties in which two or more qualified
96 newspapers publish a daily newspaper, on the last day
97 on which a newspaper is published immediately preced-
98 ing the general election, the ballot commissioners shall
99 publish the official list of nominees and issues as a Class
100 I-0 legal advertisement in the two qualified daily
101 newspapers of different political parties within the
102 county having the largest circulation in compliance with
103 the provisions of article three, chapter fifty-nine of this
104 code;

105 (2) For counties having no more than one daily paper,
106 or having only one or more qualified newspapers which
107 publish weekly, on the last day on which a newspaper
108 is published immediately preceding the general election,
109 the ballot commissioners shall publish the sample
110 official list of nominees and issues as a Class I legal
111 advertisement in the qualified newspaper within the
112 county having the largest circulation in compliance with
113 the provisions of article three, chapter fifty-nine of this
114 code;

115 (3) The publication of the official list of nominees for
116 each party and for nonpartisan candidates shall be in
117 single or double columns, as required to accommodate
118 the type size requirements as follows: (A) The words
119 "Official List of Nominees and Issues", the name of the

120 county, the words "General Election" and the date of the
121 election shall be printed in all capital letters and in bold
122 type no smaller than fourteen point; (B) the designation
123 of the straight ticket party positions shall be printed in
124 all capital letters in bold type no smaller than twelve
125 point, and the title of the office shall be printed in bold
126 type no smaller than twelve point, and any voting
127 instructions or other language printed below the title
128 shall be printed in bold type no smaller than ten point;
129 and (C) the names of the candidates and the initial
130 within parenthesis designating the candidate's affilia-
131 tion shall be printed in all capital letters in bold type
132 no smaller than ten point, and the residence information
133 shall be printed in type no smaller than ten point; and

134 (4) When any ballot issue is to appear on the ballot,
135 the title of that ballot shall be printed in all capital
136 letters in bold type no smaller than twelve point. The
137 text of the ballot issue shall appear in no smaller than
138 ten point type. The ballot commissioners may require
139 the publication of the ballot issue under this subsection
140 in the facsimile sample ballot format in lieu of the
141 alternate format.

§3-6-4a. Filing requirements for write-in candidates.

1 Any eligible person who seeks to be elected by write-
2 in votes to an office, except delegate to national
3 convention, which is to be filled in a primary, general
4 or special election held under the provisions of this
5 chapter shall file a write-in candidate's certificate of
6 announcement and pay a filing fee as provided in this
7 section. No certificate of announcement may be accepted
8 and no person may be certified as a write-in candidate
9 for a political party nomination for any office or for
10 election as delegate to national convention.

11 (a) The write-in candidate's certificate of announce-
12 ment shall be in a form prescribed by the secretary of
13 state on which the candidate shall make a sworn
14 statement before a notary public or other officer
15 authorized to give oaths, containing the following
16 information:

17 (1) The name of the office sought and the district and

18 division, if any;

19 (2) The legal name of the candidate, and the first and
20 last name by which the candidate may be identified in
21 seeking the office;

22 (3) The specific address designating the location at
23 which the candidate resides at the time of filing,
24 including number and street or rural route and box
25 number, and city, state and zip code;

26 (4) A statement that the person filing the certificate
27 of announcement is a candidate for the office in good
28 faith; and

29 (5) The words "subscribed and sworn to before me this
30 _____ day of _____,
31 _____" and a space for the signature of the officer
32 giving the oath.

33 (b) Any person who seeks to become an official write-
34 in candidate shall pay a filing fee, which shall be the
35 fee prescribed for the office in section eight, article five
36 of this chapter, or other section of this code, as the case
37 may be.

38 The provisions of section eight-a, article five of this
39 chapter relating to the waiver of filing fees shall apply,
40 and the petition for waiver of the fee shall be due no
41 later than the time of filing the certificate of announce-
42 ment. The filing fees shall be distributed to the counties
43 as provided in section eight, article five of this chapter.

44 (c) The certificate of announcement shall be filed with
45 the filing officer for the political division of the office
46 as prescribed in section seven, article five of this
47 chapter.

48 (d) The certificate of announcement shall be filed with
49 and received by the proper filing officer as follows:

50 (1) Except as provided in subdivisions (2) and (3) of
51 this subsection, the certificate of announcement for any
52 office shall be received no later than the close of business
53 on the fourteenth day before the election at which the
54 office is to be filled;

55 (2) When a vacancy occurs in the nomination of

56 candidates for an office on the ballot resulting from the
57 death of the nominee or from the disqualification or
58 removal of a nominee from the ballot by a court of
59 competent jurisdiction not earlier than the twenty-first
60 day nor later than the fifth day before the general
61 election, the certificate shall be received no later than
62 the close of business on the fifth day before the election,
63 or the close of business on the day following the
64 occurrence of the vacancy, whichever is later;

65 (3) When a vacancy occurs in an elective office which
66 would not otherwise appear on the ballot in the election,
67 but which creates an unexpired term of one or more
68 years which, according to the provisions of this chapter,
69 is to be filled by election in the next ensuing election,
70 and such vacancy occurs no earlier than the twenty-first
71 day and no later than the fifth day before the general
72 election, the certificate shall be received no later than
73 the close of business on the fifth day before the election,
74 or the close of business on the day following the
75 occurrence of the vacancy, whichever is later.

76 (e) Any eligible person who files a completed write-
77 in candidate's certificate of announcement and the
78 required filing fee with the proper filing officer within
79 the required time shall be certified by that filing officer
80 as an official write-in candidate:

81 (1) The secretary of state shall, immediately following
82 the filing deadline, post the names of all official write-
83 in candidates for offices on the ballot in more than one
84 county and certify the name of each official write-in
85 candidate to the clerks of the circuit court of the
86 appropriate counties.

87 (2) The clerk of the circuit court shall, immediately
88 following the filing deadline, post the names of all
89 official write-in candidates for offices on the ballot in
90 one county, and certify and deliver to the election
91 officials of the appropriate precincts the names of all
92 official write-in candidates and the office sought by each
93 for statewide, district and county offices on the ballot
94 in the precinct for which valid write-in votes will be
95 counted.

§3-6-5. Rules and procedures in election other than primaries.

1 The provisions of article one of this chapter relating
2 to elections generally shall govern and control arrange-
3 ments and election officials for the conduct of elections
4 under this article. The following rules and procedures
5 shall govern the voting for candidates in general and
6 special elections:

7 (a) If the voter desires to vote a straight ticket, or in
8 other words, for each and every candidate for one party
9 for whatever office nominated, the voter shall either:

10 (1) Mark the position designated for a straight ticket
11 in the manner appropriate to the voting system; or

12 (2) Mark the voting position for each and every
13 candidate of the chosen party in the manner appropriate
14 to the voting system.

15 (b) If the voter desires to vote a mixed ticket, or in
16 other words, for candidates of different parties, the
17 voter shall either:

18 (1) Omit marking any straight ticket voting position
19 and mark, in the manner appropriate to the voting
20 system, the name of each candidate for whom he or she
21 desires to vote on whatever ticket the name may be; or

22 (2) Mark the position designated for a straight ticket
23 for the party for some of whose candidates he or she
24 desires to vote, and then mark the name of any
25 candidate of any other party for whom he or she may
26 desire to vote, in which case the cross mark in the
27 circular space above the name of the party straight
28 ticket mark will cast his vote for every candidate on the
29 ticket of such party except for offices for which
30 candidates are marked on other party tickets, and the
31 marks for such candidates will cast a vote for them; or

32 (3) Write with ink or other means or affix a sticker
33 or label or place an ink-stamped impression of the name
34 of an official write-in candidate for an office for whom
35 he or she desires to vote in the space designated for
36 write-in votes for the particular voting system and mark

37 that voting position as required in this chapter; or for
38 paper ballot systems, write or place the name and office
39 designation in any position on the face of the ballot
40 which makes the intention of the voter clear as to both
41 the office and the candidate chosen.

42 (c) If in marking either a straight or mixed ticket as
43 above defined, a straight ticket voting position is
44 marked, and also one or more marks are made for
45 candidates on the same ticket for offices for which
46 candidates on other party tickets are not individually
47 marked, such marks before the name of candidate on the
48 ticket so marked shall be treated as surplusage and
49 ignored.

50 (d) When a voter casts a straight ticket vote and also
51 writes in any name for an office and, in electronic voting
52 systems, punches or marks the voting position for that
53 write-in, the straight ticket vote for that office shall be
54 rejected, whether or not a vote can be counted for a
55 write-in candidate.

56 (e) The secretary of state may proscribe devices for
57 casting write-in votes which would cause mechanical
58 difficulty with voting machines or electronic devices or
59 which would obliterate or deface a paper ballot or any
60 portion thereof, but the secretary of state shall preserve
61 the right to vote by a write-in vote for those candidates
62 who have filed and have been certified as official write-
63 in candidates under the provisions of section four-a of
64 this article.

65 (f) If the voter marks more names than there are
66 persons to be elected to an office, or if, for any reason,
67 it is impossible to determine the voter's choice, for an
68 office to be filled, the ballot shall not be counted for such
69 office. The intention of the voter shall be deemed to be
70 clear if the write-in vote cast for an office contains both
71 the first and last name of an official write-in candidate
72 for that office; and, if no two official write-in candidates
73 for that office share a first or last name, either the first
74 name or last name alone shall be deemed to express the
75 clear intention of the voter.

76 (g) Except as otherwise specifically provided in this

77 chapter, no ballot shall be rejected for any technical
78 error which does not make it impossible to determine
79 the voter's choice.

§3-6-6. Ballot counting procedures in paper ballot systems.

1 When the polls are closed in an election precinct
2 where only a single election board has served, the
3 receiving board shall perform all of the duties pres-
4 cribed in this section. When the polls are closed in an
5 election precinct where two election boards have served,
6 both the receiving and counting boards shall together
7 conclude the counting of the votes cast, the tabulating
8 and summarizing of the number of the votes cast, unite
9 in certifying and attesting to the returns of the election,
10 and join in making out the certificates of the result of
11 the election provided for in this article. They shall not
12 adjourn until the work is completed.

13 In all election precincts, as soon as the polls are closed
14 and the last voter has voted, the receiving board shall
15 first process the absentee ballots according to the
16 provisions of section eight, article three of this chapter.
17 After the absentee ballots to be counted have been
18 deposited in the ballot box, the election officers shall
19 proceed to ascertain the result of the election in the
20 following manner:

21 (a) The receiving board shall ascertain from the poll
22 books and record on the proper form the total number
23 of voters who have voted. The number of ballots
24 challenged shall be counted and subtracted from the
25 total, which result should equal the number of ballots
26 deposited in the ballot box. The commissioners and
27 clerks shall also report, over their signatures, the
28 number of ballots spoiled and the number of ballots not
29 voted.

30 (b) The procedure for counting ballots, whether
31 performed throughout the day by the counting board as
32 provided in section thirty-three, article one of this
33 chapter, or after the close of the polls by the receiving
34 board or by the two boards together, shall be as follows:

35 (1) The ballot box shall be opened and all votes shall
36 be tallied in the presence of the entire election board;

37 (2) One of the commissioners shall take one ballot
38 from the box at a time and shall determine if the ballot
39 is properly signed by the two poll clerks of the receiving
40 board. If not properly signed, the ballot shall be placed
41 in an envelope for the purpose, without unfolding it. If
42 properly signed, the commissioner shall hand the ballot
43 to a team of commissioners of opposite politics, who shall
44 together read the votes marked on the ballot for each
45 office. Write-in votes for election for any person other
46 than an official write-in candidate shall be disregarded.
47 When a voter casts a straight ticket vote and also casts
48 a write-in vote for an office, the straight ticket vote for
49 that office shall be rejected, whether or not a vote can
50 be counted for a write-in candidate;

51 (3) The commissioner responsible for removing the
52 ballots from the box shall keep a tally of the number
53 of ballots as they are removed, and whenever the
54 number shall equal the number of voters entered on the
55 poll book minus the number of challenged ballots, as
56 determined according to subsection (a) of this section,
57 any other ballot found in the ballot box shall be placed
58 in the same envelope with unsigned ballots not counted,
59 without unfolding the same, or allowing anyone to
60 examine or know the contents thereof, and the number
61 of excess ballots shall be recorded on the envelope;

62 (4) Each poll clerk shall keep an accurate tally of the
63 votes cast by marking in ink on tally sheets, which shall
64 be provided for the purpose, so as to show the number
65 of votes received by each candidate for each office and
66 for and against each issue on the ballot; and

67 (5) When the reading of the votes is completed, the
68 ballot shall be immediately strung on a thread.

§3-6-8. Precinct returns; certificates; procedures.

1 As soon as the results are ascertained, the election
2 officials shall make out and sign, under oath as provided
3 in section fifteen, article five of this chapter, four
4 certificates of result on a form prescribed by the

5 secretary of state, giving the complete returns of the
6 election at the polling place, including the name of each
7 office and the full name of every candidate on the ballot
8 and the full name of every official write-in candidate for
9 each office, and the number of votes, in words and
10 numbers, received by each, and the designation of each
11 issue on the ballot and the number of votes, in words
12 and numbers, for and against such issue.

13 The certificates shall be sealed up and disposed of as
14 provided in section fifteen, article five of this chapter
15 for certificates of result of a primary election.

16 Immediately after the completion of the tabulation
17 and the posting of the certificate of result of the general
18 election in each precinct, the ballots, registration books,
19 poll books, tally sheets and other election supplies shall
20 be sealed up and delivered to the clerks of the county
21 commission and the circuit court as provided in section
22 sixteen, article five of this chapter.

CHAPTER 51

(Com. Sub. for H. B. 2184—By Delegates Richards and Houvouras)

[Passed April 10, 1993; 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 three-c, relating to guidelines for elevator safety; hiring, certification and suspension of elevator inspectors; registration, annual inspections and certificates of operation required; safety equipment required; promulgation of legislative rules; exemptions; and providing criminal penalties.

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 three-c, to read as follows:

ARTICLE 3C. ELEVATOR SAFETY.

- §21-3C-1. Definitions.
- §21-3C-2. Inspectors; certificates of competency; application; examination; reexamination.
- §21-3C-3. Suspension or revocation of certificates.
- §21-3C-4. Registration of elevators; notification to counties and municipalities.
- §21-3C-5. Powers and duties of counties and municipalities; annual inspections required.
- §21-3C-6. Report of inspection; hearing on construction plans and specifications; findings and orders of division.
- §21-3C-7. Safety equipment.
- §21-3C-8. Certificate of operation; renewal.
- §21-3C-9. Permits for removal or repairs.
- §21-3C-10. Enforcement; notice of defective machinery.
- §21-3C-11. Disposition of fees; legislative rules.
- §21-3C-12. Penalties.
- §21-3C-13. Mining and industrial elevators and general public elevators exempt.

§21-3C-1. Definitions.

1 (1) "Certificate of operation" means a certificate
2 issued by the division of labor certifying that an elevator
3 has been inspected and deemed safe for operation, thus
4 authorizing its operation. The "certificate of operation"
5 shall be conspicuously posted on the elevator at all times.

6 (2) "Division" means the division of labor.

7 (3) "Elevator" means all the machinery, construction,
8 apparatus and equipment used in raising and lowering
9 a car, cage or platform vertically between permanent
10 rails or guides and includes all elevators, power
11 dumbwaiters, escalators, gravity elevators and other
12 lifting or lowering apparatus permanently installed
13 between rails or guides, but does not include hand
14 operated dumbwaiters, manlifts of the platform type
15 with a platform area not exceeding nine hundred square
16 inches, construction hoists or other similar temporary
17 lifting or lowering apparatus.

18 (4) "Freight elevator" means an elevator used for
19 carrying freight and on which only the operator, by the
20 permission of the employer, is allowed to ride.

21 (5) "Inspector" means a person hired by the division,
22 a county or municipality who has successfully completed

23 the required West Virginia state elevator inspector
24 examination and is thereby qualified to conduct safety
25 inspections on elevators.

26 (6) "Passenger elevator" means an elevator that is
27 designed to carry persons to its contract capacity.

**§21-3C-2. Inspectors; certificates of competency; applica-
tion; examination; reexamination.**

1 No person may serve as an elevator inspector unless
2 he or she successfully completes the examination
3 required by this article and holds a certificate of
4 competency for elevator inspections issued by the
5 division.

6 Application for examination for elevator inspections
7 shall be in writing, accompanied by a fee of ten dollars,
8 upon a form designed and furnished by the division and
9 shall, at a minimum, state the level of education of the
10 applicant, list his or her employers, his or her period of
11 employment and the position held with each. The
12 applicant shall also submit a letter from one or more of
13 his or her previous employers concerning his or her
14 character and experience.

15 Applications which contain any willfully submitted
16 false or untrue information shall be rejected. After
17 review of the application by the division, the applicant,
18 if deemed appropriate by the division, shall be tested by
19 means of a written examination as prescribed by the
20 division dealing with the construction, installation,
21 operation, maintenance and repair of elevators and their
22 accessories.

23 The division shall issue a certificate of competency for
24 elevator inspections to any applicant who successfully
25 completes the examination, as determined by standards
26 set in legislative rules promulgated by the division, as
27 authorized by this article. An applicant who fails to
28 successfully complete an initial examination may submit
29 an application for a second examination ninety days or
30 more after the initial examination and upon payment of
31 the ten dollar examination fee. Should an applicant fail
32 to successfully complete the prescribed examination on

33 the second trial, he or she shall not be permitted to
34 submit an application for another examination for a
35 period of one year after the second failure.

36 Any person hired as an elevator inspector by a county
37 or municipality shall possess a certificate of competency
38 issued by the division.

39 The division may hire certified inspectors or enter
40 into a contract to hire inspectors who are certified by
41 the division. The division shall hire an inspector
42 supervisor who shall supervise the inspection activities
43 under this article.

§21-3C-3. Suspension or revocation of certificates.

1 A certificate of competency for elevator inspections
2 may be suspended or revoked by the division if the
3 inspector is found to be incompetent or untrustworthy.
4 Any willfully submitted false statement contained in an
5 inspection report shall constitute grounds for suspension
6 of the certificate of competency.

§21-3C-4. Registration of elevators; notification to counties and municipalities.

1 The owner or operator of any elevator shall register
2 with the division every elevator operated by him or her,
3 giving the type, capacity and description, name of
4 manufacturer, and purpose for which each is used. Such
5 registration shall be made on a form designed and
6 furnished by the division. The division shall forward a
7 list of registered elevators to the county or municipality
8 wherein said elevators are located.

§21-3C-5. Powers and duties of counties and municipalities; annual inspections required.

1 A county or municipality may hire its own elevator
2 inspector or contract with any person who possesses a
3 West Virginia elevator inspector's certificate of competency issued by the division. The county or municipality
4 shall ensure that every elevator which has been in use
5 for five years or more is inspected annually.

§21-3C-6. Report of inspection; hearing on construction plans and specifications; findings and orders of division.

1 Every inspector shall forward to the division and to
2 the county or municipality wherein the elevator is
3 located a complete report of each inspection made of any
4 passenger elevator, showing the exact condition of the
5 elevator. The inspector shall leave a copy of the report
6 at the elevator on the day the inspection is completed.
7 The division shall promulgate legislative rules, as
8 authorized by this article, prescribing inspection
9 procedures. The owner or operator of the elevator shall
10 be required to pay the fees for inspections levied
11 pursuant to this article.

12 If any elevator requires changes or repairs to make
13 it safe to operate, such recommendations shall be
14 contained in the inspection report. A copy of the report
15 as approved by the division shall be submitted to the
16 owner or operator of such elevator. Unless the findings
17 in the report are appealed, the owner or operator of the
18 elevator shall make the required changes or repairs
19 before a certificate of operation is issued.

20 The owner or operator, within twenty days from
21 receipt of the copy of an inspection report, may make
22 written application to the division, upon forms to be
23 furnished by the division, for a hearing on the inspection
24 report as to whether the elevator in question is reason-
25 ably safe. The division shall promptly consider such
26 application and proceedings consistent with the provi-
27 sions of this section.

28 If it appears from the evidence that the elevator will
29 be reasonably safe to operate without such changes or
30 repairs as shown in such report or by making only a
31 part or all thereof, the division shall make its finding
32 and order accordingly. If such finding and order
33 requires changes or repairs to be made in the elevator,
34 the division shall issue a certificate of operation when
35 such order has been executed or issue its approval of the
36 plans or specifications. If the finding and order of the
37 division has been affirmed or modified by appeal, on the
38 grounds of reasonable safety considered by the division,
39 the division shall, upon compliance with such order,
40 issue such certificate of operation, but if such finding
41 and order of the division has been vacated, such

42 certificate of operation shall be issued forthwith. No
43 elevator may be operated after being inspected without
44 having the certificate of operation conspicuously posted
45 thereon, except pending a hearing on the issuance
46 thereof.

§21-3C-7. Safety equipment.

1 Every passenger elevator, whether or not such
2 elevator has been in use for five years or longer, shall
3 be equipped, maintained and operated in a safe manner
4 in accordance with legislative rules promulgated by the
5 division as authorized by this article.

§21-3C-8. Certificate of operation; renewal.

1 A certificate of operation for any elevator shall not be
2 issued until the elevator has been inspected for safety
3 and the inspection report thereof filed with the division:
4 *Provided*, That only elevators which have been in use for
5 five years or more shall be required to be inspected. The
6 certificate of operation shall list the date of inspection
7 and shall expire one year after the date of inspection.
8 An expired certificate of operation shall be renewed in
9 the manner that the prior certificate was obtained.

§21-3C-9. Permits for removal or repairs.

1 Before any existing elevator is removed to a different
2 location, an application of specifications shall be
3 submitted to the division listing such information
4 concerning the installation and operation of the elevator
5 as the division may require on forms designed and
6 furnished by the division. Copies of the complete
7 installation plans shall be submitted with the
8 application.

9 In all cases where any changes or repairs proposed
10 by the owner or operator which alter the elevator's
11 construction or classification, grade or rated lifting
12 capacity, except when made pursuant to a report of an
13 inspector, the owner or operator of the elevator shall
14 submit to the division an application containing such
15 information as deemed appropriate by the division.

16 Upon approval of such application and installation

17 plans, the division shall issue a permit for the installa-
18 tion or repair of such elevator. No elevator being
19 removed and re-installed or repaired may be operated
20 until its completion, in accordance with the approved
21 plans and specifications: *Provided*, That the division
22 may grant a temporary permit to such elevator,
23 authorizing its operation.

§21-3C-10. Enforcement; notice of defective machinery.

1 If during an inspection the division or the inspector
2 finds that a passenger elevator or a part thereof cannot
3 be operated safely, the division or the inspector shall
4 contact the owner or operator in writing stating the
5 deficiencies and recommend changes or alterations and
6 shall post a notice upon such elevator prohibiting
7 further use of the elevator. The notice shall be in effect
8 until the changes or alterations set forth in the notice
9 have been made. The notice shall contain a statement
10 that operators or passengers are subject to injury by its
11 continued use, a description of the alteration or other
12 change necessary to be made in order to secure its safe
13 operation, date of such notice, and the name and
14 signature of the inspector issuing the notice.

15 If any inspector finds a passenger elevator to be so
16 unsafe that it represents imminent danger of death or
17 physical injury, that unit shall be sealed out of service
18 and a hazard notice as prescribed by the division posted
19 thereon. The division shall be notified immediately as to
20 the location and condition of the unit.

21 Any passenger elevator, once sealed, may not be
22 operated except for the purpose of making repairs and
23 in such a manner as prescribed by the division until all
24 defects are corrected and the unit has been inspected
25 and deemed safe by the division. The division shall
26 promulgate legislative rules, as authorized by this
27 article, to develop procedures for sealing and barricad-
28 ing an elevator once it has been declared inoperable.

29 No seal, notice or barricade placed on or around an
30 elevator in accordance with the provisions of this article
31 may be removed, obstructed or in any way altered
32 without the written consent of the division.

§21-3C-11. Disposition of fees; legislative rules.

1 (a) The division shall propose for promulgation
2 legislative rules pursuant to article three, chapter
3 twenty-nine-a of this code in order to implement the
4 provisions of this article.

5 (b) The rules proposed for promulgation pursuant to
6 subsection (a) of this section shall establish the amount
7 of any fee authorized pursuant to the provisions of this
8 article: *Provided*, That in no event may the fees
9 established for inspection exceed one hundred dollars
10 for any one inspection: *Provided, however*, That in
11 buildings with more than one elevator, the fee shall not
12 exceed one hundred dollars for the first elevator
13 inspected and twenty-five dollars for each additional
14 elevator: *Provided further*, That in no event may the fees
15 established for the issuance of permits exceed twenty-
16 five dollars.

17 (c) All fees collected pursuant to the provisions of this
18 article shall be deposited in an appropriated special
19 revenue account hereby created in the state treasury
20 known as the "Elevator Safety Fund" and expended for
21 the implementation and enforcement of this article:
22 *Provided*, That amounts collected which are found from
23 time to time to exceed funds needed for the purposes set
24 forth in this article may be transferred to other accounts
25 or funds and redesignated for other purposes by
26 appropriation of the Legislature.

27 (d) The division may enter into agreements with
28 counties and municipalities whereby such counties and
29 municipalities be permitted to retain the inspection fees
30 collected to support the enforcement activities at the
31 local level.

§21-3C-12. Penalties.

1 Any person who violates any provision of this article
2 or any directive or order issued pursuant thereto is
3 guilty of a misdemeanor and, upon conviction thereof,
4 shall be fined not less than fifty dollars nor more than
5 one thousand dollars per day. Each day the violation
6 continues constitutes a separate offense.

§21-3C-13. Mining and industrial elevators and general public elevators exempt.

1 The provisions of this article shall not be applicable
2 to elevators or similar devices used by mining or
3 industrial operations, or to elevators located within any
4 single family residential dwelling.

CHAPTER 52

(S. B. 474—By Senator Felton)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-a, relating to authorizing the division of environmental protection to promulgate legislative rules relating to West Virginia surface mining and reclamation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§64-3-17a. Division of environmental protection.

1 The legislative rules filed in the state register on the
2 seventh day of April, one thousand nine hundred ninety-
3 three, incorporating and amending the legislative rules
4 which were filed in the state register on the thirtieth
5 day of October, one thousand nine hundred ninety-two,
6 in accordance with subsection (b), section eleven-a,
7 article three, chapter twenty-two-a of this code, relating
8 to the division of environmental protection (West
9 Virginia surface mining and reclamation), are autho-
10 rized.

CHAPTER 53

(Com. Sub. for H. B. 2130—By Delegate Huffman)

[Passed March 19, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two and seven, article four, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to accounting by fiduciaries; clarifying and expanding the types of property to be accounted for annually to fiduciary commissioners; and updating archaic language.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. ACCOUNTING BY FIDUCIARIES.

§44-4-2. Fiduciaries to exhibit accounts for settlement.

§44-4-7. Failure to account forfeits commissions unless allowed by circuit court of county commission.

§44-4-2. Fiduciaries to exhibit accounts for settlement.

1 A statement of all the money, and an inventory of all
2 securities, stocks, bonds and all other property, includ-
3 ing the value thereof, which any personal representa-
4 tive, guardian, curator or committee, has received,
5 become chargeable with or disbursed, within one year
6 from the date of the fiduciary's qualification, or within
7 any succeeding year, together with the vouchers for such
8 disbursements, shall, within two months after the end
9 of every such period, be exhibited by the fiduciary to
10 the fiduciary commissioner to whom the estate or trust
11 has been referred. If any fiduciary fails to make an
12 exhibit, the fiduciary commissioner to whom the
13 fiduciary should make the exhibit shall proceed against
14 the fiduciary in the appropriate circuit court, and the
15 court shall impose the same penalties, unless the
16 fiduciary is excused for sufficient reason, as are

17 provided in cases where fiduciaries fail to return
18 appraisements.

**§44-4-7. Failure to account forfeits commissions unless
allowed by circuit court or county com-
mission.**

1 If any fiduciary fails to present to the fiduciary
2 commissioner, to whom the estate or trust has been
3 referred, a statement of receipts for any year, within
4 two months after its expiration, in accordance with the
5 provisions of section two of this article, or if a fiduciary
6 is found chargeable for that year with any money or
7 other property not included in such statement, the
8 fiduciary may have no compensation for fiduciary
9 services during such year, nor commission on such
10 money or other property, unless otherwise allowed by
11 the county commission or circuit court. This section
12 shall not apply to a case in which, within two months
13 after the end of any one year, the fiduciary gives to the
14 parties entitled to the money or any other property
15 received in such year, a statement of such money or
16 other property, and actually settled therefor with them;
17 nor to a case in which, within such two months after the
18 end of any one year, a fiduciary presents a statement
19 of receipts for the year to a fiduciary commissioner and
20 who may, in a pending suit, have been ordered to settle
21 the account.

CHAPTER 54

(H. B. 2251—By Delegates Williams, Carper, Phillips, H. White,
Rutledge and Harrison)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating to providing fiduciaries with specific statutory powers to respond to environmental problems.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. GENERAL PROVISIONS AS TO FIDUCIARIES.

§44-5-14. Powers of fiduciaries regarding environmental laws.

1 (a) For purposes of this section:

2 (1) "Environmental law" means any federal, state or
3 local law, rule, regulation or ordinance relating to the
4 regulation of hazardous substances or hazardous wastes,
5 air pollution, water pollution and underground storage
6 tanks;

7 (2) "Hazardous substance" means any substance
8 defined as hazardous in the Comprehensive Environ-
9 mental Response, Compensation and Liability Act
10 ("CERCLA") [42 U.S.C. 9601, et seq. (1980) as amended]
11 and regulations promulgated thereunder;

12 (3) "Hazardous waste" means a waste characterized or
13 listed as hazardous in the Resource, Conservation and
14 Recovery Act ("RCRA") [42 U.S.C. 6901, et seq. as
15 amended] and regulations promulgated thereunder;

16 (4) "Fiduciary" means a fiduciary as defined by
17 section one-d, article four-d, chapter thirty-one of this
18 code.

19 (b) In addition to powers, remedies and rights which
20 may be set forth in any will, trust agreement or other
21 document which is the source of authority, a trustee,
22 executor, administrator, guardian, or one acting in any
23 other fiduciary capacity, whether an individual, corpo-
24 ration or other entity ("fiduciary") has the following
25 powers, rights and remedies whether or not set forth in
26 the will, trust agreement or other document which is the
27 source of authority:

28 (1) To inspect property held by the fiduciary including
29 interests in sole proprietorships, partnerships or

30 corporations and any assets owned by any such business
31 enterprise, for the purpose of determining compliance
32 with any environmental law affecting such property and
33 to take necessary or reasonable action, including
34 reporting to the appropriate regulatory authority as
35 may be otherwise required by law, with respect to any
36 actual or potential violation of any environmental law
37 affecting property held by the fiduciary;

38 (2) To take, on behalf of the estate or trust, any action
39 necessary to prevent, abate or otherwise remedy any
40 actual or threatened violation of any environmental law
41 affecting property held by the fiduciary, either before
42 or after the initiation of an enforcement action by any
43 governmental body;

44 (3) To refuse to accept property in trust or estate if
45 the fiduciary determines any property to be donated or
46 conveyed to the trust or estate is contaminated by any
47 hazardous substance or hazardous waste or is being used
48 or has been used for any activity directly or indirectly
49 involving any violation of an environmental law which
50 is reasonably likely to result in liability to the fiduciary:
51 *Provided*, That such refusal shall not be construed to
52 limit the liability of the trust or estate or its income or
53 principal, for any liability such trust or estate may
54 otherwise have in connection with any environmental
55 law, but only to limit the liability of the fiduciary.
56 Property not accepted into a trust or estate by the
57 fiduciary may revert to the grantor or its successors or
58 pass by the laws of descent and distribution, as may
59 otherwise be provided by law;

60 (4) To settle or compromise at any time any and all
61 claims against the trust or estate which may be asserted
62 by any governmental body or private party involving the
63 alleged violation of any environmental law affecting
64 property held in trust or in an estate;

65 (5) To decline to serve as a fiduciary if the fiduciary
66 reasonably believes that there is or may be a conflict of
67 interest between it and its fiduciary capacity and in its
68 individual capacity because of potential claims or
69 liabilities which may be asserted against it on behalf of

70 the trust or estate because of the type or condition of
71 assets held therein.

72 (c) The fiduciary is entitled to charge the cost of any
73 inspection, review, abatement, response, cleanup or
74 remedial action authorized herein against the income or
75 principal of the trust or estate.

76 (d) A fiduciary is not personally liable to any
77 beneficiary or other party for any decrease in value of
78 assets in trust or in an estate by reason of the fiduciary's
79 compliance with any environmental law, specifically
80 including any reporting requirement under such law.

81 (e) Neither the acceptance by the fiduciary of
82 property nor the failure by the fiduciary to inspect
83 property creates any inference as to whether or not
84 there is or may be any liability under any environmental
85 law with respect to such property.

CHAPTER 55

(H. B. 2095—By Delegates Burk and Rowe)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-a, relating to the administration of estates and trusts; powers of fiduciaries; providing that certain enumerated powers may be incorporated by reference in trust instrument; definition; and restrictions on exercise of power.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5A. POWERS OF FIDUCIARIES.

§44-5A-1. Definition.

§44-5A-2. Incorporation by reference of enumerated powers; restriction on exercise of such powers.

§44-5A-3. Powers which may be incorporated by reference in trust instrument.

§44-5A-1. Definition.

1 As used in this article, the term "fiduciary" means the
2 one or more executors of the estate of a decedent, or the
3 one or more trustees of a testamentary or inter vivos
4 trust estate, whichever in a particular case is appropriate.
5

§44-5A-2. Incorporation by reference of enumerated powers; restriction on exercise of such powers.

1 (a) By an express intention of the testator or settlor
2 so to do contained in a will, or in an instrument in
3 writing whereby a trust estate is created inter vivos, any
4 or all of the powers or any portion thereof enumerated
5 in section three of this article, as they exist at the time
6 of the signing of the will by the testator or at the time
7 of the signing by the first settlor who signs the trust
8 instrument, may be, by appropriate reference made
9 thereto, incorporated in such will or other written
10 instrument, with the same effect as though such
11 language were set forth verbatim in the instrument.
12 Incorporation of one or more of the powers contained in
13 section three of this article by reference to that section
14 shall be in addition to and not in limitation of the
15 common law or statutory powers of the fiduciary.

16 (b) No power of authority conferred upon a fiduciary
17 as provided in this article may be exercised by such
18 fiduciary in such a manner as, in the aggregate, to
19 deprive the trust or the estate involved of an otherwise
20 available tax exemption, deduction or credit, expressly
21 including the marital deduction, or operate to impose a
22 tax upon a donor or testator or other person as owner
23 of any portion of the trust or estate involved. "Tax"
24 includes, but is not limited to, any federal, state, or local
25 income, gift, estate or inheritance tax.

26 (c) Nothing herein shall be construed to prevent the
27 incorporation of the powers enumerated in section three

28 of this article in any other kind of instrument or
29 agreement.

**§44-5A-3. Powers which may be incorporated by refer-
ence in trust instrument.**

1 The following powers may be incorporated by refer-
2 ence as provided in section two of this article:

3 (a) *Retain original property.* — To retain for such time
4 as the fiduciary considers advisable any property, real
5 or personal, which the fiduciary may receive, even
6 though the retention of such property by reason of its
7 character, amount, proportion to the total estate or
8 otherwise would not be appropriate for the fiduciary
9 apart from this provision.

10 (b) *Sell and exchange property.* — To sell, exchange,
11 give options upon, partition or otherwise dispose of any
12 property or interest therein which the fiduciary may
13 hold from time to time, with or without order of court,
14 at public or private sale or otherwise, upon such terms
15 and conditions, including credit, and for such consider-
16 ation as the fiduciary considers advisable, and to
17 transfer and convey the property or interest therein
18 which is at the disposal of the fiduciary, in fee simple
19 absolute or otherwise, free of all trust; and the party
20 dealing with the fiduciary is not under a duty to follow
21 the proceeds or other consideration received by the
22 fiduciary from such sale or exchange.

23 (c) *Invest and reinvest.* — To invest and reinvest, as
24 the fiduciary considers advisable, in stocks (common or
25 preferred), bonds, debentures, notes, mortgages or other
26 securities, in or outside the United States; in insurance
27 contracts on the life of any beneficiary or of any person
28 in whom a beneficiary has an insurable interest, or in
29 annuity contracts for any beneficiary, in any real or
30 personal property, in investment trusts; in participa-
31 tions in common trust funds, and generally in such
32 property as the fiduciary considers advisable, even
33 though such investment is not of the character approved
34 by applicable law but for this provision.

35 (d) *Invest without diversification.* — To make invest-

36 ments which cause a greater proportion of the total
37 property held by the fiduciary to be invested in
38 investments of one type or of one company than would
39 be considered appropriate for the fiduciary apart from
40 this provision.

41 (e) *Continue business.* — To the extent and upon such
42 terms and conditions and for such periods of time as the
43 fiduciary considers necessary or advisable, to continue
44 or participate in the operation of any business or other
45 enterprise, whatever its form of organization, including,
46 but not limited to, the power:

47 (1) To effect incorporation, dissolution, or other
48 change in the form of the organization of the business
49 or enterprise;

50 (2) To dispose of any interest therein or acquire the
51 interest of others therein;

52 (3) To contribute thereto or invest therein additional
53 capital or to lend money thereto, in any such case upon
54 such terms and conditions as the fiduciary approves
55 from time to time;

56 (4) To determine whether the liabilities incurred in
57 the conduct of the business are to be chargeable solely
58 to the part of the estate or trust set aside for use in the
59 business or to the estate or trust as a whole; and

60 (5) In all cases in which the fiduciary is required to
61 file accounts in any court or in any other public office,
62 it is not necessary to itemize receipts and disbursements
63 and distributions of property but it is sufficient for the
64 fiduciary to show in the account a single figure or
65 consolidation of figures, and the fiduciary is permitted
66 to account for money and property received from the
67 business and any payments made to the business in
68 lump sum without itemization.

69 (f) *Form corporation or other entity.* — To form a
70 corporation or other entity and to transfer, assign, and
71 convey to such corporation or entity all or any part of
72 the estate or of any trust property in exchange for the
73 stock, securities or obligations of any such corporation
74 or entity, and to continue to hold such stock and

75 securities and obligations.

76 (g) *Operate farm.* — To continue any farming operation received by the fiduciary pursuant to the will or
77 other instrument and to do any and all things considered
78 advisable by the fiduciary in the management and
79 maintenance of such farm and the production and
80 marketing of crops and dairy, poultry, livestock,
81 orchard and forest products including, but not limited
82 to, the following powers:
83

84 (1) To operate the farm with hired labor, tenants or
85 sharecroppers;

86 (2) To lease or rent the farm for cash or for a share
87 of the crops;

88 (3) To purchase or otherwise acquire farm machinery
89 and equipment and livestock;

90 (4) To construct, repair and improve farm buildings
91 of all kinds needed in the fiduciary's judgment, for the
92 operation of the farm;

93 (5) To make or obtain loans or advances at the
94 prevailing rate or rates of interest for farm purposes
95 such as for production, harvesting, or marketing, or for
96 the construction, repair, or improvement of farm
97 buildings or for the purchase of farm machinery or
98 equipment or livestock;

99 (6) To employ approved soil conservation practices in
100 order to conserve, improve and maintain the fertility
101 and productivity of the soil;

102 (7) To protect, manage and improve the timber and
103 forest on the farm and sell the timber and forest
104 products when it is to the best interest of the estate;

105 (8) To ditch, dam and drain damp or wet fields and
106 areas of the farm when and where needed;

107 (9) To engage in the production of livestock, poultry
108 or dairy products, and to construct such fences and
109 buildings and plant such pastures and crops as may be
110 necessary to carry on such operations;

111 (10) To market the products of the farm; and

112 (11) In general, to employ good husbandry in the
113 farming operation.

114 (h) *Manage real property.* — (1) To improve, manage,
115 protect and subdivide any real property;

116 (2) To dedicate or withdraw from dedication parks,
117 streets, highways or alleys;

118 (3) To terminate any subdivision or part thereof;

119 (4) To borrow money for the purposes authorized by
120 this subdivision for such periods of time and upon such
121 terms and conditions as to rates, maturities and
122 renewals as the fiduciary considers advisable and to
123 mortgage or otherwise encumber any such property or
124 part thereof, whether in possession or reversion;

125 (5) To lease any such property or part thereof to
126 commence at the present or in the future, upon such
127 terms and conditions, including options to renew or
128 purchase, and for such period or periods of time as the
129 fiduciary considers advisable although such period or
130 periods may extend beyond the duration of the trust or
131 the administration of the estate involved;

132 (6) To make coal, gravel, sand, oil, gas and other
133 mineral leases, contracts, licenses, conveyances or
134 grants of every nature and kind which are lawful in the
135 jurisdiction in which such property lies;

136 (7) To manage and improve timber and forests on
137 such property, to sell the timber and forest products,
138 and to make grants, leases, and contracts with respect
139 thereto;

140 (8) To modify, renew or extend leases;

141 (9) To employ agents to rent and collect rents;

142 (10) To create easements and release, convey, or
143 assign any right, title, or interest with respect to any
144 easement on such property or part thereof;

145 (11) To erect, repair or renovate any building or other
146 improvement on such property, and to remove or
147 demolish any building or other improvement, in whole
148 or in part; and

149 (12) To deal with any such property and every part
150 thereof in all other ways and for such other purposes or
151 considerations as it would be lawful for any person
152 owning the same to deal with such property either in
153 the same or in different ways from those specified
154 elsewhere in this subdivision (h).

155 (i) *Pay taxes and expenses.* — To pay taxes, assess-
156 ments, compensation of the fiduciary, and other ex-
157 penses incurred in the collection, care, administration,
158 and protection of the trust or estate.

159 (j) *Receive additional property.* — To receive addi-
160 tional property from any source and administer such
161 additional property as a portion of the appropriate trust
162 or estate under the management of the fiduciary but the
163 fiduciary is not required to receive such property
164 without his or her consent.

165 (k) *Deal with other trusts.* — In dealing with one or
166 more fiduciaries:

167 (1) To sell property, real or personal, to, or to
168 exchange property with, the trustee of any trust which
169 the decedent or the settlor or his spouse or any child of
170 his shall have created, for such estates and upon such
171 terms and conditions as to sale price, terms of payment,
172 and security as the fiduciary considers advisable; and
173 the fiduciary is under no duty to follow the proceeds of
174 any such sale; and

175 (2) To borrow money for such periods of time and
176 upon such terms and conditions as to rates, maturities,
177 renewals and securities as the fiduciary considers
178 advisable from any trust created by the decedent, his
179 spouse, or any child of his, for the purpose of paying
180 debts of the decedent, taxes, the costs of the adminis-
181 tration of the estate, and like charges against the estate,
182 or any part thereof, or discharging the liability of any
183 fiduciary thereof and to mortgage, pledge or otherwise
184 encumber such portion of the estate or any trust as may
185 be required to secure such loan or loans and to renew
186 such loans.

187 (l) *Borrow money.* — To borrow money for such

188 periods of time and upon such terms and conditions as
189 to rates, maturities, renewals, and security as the
190 fiduciary considers advisable, including the power of a
191 corporate fiduciary to borrow from its own banking
192 department, for the purpose of paying debts, taxes, or
193 other charges against the estate or any trust, or any part
194 thereof, and to mortgage, pledge or otherwise encumber
195 such portion of the estate or any trust as may be
196 required to secure such loan or loans; and to renew
197 existing loans either as maker or endorser.

198 (m) *Make advances.* — To advance money for the
199 protection of the trust or estate, and for all expenses,
200 losses and liabilities sustained in the administration of
201 the trust or estate or because of the holding or owner-
202 ship of any trust or estate assets, for which advances
203 with any interest the fiduciary shall have a lien on the
204 assets of the trust or estate as against a beneficiary.

205 (n) *Vote shares.* — To vote shares of stock owned by
206 the estate or any trust at stockholders meetings in
207 person or by special, limited, or general proxy, with or
208 without power of substitution.

209 (o) *Register in name of nominee.* — To hold a security
210 in the name of a nominee or in other form without
211 disclosure of the fiduciary relationship so that title to the
212 security may pass by delivery, but the fiduciary is liable
213 for any act of the nominee in connection with the stock
214 so held.

215 (p) *Exercise options, rights and privileges.* — To
216 exercise all options, rights, and privileges to convert
217 stocks, bonds, debentures, notes, mortgages, or other
218 property into other stocks, bonds, debentures, notes,
219 mortgages, or other property; to subscribe for other or
220 additional stocks, bonds, debentures, notes, mortgages,
221 or other property; and to hold such stocks, bonds,
222 debentures, notes, mortgages, or other property so
223 acquired as investments of the estate or trust so long as
224 the fiduciary considers advisable.

225 (q) *Participate in reorganizations.* — To unite with
226 other owners of property similar to any which may be
227 held at any time in the decedent's estate or in any trusts

228 in carrying out any plan for the consolidation or merger,
229 dissolution or liquidation, foreclosure, lease, or sale of
230 the property, incorporation or reincorporation, reorgan-
231 ization or readjustment of the capital or financial
232 structure of any corporation, company or association the
233 securities of which may form any portion of an estate
234 or trust; to become and serve as a member of a
235 stockholders or bondholders protective committee; to
236 deposit securities in accordance with any plan agreed
237 upon; to pay any assessments, expenses, or sums of
238 money that may be required for the protection or
239 furtherance of the interest of the distributees of an
240 estate or beneficiaries of any trust with reference to any
241 such plan; and to receive as investments of an estate or
242 any trust any securities issued as a result of the
243 execution of such plan.

244 (r) *Reduce interest rates.* — To reduce the interest rate
245 from time to time on any obligation, whether secured
246 or unsecured, constituting a part of an estate or trust.

247 (s) *Renew and extend obligations.* — To continue any
248 obligation, whether secured or unsecured, upon and
249 after maturity with or without renewal or extension
250 upon such terms as the fiduciary considers advisable,
251 without regard to the value of the security, if any, at
252 the time of such continuance.

253 (t) *Foreclose and bid in.* — To foreclose, as an incident
254 to the collection of any bond, note or other obligation,
255 any mortgage, deed of trust, or other lien securing such
256 bond, note or other obligation, and to bid in the property
257 at such foreclosure sale, or to acquire the property by
258 deed from the mortgagor or obligor without foreclosure;
259 and to retain the property so bid in or taken over
260 without foreclosure.

261 (u) *Insure.* — To carry such insurance coverage,
262 including public liability, for such hazards and in such
263 amounts, either in stock companies or in mutual
264 companies, as the fiduciary considers advisable.

265 (v) *Collect.* — To collect, receive and receipt for rents,
266 issues, profits, and income of an estate or trust.

267 (w) *Litigate, compromise or abandon.* — To compro-
268 mise, adjust, arbitrate, sue on or defend, abandon, or
269 otherwise deal with and settle claims in favor of or
270 against the estate or trust as the fiduciary considers
271 advisable, and the fiduciary's decision is conclusive
272 between the fiduciary and the beneficiaries of the estate
273 or trust and the person against or for whom the claim
274 is asserted, in the absence of fraud by such persons; and
275 in the absence of fraud, bad faith or gross negligence
276 of the fiduciary, is conclusive between the fiduciary and
277 the beneficiaries of the estate or trust.

278 (x) *Employ and compensate agents, etc.* — To employ
279 and compensate, out of income or principal or both and
280 in such proportion as the fiduciary considers advisable,
281 persons considered by the fiduciary needful to advise or
282 assist in the proper settlement of the estate or admin-
283 istration of any trust, including, but not limited to,
284 agents, accountants, brokers, attorneys-at-law, attor-
285 neys-in-fact, investment brokers, rental agents, realtors,
286 appraisers, and tax specialists; and to do so without
287 liability for any neglect, omission, misconduct, or
288 default of such agent or representative provided he or
289 she was selected and retained with due care on the part
290 of the fiduciary.

291 (y) *Acquire and hold property of two or more trusts*
292 *undivided.* — To acquire, receive, hold and retain the
293 principal of several trusts created by a single instru-
294 ment undivided until division becomes necessary in
295 order to make distributions; to hold, manage, invest,
296 reinvest, and account for the several shares or parts of
297 shares by appropriate entries in the fiduciary's books of
298 account, and to allocate to each share or part of share
299 its proportionate part of all receipts and expenses:
300 *Provided,* That the provisions of this subdivision do not
301 defer the vesting in possession of any share or part of
302 share of the estate or trust.

303 (z) *Establish and maintain reserves.* — To set up
304 proper and reasonable reserves for taxes, assessments,
305 insurance premiums, depreciation, obsolescence, amor-
306 tization, depletion of mineral or timber properties,
307 repairs, improvements, and general maintenance of

308 buildings or other property out of rents, profits, or other
309 income received; and to set up reserves also for the
310 equalization of payments to or for beneficiaries: *Pro-*
311 *vided*, That the provisions of this subdivision do not
312 affect the ultimate interests of beneficiaries in such
313 reserves.

314 (aa) *Distribute in cash or kind.* — To make distribu-
315 tion of capital assets of the estate or trust in kind or in
316 cash, or partially in kind and partially in cash, in
317 divided or undivided interests, as the fiduciary finds to
318 be most practicable and for the best interests of the
319 distributees; and to determine the value of capital assets
320 for the purpose of making distribution thereof if and
321 when there be more than one distributee thereof, which
322 determination shall be binding upon the distributees
323 unless clearly capricious, erroneous and inequitable:
324 *Provided*, That the fiduciary may not exercise any
325 power under this subdivision unless the fiduciary holds
326 title to or an interest in the property to be distributed
327 and is required or authorized to make distribution
328 thereof.

329 (bb) *Pay to or for minors or incompetents.* — To make
330 payments in money, or in property in lieu of money, to
331 or for a minor or incompetent in any one or more of the
332 following ways:

333 (1) Directly to such minor or incompetent;

334 (2) To apply directly in payment for the support,
335 maintenance, education, and medical, surgical, hospital,
336 or other institutional care of such minor or incompetent;

337 (3) To the legal or natural guardian of such minor or
338 incompetent;

339 (4) To any other person, whether or not appointed
340 guardian of the person by any court, who does, in fact,
341 have the care and custody of the person of such minor
342 or incompetent.

343 The fiduciary is not under any duty to see to the
344 application of the payments so made, if the fiduciary
345 exercised due care in the selection of the person,
346 including the minor or incompetent, to whom such

347 payments were made; and the receipt of such person is
348 full acquittance to the fiduciary.

349 (cc) *Apportion and allocate receipts and expenses.* —
350 Where not otherwise provided by statute to determine:

351 (1) What is principal and what is income of any estate
352 or trust and to allocate or apportion receipts and
353 expenses as between principal and income in the
354 exercise of the fiduciary's discretion, and, by way of
355 illustration and not limitation of the fiduciary's discre-
356 tion, to charge premiums on securities purchased at a
357 premium against principal or income or partly against
358 each;

359 (2) Whether to apply stock dividends and other
360 noncash dividends to income or principal or apportion
361 them as the fiduciary considers advisable; and

362 (3) What expenses, costs, taxes (other than estate,
363 inheritance, and succession taxes and other governmen-
364 tal charges) shall be charged against principal or
365 income or apportioned between principal and income
366 and in what proportions.

367 (dd) *Make contracts and execute instruments.* — To
368 make contracts and to execute instruments, under seal
369 or otherwise, as may be necessary in the exercise of the
370 powers herein granted.

371 (ee) The foregoing powers are limited as follows for
372 any trust which shall be classified as a "private
373 foundation" as that term is defined by section 509 of the
374 Internal Revenue Code of 1954 or corresponding
375 provisions of any subsequent federal tax laws (including
376 each nonexempt charitable trust described in section
377 4947(a)(1) of the code which is treated as a private
378 foundation) or nonexempt split-interest trust described
379 in section 4947(a)(2) of the Internal Revenue Code of
380 1954 or corresponding provisions of any subsequent
381 federal tax laws (but only to the extent that section
382 508(e) of the code is applicable to such nonexempt split-
383 interest trust under section 4947(a)(2)):

384 (1) The fiduciary shall make distributions of such
385 amounts, for each taxable year, at such time and in such

386 manner as not to become subject to the tax imposed by
387 section 4942 of the Internal Revenue Code of 1954, or
388 corresponding provisions of any subsequent federal tax
389 laws;

390 (2) No fiduciary may engage in any act of self-dealing
391 as defined in section 4941(d) of the Internal Revenue
392 Code of 1954, or corresponding provisions of any
393 subsequent federal tax laws;

394 (3) No fiduciary may retain any excess business
395 holdings as defined in section 4943(c) of the Internal
396 Revenue Code of 1954, or corresponding provisions of
397 any subsequent federal tax laws;

398 (4) No fiduciary may make any investments in such
399 manner as to subject the trust to tax under section 4944
400 of the Internal Revenue Code of 1954, or corresponding
401 provisions of any subsequent federal tax laws;

402 (5) No fiduciary may make any taxable expenditures
403 as defined in section 4945(e) of the Internal Revenue
404 Code of 1954, or corresponding provisions of any
405 subsequent federal tax laws.

CHAPTER 56

(Com. Sub. for S. B. 358—By Senators Wooton, Anderson,
Dittmar, Felton, Grubb, Holliday, Humphreys, Macnaughtan,
Plymale, Wiedebusch and Yoder)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-two, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section nineteen, article one, chapter fifty-one of said code; to amend article ten, chapter eight of said code by adding thereto a new section, designated section two-b; to amend article three, chapter seventeen-b of said code by adding thereto a new section, designated section three-c; to amend and reenact sections eleven, thirteen, fifteen and thirty-three, article two, chapter forty-eight of said

code; to amend and reenact section eight, article two of said chapter; to amend and reenact article four of said chapter; to amend article five of said chapter by adding thereto three new sections, designated sections seven, seven-a and nine; to amend and reenact sections one, two, four and five, article six of said chapter; to amend and reenact sections fifteen and sixteen-b, article five, chapter forty-nine of said code; to amend and reenact section four, article five-b of said chapter; to amend and reenact section three, article two, chapter fifty of said code; to further amend said article by adding thereto a new section, designated section three-a; to amend and reenact section two-a, article three of said chapter; to further amend said article by adding thereto a new section, designated section six-a; to amend and reenact section thirteen, article five of said chapter; to amend and reenact sections four, five, five-a, six, seven, seven-a, eight, fifteen, sixteen, seventeen, eighteen and twenty, article one, chapter fifty-two of said code; to amend and reenact sections three and thirteen, article two of said chapter; to amend article one, chapter fifty-nine of said code by adding thereto a new section, designated section twelve; to amend and reenact section one, article two of said chapter; to amend article four, chapter sixty-two of said code by adding thereto a new section, designated section seventeen; to amend and reenact sections five, nine and fifteen, article twelve of said chapter; and to amend and reenact section two, article thirteen of said chapter, all relating to promoting the cost-efficient administration of courts; suspension of licenses for failure to pay fines imposed by municipal courts; suspending vehicle operating licenses for failure to pay fines; hearing; guardian for infants, incompetents and insane parties; temporary relief in divorce annulment or separate maintenance; relief upon granting final order of divorce, annulment or separate maintenance; disclosure of assets; recodifying the laws relating to family law masters; misrepresentation of delinquent support payments; providing equitable remedy for establishment of paternity and support; child welfare, juvenile proceedings; transferring appointment of juvenile

probation officers from the division of health and human services to circuit courts with approval of the supreme court of appeals; salaries and all expenses of said officer to be paid by the supreme court of appeals; county commissions to provide office facilities for said officers; authority of the juvenile review facilities review panel; sunset provisions for said panel; magistrate courts granted jurisdiction to conduct preliminary examinations on probation violations; authorizing magistrates to suspend sentences and impose unsupervised probation; exception; conditions of probation; revocation of probation; suspension of driver's license and hunting and fishing license for failure to pay fines and penalties imposed; suspension of driver's license for failure to appear to answer criminal charges; failure to pay fines and penalties constitutes a lien against property of defendant; notice to defendant of consequences of failure to pay fines and penalties effect of financial inability to pay; deposits of moneys collected by magistrates to be in interest-bearing accounts; payment of interest into general revenue fund of state treasury; appeals from magistrate court in criminal cases; exception as to traffic offenses; jury selection; eliminating jury commissions; petit jurors to be selected by clerks of the circuit courts; reimbursement of expenses of jurors; assessment of jury costs; amount; waiver of assessment of jury costs by order of circuit court; jury costs remitted to sheriff by court clerk; surety liable for remission of costs on clerk's official bond; jury costs to be paid into state treasury; grand juries; selection of grand jurors by clerk of circuit court; reimbursement of expenses of grand jurors; suits by poor persons financially unable to pay; procedures; appeals; eligibility of civil litigants to proceed in forma pauperis; factors to be considered for eligibility; probationer to pay for costs of supervision; fees collected to be deposited in the state general revenue fund; and commissioner of corrections to supervise all persons released on parole and probationers released from other states residing in this state pursuant to any interstate compact.

Be it enacted by the Legislature of West Virginia:

That section twenty-two, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section nineteen, article one, chapter fifty-one of said code be repealed; that article ten, chapter eight of said code be amended by adding thereto a new section, designated section two-b; that article three, chapter seventeen-b of said code be amended by adding thereto a new section, designated section three-c; that sections eleven, thirteen, fifteen and thirty-three, article two, chapter forty-eight of said code be amended and reenacted; that section eight, article two of said chapter be amended and reenacted; that article four of said chapter be amended and reenacted; that article five of said chapter be amended by adding thereto three new sections, designated section seven, seven-a and nine; that sections one, two, four and five, article six of said chapter be amended and reenacted; that sections fifteen and sixteen-b, article five, chapter forty-nine of said code be amended and reenacted; that section four, article five-b of said chapter be amended and reenacted; that section three, article two, chapter fifty of said code be amended and reenacted; that said article two be further amended by adding thereto a new section, designated section three-a; that section two-a, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section six-a; that section thirteen, article five of said chapter be amended and reenacted; that sections four, five, five-a, six, seven, seven-a, eight, fifteen, sixteen, seventeen, eighteen and twenty, article one, chapter fifty-two of said code be amended and reenacted; that sections three and thirteen, article two of said chapter be amended and reenacted; that article one, chapter fifty-nine of said code be amended by adding thereto a new section, designated section twelve; that section one, article two of said chapter be amended and reenacted; that article four, chapter sixty-two of said code be amended by adding thereto a new section, designated section seventeen; that sections five, nine and fifteen, article twelve of said chapter be amended and reenacted; and that section two, article thirteen of said chapter be amended and reenacted, all to read as follows:

Chapter

- 8. Municipal Corporations.
- 17B. Motor Vehicle Driver's Licenses.
- 48. Domestic Relations.
- 48A. Enforcement of Family Obligations.
- 49. Child Welfare.
- 50. Magistrate Courts.
- 52. Juries.
- 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.
- 62. Criminal Procedure.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2b. Suspension of licenses for failure to pay fines and costs or failure to appear in court.

1 (a) If costs, fines, forfeitures or penalties imposed by
 2 the municipal court upon conviction of a person for a
 3 criminal offense as defined in section three-c, article
 4 three, chapter seventeen-b of this code are not paid in
 5 full within ninety days of the judgment, the municipal
 6 court clerk or, upon a judgment rendered on appeal, the
 7 circuit clerk shall notify the division of motor vehicles
 8 of such failure to pay: *Provided*, That at the time the
 9 judgment is imposed, the judge shall provide the person
 10 with written notice that failure to pay the same as
 11 ordered shall result in the suspension of such person's
 12 license or privilege to operate a motor vehicle in this
 13 state and that such suspension could result in the
 14 cancellation of, the failure to renew or the failure to
 15 issue an automobile insurance policy providing coverage
 16 for such person or such person's family: *Provided*,
 17 *however*, That the failure of the judge to provide such
 18 notice shall not affect the validity of any suspension of
 19 such person's license or privilege to operate a motor
 20 vehicle in this state. For purposes of this section,
 21 payment shall be stayed during any period an appeal
 22 from the conviction which resulted in the imposition of
 23 such costs, fines, forfeitures or penalties is pending.

24 Upon such notice, the division of motor vehicles shall
 25 suspend the person's driver's license or privilege to

26 operate a motor vehicle in this state until such time that
27 the costs, fines, forfeitures or penalties are paid.

28 (b) Notwithstanding the provisions of this section to
29 the contrary, the notice of the failure to pay such costs,
30 fines, forfeitures or penalties shall not be given where
31 the municipal court, upon application of the person upon
32 whom the same were imposed filed prior to the expira-
33 tion of the period within which the same are required
34 to be paid, enters an order finding that such person is
35 financially unable to pay all or a portion of the same:
36 *Provided*, That where the municipal court, upon finding
37 that the person is financially unable to pay a portion
38 thereof, requires the person to pay the remaining
39 portion thereof, the municipal court shall notify the
40 division of motor vehicles of such person's failure to pay
41 the same if the same is not paid within the period of
42 time ordered by such court.

43 (c) If a person charged with a criminal offense fails
44 to appear or otherwise respond in court, the municipal
45 court shall notify the division of motor vehicles thereof
46 within fifteen days of the scheduled date to appear
47 unless such person sooner appears or otherwise responds
48 in court to the satisfaction of the judge. Upon such
49 notice, the division of motor vehicles shall suspend the
50 person's driver's license or privilege to operate a motor
51 vehicle in this state until such time that the person
52 appears as required.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-3c. Suspending license for failure to pay fines or penalties imposed as the result of criminal conviction or for failure to appear in court.

1 (a) The division shall suspend the license of any
2 resident of this state or the privilege of a nonresident
3 to drive a motor vehicle in this state upon receiving
4 notice from a circuit court, magistrate court or munic-
5 ipal court of this state, pursuant to section two-b, article

6 three, chapter fifty, or section two-b, article ten, chapter
7 eight, or section seventeen, article four, chapter sixty-
8 two of this code, that such person has defaulted on the
9 payment of costs, fines, forfeitures, penalties or restitu-
10 tion imposed on the person by the circuit court,
11 magistrate court or municipal court upon conviction for
12 any criminal offense by the date such court had required
13 such person to pay the same, or that such person has
14 failed to appear in court when charged with such an
15 offense. For the purposes of this section, section two-b,
16 article three, chapter fifty; section two-b, article ten,
17 chapter eight; and section seventeen, article four,
18 chapter sixty-two of this code, "criminal offense" shall
19 be defined as any violation of the provisions of this code,
20 or the violation of any municipal ordinance, for which
21 the violation thereof may result in a fine, confinement
22 in jail or imprisonment in the penitentiary of this state:
23 *Provided*, That any parking violation or other violation
24 for which a citation may be issued to an unattended
25 vehicle shall not be considered a criminal offense for the
26 purposes of this section; section two-b, article ten,
27 chapter eight; section two-b, article three, chapter fifty;
28 or section seventeen, article four, chapter sixty-two of
29 this code.

30 (b) A copy of the order of suspension shall be
31 forwarded to such person by certified mail, return
32 receipt requested. No order of suspension becomes
33 effective until ten days after receipt of a copy of such
34 order. The order of suspension shall advise the person
35 that because of the receipt of notice of the failure to pay
36 costs, fines, forfeitures or penalties, or the failure to
37 appear, a presumption exists that the person named in
38 the order of suspension is the same person named in the
39 notice. The commissioner may grant an administrative
40 hearing which substantially complies with the require-
41 ments of the provisions of section two, article five-a,
42 chapter seventeen-c of this code upon a preliminary
43 showing that a possibility exists that the person named
44 in the notice of conviction is not the same person whose
45 license is being suspended. Such request for hearing
46 shall be made within ten days after receipt of a copy
47 of the order of suspension. The sole purpose of this

48 hearing shall be for the person requesting the hearing
49 to present evidence that he or she is not the person
50 named in the notice. In the event the commissioner
51 grants an administrative hearing, the commissioner
52 shall stay the license suspension pending the commis-
53 sioner's order resulting from the hearing.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-11. Infant, incompetent and insane parties.

§48-2-13. Temporary relief during pendency of action for divorce, annulment or separate maintenance.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

§48-2-33. Disclosure of assets required.

§48-2-11. Infant, incompetent and insane parties.

1 (a) In any action for divorce or annulment, an infant
2 party shall sue, answer and plead by a next friend, and
3 an incompetent or insane party shall sue, answer and
4 plead by his committee, and no guardian ad litem shall
5 be required unless specifically ordered by the court or
6 judge hearing said action.

7 (b) If, in an action for divorce or annulment, either
8 party shall allege that a person, other than the husband,
9 is the father of a child born during the marriage of the
10 parties, the court shall appoint a competent attorney to
11 act as guardian ad litem on behalf of the child. The
12 attorney shall be appointed without motion and prior to
13 an entry of any order requiring blood testing.

§48-2-13. Temporary relief during pendency of action for divorce, annulment or separate maintenance.

1 (a) At the time of the filing of the complaint or at any
2 time after the commencement of an action for divorce,
3 annulment or separate maintenance under the provi-
4 sions of this article and upon motion for temporary
5 relief, notice of hearing and hearing, the court may
6 order all or any portion of the following temporary
7 relief, which order shall govern the marital rights and

8 obligations of the parties during the pendency of the
9 action:

10 (1) The court may require either party to pay
11 temporary alimony in the form of periodic installments,
12 or a lump sum, or both, for the maintenance of the other
13 party.

14 (2) The court may provide for the custody of minor
15 children of the parties subject to such rights of
16 visitation, both in and out of the residence of the
17 custodial parent or other person or persons having
18 custody, as may be appropriate under the
19 circumstances.

20 (3) In every action where visitation is awarded, the
21 court shall specify a schedule for visitation by the
22 noncustodial parent: *Provided*, That with respect to any
23 existing order of temporary relief which provides for
24 visitation but which does not provide a schedule for
25 visitation by the noncustodial parent, upon motion of any
26 party, notice of hearing and hearing, the court shall
27 issue an order which provides a specific schedule for
28 visitation by the noncustodial parent.

29 (4) When the action involves a minor child or children,
30 the court shall require either party to pay temporary
31 child support in the form of periodic installments for the
32 maintenance of the minor children of the parties in
33 accordance with section eight, article two, chapter forty-
34 eight-a of this code.

35 (5) When the action involves a minor child or children,
36 the court shall provide for medical support for any
37 minor children in accordance with section fifteen-a of
38 this article.

39 (6) (A) The court may compel either party to pay
40 attorney's fees and court costs reasonably necessary to
41 enable the other party to prosecute or defend the action
42 in the trial court. The question of whether or not a party
43 is entitled to temporary alimony is not decisive of that
44 party's right to a reasonable allowance of attorney's fees
45 and court costs. An order for temporary relief awarding
46 attorney fees and court costs may be modified at any

47 time during the pendency of the action, as the exigencies
48 of the case or equity and justice may require, including,
49 but not limited to, a modification which would require
50 full or partial repayment of fees and costs by a party
51 to the action to whom or on whose behalf payment of
52 such fees and costs was previously ordered. If an appeal
53 be taken or an intention to appeal be stated, the court
54 may further order either party to pay attorney fees and
55 costs on appeal.

56 (B) When it appears to the court that a party has
57 incurred attorney fees and costs unnecessarily because
58 the opposing party has asserted unfounded claims or
59 defenses for vexatious, wanton or oppressive purposes,
60 thereby delaying or diverting attention from valid
61 claims or defenses asserted in good faith, the court may
62 order the offending party, or his or her attorney, or both,
63 to pay reasonable attorney fees and costs to the other
64 party.

65 (7) As an incident to requiring the payment of
66 temporary alimony, the court may order either party to
67 continue in effect existing policies of insurance covering
68 the costs of health care and hospitalization of the other
69 party. If there is no such existing policy or policies, the
70 court may order that such health care insurance
71 coverage be paid for by a party if the court determines
72 that such health care coverage is available to that party
73 at a reasonable cost. Payments made to an insurer
74 pursuant to this subdivision, either directly or by a
75 deduction from wages, may be deemed to be temporary
76 alimony.

77 (8) The court may grant the exclusive use and
78 occupancy of the marital home to one of the parties
79 during the pendency of the action, together with all or
80 a portion of the household goods, furniture and furnish-
81 ings, reasonably necessary for such use and occupancy.
82 The court may require payments to third parties in the
83 form of home loan installments, land contract payments,
84 rent, payments for utility services, property taxes and
85 insurance coverage. When such third party payments
86 are ordered, the court shall specify whether such
87 payments or portions of payments are temporary

88 alimony, temporary child support, a partial distribution
89 of marital property or an allocation of marital debt:
90 *Provided*, That if the court does not set forth in the order
91 that a portion of such payments is to be deemed
92 temporary child support, then all such payments made
93 pursuant to this subdivision shall be deemed to be
94 temporary alimony: *Provided, however*, That the court
95 may order such payments to be made without denom-
96 inating them either as temporary alimony or temporary
97 child support, reserving such decision until such time as
98 the court determines the interests of the parties in
99 marital property and equitably divides the same:
100 *Provided further*, That at the time the court determines
101 the interests of the parties in marital property and
102 equitably divides the same, the court may consider the
103 extent to which payments made to third parties under
104 the provisions of this subdivision have affected the
105 rights of the parties in marital property and may treat
106 such payments as a partial distribution of marital
107 property notwithstanding the fact that such payments
108 have been denominated temporary alimony or tempor-
109 ary child support or not so denominated under the
110 provisions of this subdivision. If the payments are not
111 designated in an order and the parties have waived any
112 right to receive alimony, the court may designate the
113 payments upon motion by any party. Nothing contained
114 in this subdivision shall abrogate an existing contract
115 between either of the parties and a third party, or affect
116 the rights and liabilities of either party or a third party
117 under the terms of such contract.

118 (9) As an incident to requiring the payments of
119 temporary alimony, the court may grant the exclusive
120 use and possession of one or more motor vehicles to
121 either of the parties during the pendency of the action.
122 The court may require payments to third parties in the
123 form of automobile loan installments or insurance
124 coverage, and any such payments made pursuant to this
125 subdivision shall be deemed to be temporary alimony:
126 *Provided*, That the court may order such payments to
127 be made without denominating them as temporary
128 alimony, reserving such decision until such time as the
129 court determines the interests of the parties in marital

130 property and equitably divides the same: *Provided,*
131 *however,* That at the time the court determines the
132 interests of the parties in marital property and equit-
133 ably divides the same, the court may consider the extent
134 to which payments made to third parties under the
135 provisions of this subdivision have affected the rights of
136 the parties in marital property and may treat such
137 payments as a partial distribution of marital property
138 notwithstanding the fact that such payments have been
139 denominated temporary alimony or not so denominated
140 under the provisions of this subdivision. Nothing
141 contained in this subdivision shall abrogate an existing
142 contract between either of the parties and a third party
143 or affect the rights and liabilities of either party or a
144 third party under the terms of such contract.

145 (10) When the pleadings include a specific request for
146 specific property or raise issues concerning the equita-
147 ble division of marital property, the court may enter
148 such order as is reasonably necessary to preserve the
149 estate of either or both of the parties, including the
150 imposition of a constructive trust, so that such property
151 be forthcoming to meet any order which may be made
152 in the action, and may compel either party to give
153 security to abide such order, or may require the
154 property in question to be delivered into the temporary
155 custody of a third party. The court may further order
156 either or both of the parties to pay the costs and
157 expenses of maintaining and preserving the property of
158 the parties during the pendency of the action: *Provided,*
159 That at the time the court determines the interests of
160 the parties in marital property and equitably divides the
161 same, the court may consider the extent to which
162 payments made for the maintenance and preservation of
163 property under the provisions of this subdivision have
164 affected the rights of the parties in marital property and
165 may treat such payments as a partial distribution of
166 marital property. The court may release all or any part
167 of such protected property for sale and substitute all or
168 a portion of the proceeds of the sale for such property.

169 (11) Unless a contrary disposition is ordered pursuant
170 to other provisions of this section, then upon the motion

171 of a party, the court may compel a party to deliver to
172 the moving party any of his or her separate estate which
173 may be in the possession or control of the respondent
174 party and may make any further order that is necessary
175 to prevent either party from interfering with the
176 separate estate of the other party.

177 (12) The court may enjoin the offending party from
178 molesting or interfering with the other, or otherwise
179 imposing any restraint on the personal liberty of the
180 other, or interfering with the custodial or visitation
181 rights of the other. This order may permanently enjoin
182 the offending party from entering the school, business
183 or place of employment of the other for the purpose of
184 molesting or harassing the other; or from contacting the
185 other, in person or by telephone, for the purpose of
186 harassment or threats; or from harassing or verbally
187 abusing the other in a public place. Any order entered
188 by the court to protect a party from abuse may grant
189 the relief provided in article two-a of this chapter.

190 (b) In ordering temporary relief under the provisions
191 of this section, the court shall consider the financial
192 needs of the parties, the present income of each party
193 from any source, their income-earning abilities and the
194 respective legal obligations of each party to support
195 himself or herself and to support any other persons.
196 Except in extraordinary cases supported by specific
197 findings set forth in the order granting relief, payments
198 of temporary alimony and temporary child support are
199 to be made from a party's income and not from the
200 corpus of a party's separate estate, and an award of such
201 relief shall not be disproportionate to a party's ability
202 to pay as disclosed by the evidence before the court:
203 *Provided*, That child support shall be established in
204 accordance with support guidelines promulgated pursu-
205 ant to section eight, article two, chapter forty-eight-a of
206 this code.

207 (c) At any time after a party is abandoned or deserted
208 or after the parties to a marriage have lived separate
209 and apart in separate places of abode without any
210 cohabitation, the party abandoned or either party living
211 separate and apart may apply for relief pursuant to this

212 section by instituting an action for divorce as provided
213 in section ten of this article, alleging that the plaintiff
214 reasonably believes that the period of abandonment or
215 of living separate and apart will continue for the period
216 prescribed by the applicable provisions of section four
217 of this article. If the period of abandonment or living
218 separate and apart continues for the period prescribed
219 by the applicable provisions of section four of this
220 article, the divorce action may proceed to a hearing as
221 provided in sections twenty-four and twenty-five of this
222 article without a new complaint being filed: *Provided,*
223 That the party desiring to proceed to a hearing shall
224 give the opposing party at least twenty days' notice of
225 the time, place and purpose of the hearing, unless the
226 opposing party files a waiver of notice of further
227 proceedings, signed by the opposing party. If such notice
228 is required to be served, it shall be served in the same
229 manner as a complaint, regardless of whether the
230 opposing party has appeared or answered.

231 (d) To facilitate the resolution of issues arising at a
232 hearing for temporary relief, the court may, or upon the
233 motion of either party shall, order the parties to comply
234 with the disclosure requirements set forth in section
235 thirty-three of this article prior to the hearing for
236 temporary relief. The form for this disclosure shall
237 substantially comply with the form promulgated by the
238 supreme court of appeals, pursuant to said section. If
239 either party fails to timely file a complete disclosure as
240 required by this section or as ordered by the court, the
241 court may accept the statement of the other party as
242 accurate.

243 (e) An ex parte order granting all or part of the relief
244 provided for in this section may be granted without
245 written or oral notice to the adverse party if:

246 (1) It appears from specific facts shown by affidavit
247 or by the verified complaint that immediate and
248 irreparable injury, loss or damage will result to the
249 applicant before the adverse party or such party's
250 attorney can be heard in opposition. The potential
251 injury, loss or damage may be anticipated when the
252 following conditions exist: *Provided,* That the following

253 list of conditions is not exclusive:

254 (A) There is a real and present threat of physical
255 injury to the applicant at the hands or direction of the
256 adverse party;

257 (B) The adverse party is preparing to quit the state
258 with a minor child or children of the parties, thus
259 depriving the court of jurisdiction in the matter of child
260 custody;

261 (C) The adverse party is preparing to remove property
262 from the state or is preparing to transfer, convey,
263 alienate, encumber or otherwise deal with property
264 which could otherwise be subject to the jurisdiction of
265 the court and subject to judicial order under the
266 provisions of this section or section fifteen of this article;
267 and

268 (2) The moving party or his or her attorney certifies
269 in writing any effort that has been made to give the
270 notice and the reasons supporting his or her claim that
271 notice should not be required.

272 (f) Every ex parte order granted without notice shall
273 be endorsed with the date and hour of issuance; shall
274 be filed forthwith in the circuit clerk's office and
275 entered of record; and shall set forth the finding of the
276 court that unless the order is granted without notice
277 there is probable cause to believe that existing condi-
278 tions will result in immediate and irreparable injury,
279 loss or damage to the moving party before the adverse
280 party or his or her attorney can be heard in opposition.
281 The order granting ex parte relief shall fix a time for
282 a hearing for temporary relief to be held within a
283 reasonable time, not to exceed twenty days, unless
284 before the time so fixed for hearing, such hearing is
285 continued for good cause shown or with the consent of
286 the party against whom the ex parte order is directed.
287 The reasons for the continuance shall be entered of
288 record. Within the time limits described herein, when
289 an ex parte order is made, a motion for temporary relief
290 shall be set down for hearing at the earliest possible
291 time and shall take precedence of all matters except
292 older matters of the same character. If the party who

293 obtained the ex parte order fails to proceed with a
294 motion for temporary relief, the court shall set aside the
295 ex parte order. At any time after ex parte relief is
296 granted, and on two days' notice to the party who
297 obtained such relief or on such shorter notice as the
298 court may direct, the adverse party may appear and
299 move the court to set aside or modify the ex parte order
300 on the grounds that the effects of such order are onerous
301 or otherwise improper. In such event, the court shall
302 proceed to hear and determine such motion as expedi-
303 tiously as the ends of justice require.

304 (g) No order granting temporary relief may be the
305 subject of an appeal or a petition for review.

306 (h) (1) Unless the best interests of the child require
307 otherwise, every temporary order which provides for the
308 custody of a minor child of the parties shall also provide
309 for the following:

310 (A) The custodial parent shall be required to autho-
311 rize school authorities in the school in which the child
312 is enrolled to release to the noncustodial parent copies
313 of any and all information concerning the child which
314 would otherwise be properly released to the custodial
315 parent;

316 (B) The custodial parent shall be required, promptly
317 after receipt, to transmit to the noncustodial parent a
318 copy of the child's grades or report card and copies of
319 any other reports reflecting the status or progress of the
320 child;

321 (C) The custodial parent shall be required, when
322 practicable, to arrange appointments for parent-teacher
323 conferences at a time when the noncustodial parent can
324 be present;

325 (D) The custodial parent shall be required to autho-
326 rize medical providers to release to the noncustodial
327 parent copies of any and all information concerning
328 medical care provided to the child which would other-
329 wise be properly released to the custodial parent;

330 (E) The custodial parent shall be required to promptly
331 inform the noncustodial parent of any illness of the child

332 which requires medical attention; or, if the child is in
333 the actual physical custody of the noncustodial parent
334 during a period of visitation, the noncustodial parent
335 shall be required to promptly inform the custodial
336 parent of any illness of the child which requires medical
337 attention;

338 (F) The custodial parent shall be required to consult
339 with the noncustodial parent prior to any elective
340 surgery being performed on the child; and in the event
341 emergency medical procedures are undertaken for the
342 child which requires the parental consent of either
343 parent, if time permits, the other parent shall be
344 consulted, or if time does not permit such consultation,
345 the other parent shall be promptly informed of such
346 emergency medical procedures: *Provided*, That the same
347 duty to inform the custodial parent applies to the
348 noncustodial parent in the event that the emergency
349 medical procedures are required while the child is in the
350 physical custody of the noncustodial parent during a
351 period of visitation: *Provided, however*, That nothing
352 contained herein shall be deemed to alter or amend the
353 law of this state as it otherwise pertains to physicians
354 or health care facilities obtaining parental consent prior
355 to providing medical care or performing medical
356 procedures.

357 (2) In the event a custodial parent shall fail or refuse
358 to authorize the release of school or medical records as
359 provided for by subdivision (1) of this subsection, then
360 upon the ex parte application of the noncustodial parent,
361 the family law master shall prepare an order for entry
362 by the circuit court which appoints the family law
363 master as a special commissioner authorized to execute
364 a consent for the release of such records, and direct it
365 to the appropriate school authorities or medical pro-
366 viders.

**§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 instal-

4 lments, or a lump sum, or both, for the maintenance of
5 the other party. Payments of alimony are to be ordinari-
6 ly made from a party's income, but when the income
7 is not sufficient to adequately provide for those pay-
8 ments, the court may, upon specific findings set forth
9 in the order, order the party required to make those
10 payments to make them from the corpus of his or her
11 separate estate. An award of alimony shall not be
12 disproportionate to a party's ability to pay as disclosed
13 by the evidence before the court.

14 (b) Upon ordering the annulment of a marriage or a
15 divorce or granting of decree of separate maintenance,
16 the court may further order all or any part of the
17 following relief:

18 (1) The court may provide for the custody of minor
19 children of the parties, subject to such rights of
20 visitation, both in and out of the residence of the
21 custodial parent or other person or persons having
22 custody, as may be appropriate under the circumstan-
23 ces. In every action where visitation is awarded, the
24 court shall specify a schedule for visitation by the
25 noncustodial parent: *Provided*, That with respect to any
26 existing order which provided for visitation but which
27 does not provide a specific schedule for visitation by the
28 noncustodial parent, upon motion of any party, notice of
29 hearing and hearing, the court shall issue an order
30 which provides a specific schedule of visitation by the
31 noncustodial parent.

32 (2) When the action involves a minor child or children,
33 the court shall require either party to pay child support
34 in the form of periodic installments for the maintenance
35 of the minor children of the parties in accordance with
36 support guidelines promulgated pursuant to section
37 eight, article two, chapter forty-eight-a of this code.
38 Payments of child support are to be ordinarily made
39 from a party's income, but in cases when the income is
40 not sufficient to adequately provide for those payments,
41 the court may, upon specific findings set forth in the
42 order, order the party required to make those payments
43 to make them from the corpus of his or her separate
44 estate.

45 (3) When the action involves a minor child or children,
46 the court shall provide for medical support for any
47 minor children in accordance with section fifteen-a of
48 this article.

49 (4) As an incident to requiring the payment of
50 alimony or child support, the court may order either
51 party to continue in effect existing policies of insurance
52 covering the costs of health care and hospitalization of
53 the other party: *Provided*, That if the other party is no
54 longer eligible to be covered by such insurance because
55 of the granting of an annulment or divorce, the court
56 may require a party to substitute such insurance with
57 a new policy to cover the other party or may consider
58 the prospective cost of such insurance in awarding
59 alimony to be paid in periodic installments. Payments
60 made to an insurer pursuant to this subdivision, either
61 directly or by a deduction from wages, shall be deemed
62 to be alimony or installment payments for the distribu-
63 tion of marital property, in such proportion as the court
64 shall direct: *Provided, however*, That if the court does not
65 set forth in the order that a portion of such payments
66 is to be deemed installment payments for the distribu-
67 tion of marital property, then all such payments made
68 pursuant to this subdivision shall be deemed to be
69 alimony: *Provided further*, That the designation of
70 insurance coverage as alimony under the provisions of
71 this subdivision shall not, in and of itself, give rise to
72 a subsequent modification of the order to provide for
73 alimony other than insurance for covering the costs of
74 health care and hospitalization.

75 (5) The court may grant the exclusive use and
76 occupancy of the marital home to one of the parties,
77 together with all or a portion of the household goods,
78 furniture and furnishings reasonably necessary for such
79 use and occupancy. Such use and occupancy shall be for
80 a definite period, ending at a specific time set forth in
81 the order, subject to modification upon the petition of
82 either party. Except in extraordinary cases supported
83 by specific findings set forth in the order granting
84 relief, a grant of the exclusive use and occupancy of the
85 marital home shall be limited to those situations when

86 such use and occupancy is reasonably necessary to
87 accommodate the rearing of minor children of the
88 parties. The court may require payments to third
89 parties in the form of home loan installments, land
90 contract payments, rent, property taxes and insurance
91 coverage if the amount of such coverage is reduced to
92 a fixed monetary amount set forth in the court's order.
93 When such third party payments are ordered, the court
94 shall specify whether such payments or portions of
95 payments are alimony, child support, a partial distribu-
96 tion of marital property or an allocation of marital debt:
97 *Provided*, That if the court does not set forth in the order
98 that a portion of such payments is to be deemed child
99 support or installment payments for the distribution of
100 marital property, then all such payments made pursu-
101 ant to this subdivision shall be deemed to be alimony.
102 When such third party payments are ordered, the court
103 shall specify whether such payments or portions of
104 payments are alimony, child support, a partial distribu-
105 tion of marital property or an allocation of marital debt.
106 If the payments are not designated in an order and the
107 parties have waived any right to receive alimony, the
108 court may designate the payments upon motion by any
109 party. Nothing contained in this subdivision shall
110 abrogate an existing contract between either of the
111 parties and a third party or affect the rights and
112 liabilities of either party or a third party under the
113 terms of such contract.

114 (6) As an incident to requiring the payment of
115 alimony, the court may grant the exclusive use and
116 possession of one or more motor vehicles to either of the
117 parties. The court may require payments to third
118 parties in the form of automobile loan installments or
119 insurance coverage if available at reasonable rates, and
120 any such payments made pursuant to this subdivision
121 for the benefit of the other party shall be deemed to be
122 alimony or installment payments for the distribution of
123 marital property, as the court may direct. Nothing
124 contained in this subdivision shall abrogate an existing
125 contract between either of the parties and a third party
126 or affect the rights and liabilities of either party or a
127 third party under the terms of such contract.

128 (7) When the pleadings include a specific request for
129 specific property or raise issues concerning the equita-
130 ble division of marital property as defined in section one
131 of this article, the court shall order such relief as may
132 be required to effect a just and equitable distribution
133 of the property and to protect the equitable interests of
134 the parties therein.

135 (8) Unless a contrary disposition is ordered pursuant
136 to other provisions of this section, then upon the motion
137 of either party, the court may compel the other party
138 to deliver to the moving party any of his or her separate
139 estate which may be in the possession or control of the
140 respondent party and may make such further order as
141 is necessary to prevent either party from interfering
142 with the separate estate of the other.

143 (9) When allegations of abuse have been proven, the
144 court shall enjoin the offending party from molesting or
145 interfering with the other, or otherwise imposing any
146 restraint on the personal liberty of the other, or
147 interfering with the custodial or visitation rights of the
148 other. Such order may permanently enjoin the offending
149 party from entering the school, business or place of
150 employment of the other for the purpose of molesting or
151 harassing the other; or from contacting the other, in
152 person or by telephone, for the purpose of harassment
153 or threats; or from harassing or verbally abusing the
154 other in a public place.

155 (10) The court may order either party to take
156 necessary steps to transfer utility accounts and other
157 accounts for recurring expenses from the name of one
158 party into the name of the other party or from the joint
159 names of the parties into the name of one party. Nothing
160 contained in this subdivision shall affect the liability of
161 the parties for indebtedness on any such account
162 incurred before the transfer of such account.

163 (c) When an annulment or divorce is denied, the court
164 shall retain jurisdiction of the case and may order all
165 or any portion of the relief provided for in subsections
166 (a) and (b) of this section which has been demanded or
167 prayed for in the pleadings.

168 (d) When a divorce or annulment is granted in this
169 state upon constructive service of process and personal
170 jurisdiction is thereafter obtained of the defendant in
171 such case, the court may order all or any portion of the
172 relief provided for in subsections (a) and (b) of this
173 section which has been demanded or prayed for in the
174 pleadings.

175 (e) At any time after the entry of an order pursuant
176 to the provisions of this section, the court may, upon
177 motion of either party, revise or alter the order
178 concerning the maintenance of the parties, or either of
179 them, and make a new order concerning the same,
180 issuing it forthwith, as the altered circumstances or
181 needs of the parties may render necessary to meet the
182 ends of justice.

183 The court may also from time to time afterward, upon
184 motion of either of the parties and upon proper service,
185 revise or alter such order to grant relief pursuant to
186 subdivision (9), subsection (b) of this section, and make
187 a new order concerning the same, issuing it forthwith,
188 as the circumstances of the parties and the benefit of
189 children may require. The court may also from time to
190 time afterward, upon the motion of either of the parties
191 or other proper person having actual or legal custody
192 of the minor child or children of the parties, revise or
193 alter the order concerning the custody and support of
194 the children, and make a new order concerning the
195 same, issuing it forthwith, as the circumstances of the
196 parents or other proper person or persons and the
197 benefit of the children may require: *Provided*, That all
198 orders modifying child support shall be in conformance
199 with the requirements of support guidelines promul-
200 gated pursuant to section eight, article two, chapter
201 forty-eight-a of this code: *Provided, however*, That an
202 order providing for child support payments may be
203 revised or altered for the reason, inter alia, that the
204 existing order provides for child support payments in an
205 amount that is less than eighty-five percent or more
206 than one hundred fifteen percent of the amount that
207 would be required to be paid under the child support
208 guidelines promulgated pursuant to the provisions of

209 said section.

210 In granting relief under this subsection, the court
211 may, when other means are not conveniently available,
212 alter any prior order of the court with respect to the
213 distribution of marital property, if such property is still
214 held by the parties, and if necessary to give effect to a
215 modification of alimony, child support or child custody
216 or necessary to avoid an inequitable or unjust result
217 which would be caused by the manner in which the
218 modification will affect the prior distribution of marital
219 property.

220 (f) When a separation agreement is the basis for an
221 award of alimony, the court, in approving the agree-
222 ment, shall examine the agreement to ascertain whether
223 it clearly provides for alimony to continue beyond the
224 death of the payor party or to cease in such event. When
225 alimony is to be paid pursuant to the terms of a
226 separation agreement which does not state whether the
227 payment of alimony is to continue beyond the death of
228 the payor party or is to cease, or when the parties have
229 not entered into a separation agreement and alimony is
230 to be awarded, the court shall specifically state as a part
231 of its order whether such payments of alimony are to
232 be continued beyond the death of the payor party or
233 cease.

234 (g) When a separation agreement is the basis for an
235 award of alimony, the court, in approving the agree-
236 ment, shall examine the agreement to ascertain whether
237 it clearly provides for alimony to continue beyond the
238 remarriage of the payee party or to cease in such event.
239 When alimony is to be paid pursuant to the terms of a
240 separation agreement which does not state whether the
241 payment of alimony is to continue beyond the remar-
242 riage of the payee party or is to cease, or where when
243 the parties have not entered into a separation agreement
244 and alimony is to be awarded, the court shall specifically
245 state as a part of its order whether such payments of
246 alimony are to be continued beyond the remarriage of
247 the payee party or cease.

248 (h) In addition to the disclosure requirements set forth

249 in section thirty-three of this article, the court may
250 order accounts to be taken as to all or any part of
251 marital property or the separate estates of the parties
252 and may direct that the accounts be taken as of the date
253 of the marriage, the date upon which the parties
254 separated or any other time in assisting the court in the
255 determination and equitable division of property.

256 (i) In determining whether alimony is to be awarded,
257 or in determining the amount of alimony, if any, to be
258 awarded under the provisions of this section, the court
259 shall consider and compare the fault or misconduct of
260 either or both of the parties and the effect of such fault
261 or misconduct as a contributing factor to the deteriora-
262 tion of the marital relationship. However, alimony shall
263 not be awarded when both parties prove grounds for
264 divorce and are denied a divorce, nor shall an award of
265 alimony under the provisions of this section be ordered
266 which directs the payment of alimony to a party
267 determined to be at fault, when, as a grounds granting
268 the divorce, such party is determined by the court:

269 (1) To have committed adultery; or

270 (2) To have been convicted for the commission of a
271 crime which is a felony, subsequent to the marriage if
272 such conviction has become final; or

273 (3) To have actually abandoned or deserted his or her
274 spouse for six months.

275 (j) Whenever under the terms of this section or section
276 thirteen of this article a court enters an order requiring
277 the payment of alimony or child support, if the court
278 anticipates the payment of such alimony or child
279 support or any portion thereof to be paid out of
280 "disposable retired or retainer pay" as that term is
281 defined in 10 U.S.C. §1408, relating to members or
282 former members of the uniformed services of the United
283 States, the court shall specifically provide for the
284 payment of an amount, expressed in dollars or as a
285 percentage of disposable retired or retainer pay, from
286 the disposable retired or retainer pay of the payor party
287 to the payee party.

- 288 (k) Any order which provides for the custody or
289 support of a minor child shall include:
- 290 (1) The name of the custodian;
- 291 (2) The amount of the support payments;
- 292 (3) The date the first payment is due;
- 293 (4) The frequency of the support payments;
- 294 (5) The event or events which trigger termination of
295 the support obligation;
- 296 (6) A provision regarding wage withholding;
- 297 (7) The address where payments shall be sent;
- 298 (8) A provision for medical support;
- 299 (9) When child support guidelines are not followed, a
300 specific written finding pursuant to section eight, article
301 two, chapter forty-eight-a of this code.
- 302 (l) (1) Unless the best interests of the child require
303 otherwise, every final order and every modification
304 order which provides for the custody of a minor child
305 of the parties shall also provide for the following:
- 306 (A) The custodial parent shall be required to autho-
307 rize school authorities in the school in which the child
308 is enrolled to release to the noncustodial parent copies
309 of any and all information concerning the child which
310 would otherwise be properly released to the custodial
311 parent;
- 312 (B) The custodial parent shall be required, promptly
313 after receipt, to transmit to the noncustodial parent a
314 copy of the child's grades or report card and copies of
315 any other reports reflecting the status or progress of the
316 child;
- 317 (C) The custodial parent shall be required, when
318 practicable, to arrange appointments for parent-teacher
319 conferences at a time when the noncustodial parent can
320 be present;
- 321 (D) The custodial parent shall be required to autho-
322 rize medical providers to release to the noncustodial

323 parent copies of any and all information concerning
324 medical care provided to the child which would other-
325 wise be properly released to the custodial parent;

326 (E) The custodial parent shall be required to promptly
327 inform the noncustodial parent of any illness of the child
328 which requires medical attention; or, if the child is in
329 the actual physical custody of the noncustodial parent
330 during a period of visitation, the noncustodial parent
331 shall be required to promptly inform the custodial
332 parent of any illness of the child which requires medical
333 attention;

334 (F) The custodial parent shall be required to consult
335 with the noncustodial parent prior to any elective
336 surgery being performed on the child; and in the event
337 emergency medical procedures are undertaken for the
338 child which require the parental consent of either
339 parent, if time permits, the other parent shall be
340 consulted, or if time does not permit such consultation,
341 the other parent shall be promptly informed of such
342 emergency medical procedures: *Provided*, That the same
343 duty to inform the custodial parent applies to the
344 noncustodial parent in the event that the emergency
345 medical procedures are required while the child is in the
346 physical custody of the noncustodial parent during a
347 period of visitation: *Provided, however*, That nothing
348 contained herein shall be deemed to alter or amend the
349 law of this state as it otherwise pertains to physicians
350 or health care facilities obtaining parental consent prior
351 to providing medical care or performing medical
352 procedures.

353 (2) In the event a custodial parent shall fail or refuse
354 to authorize the release of school or medical records as
355 provided for by subdivision (1) of this subsection, then
356 upon the ex parte application of the noncustodial parent,
357 the family law master shall prepare an order for entry
358 by the circuit court which appoints the family law
359 master as a special commissioner authorized to execute
360 a consent for the release of such records and direct it
361 to the appropriate school authorities or medical provid-
362 ers.

§48-2-33. Disclosure of assets required.

1 (a) In all divorce actions and in any other action
2 involving child support, all parties shall fully disclose
3 their assets and liabilities within forty days after the
4 service of summons or at such earlier time as ordered
5 by the court. The information contained on these forms
6 shall be updated on the record to the date of the hearing.

7 (b) The disclosure required by this section may be
8 made by each party individually or by the parties
9 jointly. Assets required to be disclosed shall include, but
10 shall not be limited to, real property, savings accounts,
11 stocks and bonds, mortgages and notes, life insurance,
12 health insurance coverage, interest in a partnership or
13 corporation, tangible personal property, income from
14 employment, future interests whether vested or non-
15 vested and any other financial interest or source.

16 (c) The supreme court of appeals shall make available
17 to the circuit courts a standard form for the disclosure
18 of assets and liabilities required by this section. The
19 clerk of the circuit court shall make these forms
20 available to all parties in any divorce action or action
21 involving child support. All disclosure required by this
22 section shall be on a form that substantially complies
23 with the form promulgated by the supreme court of
24 appeals. The form used shall contain a statement in
25 conspicuous print that complete disclosure of assets and
26 liabilities is required by law and deliberate failure to
27 provide complete disclosure as ordered by the court
28 constitutes false swearing.

29 (d) Nothing contained in this section shall be
30 construed to prohibit the court from ordering discovery
31 pursuant to rule eighty-one of the rules of civil proce-
32 dure. Additionally, the court may on its own initiative
33 and shall at the request of either party require the
34 parties to furnish copies of all state and federal income
35 tax returns filed by them for the past two years and may
36 require copies of such returns for prior years.

37 (e) Information disclosed under this section shall be
38 confidential and may not be made available to any
39 person for any purpose other than the adjudication,

40 appeal, modification or enforcement of judgment of an
41 action affecting the family of the disclosing parties. The
42 court shall include in any order compelling disclosure
43 of assets such provisions as the court considers necessary
44 to preserve the confidentiality of the information
45 ordered disclosed.

46 (f) Any failure to timely or accurately disclose
47 financial information required by this section may be
48 considered as follows:

49 (1) Upon the failure by either party timely to file a
50 complete disclosure statement as required by this
51 section or as ordered by the court, the court may accept
52 the statement of the other party as accurate.

53 (2) If any party deliberately or negligently fails to
54 disclose information which is required by this section
55 and in consequence thereof any asset or assets with a
56 fair market value of five hundred dollars or more is
57 omitted from the final distribution of property, the
58 party aggrieved by such nondisclosure may at any time
59 petition a court of competent jurisdiction to declare the
60 creation of a constructive trust as to all undisclosed
61 assets, for the benefit of the parties and their minor or
62 dependent children, if any, with the party in whose
63 name the assets are held declared the constructive
64 trustee, such trust to include such terms and conditions
65 as the court may determine. The court shall impose the
66 trust upon a finding of a failure to disclose such assets
67 as required under this section.

68 (3) Any assets with a fair market value of five
69 hundred dollars or more which would be considered
70 part of the estate of either or both of the parties if owned
71 by either or both of them at the time of the action, but
72 which was transferred for inadequate consideration,
73 wasted, given away or otherwise unaccounted for by one
74 of the parties, within five years prior to the filing of the
75 petition or length of the marriage, whichever is shorter,
76 shall be presumed to be part of the estate and shall be
77 subject to the disclosure requirement contained in this
78 section. With respect to such transfers the spouse shall
79 have the same right and remedies as a creditor whose

80 debt was contracted at the time the transfer was made
81 under article one-a, chapter forty of this code. Transfers
82 which resulted in an exchange of assets of substantially
83 equivalent value need not be specifically disclosed when
84 such assets are otherwise identified in the statement of
85 net worth.

86 (4) A person who knowingly provides incorrect
87 information or who deliberately fails to disclose infor-
88 mation pursuant to the provisions of this section is guilty
89 of false swearing.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article

2. West Virginia Child Advocate Office.
4. Proceedings Before a Master.
5. Remedies for the Enforcement of Support Obligations and Visitation.
6. Establishment of Paternity.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-8. Guidelines for child support awards.

1 (a) The director of the child advocate office shall, by
2 legislative rule, establish guidelines for child support
3 award amounts so as to ensure greater uniformity by
4 those persons who make child support recommendations
5 and enter child support orders and to increase predic-
6 tability for parents, children and other persons who are
7 directly affected by child support orders. There shall be
8 a rebuttable presumption, in any proceeding before a
9 family law master or circuit court judge for the award
10 of child support, that the amount of the award which
11 would result from the application of such guidelines is
12 the correct amount of child support to be awarded. A
13 written finding or specific finding on the record that the
14 application of the guidelines would be unjust or
15 inappropriate in a particular case shall be sufficient to
16 rebut the presumption in that case. The guidelines shall
17 not be followed:

18 (1) When the child support award proposed to be
19 made pursuant to the guidelines has been disclosed to
20 the parties and each party has made a knowing and

21 intelligent waiver of said amount, and the support
22 obligors have entered into an agreement which provides
23 for the custody and support of the child or children of
24 the parties; or

25 (2) When the child support award proposed to be
26 made pursuant to the guidelines would be contrary to
27 the best interests of the child or children, or contrary
28 to the best interests of the parties.

29 (b) The Legislature, by the enactment of this article,
30 recognizes that children have a right to share in their
31 natural parents' level of living. Accordingly, guidelines
32 promulgated under the provisions of this section shall
33 not be based upon any schedule of minimum costs for
34 rearing children based upon subsistence level amounts
35 set forth by various agencies of government. The
36 Legislature recognizes that expenditures in families are
37 not made in accordance with subsistence level stand-
38 ards, but are rather made in proportion to household
39 income, and as parental incomes increase or decrease,
40 the actual dollar expenditures for children also increase
41 or decrease correspondingly. In order to ensure that
42 children properly share in their parents' resources,
43 regardless of family structure, the guidelines shall be
44 structured so as to provide that after a consideration of
45 respective parental incomes, that child support will be
46 related, to the extent practicable, to the level of living
47 which such children would enjoy if they were living in
48 a household with both parents present.

49 (c) The guidelines promulgated under the provisions
50 of this section shall take into consideration the financial
51 contributions of both parents. The Legislature recog-
52 nizes that expenditures in households are made in
53 aggregate form and that total family income is pooled
54 to determine the level at which the family can live. The
55 guidelines shall provide for examining the financial
56 contributions of both parents in relationship to total
57 income, so as to establish and equitably apportion the
58 child support obligation. Under the guidelines, the child
59 support obligation of each parent will vary proportion-
60 ately according to their individual incomes.

61 (d) The guidelines shall be structured so as to take
62 into consideration any preexisting support orders which
63 impose additional duties of support upon an obligor
64 outside of the instant case and shall provide direction
65 in cases involving split or shared custody.

66 (e) The guidelines shall have application to cases of
67 divorce, paternity, actions for support and modifications
68 thereof.

69 (f) In promulgating the legislative rule provided for
70 under the provisions of this section, the director shall be
71 directed by the following legislative findings:

72 (1) That amounts to be fixed as child support should
73 not include awards for alimony, notwithstanding the
74 fact that any amount fixed as child support will impact
75 upon the living conditions of custodial parents;

76 (2) That parental expenditures on children represent
77 a relatively constant percentage of family consumption
78 as family consumption increases, so that as family
79 income increases, the family's level of consumption
80 increases, and the children should share in and benefit
81 from this increase;

82 (3) That parental expenditures on children represent
83 a declining proportion of family income as the gross
84 income of the family increases, so that while total dollar
85 outlays for children have a positive relationship to the
86 family's gross income, the proportion of gross family
87 income allotted for the children has a negative relation-
88 ship to gross income;

89 (4) That expenditures on children vary according to
90 the number of children in the family, and as the number
91 of children in the family increases, the expenditures for
92 the children as a group increase and the expenditures
93 on each individual child decrease; so that due to
94 increasing economies of scale and the increased sharing
95 of resources among family members, spending will not
96 increase in direct proportion to the number of children;

97 (5) That as children grow older, expenditures on
98 children increase, particularly during the teenage years.

99 (g) The director of the child advocate office shall
100 review the guidelines at least once every four years to
101 ensure that their application results in the determina-
102 tion of appropriate child support awards. Such four-year
103 period shall begin on the first day of July, one thousand
104 nine hundred eighty-nine. Upon completion of the four-
105 year review period ending on the thirtieth day of June,
106 one thousand nine hundred ninety-three, after consult-
107 ing with the supreme court of appeals, circuit judges
108 and family law masters, the director shall propose for
109 promulgation a legislative rule in accordance with the
110 provisions of article three, chapter twenty-nine-a of this
111 code which amends and updates the guidelines required
112 by this section. Such proposed amended rule, shall
113 include, but not be limited to, provisions regarding the
114 following subject matters:

115 (1) In determining the child support obligation of a
116 parent whose employment income consists, in part, of
117 compensation for overtime hours worked, the guidelines
118 shall provide for a child support order which includes
119 a consideration of such overtime compensation, balanc-
120 ing the interest of children to share in the resources of
121 such parent with the interest of the parent in not being
122 penalized for accepting overtime work. Any formula
123 which is used to compute anticipated overtime compen-
124 sation shall allow for the irregular nature of such
125 compensation.

126 (2) In determining the child support obligation of a
127 parent whose employment income consists of compensa-
128 tion for seasonal employment, the guidelines shall
129 provide for discretionary use of alternative payment
130 schedules which may vary the periodic amounts re-
131 quired to be paid.

132 (3) In determining the child support obligation of a
133 parent whose support obligation extends to the children
134 of more than one family, the guidelines shall be
135 structured so as to equitably provide for all children to
136 whom the obligor owes a duty of support.

ARTICLE 4. PROCEEDINGS BEFORE A MASTER.

- §48A-4-1. Appointment of family law masters; term of office; vacancy; removal.
- §48A-4-2. Qualifications of family law masters.
- §48A-4-3. Compensation and expenses of family law masters and their staffs.
- §48A-4-4. Assignment of family law masters by geographical regions.
- §48A-4-5. Rules.
- §48A-4-6. Matters to be heard by a family law master.
- §48A-4-7. Fees for the services of a family law master.
- §48A-4-8. Hearings before a master.
- §48A-4-9. Hearing procedures.
- §48A-4-10. Acts or failures to act in the physical presence of family law masters.
- §48A-4-11. Family law master's docket.
- §48A-4-12. Default orders; temporary orders.
- §48A-4-13. Recommended orders.
- §48A-4-14. Form of notice of recommended order.
- §48A-4-15. Orders to be entered by circuit court exclusively.
- §48A-4-16. Circuit court review of master's action or recommended order.
- §48A-4-17. Procedure for review by circuit court.
- §48A-4-18. Form of petition for review.
- §48A-4-19. Answer in opposition to a petition for review.
- §48A-4-20. Circuit court review of master's recommended order.
- §48A-4-21. County commissions required to furnish offices for the family law master.
- §48A-4-22. Budget of the family law master system.
- §48A-4-23. Family law masters fund.
- §48A-4-24. Continuation of family law masters system.

§48A-4-1. Appointment of family law masters; term of office; vacancy; removal.

- 1 (a) The family law masters holding office on the
- 2 effective date of this section by virtue of appointments
- 3 made under the prior enactments of this article shall
- 4 continue their service for a term of office ending on the
- 5 thirtieth day of June, one thousand nine hundred ninety-
- 6 four. Before the first day of July, one thousand nine
- 7 hundred ninety-four, the governor shall appoint family
- 8 law masters in such numbers and to serve such areas
- 9 of the state as provided for under the provisions of this
- 10 article, with terms commencing on the first day of July,
- 11 one thousand nine hundred ninety-four, and on a like
- 12 date in every fourth year thereafter, and ending on the
- 13 thirtieth day of June, one thousand nine hundred ninety-
- 14 eight, and on a like date in every fourth year thereafter.
- 15 Upon the expiration of his or her term, a family law
- 16 master may continue to perform the duties of the office

17 until the governor makes the appointment, or for sixty
18 days after the date of the expiration of the master's
19 term, whichever is earlier. If a vacancy occurs in the
20 office of family law master, the governor shall, within
21 thirty days after such vacancy occurs, fill the 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 or
25 her discretion, simultaneously appoint an individual to
26 the unexpired term and to the next succeeding full four-
27 year term.

28 (b) An individual may be reappointed to succeeding
29 terms as a family law master to serve in the same or
30 a different region of the state.

31 (c) Removal of a master during the term for which
32 he or she is appointed shall be as follows:

33 (1) Upon a recommendation by the judicial hearing
34 board created pursuant to the rules of procedure for the
35 handling of complaints against justices, judges, magis-
36 trates and family law masters, if the supreme court of
37 appeals shall find that a family law master has violated
38 the judicial code of ethics or that the master, because
39 of advancing years and attendant physical or mental
40 incapacity, should not continue to serve, the supreme
41 court of appeals may, in lieu of or in addition to any
42 disposition authorized by such rules, remove the family
43 law master from office.

44 (2) The supreme court of appeals may remove a
45 master when conduct of the family law master evidences
46 incompetence, unsatisfactory performance, misconduct,
47 neglect of duty or physical or mental disability.

§48A-4-2. Qualifications of family law masters.

1 (a) No individual may be appointed to serve as a
2 family law master unless he or she is a member in good
3 standing of the West Virginia state bar.

4 (b) No person may assume the duties of family law
5 master unless he or she has first attended and completed
6 a course of instruction in principles of family law and
7 procedure which is given in accordance with the

8 supervisory rules of the supreme court of appeals. All
9 family law masters shall attend all courses of continuing
10 educational instruction as may be required by supervi-
11 sory rule of the supreme court of appeals. Failure to
12 attend such courses of continuing educational instruc-
13 tion without good cause shall constitute a neglect of
14 duty. These courses shall be provided at least once every
15 other year. Persons attending such courses outside of the
16 county of their residence shall be reimbursed by the
17 state for expenses actually incurred in accordance with
18 the supervisory rules of the supreme court of appeals.

19 (c) A family law master may not engage in any other
20 business, occupation or employment inconsistent with
21 the expeditious, proper and impartial performance of
22 his or her duties as a judicial officer. A full-time family
23 law master shall not engage in the outside practice of
24 law and shall devote full time to his or her duties as a
25 judicial officer. Part-time family law masters who do
26 not engage in the practice of criminal law shall be
27 exempt from the appointments in indigent cases which
28 would otherwise be required pursuant to article twenty-
29 one, chapter twenty-nine of this code.

30 (d) All family law masters and all necessary clerical
31 and secretarial assistants employed in the offices of
32 family law masters are officers or employees of the
33 judicial branch of state government.

**§48A-4-3. Compensation and expenses of family law
masters and their staffs.**

1 (a) Prior to the first day of July, one thousand nine
2 hundred ninety-four, a family law master shall receive
3 as full compensation for his or her services an annual
4 salary of thirty-five thousand dollars.

5 (b) After the first day of July, one thousand nine
6 hundred ninety-four, a full-time family law master shall
7 receive as full compensation for his or her services an
8 annual salary of fifty thousand dollars and a part-time
9 family law master shall receive as full compensation for
10 his or her services an annual salary of thirty-seven
11 thousand five hundred dollars.

12 (c) The secretary-clerk of the family law master shall
13 be appointed by the family law master and serve at his
14 or her will and pleasure and shall receive an annual
15 salary of seventeen thousand five hundred dollars:
16 *Provided*, That subsequent to the first day of July, one
17 thousand nine hundred ninety-three, the secretary-clerk
18 may receive such percentage or proportional salary
19 increases as may be provided for by general law for
20 other public employees and shall receive the annual
21 incremental salary increase as provided for in article
22 five, chapter five of this code.

23 (d) A temporary or special family law master shall be
24 compensated by the supreme court of appeals at an
25 hourly rate not to exceed the hourly rate paid to panel
26 attorneys for performing work in court pursuant to the
27 provisions of section thirteen-a, article twenty-one,
28 chapter twenty-nine of this code.

29 (e) Disbursement of salaries for family law masters
30 and members of their staffs shall be made by or
31 pursuant to the order of the director of the administra-
32 tive office of the supreme court of appeals.

33 (f) Family law masters, members of their staffs and
34 temporary family law masters shall be allowed their
35 actual and necessary expenses incurred in the perfor-
36 mance of their duties. Such expenses and compensation
37 shall be determined and paid by the director of the
38 administrative office of the supreme court of appeals
39 under such guidelines as he or she may prescribe as
40 approved by the supreme court of appeals.

**§48A-4-4. Assignment of family law masters by geogra-
phical regions.**

1 (a) Prior to the first day of July, one thousand nine
2 hundred ninety-four, the offices of the family law
3 masters shall be distributed geographically so as to
4 provide an office of the family law master for each of
5 the following regions:

6 (1) The counties of Brooke, Hancock and Ohio;

7 (2) The counties of Marshall, Tyler and Wetzel;

- 8 (3) The counties of Pleasants, Ritchie, Wirt and Wood;
9 (4) The counties of Calhoun, Jackson and Roane;
10 (5) The counties of Mason and Putnam;
11 (6) The county of Cabell;
12 (7) The counties of McDowell and Wyoming;
13 (8) The counties of Logan and Mingo;
14 (9) The county of Kanawha;
15 (10) The county of Raleigh;
16 (11) The counties of Mercer and Summers;
17 (12) The counties of Fayette and Nicholas;
18 (13) The counties of Greenbrier, Pocahontas and
19 Monroe;
20 (14) The counties of Braxton, Clay, Gilmer and
21 Webster;
22 (15) The counties of Doddridge, Harrison, Lewis and
23 Upshur;
24 (16) The counties of Marion and Taylor;
25 (17) The counties of Monongalia and Preston;
26 (18) The counties of Barbour, Randolph and Tucker;
27 (19) The counties of Grant, Hampshire, Hardy,
28 Mineral and Pendleton;
29 (20) The counties of Berkeley, Jefferson and Morgan;
30 and
31 (21) The counties of Boone, Lincoln and Wayne.

32 There shall be a total of twenty-two family law
33 masters serving throughout the state. Two masters shall
34 be assigned to the office of the family law master for
35 the region of Kanawha county. In each of the other
36 regions defined by this subsection, one individual shall
37 be assigned as family law master for each such region.

38 (b) On and after the first day of July, one thousand
39 nine hundred ninety-four, there shall be a total of

40 twenty-six family law masters, not more than fourteen
41 of whom shall be full-time masters, to serve throughout
42 the state. During the year immediately preceding the
43 appointment of law masters as provided for in section
44 one of this article, the supreme court of appeals shall
45 apportion the state into geographical regions which may
46 be single-master regions or multi-master regions, or a
47 combination of both. County boundaries shall be strictly
48 observed and no county may be divided among two or
49 more regions. Otherwise, in making such apportion-
50 ment, the supreme court of appeals shall construct
51 regions which provide, as nearly as is practicable, for
52 the case load of each master to be equal to that of other
53 masters. Mathematical exactness as to case load is not
54 required and deviations from an absolute standard may
55 be based upon concerns, other than case load, including,
56 but not limited to, deviations dictated by the following
57 considerations:

58 (1) Judicial circuits;

59 (2) Geographical features which affect the time and
60 expense of travel;

61 (3) Traditional patterns of practice by members of the
62 bar; and

63 (4) Population variances between regions.

64 (c) In the region which includes Kanawha county, of
65 the masters appointed, not less than two shall be part-
66 time masters.

67 (d) Nothing contained herein shall prohibit the chief
68 justice of the supreme court of appeals from temporarily
69 assigning a family law master from one geographical
70 region to another geographical region, as case load,
71 disqualification, recusal, vacation or illness may dictate.

72 (e) The administrative office of the supreme court
73 shall promulgate any procedural rule necessary to
74 delineate the duties of the part-time and full-time law
75 masters consistent with this article.

§48A-4-5. Rules.

1 (a) Pleading, practice and procedure in matters before

2 a family law master shall be governed by rules of
3 practice and procedure for family law made and
4 promulgated by the supreme court of appeals pursuant
5 to the provisions of section four, article one, chapter
6 fifty-one of this code.

7 (b) The West Virginia rules of evidence shall apply
8 to proceedings before a family law master.

9 (c) The judge of a circuit court, or the chief judge
10 thereof, may promulgate local administrative rules
11 governing the conduct and administration of family law
12 master offices serving the court, which rules shall be
13 subordinate and subject to the rules of the supreme
14 court of appeals or the orders of the chief justice thereof.
15 Rules promulgated by the judge of a circuit court, or
16 the chief judge thereof, shall be made by order entered
17 upon the order book of the circuit court, as hereinafter
18 provided, and shall be effective when filed with the
19 clerk of the supreme court of appeals.

§48A-4-6. Matters to be heard by a family law master.

1 (a) A circuit court or the chief judge thereof shall
2 refer to the master the following matters for hearing to
3 be conducted pursuant to sections eight and nine of this
4 article:

5 (1) Actions to obtain orders of support brought under
6 the provisions of section one, article five of this chapter;

7 (2) All actions to establish paternity brought under
8 the provisions of article six of this chapter and any
9 dependent claims related to such action regarding child
10 support, custody and visitation;

11 (3) All petitions for writs of habeas corpus wherein
12 the issue contested is child custody;

13 (4) All motions for temporary relief affecting child
14 custody, visitation, child support, spousal support or
15 family violence, wherein either party has requested such
16 referral or the court on its own motion in individual
17 cases or by general order has referred such motions to
18 the master: *Provided*, That if the family law master
19 determines, in his or her discretion, that the pleadings

20 raise substantial issues concerning the identification of
21 separate property or the division of marital property
22 which may have a bearing on an award of support, the
23 family law master shall notify the court of this fact and
24 the circuit court shall refer the case to a temporary or
25 special law master or commissioner of the court
26 designated by the chief justice of the supreme court;

27 (5) All petitions for modification of an order involving
28 child custody, child visitation, child support or spousal
29 support;

30 (6) All actions for divorce, annulment or separate
31 maintenance brought pursuant to article two, chapter
32 forty-eight of this code: *Provided*, That an action for
33 divorce, annulment or separate maintenance which does
34 not involve child custody or child support shall be heard
35 by the circuit judge if, at the time of the filing of the
36 action, the parties file a written property settlement
37 agreement which has been signed by both parties;

38 (7) All actions wherein an obligor is contesting the
39 enforcement of an order of support through the with-
40 holding from income of amounts payable as support or
41 is contesting an affidavit of accrued support, filed with
42 a circuit clerk, which seeks to collect arrearages;

43 (8) All actions commenced under the provisions of
44 article seven of this chapter or under the provisions of
45 the revised uniform reciprocal enforcement of support
46 act of any other state;

47 (9) Proceedings for the enforcement of support,
48 custody or visitation orders: *Provided*, That contempt
49 actions shall be heard by a circuit judge; and

50 (10) All actions to establish custody of a minor child
51 or visitation with a minor child, including actions
52 brought pursuant to the uniform child custody jurisdic-
53 tion act and actions brought to establish grandparent
54 visitation: *Provided*, That any action instituted under
55 article six, chapter forty-nine shall be heard by a circuit
56 judge.

57 (b) On its own motion or upon motion of a party, the
58 circuit court may revoke the referral of a particular

59 matter to a master if the master is recused, if the matter
60 is uncontested, or for other good cause, or if the matter
61 will be more expeditiously and inexpensively heard by
62 the circuit judge without substantially affecting the
63 rights of parties in actions which must be heard by the
64 circuit court.

§48A-4-7. Fees for the services of a family law master.

1 (a) The payment of initial fees for a hearing before
2 a master shall be paid before the commencement of the
3 hearing. Any additional hourly fees beyond the initial
4 fee shall be paid at the conclusion of the hearing, unless
5 a party is excused from payment thereof under the
6 provisions of section one, article two, chapter fifty-nine
7 of this code. Such initial fees may be paid at any time
8 prior to such hearing, but shall not be required at the
9 time the action is filed, and no advance payment shall
10 be required for additional fees beyond the initial fees
11 required by this section. Any payment of fees for a
12 hearing shall be refunded by the clerk of the circuit
13 court if the master verifies that such hearing was not
14 held, upon the request of the person paying such fees.

15 (b) Fees for hearings before a master shall be taxed
16 as court costs, which costs may be assessed against
17 either party or apportioned between the parties, in the
18 discretion of the master. The assessment of court costs
19 shall be made at the conclusion of the hearing and
20 included as findings in each case of a master's recom-
21 mended order. The fees for hearings before a master
22 shall be as follows:

23 (1) For an action to establish an order of support, fifty
24 dollars;

25 (2) For an action to establish paternity, one hundred
26 dollars;

27 (3) For a motion for temporary relief affecting
28 custody, visitation, child support or spousal support,
29 fifty dollars;

30 (4) For a petition for modification of an order
31 involving child custody, child visitation, child support or
32 spousal support, fifty dollars: *Provided*, That if the

33 matter is contested, the fee shall be fifty dollars for the
34 first hour or any portion thereof, and thirty dollars per
35 hour for each subsequent hour or any portion thereof;

36 (5) For an uncontested divorce, annulment or separate
37 maintenance action, fifty dollars;

38 (6) For a proceeding for the enforcement of an order,
39 fifty dollars: *Provided*, That if the matter is contested,
40 the fee shall be fifty dollars for the first hour or any
41 portion thereof, and thirty dollars per hour for each
42 subsequent hour or any portion thereof;

43 (7) For a contested divorce, annulment or separate
44 maintenance action matured for final hearing, fifty
45 dollars for the first hour or any portion thereof, and
46 thirty dollars per hour for each subsequent hour or any
47 portion thereof;

48 (8) For an action to establish custody of a minor child,
49 including habeas corpus proceedings, fifty dollars:
50 *Provided*, That if the matter is contested, the fee shall
51 be fifty dollars for the first hour or any portion thereof,
52 and thirty dollars per hour for each subsequent hour or
53 any portion thereof; and

54 (9) For an action to establish visitation with a minor
55 child, including grandparent visitation, fifty dollars:
56 *Provided*, That if the matter is contested, the fee shall
57 be fifty dollars for the first hour or any portion thereof,
58 and thirty dollars per hour for each subsequent hour or
59 any portion thereof.

§48A-4-8. Hearings before a master.

1 (a) Persons entitled to notice of a master's hearing
2 shall be timely informed of:

3 (1) The time, place and nature of the hearing;

4 (2) The legal authority and jurisdiction under which
5 the hearing is to be held; and

6 (3) The matters of fact and law asserted.

7 (b) The master shall give all interested parties
8 opportunity for the submission and consideration of

9 facts, arguments, offers of settlement or proposals of
10 adjustment when time, the nature of the proceedings
11 and the public interest permit. To the extent that the
12 parties are unable to settle or compromise a controversy
13 by consent, the master shall provide the parties a
14 hearing and make a recommended order in accordance
15 with the provisions of sections nine and thirteen of this
16 article.

17 (c) The master who presides at the reception of
18 evidence pursuant to section nine of this article shall
19 prepare the default order or make and enter the
20 temporary order provided for in section twelve of this
21 article, or make the recommended order required by
22 section thirteen of this article, as the case may be.
23 Except to the extent required for disposition of ex parte
24 matters as authorized by this chapter, a master may not
25 consult a person or party on a fact in issue, unless on
26 notice and opportunity for all parties to participate; nor
27 shall the master attempt to supervise or direct an
28 employee or agent engaged in the performance of
29 investigative or prosecuting functions for a prosecuting
30 attorney, the division of human services or any other
31 agency or political subdivision of this state.

§48A-4-9. Hearing procedures.

1 (a) This section applies, according to the provisions
2 thereof, to hearings required by section six of this article
3 to be conducted in accordance with this section.

4 (b) A master to whom a matter is referred pursuant
5 to the provisions of section six of this article shall
6 preside at the taking of evidence.

7 (c) A master presiding at a hearing under the
8 provisions of this chapter may:

9 (1) Administer oaths and affirmations, compel the
10 attendance of witnesses and the production of docu-
11 ments, examine witnesses and parties and otherwise
12 take testimony, receive relevant evidence and establish
13 a record;

14 (2) Rule on motions for discovery and offers of proof;

- 15 (3) Take depositions or have depositions taken when
16 the ends of justice may be served;
- 17 (4) Regulate the course of the hearing;
- 18 (5) Hold pre-trial conferences for the settlement or
19 simplification of issues and enter time frame orders
20 which shall include, but not be limited to, discovery cut-
21 offs, exchange of witness lists and agreements on
22 stipulations, contested issues, and hearing schedules;
- 23 (6) Make and enter temporary orders on procedural
24 matters, including, but not limited to, substitution of
25 counsel, amendment of pleadings, requests for hearings
26 and other similar matters;
- 27 (7) Accept voluntary acknowledgements of support
28 liability or paternity;
- 29 (8) Accept stipulated agreements;
- 30 (9) Prepare default orders for entry if the person
31 against whom an action is brought does not respond to
32 notice or process within the time required;
- 33 (10) Recommend orders in accordance with the
34 provisions of section thirteen of this article;
- 35 (11) Require the issuance of subpoenas and subpoenas
36 duces tecum, issue writs of attachment, hold hearings
37 in aid of execution and propound interrogatories in aid
38 of execution and fix bond or other security in connection
39 with an action for enforcement in a child or spousal
40 support matter; and
- 41 (12) Take other action authorized by general order of
42 the circuit court or the chief judge thereof consistent
43 with the provisions of this chapter.
- 44 (d) Except as otherwise provided by law, a moving
45 party has the burden of proof on a particular question
46 presented. Any oral or documentary evidence may be
47 received, but the master shall exclude irrelevant,
48 immaterial or unduly repetitious evidence. A party is
49 entitled to present his or her case or defense by oral or
50 documentary evidence, to submit rebuttal evidence and
51 to conduct such cross-examination as may be required

52 for a full and true disclosure of the facts. In determining
53 claims for money due or the amount of payments to be
54 made, when a party will not be prejudiced thereby, the
55 master may adopt procedures for the submission of all
56 or part of the evidence in written form.

57 (e) Hearings before a master shall be recorded
58 electronically. A magnetic tape or other electronic
59 recording medium on which a hearing is recorded shall
60 be indexed and securely preserved by the secretary-
61 clerk of the family law master and shall not be placed
62 in the case file in the office of the circuit clerk: *Provided,*
63 That upon the request of the family law master, such
64 magnetic tapes or other electronic recording media shall
65 be stored by the clerk of the circuit court. When
66 requested by either of the parties, a master shall provide
67 a duplicate copy of the tape or other electronic recording
68 medium of each hearing held. For evidentiary purposes,
69 a duplicate of such electronic recording prepared by the
70 secretary-clerk shall be a "writing" or "recording" as
71 those terms are defined in rule 1001 of the West
72 Virginia rules of evidence, and unless the duplicate is
73 shown not to reflect the contents accurately, it shall be
74 treated as an original in the same manner that data
75 stored in a computer or similar data is regarded as an
76 "original" under such rule. The party requesting the
77 copy shall pay to the master an amount equal to the
78 actual cost of the tape or other medium or the sum of
79 five dollars, whichever is greater. Unless otherwise
80 ordered by the court, the preparation of a transcript and
81 the payment of the cost thereof shall be the responsibil-
82 ity of the party requesting the transcript.

83 (f) The recording of the hearing or the transcript of
84 testimony, as the case may be, and the exhibits, together
85 with all papers and requests filed in the proceeding,
86 constitute the exclusive record for recommending an
87 order in accordance with section thirteen of this article,
88 and on payment of lawfully prescribed costs, shall be
89 made available to the parties. When a master's final
90 recommended order rests on official notice of a material
91 fact not appearing in the evidence in the record, a party
92 is entitled, on timely request, to an opportunity to show

93 the contrary.

§48A-4-10. Acts or failures to act in the physical presence of family law masters.

1 (a) If in the master's presence a party, witness or
2 other person conducts himself in a manner which would
3 constitute direct contempt if committed in the presence
4 of a circuit judge, the master shall halt any proceeding
5 which may be in progress and inform the person that
6 their conduct constitutes direct contempt and give notice
7 of the procedures and possible dispositions which may
8 result.

9 (b) (1) If a circuit judge is sitting in the same county
10 in which the conduct occurred, or is otherwise available,
11 the alleged contemnor shall be immediately taken before
12 the circuit judge. Disposition of these matters shall be
13 given priority over any other matters, with the excep-
14 tion of a criminal trial in progress.

15 (2) If a circuit judge is unavailable, then the master
16 shall schedule a hearing before the circuit court and the
17 alleged contemnor shall be advised, on the record, of the
18 time and place of the hearing. The master may elect,
19 in his or her discretion, to obtain a warrant for the
20 arrest of the alleged contemnor from the magistrate
21 court on the charge of contempt with the matter to be
22 heard by the circuit court.

23 (c) At the hearing, the circuit court shall be advised
24 of the charges, receive the evidence and rule in the same
25 manner as would be appropriate if the conduct com-
26 plained of occurred in the physical presence of a circuit
27 judge. In addition to other sanctions the court may
28 award attorney's fees and costs.

29 (d) Prior to or during any hearing before a master,
30 if the master determines that a situation exists which
31 warrants the presence of security during such hearing,
32 the master shall inform the sheriff of the need for such
33 security and the time and place of the hearing, and the
34 sheriff shall assign a deputy to act as bailiff during such
35 hearing.

§48A-4-11. Family law master's docket.

1 (a) Every family law master shall establish a regular
2 docket or other means for hearing urgent motions
3 regarding child support, child custody or visitation,
4 protection from family violence or abuse, possession of
5 the home or other urgent matter. The family law master
6 shall make all decisions and rulings before him or her
7 within thirty days, or sooner after the close of the
8 evidence in the proceeding before the master. If the
9 master's recommended decision is not so timely made,
10 the master shall, in writing, notify the administrator of
11 the West Virginia supreme court as to why he or she
12 has not so ruled; and the administrator of the West
13 Virginia supreme court may take appropriate action
14 against said master including pay suspensions, or
15 reprimand or dismissal without pay for up to six
16 months.

17 (b) Upon the request of the family law master, the
18 clerk of the circuit court shall, under the general
19 direction of the master, maintain the master's docket,
20 schedule trials and hearings and deliver case files to the
21 master.

***§48A-4-12. Default orders; temporary orders.**

1 (a) In any proceeding in which the amount of support
2 is to be established, if the obligor has been served with
3 notice of a hearing before a master and does not enter
4 an appearance, the family law master shall prepare a
5 default order for entry by the circuit judge, which order
6 fixes support in an amount at least equal to the amount
7 paid as public assistance under section four, article
8 three, chapter nine of this code, if the obligee or
9 custodian receives public assistance, or in an amount at
10 least equal to the amount that would be paid as public
11 assistance if the obligee or custodian were eligible to
12 receive public assistance, unless the family law master
13 has sufficient information in the record so as to
14 determine the amount to be fixed in accordance with the
15 child support guidelines.

*Clerk's Note: This section was also amended by S. B. 20 (Chapter 155), which passed prior to this act.

16 (b) A master who presides at a hearing under the
17 provisions of section nine of this article is authorized to
18 make and enter temporary support and custody orders
19 which, when entered, shall be enforceable and have the
20 same force and effect under law as temporary support
21 orders made and entered by a judge of the circuit court,
22 unless and until such support orders are modified,
23 vacated or superseded by an order of the circuit court.

24 (c) All orders prepared by a master shall provide for
25 automatic withholding from income of the obligor if
26 arrearages in support occur, if no such provision already
27 exists in prior orders or if the existing order as it relates
28 to withholding is not in compliance with applicable law.

§48A-4-13. Recommended orders.

1 (a) This section applies, according to the provisions
2 thereof, when a hearing has been conducted in accor-
3 dance with section nine of this article.

4 (b) A master who has presided at the hearing
5 pursuant to section nine of this article shall recommend
6 an order and findings of fact and conclusions of law to
7 the circuit court within ten days following the close of
8 the evidence. Before the recommended order is made,
9 the master may, in his discretion, require the parties to
10 submit proposed findings and conclusions and the
11 supporting reasons therefor.

12 (c) The master shall sign and send the recommended
13 order, any separate document containing the findings of
14 fact and conclusions of law and the notice of recom-
15 mended order as set forth in section fourteen of this
16 article to the attorney for each party, or if a party is
17 unrepresented, directly to the party, in the same manner
18 as pleadings subsequent to an original complaint are
19 served in accordance with rule five of the rules of civil
20 procedure for trial courts of record. The master shall
21 file the recommended order and the record in the office
22 of the circuit clerk prior to the expiration of the ten-day
23 period during which exceptions can be filed.

24 (d) A copy of any supporting documents or a summary
25 of supporting documents, prepared or used by the

26 children's advocate or an employee of the child advocate
 27 office, and all documents introduced into evidence
 28 before the master, shall be made available to the
 29 attorney for each party and to each of the parties before
 30 the circuit court takes any action on the
 31 recommendation.

32 (e) All recommended orders of the master shall
 33 include the statement of findings of fact and conclusions
 34 of law, and the reasons or basis therefor, on all the
 35 material issues of fact, law, or discretion presented on
 36 the record; and the appropriate sanction, relief or denial
 37 thereof. In every action where visitation is recom-
 38 mended, the master shall specify a schedule for visita-
 39 tion by the noncustodial parent: *Provided*, That with
 40 respect to any existing order which provided for
 41 visitation but which does not provide a specific schedule
 42 for visitation by the noncustodial parent, upon motion
 43 of any party, notice of hearing and hearing, the master
 44 shall recommend an order which provides a specific
 45 schedule of visitation by the noncustodial parent.

§48A-4-14. Form of notice of recommended order.

1 IN THE CIRCUIT COURT OF _____ COUNTY,
 2 WEST VIRGINIA,

3 _____
 4 Plaintiff,
 5 vs. CIVIL ACTION NO. _____

6 _____
 7 Defendant.

8 NOTICE OF RECOMMENDED ORDER

9 The undersigned family law master hereby recom-
 10 mends the enclosed order to the circuit court
 11 of _____ county. If you wish
 12 to file objections to this decision, you must file a written
 13 petition in accordance with the provisions of chapter
 14 48A-4-18 of the West Virginia Code within a period of
 15 ten days ending on _____, 19____,
 16 with the circuit clerk of _____ county
 17 and send a copy to counsel for the opposing party or if
 18 the party is unrepresented to the party, and to the office

19 of the family law master located at _____.

20 If no written petition for review is filed by _____,
21 19____, then the recommended order will be sent to the
22 circuit judge assigned to this case. A recommended
23 order which is not signed by a party, or counsel for a
24 party who is represented, by the end of the ten-day
25 period will still be sent to the circuit judge for entry.

26 YOUR FAILURE TO SIGN THE ORDER AS
27 HAVING BEEN INSPECTED OR APPROVED
28 WILL NOT DELAY THE ENTRY THEREOF.

29

30

Family Law Master

§48A-4-15. Orders to be entered by circuit court exclusively.

1 With the exception of temporary support and custody
2 orders entered by a master in accordance with the
3 provisions of section twelve of this article and section
4 twenty-two, article two, chapter forty-eight of this code,
5 and procedural orders entered pursuant to the provi-
6 sions of section nine of this article, an order imposing
7 sanctions or granting or denying relief may not be made
8 and entered except as authorized by law. Upon entry of
9 a final order in any action for divorce, separate
10 maintenance or annulment, the clerk of the circuit court
11 shall deliver an attested copy of such order to the parties
12 who have appeared in such action or their counsel of
13 record by personal delivery or by first class mail.

§48A-4-16. Circuit court review of master's action or recommended order.

1 (a) A person who alleges that he or she will be
2 adversely affected or aggrieved by a recommended
3 order of a master is entitled to review of the proceed-
4 ings. The recommended order of the master is the
5 subject of review by the circuit court and a procedural
6 action or ruling not otherwise directly reviewable is
7 subject to review only upon the review of the recom-
8 mended order by the circuit court.

9 (b) When a master's action or recommended order is

10 presented to the circuit court for review upon the
11 petition of any party and such action or recommended
12 order is subject to review, the family law master or
13 circuit court shall enter a temporary support and
14 custody order or otherwise provide for relief during the
15 pendency of the review proceedings upon any party's
16 request therefor or on the master's or court's own motion
17 if the family law master or court deems such order or
18 other relief to be fair and equitable.

§48A-4-17. Procedure for review by circuit court.

1 (a) Within ten days after the master's recommended
2 order, any separate document with findings of fact and
3 conclusions of law and the notice of recommended order
4 is served on the parties as set forth in section thirteen
5 of this article, any party may file exceptions thereto in
6 a petition requesting that the action by the master be
7 reviewed by the circuit court. Failure to timely file the
8 petition shall constitute a waiver of exceptions, unless
9 the petitioner, prior to the expiration of the ten-day
10 period, moves for and is granted an extension of time
11 from the circuit court. At the time of filing the petition,
12 a copy of the petition for review shall be served on all
13 parties to the proceeding, in the same manner as
14 pleadings subsequent to an original complaint are
15 served under rule five of the rules of civil procedure for
16 trial courts of record.

17 (b) Not more than ten days after the filing of the
18 petition for review, a responding party wishing to file
19 a cross-petition that would otherwise be untimely may
20 file, with proof of service on all parties, a cross-petition
21 for review.

§48A-4-18. Form of petition for review.

1 (a) The petition for review shall contain a list of
2 exceptions in the form of questions presented for review,
3 expressed in the terms and circumstances of the case,
4 designating and pointing out the errors complained of
5 with reasonable certainty, so as to direct the attention
6 of the circuit court specifically to them, but without
7 unnecessary detail. The statement of questions should be
8 short and concise and should not be argumentative or

9 repetitious. The statement of a question presented will
10 be deemed to comprise every subsidiary question fairly
11 included therein. Only the questions set forth in the
12 petition or fairly included therein will be considered by
13 the court. Parts of the master's report not excepted to
14 are admitted to be correct, not only as regards the
15 principles, but as to the evidence, upon which they are
16 founded.

17 (b) The circuit court may require, or a party may
18 choose to submit with the petition for review, a brief in
19 support thereof, which should include a direct and
20 concise argument amplifying the reasons relied upon for
21 modification of the master's recommended order and
22 citing the constitutional provisions, statutes and regula-
23 tions which are applicable.

§48A-4-19. Answer in opposition to a petition for review.

1 (a) A respondent shall have ten days after the filing
2 of a petition within which to file an answer disclosing
3 any matter or ground why the recommended order of
4 the master should not be modified by the court in the
5 manner sought by the petition. The judge may require,
6 or a party may choose to submit with the answer, a brief
7 in opposition to the petition, which should include a
8 direct and concise argument in support of the master's
9 recommended order and citing the constitutional
10 provisions, statutes and regulations which are
11 applicable.

12 (b) No motion by a respondent to dismiss a petition
13 for review will be received.

14 (c) Any party may file a supplemental brief at any
15 time while a petition for review is pending, calling
16 attention to new cases or legislation or other intervening
17 matter not available at the time of the party's last filing.

§48A-4-20. Circuit court review of master's recommended order.

1 (a) The circuit court shall proceed to a review of the
2 recommended order of the master when:

3 (1) No petition has been filed within the time allowed,

4 or the parties have expressly waived the right to file a
5 petition;

6 (2) A petition and an answer in opposition have been
7 filed, or the time for filing an answer in opposition has
8 expired, or the parties have expressly waived the right
9 to file an answer in opposition, as the case may be.

10 (b) To the extent necessary for decision and when
11 presented, the circuit court shall decide all relevant
12 questions of law, interpret constitutional and statutory
13 provisions and determine the appropriateness of the
14 terms of the recommended order of the master.

15 (c) The circuit court shall examine the recommended
16 order of the master, along with the findings and
17 conclusions of the master, and may enter the recom-
18 mended order, may recommit the case, with instruc-
19 tions, for further hearing before the master or may, in
20 its discretion, enter an order upon different terms, as
21 the ends of justice may require. The circuit court shall
22 not follow the recommendation, findings and conclusions
23 of a master found to be:

24 (1) Arbitrary, capricious, an abuse of discretion or
25 otherwise not in conformance with the law;

26 (2) Contrary to constitutional right, power, privilege
27 or immunity;

28 (3) In excess of statutory jurisdiction, authority or
29 limitations or short of statutory right;

30 (4) Without observance of procedure required by law;

31 (5) Unsupported by substantial evidence; or

32 (6) Unwarranted by the facts.

33 (d) In making its determinations under this section,
34 the circuit court shall review the whole record or those
35 parts of it cited by a party. If the circuit court finds that
36 a master's recommended order is deficient as to matters
37 which might be affected by evidence not considered or
38 inadequately developed in the master's recommended
39 order, the court may recommit the recommended order
40 to the master, with instructions indicating the court's

41 opinion, or the circuit court may proceed to take such
42 evidence without recommitting the matter.

43 (e) The order of the circuit court entered pursuant to
44 the provisions of subsection (d) of this section shall be
45 entered not later than ten days after the time for filing
46 pleadings or briefs has expired or after the filing of a
47 notice or notices waiving the right to file such pleading
48 or brief.

49 (f) If a case is recommitted by the circuit court, the
50 master shall retry the matter within twenty days.

51 (g) At the time a case is recommitted, the circuit court
52 shall enter appropriate temporary orders awarding
53 custody, visitation, child support, spousal support or
54 such other temporary relief as the circumstances of the
55 parties may require.

**§48A-4-21. County commissions required to furnish
offices for the family law master.**

1 Each county commission of this state has a duty to
2 provide premises for the family law master which are
3 adequate for the conduct of the duties required of such
4 master under the provisions of this chapter and which
5 conform to standards established by rules promulgated
6 by the supreme court of appeals. The administrative
7 office of the supreme court of appeals shall pay to the
8 county commission a reasonable amount as rent for the
9 premises furnished by the county commission to the
10 family law master and his or her staff pursuant to the
11 provisions of this section.

§48A-4-22. Budget of the family law master system.

1 The budget for the payment of the salaries and
2 benefits of the family law masters and clerical and
3 secretarial assistants shall be included in the appropri-
4 ation for the supreme court of appeals. The family law
5 master administration fund is hereby created and shall
6 be a special account in the state treasury. The fund shall
7 operate as a special fund administered by the state
8 auditor which shall be appropriated by line item by the
9 Legislature for payment of administrative expenses of
10 the family law master system. All agencies or entities

11 receiving federal matching funds for the services of
12 family law masters and their staff, including, but not
13 limited to, the administrator of the child advocate office
14 and the secretary of the department of health and
15 human resources, shall enter into an agreement with the
16 administrative office of the supreme court of appeals
17 whereby all federal matching funds paid to and received
18 by said agencies or entities for the activities by family
19 law masters and staff of the program shall be paid into
20 the family law master administration fund. Said
21 agreement shall provide for advance payments into the
22 fund by such agencies, from available federal funds
23 pursuant to Title IV-D of the Social Security Act and
24 in accordance with federal regulations.

§48A-4-23. Family law masters fund.

1 The office and the clerks of the circuit courts shall,
2 on or before the tenth day of each month, transmit all
3 fees and costs received for the services of the office or
4 the family law master under this chapter to the state
5 treasurer for deposit in the state treasury to the credit
6 of a special revenue fund to be known as the "family law
7 masters fund", which is hereby created. All moneys
8 collected and received under this chapter and paid into
9 the state treasury and credited to the "family law
10 masters fund" shall be used by the administrative office
11 of the supreme court of appeals solely for paying the
12 costs associated with the duties imposed upon the family
13 law masters under the provisions of this chapter which
14 require activities by the masters which are not subject
15 to being matched with federal funds or subject to
16 reimbursement by the federal government. Such
17 moneys shall not be treated by the auditor and treasurer
18 as part of the general revenue of the state.

§48A-4-24. Continuation of family law masters system.

1 After having conducted a performance and fiscal
2 audit through its joint committee on government
3 operations, pursuant to section nine, article ten, chapter
4 four of this code, the Legislature hereby finds and
5 declares the family law masters system should be
6 continued and reestablished. Accordingly, notwithstand-

7 ing the provisions of section four of said article, the
8 family law masters system shall continue to exist until
9 the first day of July, one thousand nine hundred ninety-
10 four, so that the joint committee on government
11 operations may monitor compliance by the family law
12 masters system with the recommendations of the
13 performance audit.

**ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT
OBLIGATIONS AND VISITATION.**

§48A-5-7. Visitation enforcement; contempt; penalties.

§48A-5-7a. Pilot custody and visitation mediation project.

§48A-5-9. Misrepresentation of delinquent support payments; penalty.

§48A-5-7. Visitation enforcement; contempt; penalties.

1 (a) Except as provided in subsection (b) of this section,
2 the family law master may do either of the following in
3 a dispute concerning visitation of a minor child:

4 (1) Apply a visitation adjustment policy established in
5 accordance with the provisions of subsection (c) of this
6 section, or

7 (2) Recommend to the circuit court that the matter be
8 treated as a contempt proceeding under the provisions
9 of this section.

10 (b) The family law master shall not invoke either
11 option under subsection (a) of this section if the parties
12 resolve their dispute through an informal joint meeting
13 with a mediator designated in accordance with the
14 provisions of section seven-a of this article.

15 (c) Each family law master may formulate a visitation
16 adjustment policy which may be implemented by the
17 family law master after it is approved by the chief judge
18 of the circuit. Such policy shall be applied to the
19 following visitation violations:

20 (1) Where a noncustodial parent has been wrongfully
21 denied visitation; or

22 (2) Where a custodial parent has had his or her right
23 to custody infringed upon by the actions of a noncusto-
24 dial parent who has abused or exceeded his or her right
25 of visitation.

26 (d) A visitation adjustment policy formulated and
27 approved under the provisions of this section shall
28 include all of the following:

29 (1) An adjustment of visitation shall be applied of the
30 same type and duration as the visitation that was denied
31 by the custodial parent or exceeded by the noncustodial
32 parent, including, but not limited to, weekend visitation
33 for weekend visitation, holiday visitation for holiday
34 visitation, weekday visitation for weekday visitation and
35 summer visitation for summer visitation.

36 (2) An adjustment of visitation shall be scheduled to
37 occur within thirteen months after the visitation
38 violation occurred.

39 (3) The time of the visitation adjustment shall be
40 chosen by the parent whose right of visitation or custody
41 was violated.

42 (e) If a visitation adjustment policy is formulated and
43 approved under this section, the family law master shall
44 direct his or her secretary-clerk to thereafter keep an
45 accurate record of alleged visitation violations reported
46 to the office of the family law master. A parent who is
47 subject to a visitation adjustment policy and who
48 thereafter makes a claim of a visitation violation shall
49 give to the family law master a written claim of such
50 alleged visitation violation within seven days after the
51 actions complained of are alleged to have occurred.

52 (f) If a visitation violation is alleged in a county in
53 which a visitation adjustment policy has been formu-
54 lated and approved under this section and if the alleged
55 violation appears to support a pattern of violations or a
56 single alleged violation appears to constitute a substan-
57 tial violation, the following shall apply:

58 (1) Within five days after receipt of the claim of a
59 visitation violation, the office of the family law master
60 shall mail to the parent who is alleged to have commit-
61 ted the violation a notice by first class mail, directed to
62 such person's last known address. The notice shall
63 inform the parent of the following:

64 (A) When the visitation violation is alleged to have
65 occurred;

66 (B) That it is proposed that a visitation adjustment be
67 granted to the complaining parent;

68 (C) That if the parent alleged to have committed the
69 visitation violation wishes to agree to a visitation
70 adjustment, he or she must notify the family law master,
71 in writing, within fourteen days from the date of the
72 notice; and

73 (D) That if he or she desires to contest the application
74 of the visitation adjustment policy on the grounds that
75 the claim of a visitation violation is incorrect or that a
76 visitation adjustment is not proper because of mistakes
77 of fact, he or she must, within fourteen days of the date
78 of the notice, inform the family law master in writing
79 of the reasons why the proposed adjustment is contested
80 and must request a hearing with the family law master.

81 (2) After a final determination as to whether visitation
82 was wrongfully denied by the custodial parent or the
83 right of visitation was exceeded or abused by the
84 noncustodial parent, the office of the family law master
85 shall adjust the records of visitation violations
86 accordingly.

87 (3) The parent found to be entitled to a visitation
88 adjustment shall give to the office of the family law
89 master and the other parent a written notice of the time
90 the visitation adjustment will occur. Such notice shall
91 be given at least ten days before a makeup weekday or
92 weekend visitation or at least thirty days before a
93 makeup holiday or makeup summer visitation.

94 (g) (1) Except as provided in subsection (b) of this
95 section, the office of the family law master may refer
96 the written complaint of a visitation violation to the
97 circuit court, to be treated as a civil or criminal
98 contempt proceeding in accordance with the provisions
99 of section twenty-two, article two, chapter forty-eight of
100 this code to resolve the dispute concerning visitation of
101 a minor child. In the discretion of the court, the court
102 may remand the matter to the master for a consider-

103 ation of visitation adjustment, or may treat the written
104 complaint as a petition for an order to show cause why
105 the parent alleged to have committed the visitation
106 violation should not be held in contempt, and direct such
107 order to show cause to be served upon the alleged
108 violator.

109 (2) If the court finds that the parent committed the
110 visitation violation, the court shall find the parent in
111 contempt and may do one or more of the following:

112 (A) Require additional terms and conditions consist-
113 ent with the court's visitation order.

114 (B) After notice to both parties and a hearing, if
115 requested by a party, on any proposed modification of
116 visitation, modify the visitation order to meet the best
117 interests of the child. A modification sought by a parent
118 charged with a visitation violation, if otherwise justified,
119 shall not be denied solely because the parent is found
120 to be in contempt.

121 (C) Order that a visitation adjustment be made.

122 (D) If appropriate under the provisions of section
123 twenty-two, article two, chapter forty-eight of this code:

124 (i) Commit the contemnor to the county jail; or

125 (ii) Commit the contemnor to the county jail with the
126 privilege of leaving the jail, during such hours as the
127 court determines and under such supervision as the
128 court considers necessary, for the purpose of allowing
129 the contemnor to go to and return from his or her place
130 of employment.

131 (3) A commitment under paragraph (D), subdivision
132 (2) of this subsection shall not exceed forty-five days for
133 the first adjudication of contempt or ninety days for any
134 subsequent adjudication of contempt.

135 (4) A parent committed under paragraph (D), subdi-
136 vision (2) of this subsection shall be released if the court
137 has reasonable cause to believe that the parent will
138 comply with the visitation order.

139 (5) If a parent is committed to jail under the

140 provisions of subparagraph (ii), paragraph (D), subdivi-
141 sion (2) of this subsection and violates the conditions of
142 the court, the court may commit the person to the county
143 jail without the privilege provided under said subpara-
144 graph for the balance of the period of commitment
145 imposed by the court.

146 (6) If a person is committed to jail under the
147 provisions of subparagraph (ii), paragraph (D), subdivi-
148 sion (2) of this subsection and willfully fails to return
149 to the place of confinement within the time prescribed,
150 such person shall be considered to have escaped from
151 custody and shall be guilty of a misdemeanor, punisha-
152 ble by imprisonment for not more than one year.

§48A-5-7a. Pilot custody and visitation mediation project.

1 (a) The administrative office of the supreme court of
2 appeals may, within current funds available to the
3 court, establish a pilot custody and visitation mediation
4 project in designated regions comprised of one or more
5 counties of the state.

6 (b) Mediation will be provided in the designated
7 county or counties or regions only, in all cases in which
8 the issues of custody and/or visitation are contested,
9 when a hearing before a family law master or judge is
10 required to resolve the contested issue, pursuant to
11 guidelines established by the administrative office of the
12 supreme court. All parties to such contested cases must
13 attend at least one mediation session and attempt to
14 resolve the issues of custody and/or visitation through
15 this process. No final hearing on the issues of custody
16 or visitation can be held before a family law master or
17 judge unless the parties have attempted mediation.

18 (c) This pilot mediation project is established to
19 encourage parties to resolve disputes over custody and
20 visitation through a voluntary process in which an
21 impartial mediator actively assists parties in identifying
22 and clarifying issues regarding custody and visitation
23 and in designing and agreeing to solutions for those
24 issues. All of the information that is provided by the
25 parties during mediation shall remain confidential and
26 mediators cannot be called as witnesses to provide

27 testimony in unresolved cases that proceed to contested
28 hearings.

29 (d) The parties in each case shall be entitled to
30 participate in six hours of mediation per year free of
31 cost. Any additional time spent in mediation during the
32 year, over and above the first six-hours, shall be assessed
33 by the court at the conclusion of the case at a rate of
34 thirty-five dollars per hour. These fees shall be paid into
35 the state treasury and credited to a fund to be used by
36 the administrative office solely to pay for the costs of the
37 pilot mediation project.

38 (e) The administrative office of the supreme court
39 shall hire one qualified mediator for each of the regions
40 designated in subsection (a) of this section, or may
41 establish and train panels of volunteer mediators, from
42 which panels individual mediators may then be assigned
43 to specific cases by a circuit court or a family law
44 master.

45 (f) The administrative office of the supreme court of
46 appeals shall carefully monitor the case statistics and
47 case results and no later than eighteen months after the
48 initiation of the project shall submit a report to the
49 Legislature which evaluates the efficacy of using
50 mediation as a method of resolving custody and visita-
51 tion disputes. The Legislature shall review this report
52 and determine whether the project should be continued
53 or expanded to other counties in the state.

**§48A-5-9. Misrepresentation of delinquent support pay-
ments; penalty.**

1 If any person knowingly and willfully makes any
2 false, fictitious or fraudulent statement or representa-
3 tion, or makes or uses any false writing or document
4 knowing the same to contain any false, fictitious or
5 fraudulent statement or entry, thus misrepresenting the
6 amount of child support actually due and owing, and if
7 such statement, representation, writing or document
8 causes a children's advocate in reliance thereon to
9 institute an action or proceeding or otherwise commence
10 to enforce a support obligation under this article or
11 under section twenty-two, article two, chapter forty-

12 eight of this code, such person shall be guilty of false
13 swearing, and, upon conviction thereof, shall be pun-
14 ished as provided by law for such offense.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-1. Paternity proceedings.

§48A-6-2. Statute of limitations; prior statute of limitations not a bar to
action under this article; effect of prior adjudication between
husband and wife.

§48A-6-4. Establishment of paternity and duty of support.

§48A-6-5. Representation of parties.

§48A-6-1. Paternity proceedings.

1 (a) A civil action to establish the paternity of a child
2 and to obtain an order of support for the child may be
3 instituted, by verified complaint, in the circuit court of
4 the county where the child resides: *Provided*, That if
5 such venue creates a hardship for the parties, or either
6 of them, or if judicial economy requires, the court may
7 transfer the action to the county where either of the
8 parties resides.

9 (b) A "paternity proceeding" is a summary proceed-
10 ing, equitable in nature and within the domestic
11 relations jurisdiction of the courts, wherein a circuit
12 court upon the petition of the state or another proper
13 party may intervene to determine and protect the
14 respective personal rights of a child for whom paternity
15 has not been lawfully established, of the mother of such
16 child and of the putative father of such child.

17 (c) The sufficiency of the statement of the material
18 allegations in the complaint set forth as grounds for
19 relief and the grant or denial of the relief prayed for
20 in a particular case shall rest in the sound discretion of
21 the court, to be exercised by the court according to the
22 circumstances and exigencies of the case, having due
23 regard for precedent and the provisions of the statutory
24 law of this state.

25 (d) A decree or order made and entered by a court
26 in a paternity proceeding shall include a determination
27 of the filial relationship, if any, which exists between a
28 child and his or her putative father, and, if such
29 relationship is established, shall resolve dependent

30 claims arising from family rights and obligations
31 attendant to such filial relationship.

32 (e) A paternity proceeding may be brought by any of
33 the following persons:

34 (1) An unmarried woman with physical or legal
35 custody of a child to whom she gave birth;

36 (2) A married woman with physical or legal custody
37 of a child to whom she gave birth, if the complaint
38 alleges that:

39 (A) Such married woman lived separate and apart
40 from her husband preceding the birth of the child;

41 (B) Such married woman did not cohabit with her
42 husband at any time during such separation and that
43 such separation has continued without interruption; and

44 (C) The defendant, rather than her husband, is the
45 father of the child;

46 (3) The state of West Virginia or the department of
47 health and human resources, or the child advocate office
48 on its behalf, when such proceeding is deemed necessary
49 to prevent such child from being or becoming a public
50 charge;

51 (4) Any person who is not the mother of the child, but
52 who has physical or legal custody of such child;

53 (5) The guardian or committee of such child;

54 (6) The next friend of such child when the child is a
55 minor;

56 (7) By such child in his own right at any time after
57 the child's eighteenth birthday but prior to the child's
58 twenty-first birthday; or

59 (8) A man purporting to be the father of a child born
60 out of wedlock, when there has been no prior judicial
61 determination of paternity.

62 (f) Blood or tissue samples taken pursuant to the
63 provisions of this article may be ordered to be taken in
64 such locations as may be convenient for the parties so

65 long as the integrity of the chain of custody of such
66 samples can be preserved.

67 (g) A person who has sexual intercourse in this state
68 submits to the jurisdiction of the courts of this state for
69 a proceeding brought under this article with respect to
70 a child who was conceived by that act of intercourse.
71 Service of process may be perfected according to the
72 rules of civil procedure.

73 (h) If the person against whom the proceeding is
74 brought has failed to plead or otherwise defend the
75 action after proper service has been obtained, judgment
76 by default may be issued by the court as provided by
77 the rules of civil procedure.

**§48A-6-2. Statute of limitations; prior statute of limita-
tions not a bar to action under this article;
effect of prior adjudication between hus-
band and wife.**

1 (a) Except for a proceeding brought by a child in his
2 or her own right under the provisions of subdivision (7),
3 subsection (e), section one of this article, a proceeding
4 for the establishment of the paternity of a child shall be
5 brought prior to such child's eighteenth birthday.

6 (b) A proceeding to establish paternity under the
7 provisions of this article may be brought by or on behalf
8 of a child notwithstanding the fact that, prior to the
9 effective date of this section, an action to establish
10 paternity may have been barred by a prior statute of
11 limitations set forth in this code or otherwise provided
12 for by law.

13 (c) A proceeding to establish paternity under the
14 provisions of this article may be brought for any child
15 who was not yet eighteen years of age on the sixteenth
16 day of August, one thousand nine hundred eighty-four,
17 regardless of the current age.

18 (d) A proceeding to establish paternity under the
19 provisions of this article may be brought for any child
20 who was not yet eighteen years of age on the sixteenth
21 day of August, one thousand nine hundred eighty-four,
22 and for whom a paternity action was brought but

23 dismissed because a statute of limitations of less than
24 eighteen years was then in effect.

25 (e) Any other provision of law to the contrary
26 notwithstanding, when a husband and wife or former
27 husband and wife, in an action for divorce or an action
28 to obtain a support order, have litigated the issue of the
29 paternity of a child conceived during their marriage to
30 the end that the husband has been adjudged not to be
31 the father of such child, such prior adjudication of the
32 issue of paternity between the husband and the wife
33 shall not preclude the mother of such child from
34 bringing a proceeding against another person to
35 establish paternity under the provisions of this article.

§48A-6-4. Establishment of paternity and duty of support.

1 If the defendant, by verified responsive pleading,
2 shall admit that the man is the father of the child and
3 owes a duty of support, or if after a trial on the merits,
4 the court shall find, by clear and convincing evidence
5 that the man is the father of the child, the court shall
6 order support in accordance with the provisions of this
7 chapter.

§48A-6-5. Representation of parties.

1 (a) The children's advocate of the county where the
2 proceeding under this section is brought shall represent
3 the state of West Virginia and shall litigate the action
4 in the 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. If paternity
19 is established, appointed counsel shall also represent the
20 defendant with regard to dependent claims arising from
21 family rights and obligations attendant to the filial
22 relationship, including the establishment and enforce-
23 ment of a child support order and the determination of
24 custody and visitation.

25 (c) The children's advocate shall litigate the issue of
26 paternity and, if paternity is established, shall also
27 litigate all dependent claims arising from family rights
28 and obligations attendant to the filial relationship,
29 including the establishment and enforcement of a child
30 support order and the determination of custody and
31 visitation.

32 (d) If the proceeding is brought by a married woman
33 pursuant to the provisions of subdivision (2), subsection
34 (e), section one of this article, the court shall appoint a
35 competent attorney to act as guardian ad litem on behalf
36 of the child. This attorney shall be appointed without
37 motion and prior to the entry of any order requiring
38 blood testing.

CHAPTER 49. CHILD WELFARE.

Article

5. Juvenile Proceedings.

5B. West Virginia Juvenile Offender Rehabilitation Act.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-15. Juvenile probation officers; appointment; salary; facilities; ex-
penses; duties; powers.

§49-5-16b. Juvenile facilities review panel; compensation; expenses.

**§49-5-15. Juvenile probation officers; appointment;
salary; facilities; expenses; duties; powers.**

1 (a) Each circuit court, subject to the approval of the
2 supreme court of appeals and in accordance with the
3 rules of the supreme court of appeals, shall appoint one
4 or more juvenile probation officers and clerical assist-
5 ants for the circuit. A probation officer or clerical
6 assistant shall not be related by consanguinity or
7 affinity to any judge of the appointing court.

8 The salary for juvenile probation officers and clerical

9 assistants shall be determined and fixed by the supreme
10 court of appeals. All expenses and costs incurred by the
11 juvenile probation officers and their staff shall be paid
12 by the supreme court of appeals in accordance with its
13 rules. The county commission of each county shall
14 provide adequate office facilities for juvenile probation
15 officers and their staff. All equipment and supplies
16 required by juvenile probation officers and their staff
17 shall be provided by the supreme court of appeals.

18 A juvenile probation officer shall not be considered a
19 law-enforcement official under any provision of this
20 chapter.

21 (b) The clerk of a court shall notify, if practicable, the
22 chief probation officer of the county, or his or her
23 designee, when a child is brought before the court or
24 judge. When notified, or if the probation officer
25 otherwise obtains knowledge of such fact, he or one of
26 his or her assistants shall:

27 (1) Make investigation of the case;

28 (2) Furnish such information and assistance as the
29 court or judge may require; and

30 (3) Take charge of the child before and after the trial,
31 as may be directed by the court or judge.

**§49-5-16b. Juvenile facilities review panel; compensation;
expenses.**

1 The supreme court of appeals shall appoint and
2 maintain a five-member panel, consisting of five persons
3 who are willing to serve in such capacity, to visit,
4 inspect and interview residents of all juvenile institu-
5 tions, detention facilities and places in or out of the state
6 wherein West Virginia juveniles may be held involun-
7 tarily, to make public reports of such reviews: *Provided*,
8 That the panel shall not visit, inspect or interview adult
9 inmates of county jails, regional jails or facilities under
10 the direction of the commissioner of corrections used for
11 the incarceration of adult offenders or detainees:
12 *Provided, however*, That the panel shall have no author-
13 ity to enforce jail and prison standards for county jails
14 and regional jails as they pertain to adults confined

15 therein. In visiting and inspecting any facility pursuant
16 to the provisions of this section, the panel shall have
17 prompt and direct access to the head of the facility for
18 any purpose pertaining to the performance of functions
19 and responsibilities under this section. The members so
20 appointed shall serve without compensation for their
21 time, however, each member may be reimbursed for
22 reasonable and necessary expenses in the performance
23 of their duties under this article.

24 Copies of the panel's report shall be submitted
25 annually to the president of the Senate and the speaker
26 of the House of Delegates.

27 Pursuant to the provisions of article ten, chapter four
28 of this code, the juvenile facilities review panel shall
29 continue to exist until the first day of July, one thousand
30 nine hundred ninety-four, to allow for the completion of
31 a performance audit by the joint committee on govern-
32 ment operations.

**ARTICLE 5B. WEST VIRGINIA JUVENILE OFFENDER REHA-
BILITATION ACT.**

**§49-5B-4. Responsibilities of the department of health
and human resources.**

1 (a) The department of health and human resources is
2 empowered to establish, and shall establish, subject to
3 the limits of funds available or otherwise appropriated
4 therefor, programs and services designed to prevent
5 juvenile delinquency, to divert juveniles from the
6 juvenile justice system, to provide community-based
7 alternatives to juvenile detention and correctional
8 facilities and to encourage a diversity of alternatives
9 within the juvenile justice system. The development,
10 maintenance and expansion of programs and services
11 may include, but not be limited to, the following:

12 (1) Community-based programs and services for the
13 prevention and treatment of juvenile delinquency
14 through the development of foster-care and shelter-care
15 homes, group homes, halfway houses, homemaker and
16 home health services, twenty-four hour intake screening,
17 volunteer and crisis home programs, day treatment and
18 any other designated community-based diagnostic,

19 treatment or rehabilitative service;

20 (2) Community-based programs and services to work
21 with parents and other family members to maintain and
22 strengthen the family unit so that the juvenile may be
23 retained in his home;

24 (3) Youth service bureaus and other community-based
25 programs to divert youth from the juvenile court or to
26 support, counsel, or provide work and recreational
27 opportunities for delinquents and other youth to help
28 prevent delinquency;

29 (4) Projects designed to develop and implement
30 programs stressing advocacy activities aimed at improv-
31 ing services for and protecting rights of youth impacted
32 by the juvenile justice system;

33 (5) Educational programs or supportive services
34 designed to keep delinquents, and to encourage other
35 youth to remain, in elementary and secondary schools or
36 in alternative learning situations;

37 (6) Expanded use of professional and paraprofessional
38 personnel and volunteers to work effectively with youth;

39 (7) Youth initiated programs and outreach programs
40 designed to assist youth who otherwise would not be
41 reached by traditional youth assistance programs;

42 (8) A statewide program designed to reduce the
43 number of commitments of juveniles to any form of
44 juvenile facility as a percentage of the state juvenile
45 population, to increase the use of nonsecure community-
46 based facilities as a percentage of total commitments to
47 juvenile facilities and to discourage the use of secure
48 incarceration and detention.

49 (b) The department of health and human resources
50 shall establish, within the funds available, an individ-
51 ualized program of rehabilitation for each accused
52 juvenile offender referred to the department after being
53 allowed an improvement period by the juvenile court,
54 and for each adjudicated juvenile offender who, after
55 adjudication, is referred to the department for investi-
56 gation or treatment or whose custody is vested in the

57 department. Such individualized program of rehabilita-
58 tion shall take into account the programs and services
59 to be provided by other public or private agencies or
60 personnel which are available in the community to deal
61 with the circumstances of the particular child. Such
62 individualized program of rehabilitation shall be
63 furnished to the juvenile court and shall be available to
64 counsel for the child; it may be modified from time to
65 time at the direction of the department or by order of
66 the juvenile court. The department may develop an
67 individualized program of rehabilitation for any child
68 referred for noncustodial counseling under section five,
69 article three of this chapter, for any child receiving
70 counsel and advice under section three-a, article five of
71 this chapter, or for any other child upon the request of
72 a public or private agency.

73 (c) The department of health and human resources is
74 authorized to enter into cooperative arrangements and
75 agreements with private agencies or with agencies of
76 the state and its political subdivisions to effectuate the
77 purpose of this article.

CHAPTER 50. MAGISTRATE COURTS.

Article

2. Jurisdiction and Authority.
3. Costs, Fines and Records.
5. Trials, Hearing and Appeals.

ARTICLE 2. JURISDICTION AND AUTHORITY.

§50-2-3. Criminal jurisdiction; limitations on bail.

§50-2-3a. Sentencing; probation.

§50-2-3. Criminal jurisdiction; limitations on bail.

1 In addition to jurisdiction granted elsewhere to
2 magistrate courts, magistrate courts shall have jurisdic-
3 tion of all misdemeanor offenses committed in the
4 county and to conduct preliminary examinations on
5 warrants charging felonies committed within the county
6 and, upon order of referral from the circuit courts, to
7 conduct preliminary examinations on probation viola-
8 tions, which examinations shall be conducted without
9 delay and in all events not later than thirty days from
10 the date any probation violation petition or motion has

11 been filed in circuit court. A magistrate shall have the
12 authority to issue arrest warrants in all criminal
13 matters, to issue warrants for search and seizure and,
14 except in cases involving capital offenses, to set and
15 admit to bail: *Provided*, That in cases punishable only
16 by the fine, such bail or recognizance shall not exceed
17 the maximum amount of the fine and applicable court
18 costs permitted or authorized by statute to be imposed
19 in the event of conviction.

§50-2-3a. Sentencing; probation.

1 (a) In addition to sentencing authority granted
2 elsewhere to magistrate courts, magistrate courts have
3 authority to suspend sentences and impose periods of
4 unsupervised probation for a period not to exceed two
5 years, except for offenses for which the penalty includes
6 mandatory incarceration and offenses defined in sec-
7 tions eight and nine, article eight-b, chapter sixty-one
8 of this code and subsection (c), section five, article eight-
9 d of said chapter.

10 (b) Release on probation shall be upon the following
11 conditions:

12 (1) That the probationer shall not, during the term of
13 his probation, violate any criminal law of this state, any
14 other state of the United States or the United States;

15 (2) That he or she shall not, during the term of his
16 or her probation, leave the state without the consent of
17 the court which placed him or her on probation;

18 (3) That he or she shall comply with the rules or terms
19 prescribed by the court;

20 (4) That he or she shall make reasonable restitution
21 if financially able to do so, in whole or in any part,
22 immediately or within the period of probation; and

23 (5) That he or she shall pay any fine and the costs
24 assessed as the court may direct.

25 (c) On motion by the prosecuting attorney, and upon
26 a hearing and a finding that reasonable cause exists to
27 believe that a violation of any condition of probation has
28 occurred, the magistrate may revoke probation and

29 order execution of the sentence originally imposed.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2a. Payment of fines by credit card or payment plan; suspension of licenses for failure to pay fines or appear or respond.

§50-3-6a. Deposits in interest-bearing accounts; payment of interest to general revenue fund of state treasury.

§50-3-2a. Payment of fines by credit card or payment plan; suspension of licenses for failure to pay fines or appear or respond.

1 (a) A magistrate court may accept credit cards in
2 payment of all costs, fines, forfeitures or penalties. The
3 supreme court of appeals shall adopt rules regarding the
4 use of credit cards to pay fines, and the rules shall state
5 that any charges made by the credit company shall be
6 paid by the person responsible for paying the fine. A
7 magistrate court may collect a portion of any costs,
8 fines, forfeitures or penalties at the time the amount is
9 imposed by the court so long as the court requires the
10 balance to be paid in accordance with a payment plan
11 which specifies: (1) The number of payments to be made;
12 (2) the dates on which such payments and amounts shall
13 be made; and (3) amounts due on such dates.

14 (b) If any costs, fines, forfeitures, restitution or
15 penalties imposed or ordered by the magistrate court for
16 hunting or fishing violations as described in chapter
17 twenty of this code are not paid in full as directed by
18 the magistrate court, the magistrate court clerk or, upon
19 a judgment rendered on appeal, the circuit clerk, shall
20 notify the director of the division of natural resources,
21 of such failure to pay. If any costs, fines, forfeitures,
22 restitution or penalties imposed by the magistrate court
23 in a criminal case are not paid as directed by the
24 magistrate court, the magistrate court clerk or, upon
25 judgment rendered on appeal, the circuit clerk, shall
26 notify the director of the division of motor vehicles of
27 the failure to pay. Upon such notice, the division of
28 motor vehicles shall suspend the operator's or commer-
29 cial driver's license and the director of the division of
30 natural resources shall suspend the hunting or fishing
31 license of the person defaulting on payment until such

32 time that the costs, fines, forfeitures, restitution or
33 penalties are paid.

34 (c) If a person charged with any criminal violation of
35 this code fails to appear or otherwise respond in court,
36 the magistrate court shall notify the director of the
37 division of motor vehicles thereof within fifteen days of
38 the scheduled date to appear, unless the person sooner
39 appears or otherwise responds in court to the satisfac-
40 tion of the magistrate. Upon such notice, the division of
41 motor vehicles shall suspend the operator's or commer-
42 cial driver's license of the person failing to appear or
43 otherwise respond in accordance with the provisions of
44 section six, article three, chapter seventeen-b of this
45 code.

46 (d) In every criminal case which involves a misdemea-
47 nor violation, a magistrate may order restitution where
48 appropriate when rendering judgment.

49 (e) If all costs, fines, forfeitures, restitution or
50 penalties imposed by a magistrate court and ordered to
51 be paid are not paid as ordered by the judgment of the
52 magistrate court, the clerk of the magistrate court shall
53 notify the prosecuting attorney of the county of such
54 nonpayment and provide the prosecuting attorney with
55 an abstract of judgment. The prosecuting attorney shall
56 file the abstract of judgment in the office of the clerk
57 of the county commission in the county where the
58 defendant was convicted and in any county wherein the
59 defendant resides or owns property. The clerk of the
60 county commission shall record and index the abstracts
61 of judgment without charge or fee to the prosecuting
62 attorney, and when so recorded, the amount stated to be
63 owing in the abstract shall constitute a lien against all
64 property of the defendant.

**§50-3-6a. Deposits in interest-bearing accounts; payment
of interest to general revenue fund of state
treasury.**

1 Magistrate court clerks or circuit clerks acting in that
2 capacity, subject to the rules and regulations of the
3 supreme court of appeals, may establish and maintain
4 interest-bearing checking accounts in secure and

5 properly insured financial institutions for the deposit
6 and disbursement of all moneys collected by the
7 magistrate court. In addition to making other remittan-
8 ces as required by law, the clerk of each magistrate
9 court shall, on a monthly basis, remit all interest earned
10 on such accounts to the state treasurer for deposit in the
11 state general revenue fund.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-13. Appeals in criminal cases.

1 Any person convicted of an offense in a magistrate
2 court may appeal such conviction to circuit court as a
3 matter of right by requesting such appeal within twenty
4 days of the sentencing for such conviction. The magis-
5 trate may require the posting of bond with good security
6 conditioned upon the appearance of the defendant as
7 required in circuit court, but such bond may not exceed
8 the maximum amount of any fine which could be
9 imposed for the offense. Such bond may be upon the
10 defendant's own recognizance. If no appeal is perfected
11 within such twenty-day period, the circuit court of the
12 county may, not later than ninety days after the
13 sentencing, grant an appeal upon a showing of good
14 cause why such appeal was not filed within such twenty-
15 day period. The filing or granting of an appeal shall
16 automatically stay the sentence of the magistrate. Trial
17 in circuit court shall be de novo: *Provided*, That any
18 person charged with a traffic offense which does not
19 subject a person to a period of incarceration who wishes
20 a jury trial shall elect prior to trial to receive said trial
21 by jury in either the magistrate court or circuit court.
22 Any person charged with such a traffic offense who
23 elects to receive a trial by jury in the magistrate court
24 shall receive a trial to the court on appeal. Notwith-
25 standing any other provision of this code to the contrary,
26 there shall be no appeal from a plea of guilty where the
27 defendant was represented by counsel at the time the
28 plea was entered: *Provided, however*, That the defendant
29 shall have an appeal from a plea of guilty where an
30 extraordinary remedy would lie or where the magistrate
31 court lacked jurisdiction.

CHAPTER 52. JURIES.

Article

1. Petit Juries.
2. Grand Juries.

ARTICLE 1. PETIT JURIES.

- §52-1-4. Jury selection.
- §52-1-5. Master list; method of compilation; additional freeholder list; lists to be available to public.
- §52-1-5a. Jury qualification form; contents; procedure for use; penalties.
- §52-1-6. Jury wheel or jury box; random selection of names from master list for jury wheel or jury box.
- §52-1-7. Drawings from the jury wheel or jury box; notice of jury duty; penalties.
- §52-1-7a. Alternate procedure for selection of jury by electronic data processing methods.
- §52-1-8. Disqualification from jury service.
- §52-1-15. Challenging compliance with selection procedures.
- §52-1-16. Preservation of records.
- §52-1-17. Reimbursement of jurors.
- §52-1-18. When juror not entitled to reimbursement.
- §52-1-20. Payment of reimbursement.

§52-1-4. Jury selection.

- 1 Potential petit jurors shall be selected by the clerk of
- 2 the circuit court pursuant to the provisions of this article
- 3 and under the supervision of the circuit court, or in
- 4 circuits with more than one circuit judge, the chief
- 5 judge of the circuit.

§52-1-5. Master list; method for compilation; additional freeholder list; lists to be available to public.

- 1 (a) In each county, the clerk shall compile and
- 2 maintain a master list of residents of the county from
- 3 which prospective jurors are to be chosen. The master
- 4 list shall be a list of individuals compiled from not less
- 5 than two of the following source lists:
 - 6 (1) Persons who have filed a state personal income tax
 - 7 return for the preceding tax year;
 - 8 (2) Persons who are registered to vote in the county;
 - 9 (3) Persons who hold a valid motor vehicle operator's
 - 10 or chauffeur's license as determined from the drivers'
 - 11 license lists provided by the division of motor vehicles.

12 The clerk shall compile the master list by combining
13 all the names from each source used and eliminating all
14 duplicates or by selecting a sample of names from each
15 source used by means of a random key number system.
16 If a sample of names is selected from each source list,
17 the same percentage of names must be selected from
18 each list. One source list shall be designated a primary
19 source. Names selected from the second source shall be
20 compared with the entire list of names on the primary
21 source. Duplicate names shall be removed from the
22 second source sample and the remaining names shall be
23 combined with the sample of names selected from the
24 primary source to form the master list. If more than two
25 source lists are used, this process shall be repeated,
26 using the previously combined list for comparison with
27 the third source list, and so on.

28 (b) The master list so compiled shall be used for a
29 period of two years or such other period as designated
30 by the chief judge.

31 (c) In addition to the master list required to be
32 compiled under the provisions of subsection (a) of this
33 section, the clerk shall compile a list of persons who pay
34 real property taxes to compile and maintain a list of
35 freeholders to be used as jurors in condemnation cases.

36 (d) Any public officer of an agency, department or
37 political subdivision of this state having custody,
38 possession or control of any of the source lists designated
39 to be used in compiling the master list shall make the
40 source list available to the clerk for inspection, repro-
41 duction and copying at all reasonable times: *Provided,*
42 That the tax commissioner shall be exempt from this
43 requirement. The master list and the freeholder list
44 shall be open to the public for examination.

**§52-1-5a. Jury qualification form; contents; procedure
for use; penalties.**

1 (a) Not less than twenty days before the date for
2 which persons are to report for jury duty, the clerk may,
3 if directed by the court, serve by first class mail, upon
4 each person listed on the master list, a juror qualifica-
5 tion form accompanied by instructions necessary for its

6 completion: *Provided*, That the clerk may, if directed by
7 the court, mail the juror qualification form to only those
8 prospective jurors drawn for jury service under the
9 provisions of section seven of this article. Each prospec-
10 tive juror shall be directed to complete the form and
11 return it by mail to the clerk within ten days after its
12 receipt. The juror qualification form is subject to
13 approval by the circuit court as to matters of form and
14 shall elicit the following information concerning the
15 prospective juror:

16 (1) The juror's name, sex, race, age and marital status;

17 (2) The juror's level of educational attainment,
18 occupation and place of employment;

19 (3) If married, the name of the juror's spouse and the
20 occupation and place of employment of the spouse;

21 (4) The juror's residence address and the juror's
22 mailing address if different from the residence address;

23 (5) The number of children which the juror has and
24 their ages;

25 (6) Whether the juror is a citizen of the United States
26 and a resident of the county;

27 (7) Whether the juror is able to read, speak and
28 understand the English language;

29 (8) Whether the juror has any physical or mental
30 disability substantially impairing the capacity to render
31 satisfactory jury service: *Provided*, That a juror with a
32 physical disability, who can with reasonable accommo-
33 dation render competent service, is eligible for service;

34 (9) Whether the juror has, within the preceding two
35 years, been summoned to serve as a petit juror, grand
36 juror or magistrate court juror, and has actually
37 attended sessions of the magistrate or circuit court and
38 been reimbursed for his or her expenses as a juror;

39 (10) Whether the juror has lost the right to vote
40 because of a criminal conviction; and

41 (11) Whether the juror has been convicted of perjury,
42 false swearing or other infamous offense.

43 The juror qualification form may also request infor-
44 mation concerning the prospective juror's religious
45 preferences and organizational affiliations, except that
46 the form and the accompanying instructions shall
47 clearly inform the juror that this information need not
48 be provided if the juror declines to answer such
49 inquiries.

50 (b) The juror qualification form shall contain the
51 prospective juror's declaration that the responses are
52 true to the best of the prospective juror's knowledge and
53 an acknowledgment that a willful misrepresentation of
54 a material fact may be punished by a fine of not more
55 than five hundred dollars or imprisonment for not more
56 than thirty days, or both fine and imprisonment.
57 Notarization of the juror qualification form shall not be
58 required. If the prospective juror is unable to fill out the
59 form, another person may assist the prospective juror in
60 the preparation of the form and indicate that such
61 person has done so and the reason therefor. If an
62 omission, ambiguity or error appear in a returned form,
63 the clerk shall again send the form with instructions to
64 the prospective juror to make the necessary addition,
65 clarification or correction and to return the form to the
66 clerk within ten days after its second receipt.

67 (c) Any prospective juror who fails to return a
68 completed juror qualification form as instructed shall be
69 directed by the clerk to appear forthwith before the
70 clerk to fill out the juror qualification form. At the time
71 of the prospective juror's appearance for jury service, or
72 at the time of any interview before the court or clerk,
73 any prospective juror may be required to fill out another
74 juror qualification form in the presence of the court or
75 clerk. At that time the prospective juror may be
76 questioned with regard to the responses to questions
77 contained on the form and the grounds for the prospec-
78 tive juror's excuse or disqualification. Any information
79 thus acquired by the court or clerk shall be noted on the
80 juror qualification form.

81 (d) Any person who willfully misrepresents a material
82 fact on a juror qualification form or during any
83 interview described in subsection (c) of this section, for

84 the purpose of avoiding or securing service as a juror,
85 is guilty of a misdemeanor, and, upon conviction, shall
86 be fined not more than five hundred dollars or impris-
87 soned not more than thirty days, or both fined and
88 imprisoned.

**§52-1-6. Jury wheel or jury box; random selection of
names from master list for jury wheel or jury
box.**

1 (a) At the direction of the circuit court, the clerk for
2 each county shall maintain a jury wheel or jury box, into
3 which shall be placed the names or identifying numbers
4 of prospective jurors taken from the master list. The
5 choice of employing a jury wheel or jury box shall be
6 at the discretion of the circuit court or the chief judge
7 thereof.

8 (b) In counties having a population of less than fifteen
9 thousand persons according to the last available census,
10 the jury wheel or jury box shall include at least two
11 hundred names; in counties having a population of at
12 least fifteen thousand but less than fifty thousand, at
13 least four hundred names; a population of at least fifty
14 thousand but less than ninety thousand, at least eight
15 hundred names; and a population of ninety thousand or
16 more, at least one thousand six hundred names. From
17 time to time a larger or additional number may be
18 ordered by the circuit court to be placed in the jury
19 wheel or jury box. The clerk shall take measures to
20 ensure that a sufficient number of additional jurors are
21 drawn from time to time so that the jury wheel or jury
22 box is refilled and additional jurors may be drawn
23 therefrom. In October of each even-numbered year, or
24 at such other time as the court may direct, the clerk
25 shall remove from the jury box or jury wheel the names
26 of all persons who have, within the preceding two years,
27 been summoned to serve as petit jurors, grand jurors or
28 magistrate court jurors, and who have actually attended
29 sessions of the magistrate or circuit court and been
30 reimbursed for their expenses as jurors pursuant to the
31 provisions of section twenty-one of this article, section
32 thirteen, article two of this chapter, or under any
33 applicable rule or regulation of the supreme court of

34 appeals promulgated pursuant to the provisions of
35 section eight, article five, chapter fifty of this code.

36 (c) The names or identifying numbers of prospective
37 jurors to be placed in the jury wheel or jury box shall
38 be selected by the clerk at random from the master list
39 in the following manner: The total number of names on
40 the master list shall be divided by the number of names
41 to be placed in or added to the jury wheel or jury box
42 and the whole number next greater than the quotient
43 shall be the "key number", except that the key number
44 shall never be less than two. A "starting number" for
45 making the selection shall then be determined by a
46 random method from the numbers from one to the key
47 number, both inclusive. The required number of names
48 shall then be selected from the master list by taking in
49 order the first name on the master list corresponding
50 to the starting number and then successively the names
51 appearing in the master list at intervals equal to the key
52 number, recommencing if necessary at the start of the
53 list until the required number of names has been
54 selected. Upon recommencing at the start of the list, or
55 if additional names are subsequently to be selected for
56 the jury wheel or jury box, names previously selected
57 from the master list shall be disregarded in selecting the
58 additional names. The clerk is not required to, but may,
59 use an electronic or mechanical system or device in
60 carrying out its duties. (For example, assume a county
61 with a master list of eight thousand nine hundred eighty
62 names, a population of less than fifteen thousand and a
63 desired jury box or wheel containing two hundred
64 names. Eight thousand nine hundred eighty names
65 divided by two hundred is forty-four and nine-tenths
66 percent. The next whole number is forty-five. The clerk
67 would take every forty-fifth name on the list, using a
68 random starting number between one and forty-five.)

**§52-1-7. Drawings from the jury wheel or jury box;
notice of jury duty; penalties.**

1 (a) The chief judge of the circuit, or the judge in a
2 single judge circuit, shall provide by order rules
3 relating to the random drawing by the clerk of panels
4 from the jury wheel or jury box for juries in the circuit

5 and magistrate courts. The rules may allow for the
6 drawing of panels at any time. Upon receipt of the
7 direction and in the manner prescribed by the court, the
8 clerk shall publicly draw at random from the jury wheel
9 or jury box the number of jurors specified.

10 (b) If a jury is ordered to be drawn, the clerk
11 thereafter shall cause each person drawn for jury
12 service to be notified not less than twenty days before
13 the date for which the persons are to report for jury duty
14 with a summons and juror qualification form, if such
15 form has not already been completed, by personal
16 service or first class mail addressed to the person at his
17 or her usual residence, business or post-office address,
18 requiring him or her to report for jury service at a
19 specified time and place.

20 (c) A prospective juror who fails to appear as directed
21 by the summons issued pursuant to subsection (b) of this
22 section shall be ordered by the court to appear and show
23 cause for failure to appear as directed. If the prospective
24 juror fails to appear pursuant to the court's order or
25 fails to show good cause for failure to appear as directed
26 by the summons, he or she is guilty of civil contempt
27 and shall be fined not more than one thousand dollars.

**§52-1-7a. Alternate procedure for selection of jury by
electronic data processing methods.**

1 Notwithstanding any provision of this article to the
2 contrary, the court may, after conferring with the clerk
3 and documenting in writing the methods to be used,
4 with such documentation to be approved by the chief
5 judge, direct the use of electronic data processing
6 methods, or a combination of manual and machine
7 methods, for any combination of the following tasks:

8 (a) Recording in machine readable form names that
9 are initially selected manually from source lists autho-
10 rized by this article.

11 (b) Copying of names from source lists authorized by
12 this article from any counties or other sources that
13 maintain those lists in machine readable form such as
14 punched cards, magnetic tapes or magnetic discs.

15 (c) Selecting names from source lists for inclusion in
16 the jury list.

17 (d) Selecting names from the jury list for the list of
18 jurors summoned to attend at any term of court.

19 (e) Sorting or alphabetizing lists of names, deleting
20 duplicate selections of names and deleting names of
21 persons exempt, disqualified or excused from jury
22 service.

23 (f) Selecting and copying names for the creation of
24 any papers, records or correspondence necessary to
25 recruit, select and pay jurors and for other clerical
26 tasks.

27 If the court elects to use electronic machine methods
28 for any tasks described above, the selection system shall
29 be planned and programmed in order to ensure that any
30 group of names chosen will represent all segments of
31 source files from which drawn and that the mathemat-
32 ical odds of any single name being picked are substan-
33 tially equal.

34 When machine methods for jury selection are em-
35 ployed, both the jury list and the jury list as recorded
36 in machine readable form shall be safely kept in a
37 secure location with the office of the clerk of the circuit
38 court.

§52-1-8. Disqualification from jury service.

1 (a) The court, upon request of a prospective juror or
2 on its own initiative, shall determine on the basis of
3 information provided on the juror qualification form or
4 interview with the prospective juror or other competent
5 evidence whether the prospective juror is disqualified
6 for jury service. The clerk shall enter this determination
7 in the space provided on the juror qualification form and
8 on the alphabetical lists of names drawn from the jury
9 wheel or jury box.

10 (b) A prospective juror is disqualified to serve on a
11 jury if the prospective juror:

12 (1) Is not a citizen of the United States, at least
13 eighteen years old and a resident of the county;

14 (2) Is unable to read, speak and understand the
15 English language. For the purposes of this section, the
16 requirement of speaking and understanding the English
17 language is met by the ability to communicate in
18 American sign language or signed English;

19 (3) Is incapable, by reason of substantial physical or
20 mental disability, of rendering satisfactory jury service;
21 but a person claiming this disqualification may be
22 required to submit a physician's certificate as to the
23 disability and the certifying physician is subject to
24 inquiry by the court at its discretion;

25 (4) Has, within the preceding two years, been sum-
26 moned to serve as a petit juror, grand juror or magis-
27 trate court juror, and has actually attended sessions of
28 the magistrate or circuit court and been reimbursed for
29 his or her expenses as a juror pursuant to the provisions
30 of section twenty-one of this article, section thirteen,
31 article two of this chapter, or pursuant to an applicable
32 rule or regulation of the supreme court of appeals
33 promulgated pursuant to the provisions of section eight,
34 article five, chapter fifty of this code;

35 (5) Has lost the right to vote because of a criminal
36 conviction; or

37 (6) Has been convicted of perjury, false swearing or
38 other infamous offense.

39 (c) A prospective juror sixty-five years of age or older
40 is not disqualified from serving, but shall be excused
41 from service by the court upon the juror's request.

42 (d) A prospective grand juror is disqualified to serve
43 on a grand jury if the prospective grand juror is an
44 officeholder under the laws of the United States or of
45 this state except that the term "officeholder" does not
46 include notaries public.

47 (e) A person who is physically disabled and can render
48 competent service with reasonable accommodation shall
49 not be ineligible to act as juror or be dismissed from a
50 jury panel on the basis of disability alone: *Provided,*
51 That the circuit judge shall, upon motion by either party
52 or upon his or her own motion, disqualify a disabled

53 juror if the circuit judge finds that the nature of
54 potential evidence in the case including, but not limited
55 to, the type or volume of exhibits or the disabled juror's
56 ability to evaluate a witness or witnesses, unduly
57 inhibits the disabled juror's ability to evaluate the
58 potential evidence. For purposes of this section:

59 (1) Reasonable accommodation includes, but is not
60 limited to, certified interpreters for the hearing
61 impaired, spokespersons for the speech impaired and
62 readers for the visually impaired.

63 (2) The court shall administer an oath or affirmation
64 to any person present to facilitate communication for a
65 disabled juror. The substance of such oath or affirma-
66 tion shall be that any person present as an accommo-
67 dation to a disabled juror will not deliberate on his or
68 her own behalf, although present throughout the
69 proceedings, but act only to accurately communicate for
70 and to the disabled juror.

71 (f) Nothing in this article shall be construed so as to
72 limit in any way a party's right to peremptory strikes
73 in civil or criminal actions.

**§52-1-15. Challenging compliance with selection
procedures.**

1 (a) Within seven days after the moving party discov-
2 ers, or by the exercise of due diligence could have
3 discovered, the grounds therefor, and in any event
4 before the petit jury is sworn to try the case, a party
5 may move to stay the proceedings, quash the indictment
6 or move for other relief as may be appropriate under
7 the circumstances or the nature of the case. The motion
8 shall set forth the facts which support the party's
9 contention that there has been a substantial failure to
10 comply with this article in selecting the jury.

11 (b) Upon motion filed under subsection (a) of this
12 section containing a sworn statement of facts which, if
13 true, would constitute a substantial failure to comply
14 with this article, the moving party is entitled to present,
15 in support of the motion, the testimony of the clerk, any
16 relevant records and papers not public or otherwise

17 available used by the clerk, and any other relevant
18 evidence. The clerk may identify the lists utilized in
19 compiling the master list, but may not be required to
20 divulge the contents of such lists. If the court determines
21 that in selecting a jury there has been a substantial
22 failure to comply with this article, the court shall stay
23 the proceedings pending the selection of the jury in
24 conformity with this article, quash an indictment or
25 grant such other relief as the court may deem
26 appropriate.

27 (c) In the absence of fraud, the procedures prescribed
28 by this section are the exclusive means by which a
29 person accused of a crime, the state or a party in a civil
30 case, may challenge a jury on the ground that the jury
31 was not selected in conformity with this article.

§52-1-16. Preservation of records.

1 All records and papers compiled and maintained by
2 the clerk in connection with selection and service of
3 jurors from the master list, the jury box or the jury
4 wheel shall be preserved by the clerk for at least four
5 years after such jurors were selected, or for any longer
6 period ordered by the court.

7 The clerk shall make an annual report no later than
8 the first day of March of each year to the supreme court
9 of appeals setting forth the following information:
10 Whether the clerk employed a jury box or jury wheel
11 for the year reported, and the age, race and gender of
12 each person for whom a juror qualification form has
13 been received. The supreme court of appeals shall
14 provide this information to the president of the Senate
15 and the speaker of the House of Delegates on an annual
16 basis, no later than the first day of April of each year.

§52-1-17. Reimbursement of jurors.

1 (a) A juror shall be paid mileage, at the rate set by
2 the commissioner of finance and administration for state
3 employees, for travel expenses from the juror's residence
4 to the place of holding court and return and shall be
5 reimbursed for other expenses incurred as a result of
6 required attendance at sessions of the court at a rate of

7 between fifteen and forty dollars, set at the discretion
8 of the circuit court or the chief judge thereof, for each
9 day of required attendance. Such reimbursement shall
10 be based on vouchers submitted to the sheriff. Such
11 mileage and reimbursement shall be paid out of the
12 state treasury.

13 (b) When a jury in any case is placed in the custody
14 of the sheriff, he or she shall provide for and furnish
15 the jury necessary meals and lodging while they are in
16 the sheriff's custody at a reasonable cost to be deter-
17 mined by an order of the court; and the meals and
18 lodging shall be paid for out of the state treasury.

19 (c) Anytime a panel of prospective jurors has been
20 required to report to court for the selection of a petit
21 jury in any scheduled matter, the court shall, by specific
22 provision in a court order, assess a jury cost. In circuit
23 court cases the jury cost shall be the actual cost of the
24 jurors' service, and in magistrate court cases, the jury
25 cost assessed shall be two hundred dollars. Such costs
26 shall be assessed against the parties as follows:

27 (1) In every criminal case, against the defendant upon
28 conviction, whether by plea, by bench trial or by jury
29 verdict;

30 (2) In every civil case, against either party or prorated
31 against both parties, at the court's discretion, if the
32 parties settle the case or trial is to the bench; and

33 (3) In the discretion of the court, and only when
34 fairness and justice so require, a circuit court or
35 magistrate court may forego assessment of the jury fee,
36 but shall set out the reasons therefor in a written order:
37 *Provided*, That a waiver of the assessment of a jury fee
38 in a case tried before a jury in magistrate court may
39 only be permitted after the circuit court, or the chief
40 judge thereof, has reviewed the reasons set forth in the
41 order by the magistrate and has approved such waiver.

42 (d) The circuit or magistrate court clerk shall by the
43 tenth day of the month following the month of collection
44 remit to the sheriff all jury costs collected, and the clerk
45 and the clerk's surety are liable therefor on the clerk's

46 official bond as for other money coming into the clerk's
47 hands by virtue of the clerk's office.

48 (e) The sheriff shall pay into the state treasury all jury
49 costs received from the court clerks, and the sheriff shall
50 be held to account in the sheriff's annual settlement for
51 all such moneys.

§52-1-18. When juror not entitled to reimbursement.

1 No juror who departs without leave of the court or
2 who, being summoned as a witness for the state, charges
3 for attendance as such, may be entitled to receive any
4 reimbursement for services as a juror.

§52-1-20. Payment of reimbursement.

1 The method of payment of jurors shall be determined
2 by the chief judge and approved by the state tax
3 commissioner. It is the duty of the clerk, as soon as
4 practicable after the adjournment of the court or before
5 the adjournment of the court at such time as the chief
6 judge may direct, to deliver to the sheriff of the county
7 a certified accounting of the amount to which each juror
8 is entitled. If any sheriff fails to pay any allowance as
9 required by law, the sheriff may be proceeded against
10 as for a contempt of court.

11 Any allowance paid by the sheriff under the provi-
12 sions of this section shall be repaid to the sheriff out of
13 the state treasury upon the production of satisfactory
14 proof that the same has actually been paid by the
15 sheriff. Proof of payment shall be in the form of a
16 complete itemized statement indicating the total amount
17 eligible for reimbursement.

ARTICLE 2. GRAND JURIES.

§52-2-3. Selection and summoning of jurors.

§52-2-13. Compensation and mileage of grand jurors.

§52-2-3. Selection and summoning of jurors.

1 The clerk of any circuit court requiring a grand jury
2 shall, at least thirty days before the term of court, draw
3 and assign persons for the grand jury, but the court, or
4 judge thereof, may require the clerk at any specified
5 time to draw and assign grand jurors for either a

6 regular, special or adjourned term of court. When
7 required by the circuit court or the chief judge thereof,
8 the clerk shall draw the names of sixteen persons from
9 the jury wheel or jury box, and the persons so drawn
10 shall constitute the grand jury. At the same time, the
11 clerk shall draw the names of such additional numbers
12 of persons from the jury wheel or jury box as the chief
13 judge of the circuit, or the judge in a single judge circuit
14 shall by prior order direct, and the persons so drawn
15 shall constitute alternate jurors for the grand jury. The
16 judge may replace any absent members of the grand
17 jury from among the alternate grand jurors, in the order
18 in which the alternate jurors were drawn. The clerk
19 shall enter the names of all persons so drawn in a book
20 kept for that purpose and shall issue summonses to the
21 persons so drawn in the same manner as that provided
22 for petit jurors in subsection (b), section seven, article
23 one of this chapter.

§52-2-13. Compensation and mileage of grand jurors.

1 A grand juror shall be paid mileage, at the rate set
2 by the commissioner of finance and administration for
3 state employees, for travel expenses incurred in travel-
4 ing from the grand juror's residence to the place of the
5 holding of the grand jury and return, and shall be
6 reimbursed for other expenses incurred as a result of
7 required attendance at sessions of the grand jury at a
8 rate of between fifteen and forty dollars, set at the
9 discretion of the circuit court or the chief judge thereof,
10 for each day of required attendance.

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

Article

1. Fees and Allowances.
2. Costs Generally.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-12. Payment of fines by credit card or payment plan.

1 A circuit court may accept credit cards in payment
2 of all fines, costs, forfeitures, restitution or penalties.

3 The supreme court of appeals shall adopt rules regard-
4 ing the use of credit cards to pay fines, and the rules
5 shall state that any charges made by the credit company
6 shall be paid by the person responsible for paying the
7 fine, cost, forfeiture, restitution or penalty.

ARTICLE 2. COSTS GENERALLY.

§59-2-1. Suits by persons financially unable to pay.

1 (a) A natural person who is financially unable to pay
2 the fees or costs attendant to the commencement,
3 prosecution or defense of any civil action or proceeding,
4 or an appeal therein, is permitted to proceed without
5 prepayment in any court of this state, after filing with
6 the court an affidavit that he or she is financially unable
7 to pay the fees or costs or give security therefor.

8 (1) The clerk of the court and all other officers of the
9 court shall issue and serve all process and perform all
10 duties in such cases.

11 (2) Judgment may be rendered for costs at the
12 conclusion of the action, where otherwise authorized by
13 law, and be taxable against a losing party who has not
14 been determined to be financially unable to pay.

15 (3) Upon the filing of an affidavit in accordance with
16 this subsection, seeking an appeal in a civil case from
17 a circuit court to the supreme court of appeals, the
18 supreme court of appeals may direct payment by the
19 administrative office of the supreme court of appeals of
20 the expenses of duplicating the record on appeal after
21 it is transmitted by the clerk of the circuit court. The
22 transcript of proceedings before the circuit court, if the
23 petition for appeal is to be filed with the transcript, shall
24 be provided by the court reporter without cost: *Pro-*
25 *vided*, That actual expenses of the court reporter for
26 supplies used in preparing the transcript may be paid
27 when authorized by the director of the administrative
28 office of the supreme court of appeals.

29 (b) The supreme court of appeals or the chief justice
30 thereof shall establish and periodically review and
31 update financial guidelines for determining the eligibil-
32 ity of civil litigants to proceed in forma pauperis.

33 (c) The supreme court of appeals shall adopt a
34 financial affidavit form for use by persons seeking a
35 waiver of fees, costs or security pursuant to the
36 provisions of this section. Copies of the form shall be
37 available to the public in the offices of the clerk of any
38 court of this state. The affidavit shall state the nature
39 of the action, defense or appeal and the affiant's belief
40 that he or she is entitled to redress. The form shall elicit
41 information from the affiant which will enable the court
42 in which it is filed to consider the following factors in
43 determining whether the affiant is financially unable to
44 pay fees, costs or security:

45 (1) Current income prospects, taking into account
46 seasonal variations in income;

47 (2) Liquid assets, assets which may provide collateral
48 to obtain funds and other assets which may be liqui-
49 dated to provide funds to pay fees, costs or security;

50 (3) Fixed debts and obligations, including federal,
51 state and local taxes and medical expenses;

52 (4) Child care, transportation and other expenses
53 necessary for employment;

54 (5) Age or physical infirmity of resident family
55 members;

56 (6) Whether the person has paid or will pay counsel
57 fees, or whether counsel will be provided by a private
58 attorney on a contingent fee basis, an attorney pro bono,
59 a legal services attorney, a children's advocate or some
60 other attorney at no cost or a reduced cost to the affiant;
61 and

62 (7) The consequences for the individual if a waiver of
63 fees, costs or security is denied.

64 (d) If the information set forth in the affidavit or the
65 evidence submitted in the action reveals that the person
66 filing the affidavit is financially able to pay the fees and
67 costs, the court or the family law master may order the
68 person to pay the fees and costs in the action.

69 (e) No other party in any proceeding may initiate an
70 inquiry by motion or other pleading or participate in

71 any proceeding relevant to the issues raised pursuant to
72 this section.

73 (f) The making of an affidavit subject to inquiry under
74 this section does not in any event give rise to criminal
75 remedies against the affiant nor occasion any civil action
76 against the affiant except for the recovery of costs as in
77 any other case where costs may be recovered and the
78 recovery of the value of services, if any, provided
79 pursuant to this section. A person who has made an
80 affidavit knowing the contents thereof to be false may
81 be prosecuted for false swearing as provided by law.

CHAPTER 62. CRIMINAL PROCEDURE.

Article

4. Recovery of Fines in Criminal Cases.
12. Probation and Parole.
13. Corrections Management.

ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.

§62-4-17. Suspension of licenses for failure to pay fines and costs or failure to appear in court.

1 (a) If costs, fines, forfeitures, penalties or restitution
2 imposed by the circuit court upon conviction of a person
3 for any criminal offense under this code are not paid in
4 full when ordered to do so by the court, the circuit clerk
5 shall notify the division of motor vehicles of such failure
6 to pay: *Provided*, That at the time the judgment is
7 imposed, the court shall provide the person with written
8 notice that failure to pay the same when ordered to do
9 so shall result in the suspension of such person's license
10 or privilege to operate a motor vehicle in this state and
11 that such suspension could result in the cancellation of,
12 the failure to renew or the failure to issue an automobile
13 insurance policy providing coverage for such person or
14 such person's family: *Provided, however*, That the failure
15 of the court to provide such notice shall not affect the
16 validity of any suspension of such person's license or
17 privilege to operate a motor vehicle in this state. For
18 purposes of this section, such period of time within
19 which the person is required to pay shall be stayed
20 during any period an appeal from the conviction which
21 resulted in the imposition of such costs, fines, forfeitures
22 or penalties is pending.

23 Upon such notice, the division of motor vehicles shall
24 suspend the person's driver's license or privilege to
25 operate a motor vehicle in this state until such time that
26 the costs, fines, forfeitures or penalties are paid.

27 (b) Notwithstanding the provisions of this section to
28 the contrary, the notice of the failure to pay such costs,
29 fines, forfeitures or penalties shall not be given where
30 the circuit court, upon application of the person upon
31 whom the same were imposed filed prior to the expira-
32 tion of the period within which the same are required
33 to be paid, enters an order finding that such person is
34 financially unable to pay all or a portion of the same:
35 *Provided*, That where the circuit court, upon finding
36 that the person is financially unable to pay the full
37 amount thereof, requires the person to pay the remain-
38 ing portion thereof, the circuit clerk shall notify the
39 division of motor vehicles of such person's failure to pay
40 the same if the same is not paid within the period of
41 time ordered by such court.

42 (c) If a person charged with a criminal offense fails
43 to appear or otherwise respond in court after having
44 received notice to do so, the court shall notify the
45 division of motor vehicles thereof within fifteen days of
46 the scheduled date to appear unless such person sooner
47 appears or otherwise responds in court to the satisfac-
48 tion of the court. Upon such notice, the division of motor
49 vehicles shall suspend the person's driver's license or
50 privilege to operate a motor vehicle in this state until
51 such time that the person appears as required.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-5. Probation officers and assistants.

§62-12-9. Conditions of release on probation.

§62-12-15. Powers and duties of state parole officers.

§62-12-5. Probation officers and assistants.

1 (a) Each circuit court, subject to the approval of the
2 supreme court of appeals and in accordance with its
3 rules, is authorized to appoint one or more probation
4 officers and clerical assistants.

5 (b) The appointment of probation officers and clerical

6 assistants shall be in writing and entered on the order
7 book of the court by the judge making such appointment
8 and a copy of said order of appointment shall be
9 delivered to the administrative director of the supreme
10 court of appeals. The order of appointment shall state
11 the monthly salary fixed by the judge and approved by
12 the supreme court of appeals to be paid the probation
13 officer or clerical assistants so appointed.

14 (c) The salary of probation officers and clerical
15 assistants shall be paid monthly or semimonthly, as the
16 supreme court of appeals by rule may direct and they
17 shall be reimbursed for all reasonable and necessary
18 expenses actually incurred in the line of duty in the
19 field. The salary and expenses shall be paid by the state
20 from the judicial accounts thereof. The county commis-
21 sion shall provide adequate office space for the proba-
22 tion officer and his or her assistants to be approved by
23 the appointing court. The equipment and supplies as
24 may be needed by the probation officer and his or her
25 assistants shall be provided by the state and the cost
26 thereof shall be charged against the judicial accounts of
27 the state.

28 (d) No judge may appoint any probation officer,
29 assistant probation officer or clerical assistant who is
30 related to him or her either by consanguinity or affinity.

31 (e) Subject to the approval of the supreme court of
32 appeals and in accordance with its rules, a judge of a
33 circuit court whose circuit comprises more than one
34 county may appoint a probation officer and a clerical
35 assistant in each county of the circuit or may appoint
36 the same persons to serve in these respective positions
37 in two or more counties in the circuit.

38 (f) Nothing contained in this section alters, modifies,
39 affects or supersedes the appointment or tenure of any
40 probation officer, medical assistant or psychiatric
41 assistant appointed by any court under any special act
42 of the Legislature heretofore enacted, and the salary or
43 compensation of those persons shall remain as specified
44 in the most recent amendment of any special act until
45 changed by the court, with approval of the supreme

46 court of appeals, by order entered of record, and any
47 such salary or compensation shall be paid out of the
48 state treasury.

§62-12-9. Conditions of release on probation.

1 (a) 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 (4) That in every case wherein the probationer has
14 been convicted of an offense defined in section thirteen,
15 article eight, chapter sixty-one of this code and articles
16 eight-b and eight-d of said chapter, against a child, the
17 probationer shall not live in the same residence as any
18 minor child, nor exercise visitation with any minor
19 child, and shall have no contact with the victim of the
20 offense: *Provided*, That the probationer may petition the
21 court of the circuit wherein he was so convicted for a
22 modification of this term and condition of his probation
23 and the burden shall rest upon the probationer to
24 demonstrate that a modification is in the best interest
25 of the child.

26 (5) That the probationer be required to pay a fee,
27 based upon his or her ability to pay, not to exceed twenty
28 dollars per month to defray costs of supervision. All
29 moneys collected as fees from probationers shall be
30 deposited with the circuit clerk who shall, on a monthly
31 basis, remit said moneys collected to the state treasurer
32 for deposit in the state general revenue fund.

33 (b) In addition to the terms of probation set forth in
34 subsection (a) of this section, the court may impose,

35 subject to modification at any time, any other conditions
36 which it may deem advisable, including, but not limited
37 to, any of the following:

38 (1) That he shall make restitution or reparation, in
39 whole or in part, immediately or within the period of
40 probation, to any party injured by the crime for which
41 he has been convicted.

42 (2) That he shall pay any fine assessed and the costs
43 of the proceeding in such installments as the court may
44 direct.

45 (3) That he shall make contribution from his earnings,
46 in such sums as the court may direct, for the support
47 of his dependents.

48 (4) That he shall, in the discretion of the court, be
49 required to serve a period of confinement in the county
50 jail of the county in which he was convicted for a period
51 not to exceed one third of the minimum sentence
52 established by law or one third of the least possible
53 period of confinement in an indeterminate sentence, but
54 in no case shall such period of confinement exceed six
55 consecutive months. The court shall have authority to
56 sentence the defendant within such six-month period to
57 intermittent periods of confinement including, but not
58 limited to, weekends or holidays and may grant unto the
59 defendant intermittent periods of release in order that
60 he may work at his employment or for such other
61 reasons or purposes as the court may deem appropriate:
62 *Provided*, That the provisions of article eleven-a of this
63 chapter shall not apply to such intermittent periods of
64 confinement and release except to the extent that the
65 court may direct. If a period of confinement is required
66 as a condition of probation, the court shall make special
67 findings that other conditions of probation are inade-
68 quate and that a period of confinement is necessary.

§62-12-15. Powers and duties of state parole officers.

1 Each state parole officer shall investigate all cases
2 referred to him or her for investigation by the commis-
3 sioner of corrections and shall report in writing thereon.
4 He or she shall furnish to each person released on parole

5 under his or her supervision a written statement of the
6 conditions of his or her parole together with a copy of
7 the rules prescribed by the board, as the case may be,
8 for the supervision of parolees. He or she shall keep
9 informed concerning the conduct and condition of each
10 person under his or her supervision and shall report
11 thereon in writing as often as the commissioner of
12 corrections may require. He or she shall use all
13 practicable and suitable methods to aid and encourage
14 persons on parole and to bring about improvement in
15 their conduct and condition. He or she shall keep
16 detailed records of his or her work, shall keep accurate
17 and complete accounts of and give receipts for all money
18 collected from persons under his or her supervision and
19 shall pay over the money to those persons a circuit court
20 or the commissioner of corrections may designate. He or
21 she shall give bond with good security, to be approved
22 by the commissioner of corrections, in a penalty of not
23 less than one thousand dollars nor more than three
24 thousand dollars, as the commissioner of corrections
25 may determine, and also perform any other duties the
26 commissioner may require. He or she has authority,
27 with or without an order or warrant, to arrest any
28 parolee. He or she has all the powers of a notary public,
29 with authority to act anywhere within the state.

ARTICLE 13. CORRECTIONS MANAGEMENT.

***§62-13-2. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.**

1 (a) The supreme court of appeals shall take charge of
2 and cause to be supervised all persons placed on
3 probation and shall prescribe rules for the supervision
4 of probationers under their supervision and control.

5 (b) The commissioner of corrections shall supervise all
6 persons released on parole and placed in the charge of
7 a state parole officer and all persons released on parole
8 under any law of this state. He or she shall also
9 supervise all probationers and parolees whose supervi-

*Clerk's Note: This section was also amended by S. B. 577 (Chapter 37), which passed prior to this act.

10 sion may have been undertaken by this state by reason
11 of any interstate compact entered into pursuant to the
12 uniform act for out-of-state probation and parolee
13 supervision. The commissioner shall prescribe rules for
14 the supervision of probationers and parolees under his
15 or her supervision and control and shall succeed to all
16 administrative and supervisory powers of the board of
17 probation and parole and the authority of the board of
18 probation and parole in those matters only.

19 The commissioner of corrections shall administer all
20 other laws affecting the custody, control, treatment and
21 employment of persons sentenced or committed to
22 institutions under the supervision of the department or
23 affecting the operation and administration of institu-
24 tions or functions of the department.

25 The final determination regarding the release of
26 inmates from penal institutions and the final determi-
27 nation regarding revocation of parolees from those
28 institutions pursuant to the provisions of article twelve
29 of this chapter shall remain within the exclusive
30 jurisdiction of the board of probation and parole.

CHAPTER 57

(Com. Sub. for H. B. 2270—By Delegates Vest, Faircloth,
Huffman and Compton)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section nine, article seventeen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section eight of said article, relating to abolishing the requirement that disputes between adjoining landowners concerning partition fences be settled by arbitration; permitting adjoining landowners to bring civil action to settle disputes between them concerning partition fences; and limiting liability of adjoining landowners for the cost of construction, repair or maintenance of a particular type of partition fence.

Be it enacted by the Legislature of West Virginia:

That section nine, article seventeen, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that section eight of said article be amended and reenacted to read as follows:

ARTICLE 17. FENCES.

§19-17-8. Disputes relating to partition fences.

1 If a dispute arises between the owners of adjoining
2 lands concerning the proportion or particular part of a
3 fence to be built or maintained by either of them, or the
4 amount to be paid by one party to the other for any fence
5 already built or maintained, either party may proceed
6 by civil action in a magistrate or circuit court, as shall
7 have jurisdiction of the amount or value in controversy,
8 within the county in which any portion of the partition
9 built or to be built, is or is to be located, to determine
10 the amount to be paid by one party to the other for the
11 just proportion of the costs of any construction, repair
12 or maintenance of the partition fence. The person who
13 is required to share in the cost of the construction,
14 repair or maintenance of the partition fence shall not be
15 liable for more than one half of the cost of the construc-
16 tion, repair or maintenance of a fence which meets the
17 standards of subdivision (e), section one of this article.

CHAPTER 58

(H. B. 2106—By Delegates Love, Doyle, Warner, Kiss,
L. White, Tribett and McKinley)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twelve-b, article three, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the fire prevention and control act; establishing certain fees; and specifying fees for fire safety review of new and existing construction plans and specifications.

Be it enacted by the Legislature of West Virginia:

That section twelve-b, 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.

§29-3-12b. Fees.

1 (a) The state fire marshal may establish fees in
2 accordance with the following:

3 (1) *For blasting.* — Any person storing, selling or
4 using explosives shall first obtain a permit from the
5 state fire marshal. Such permit shall be valid from the
6 first day of July through the thirtieth day of June of the
7 succeeding year beginning on the first day of July, one
8 thousand nine hundred eighty-nine. The state fire
9 marshal may charge a fee not to exceed fifty dollars for
10 such permit.

11 (2) *For inspections of schools or day care facilities.* —
12 The state fire marshal may charge a fee of up to twenty-
13 five dollars per annual inspection for inspection of
14 schools or day care facilities: *Provided*, That only one
15 such fee may be charged per year for any building in
16 which a school and a day care facility are co-located:
17 *Provided, however*, That any school or day care facility
18 may not be charged for an inspection more than one
19 time per twelve-month period.

20 (3) *For inspections of hospitals or nursing homes.* —
21 The state fire marshal may charge an inspection fee of
22 up to one hundred dollars per annual inspection of
23 hospitals or nursing homes: *Provided*, That any hospital
24 or nursing home may not be charged for an inspection
25 more than one time per twelve-month period.

26 (4) *For inspections of personal care homes or board*
27 *and care facilities.* — The state fire marshal may charge
28 an inspection fee of up to fifty dollars per annual
29 inspection for inspections of personal care homes or
30 board and care facilities: *Provided*, That any personal
31 care home or board and care facility may not be charged
32 for an inspection more than one time per twelve-month

33 period.

34 (5) *For inspections of residential occupancies.* — The
35 state fire marshal may charge an inspection fee of up
36 to one hundred dollars for each inspection of a residen-
37 tial occupancy. For purposes of this subdivision,
38 “residential occupancies” are those buildings in which
39 sleeping accommodations are provided for normal
40 residential purposes.

41 (6) *For inspections of mercantile occupancies.* — The
42 state fire marshal may charge an inspection fee of up
43 to one hundred dollars for inspections of mercantile
44 occupancies: *Provided,* That if such inspection is in
45 response to a complaint made by a member of the
46 public, the state fire marshal shall obtain from the
47 complainant an advance inspection fee of twenty-five
48 dollars. This fee shall be returned to the complainant if,
49 after the state fire marshal has made the inspection, he
50 or she finds that the complaint was accurate and
51 justified, and he or she shall thereafter collect an
52 inspection fee of up to one hundred dollars from the
53 mercantile occupancy. If, after the inspection has been
54 performed, it appears to the state fire marshal that such
55 complaint was not accurate or justified, the state fire
56 marshal shall keep the twenty-five dollar advance
57 inspection fee obtained from the complainant and may
58 not collect any fees from the mercantile occupant. For
59 purposes of this section, “mercantile occupancy” in-
60 cludes stores, markets and other rooms, buildings or
61 structures for the display and sale of merchandise.

62 (7) *For business occupancies.* — The state fire mar-
63 shal may charge an inspection fee of up to one hundred
64 dollars for inspections of business occupancies: *Provided,*
65 That the provisions in subdivision (6) of this section shall
66 apply regarding complaints by members of the public.
67 For purposes of this section, “business occupancies” are
68 those buildings used for the transaction of business,
69 other than mercantile occupancies, for the keeping of
70 accounts and records, and similar purposes.

71 (8) *For inspections of assembly occupancies.* — The
72 state fire marshal may charge an inspection fee not

73 more than one time per twelve-month period for the
74 inspection of assembly occupancies. The inspection fee
75 shall be assessed as follows: For Class C assembly
76 facilities, an inspection fee not to exceed fifty dollars; for
77 Class B assembly facilities, an inspection fee not to
78 exceed seventy-five dollars; and for Class A facilities, an
79 inspection fee not to exceed one hundred dollars.

80 For purposes of this subdivision, an "assembly
81 occupancy" includes, but is not limited to, all buildings
82 or portions of buildings used for gathering together fifty
83 or more persons for such purposes as deliberation,
84 worship, entertainment, eating, drinking, amusement or
85 awaiting transportation. For purposes of this section, a
86 "Class C assembly facility" is one that accommodates
87 fifty to three hundred persons; a "Class B facility" is one
88 which accommodates more than three hundred persons
89 but less than one thousand persons; and a "Class A
90 facility" is one which accommodates more than one
91 thousand persons.

92 (b) The state fire marshal may collect the following
93 fees for the fire safety review of plans and specifications
94 for new and existing construction. Such fees shall be
95 paid by such party or parties receiving the review.

96 (1) *Structural barriers and fire safety plans review.* —
97 The fee is one dollar for each one thousand dollars of
98 construction cost up to the first one million dollars.
99 Thereafter, the fee is forty cents for each one thousand
100 dollars of construction cost.

101 (2) *Sprinkler system review.* — The fee charged for
102 the review of an individual sprinkler system is as
103 follows: Number of heads: One to two hundred — eighty-
104 five dollars; two hundred one to three hundred — one
105 hundred dollars; three hundred one to seven hundred
106 fifty — one hundred twenty dollars; over seven hundred
107 fifty — one hundred twenty dollars plus ten cents per
108 head over seven hundred fifty.

109 (3) *Fire alarm systems review.* — The fee charged for
110 the review of a fire alarm system is fifty dollars for each
111 ten thousand square feet of space with a fifty dollar
112 minimum charge.

113 (4) *Range hood extinguishment system review.* — The
114 fee is twenty-five dollars per individual system
115 reviewed.

116 (5) *Carpet specifications.* — The fee for carpet review
117 and approval is twenty dollars per installation.

118 (c) All fees authorized and collected pursuant to this
119 article and article three-b of this chapter shall be paid
120 to the state fire marshal and thereafter deposited into
121 a special account for the operation of the state fire
122 commission in administering this article and article
123 three-b of this chapter. The Legislature shall approp-
124 priate the moneys in said account by a specific numbered
125 account in the budget bill. Beginning on the first day
126 of July, one thousand nine hundred ninety-two, and
127 every fiscal year thereafter, at the end of each fiscal
128 year there shall be transferred from the special account,
129 to the general revenue fund of the state, ten percent of
130 all money collected by the fire marshal during the year:
131 *Provided,* That any balance remaining in the special
132 account at the end of any fiscal year, after the transfer
133 of the ten percent, shall be reappropriated to the next
134 fiscal year: *Provided, however,* That in addition to said
135 ten percent, amounts collected which are found from
136 time to time to exceed the funds needed for purposes for
137 which the fees are collected may be transferred to other
138 accounts or redesignated for other purposes by appro-
139 priation of the Legislature.

140 (d) If the owner or occupant of any occupancy
141 arranges a time and place for an inspection with the
142 state fire marshal and is not ready for the occupancy
143 to be inspected at the appointed time and place, the
144 owner or occupant thereof shall be charged the inspec-
145 tion fee provided in this section unless at least forty-
146 eight hours prior to the scheduled inspection the owner
147 or occupant requests the state fire marshal to reschedule
148 such inspection. In the event a second inspection is
149 required by the state fire marshal as a result of the
150 owner or occupant failing to be ready for the inspection
151 when the state fire marshal arrives, the state fire
152 marshal shall charge the owner or occupant of such
153 occupancy the inspection fees set forth above for each
154 inspection trip required.

CHAPTER 59

(Com. Sub. for H. B. 2028—By Delegates Douglas, Faircloth and Manuel)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-aa, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to county hazardous materials response teams; allowing county commissions to bill carriers, owners and generators of hazardous materials for the cost of services provided to carriers, owners and generators of hazardous materials involved in a hazardous materials incident and providing that any carrier, owner or generator of hazardous materials failing to pay a bill for cost of services provided is liable for treble the cost of services.

Be it enacted by the Legislature of West Virginia:

That section three-aa, article one, 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 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3aa. Authority of county commissions to create and fund a hazardous material accident response program.

1 In addition to all other powers and duties now
2 conferred by law upon county commissions, county
3 commissions are hereby authorized and empowered to
4 create a hazardous material accident response program.
5 The program may include the establishment of a
6 hazardous materials response team. The hazardous
7 materials response team shall include members of the
8 fire departments, recognized and approved by the West
9 Virginia fire commission in the county, who are
10 designated by the county commission. The team shall
11 also include members of emergency medical services
12 certified pursuant to article four-c, chapter sixteen of
13 this code who are acting in their official capacity by
14 providing ambulance or emergency medical services
15 within the county and who are designated as members

16 of the hazardous materials response team by the county
17 commission. The team may also include other people in
18 the community who are recognized as having expertise
19 with hazardous materials or hazardous material inci-
20 dents and who are designated by the county commission
21 to serve on the team. The purpose of the team is to
22 respond to hazardous material incidents. The hazardous
23 materials response team shall function and the members
24 shall serve at the will and pleasure of the county
25 commission. The team shall operate in cooperation with
26 the county office of emergency services and other
27 approved fire departments. The commission is autho-
28 rized to receive donated funds and to expend those funds
29 and to expend its own funds for the acquisition of
30 equipment and materials for use by and training of the
31 members of the team. The county commission is hereby
32 authorized to enter into agreements with other counties
33 to combine or coordinate hazardous material response
34 team training and for the purchase or lease and use of
35 equipment or materials.

36 Any carrier, owner or generator of hazardous mate-
37 rials who receives the services of a county hazardous
38 materials response team is liable for the cost of
39 necessary services provided by a county hazardous
40 materials response team. County commissions may bill
41 a carrier, owner or generator of hazardous materials for
42 any costs incurred by the team in responding to a
43 hazardous materials incident in which the carrier,
44 owner or generator is involved: *Provided*, That the
45 carrier, owner or generator may, within thirty days of
46 receipt of the bill, appeal in writing to the county
47 commission to request a hearing to address any costs
48 which may be considered extraordinary for the services
49 of the hazardous materials response team. The carrier,
50 owner or generator will hold payment of the costs in
51 abeyance pending the final written decision of the
52 county commission. Any funds received by the county
53 commission as a result of billing carrier, owners and
54 generators of hazardous materials shall be used by the
55 county commission to implement the provisions of this
56 section and to reimburse the response teams partici-
57 pants for response costs.

58 Any carrier, owner or generator involved in a
59 hazardous materials incident who fails to pay a bill for
60 services provided by a county hazardous materials
61 incident team within ninety days shall be liable for
62 treble the cost of the services.

63 For purposes of this section, the term "generator"
64 means any person, corporation, partnership, association
65 or other legal entity, by site location, whose act or
66 process produces hazardous materials as identified or
67 listed by the director of the division of natural resources
68 in regulations promulgated pursuant to section six,
69 article five-g, chapter twenty of this code, in an amount
70 greater than twelve thousand kilograms per year.

71 For purposes of this section, the term "carrier" means
72 any person engaged in the off-site transportation of
73 hazardous materials by air, rail, highway or water.

74 For purposes of this section, "owner" means any
75 person, corporation, partnership, association or other
76 legal entity whose hazardous materials are being
77 transported by the entity or by a carrier.

78 For the purposes of this section, the term "hazardous
79 materials" means those materials which are designated
80 as such pursuant to federal laws and regulations, the
81 designations of which are adopted by reference as of the
82 effective date of this section.

CHAPTER 60

(Com. Sub. for S. B. 423—By Senators Jones, Plymale, Holliday and Anderson)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-four-a; and to amend and reenact sections, one, two, three and eight, article three-c, chapter sixteen of said code, all relating to serological testing generally; providing for the notification of

certain individuals and entities of test results; and providing for confidentiality of test results.

Be it enacted by the Legislature of West Virginia:

That article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-four-a; and that sections one, two, three and eight, article three-c, chapter sixteen of said code be amended and reenacted, all to read as follows:

Chapter

- 15. Public Safety.
- 16. Public Health.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. DEPARTMENT OF PUBLIC SAFETY.

§15-2-24a. Establishment of centralized database of DNA identification records in division of public safety.

1 (a) A centralized database of DNA (deoxyribonucleic
2 acid) identification records for convicted felons shall be
3 established in the division of public safety under the
4 direction, control and supervision of the division of
5 public safety criminal identification bureau forensic
6 laboratory. The established system shall be compatible
7 with the procedures set forth in a national DNA
8 identification index to ensure data exchange on a
9 national level.

10 (b) The purpose of the centralized DNA database is
11 to assist federal, state and local criminal justice and law-
12 enforcement agencies within and outside the state in the
13 identification, detection or exclusion of individuals who
14 are subjects of the investigation or prosecution of sex-
15 related crimes, violent crimes or other crimes and the
16 identification and location of missing and unidentified
17 persons.

18 (c) In any trial conducted in this state after the first
19 day of July, one thousand nine hundred ninety-three,
20 when the defendant is convicted and when evidence of
21 the DNA of the defendant is introduced, the prosecuting

22 attorney shall forward the results of the test to the
23 division of public safety for entry in the database.

24 (d) Records produced from the samples shall be used
25 only for law-enforcement purposes.

26 (e) A person whose DNA profile has been included in
27 the data bank pursuant to this section may request
28 expungement on the grounds that the felony conviction
29 on which the authority for including the DNA profile
30 was based has been reversed and the case dismissed.
31 The division of public safety shall expunge all identif-
32 iable information in the data bank pertaining to the
33 person and destroy all samples from the person upon
34 receipt of:

35 (1) A written request for expungement pursuant to
36 this section; and

37 (2) A certified copy of the court order reversing and
38 dismissing the conviction or providing for expungement.

39 (f) The superintendent of the division of public safety
40 shall promulgate administrative rules necessary to
41 carry out the provisions of the DNA database identifi-
42 cation system to include procedures for the database
43 system usage and integrity.

44 (g) Any person who disseminates, receives or other-
45 wise uses or attempts to use information in the database,
46 knowing that such dissemination, receipt or use is for
47 a purpose other than authorized by law, is guilty of a
48 misdemeanor, and, upon conviction thereof, shall be
49 fined not less than fifty dollars nor more than five
50 hundred dollars, or imprisoned in the county jail not
51 more than one year, or both fined and imprisoned.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RE- CORDS CONFIDENTIALITY ACT.

§16-3C-1. Definitions.

§16-3C-2. Testing.

§16-3C-3. Confidentiality of records; permitted disclosure; no duty to notify.

§16-3C-8. Administrative implementation.

§16-3C-1. Definitions.

- 1 When used in this article:
- 2 (a) "AIDS" means acquired immunodeficiency
3 syndrome.
- 4 (b) "ARC" means AIDS-related complex.
- 5 (c) "Bureau" means the bureau of public health.
- 6 (d) "Commissioner" means the commissioner of the
7 bureau of public health.
- 8 (e) "Department" means the state department of
9 health and human resources.
- 10 (f) "Funeral director" shall have the same meaning
11 ascribed to such term in section four, article six, chapter
12 thirty of this code.
- 13 (g) "Convicted" includes pleas of guilty and pleas of
14 nolo contendere accepted by the court having jurisdic-
15 tion of the criminal prosecution, a finding of guilty
16 following a jury trial or a trial to a court, and an
17 adjudicated juvenile offender as defined in section three,
18 article five-b, chapter forty-nine of this code.
- 19 (h) "Funeral establishment" shall have the same
20 meaning ascribed to such term in section four, article
21 six, chapter thirty of this code.
- 22 (i) "HIV" means the human immunodeficiency virus
23 identified as the causative agent of AIDS.
- 24 (j) "HIV-related test" means a test for the HIV
25 antibody or antigen or any future valid test approved
26 by the bureau, the federal drug administration or the
27 centers for disease control.
- 28 (k) "Health facility" means a hospital, nursing home,
29 clinic, blood bank, blood center, sperm bank, laboratory
30 or other health care institution.
- 31 (l) "Health care provider" means any physician,
32 dentist, nurse, paramedic, psychologist or other person
33 providing medical, dental, nursing, psychological or
34 other health care services of any kind.
- 35 (m) "Infant" means a person under six years of age.

36 (n) "Patient" means the person receiving the HIV-
37 related testing.

38 (o) "Person" includes any natural person, partnership,
39 association, joint venture, trust, public or private
40 corporation or health facility.

41 (p) "Release of test results" means a written author-
42 ization for disclosure of HIV-related test results that is
43 signed, dated and specifies to whom disclosure is
44 authorized and the time period the release is to be
45 effective.

46 (q) "Victim" means the person or persons to whom
47 transmission of bodily fluids from the perpetrator of the
48 crimes of sexual abuse, sexual assault, incest or sexual
49 molestation occurred or was likely to have occurred in
50 the commission of such crimes.

§16-3C-2. Testing.

1 (a) HIV-related testing may be requested by a
2 physician, dentist or the commissioner for any of the
3 following:

4 (1) When there is cause to believe that the test could
5 be positive;

6 (2) When there is cause to believe that the test could
7 provide information important in the care of the patient;
8 or

9 (3) When any person voluntarily consents to the test.

10 (b) The requesting physician, dentist or the commis-
11 sioner shall provide the patient with written information
12 in the form of a booklet or pamphlet prepared or
13 approved by the bureau or, in the case of persons who
14 are unable to read, shall either show a video or film
15 prepared or approved by the bureau to the patient, or
16 read or cause to be read to the patient the information
17 prepared or approved by the bureau which contains the
18 following information:

19 (1) An explanation of the test, including its purpose,
20 potential uses, limitations, the meaning of its results and
21 any special relevance to pregnancy and prenatal care;

- 22 (2) An explanation of the procedures to be followed;
- 23 (3) An explanation that the test is voluntary and may
24 be obtained anonymously;
- 25 (4) An explanation that the consent for the test may
26 be withdrawn at any time prior to drawing the sample
27 for the test and that such withdrawal of consent may
28 be given orally if the consent was given orally, or shall
29 be in writing if the consent was given in writing;
- 30 (5) An explanation of the nature and current knowl-
31 edge of asymptomatic HIV infection, ARC and AIDS
32 and the relationship between the test result and those
33 diseases; and
- 34 (6) Information about behaviors known to pose risks
35 for transmission of HIV infection.
- 36 (c) A person seeking an HIV-related test who wishes
37 to remain anonymous has the right to do so, and to
38 provide written, informed consent through use of a
39 coded system with no linking or individual identity to
40 the test requests or results. A health care provider who
41 does not provide HIV-related tests on an anonymous
42 basis shall refer such a person to a test site which does
43 provide anonymous testing, or to any local or county
44 health department which shall provide for performance
45 of an HIV-related test and counseling.
- 46 (d) At the time of learning of any test result, the
47 patient shall be provided with counseling or referral for
48 counseling for coping with the emotional consequences
49 of learning any test result. This may be done by
50 brochure or personally, or both.
- 51 (e) No consent for testing is required and the
52 provisions of subsection (b) of this section do not apply
53 for:
- 54 (1) A health care provider or health facility perform-
55 ing an HIV-related test on the donor or recipient when
56 the health care provider or health facility procures,
57 processes, distributes or uses a human body part
58 (including tissue and blood or blood products) donated
59 for a purpose specified under the uniform anatomical

60 gift act, or for transplant recipients, or semen provided
61 for the purpose of artificial insemination and such test
62 is necessary to assure medical acceptability of a
63 recipient or such gift or semen for the purposes
64 intended;

65 (2) The performance of an HIV-related test in
66 documented bona fide medical emergencies when the
67 subject of the test is unable to grant or withhold consent,
68 and the test results are necessary for medical diagnostic
69 purposes to provide appropriate emergency care or
70 treatment, except that post-test counseling or referral
71 for counseling shall nonetheless be required. Necessary
72 treatment may not be withheld pending HIV test
73 results; or

74 (3) The performance of an HIV-related test for the
75 purpose of research if the testing is performed in a
76 manner by which the identity of the test subject is not
77 known and may not be retrieved by the researcher.

78 (f) Mandated testing:

79 (1) The performance of any HIV-related testing that
80 is or becomes mandatory shall not require consent of the
81 subject but will include counseling.

82 (2) The court having jurisdiction of the criminal
83 prosecution shall order that an HIV-related test be
84 performed on any persons convicted of any of the
85 following crimes or offenses:

86 (i) Prostitution; or

87 (ii) Sexual abuse, sexual assault, incest or sexual
88 molestation.

89 (3) HIV-related tests performed on persons convicted
90 of prostitution, sexual abuse, sexual assault, incest or
91 sexual molestation shall be confidentially administered
92 by a designee of the bureau or the local or county health
93 department having proper jurisdiction. The commis-
94 sioner may designate health care providers in regional
95 jail facilities to administer HIV-related tests on such
96 convicted persons if he or she deems it necessary and
97 expedient.

98 (4) When the director of the department knows or has
99 reason to believe, because of medical or epidemiological
100 information, that a person, including, but not limited to,
101 a person such as an IV drug abuser, or a person who
102 may have a sexually transmitted disease, or a person
103 who has sexually molested, abused or assaulted another,
104 has HIV infection and is or may be a danger to the
105 public health, he may issue an order to:

106 (i) Require a person to be examined and tested to
107 determine whether the person has HIV infection;

108 (ii) Require a person with HIV infection to report to
109 a qualified physician or health worker for counseling;
110 and

111 (iii) Direct a person with HIV infection to cease and
112 desist from specified conduct which endangers the
113 health of others.

114 (5) A person convicted of such offenses shall be
115 required to undergo HIV-related testing and counseling
116 immediately upon conviction and the court having
117 jurisdiction of the criminal prosecution shall not release
118 such convicted person from custody and shall revoke any
119 order admitting the defendant to bail until HIV-related
120 testing and counseling have been performed. The HIV-
121 related test result obtained from the convicted person is
122 to be transmitted to the court and, after the convicted
123 person is sentenced, made part of the court record. If
124 the convicted person is placed in the custody of the
125 division of corrections, the court shall transmit a copy
126 of the convicted person's HIV-related test results to the
127 division of corrections. The HIV-related test results
128 shall be closed and confidential and disclosed by the
129 court and the bureau only in accordance with the
130 provisions of section three of this article.

131 (6) A person charged with prostitution, sexual abuse,
132 sexual assault, incest or sexual molestation shall be
133 informed upon initial court appearance by the judge or
134 magistrate responsible for setting the person's condition
135 of release pending trial of the availability of voluntary
136 HIV-related testing and counseling conducted by the
137 bureau.

138 (7) The prosecuting attorney shall inform the victim,
139 or parent or guardian of the victim, at the earliest stage
140 of the proceedings of the availability of voluntary HIV-
141 related testing and counseling conducted by the bureau
142 and that his or her best health interest would be served
143 by submitting to HIV-related testing and counseling.
144 HIV-related testing for the victim shall be administered
145 at his or her request on a confidential basis and shall
146 be administered in accordance with the centers for
147 disease control guidelines of the United States public
148 health service in effect at the time of such request. The
149 victim who obtains an HIV-related test shall be
150 provided with pre- and post-test counseling regarding
151 the nature, reliability and significance of the HIV-
152 related test and the confidential nature of the test. HIV-
153 related testing and counseling conducted pursuant to
154 this subsection shall be performed by the designee of the
155 commissioner of the bureau or by any local or county
156 health department having proper jurisdiction.

157 (8) If a person receives counseling or is tested under
158 this subsection and is found to be HIV infected, the
159 person shall be referred by the health care provider
160 performing the counseling or testing for appropriate
161 medical care and support services. The local or county
162 health departments or any other agency providing
163 counseling or testing under this subsection shall not be
164 financially responsible for medical care and support
165 services received by a person as a result of a referral
166 made under this subsection.

167 (9) The commissioner of the bureau or his or her
168 designees may require an HIV test for the protection of
169 a person who was possibly exposed to HIV infected
170 blood or other body fluids as a result of receiving or
171 rendering emergency medical aid or who possibly
172 received such exposure as a funeral director. Results of
173 such a test of the person causing exposure may be used
174 by the requesting physician for the purpose of determin-
175 ing appropriate therapy, counseling and psychological
176 support for the person rendering emergency medical aid
177 including good samaritans, as well as for the patient, or
178 individual receiving the emergency medical aid.

179 (10) If an HIV-related test required on persons
180 convicted of prostitution, sexual abuse, sexual assault,
181 incest or sexual molestation results in a negative
182 reaction, upon motion of the state, the court having
183 jurisdiction over the criminal prosecution may require
184 the subject of the test to submit to further HIV-related
185 tests performed under the direction of the bureau in
186 accordance with the centers for disease control guide-
187 lines of the United States public health service in effect
188 at the time of the motion of the state.

189 (11) The costs of mandated testing and counseling
190 provided under this subsection and pre- and post-
191 conviction HIV-related testing and counseling provided
192 the victim under the direction of the bureau pursuant
193 to this subsection shall be paid by the bureau.

194 (12) The court having jurisdiction of the criminal
195 prosecution shall order a person convicted of prostitu-
196 tion, sexual abuse, sexual assault, incest or sexual
197 molestation to pay restitution to the state for the costs
198 of any HIV-related testing and counseling provided the
199 convicted person and the victim, unless the court has
200 determined such convicted person to be indigent.

201 (13) Any funds recovered by the state as a result of
202 an award of restitution under this subsection shall be
203 paid into the state treasury to the credit of a special
204 revenue fund to be known as the "HIV testing fund"
205 which is hereby created. The moneys so credited to such
206 fund may be used solely by the bureau for the purposes
207 of facilitating the performance of HIV-related testing
208 and counseling under the provisions of this article.

209 (g) Premarital screening:

210 (1) Every person who is empowered to issue a
211 marriage license shall, at the time of issuance thereof,
212 distribute to the applicants for the license, information
213 concerning acquired immunodeficiency syndrome
214 (AIDS) and inform them of the availability of HIV-
215 related testing and counseling. The informational
216 brochures shall be furnished by the bureau.

217 (2) A notation that each applicant has received the

218 AIDS informational brochure shall be placed on file
219 with the marriage license on forms provided by the
220 bureau.

221 (h) The commissioner of the bureau may obtain and
222 test specimens for AIDS or HIV infection for research
223 or epidemiological purposes without consent of the
224 person from whom the specimen is obtained if all
225 personal identifying information is removed from the
226 specimen prior to testing.

227 (i) Nothing in this section is applicable to any insurer
228 regulated under chapter thirty-three of this code:
229 *Provided*, That the commissioner of insurance shall
230 develop standards regarding consent for use by insurers
231 which test for the presence of the HIV antibody.

232 (j) Whenever consent of the subject to the performance
233 of HIV-related testing is required under this article, any
234 such consent obtained, whether orally or in writing,
235 shall be deemed to be a valid and informed consent if
236 it is given after compliance with the provisions of
237 subsection (b) of this section.

§16-3C-3. Confidentiality of records; permitted disclosure; no duty to notify.

1 (a) No person may disclose or be compelled to disclose
2 the identity of any person upon whom an HIV-related
3 test is performed, or the results of such a test in a
4 manner which permits identification of the subject of
5 the test, except to the following persons:

6 (1) The subject of the test;

7 (2) The victim of the crimes of sexual abuse, sexual
8 assault, incest or sexual molestation at the request of the
9 victim or the victim's legal guardian, or of the parent
10 or legal guardian of the victim if the victim is an infant
11 where disclosure of the HIV-related test results of the
12 convicted sex offender are requested;

13 (3) Any person who secures a specific release of test
14 results executed by the subject of the test;

15 (4) A funeral director or an authorized agent or
16 employee of a health facility or health care provider if

17 the funeral establishment, health facility or health care
18 provider itself is authorized to obtain the test results, the
19 agent or employee provides patient care or handles or
20 processes specimens of body fluids or tissues and the
21 agent or employee has a need to know such information:
22 *Provided*, That such funeral director, agent or employee
23 shall maintain the confidentiality of such information;

24 (5) Licensed medical personnel or appropriate health
25 care personnel providing care to the subject of the test,
26 when knowledge of the test results is necessary or useful
27 to provide appropriate care or treatment, in an approp-
28 riate manner: *Provided*, That such personnel shall
29 maintain the confidentiality of such test results. The
30 entry on a patient's chart of an HIV-related illness by
31 the attending or other treating physician or other health
32 care provider shall not constitute a breach of confiden-
33 tiality requirements imposed by this article;

34 (6) The bureau or the centers for disease control of the
35 United States public health service in accordance with
36 reporting requirements for a diagnosed case of AIDS,
37 or a related condition;

38 (7) A health facility or health care provider which
39 procures, processes, distributes or uses: (A) A human
40 body part from a deceased person with respect to
41 medical information regarding that person; (B) semen
42 provided prior to the effective date of this article for the
43 purpose of artificial insemination; (C) blood or blood
44 products for transfusion or injection; or (D) human body
45 parts for transplant with respect to medical information
46 regarding the donor or recipient;

47 (8) Health facility staff committees or accreditation or
48 oversight review organizations which are conducting
49 program monitoring, program evaluation or service
50 reviews so long as any identity remains anonymous; and

51 (9) A person allowed access to said record by a court
52 order which is issued in compliance with the following
53 provisions:

54 (i) No court of this state may issue such order unless
55 the court finds that the person seeking the test results

56 has demonstrated a compelling need for the test results
57 which cannot be accommodated by other means. In
58 assessing compelling need, the court shall weigh the
59 need for disclosure against the privacy interest of the
60 test subject and the public interest;

61 (ii) Pleadings pertaining to disclosure of test results
62 shall substitute a pseudonym for the true name of the
63 test subject of the test. The disclosure to the parties of
64 the test subject's true name shall be communicated
65 confidentially in documents not filed with the court;

66 (iii) Before granting any such order, the court shall,
67 if possible, provide the individual whose test result is in
68 question with notice and a reasonable opportunity to
69 participate in the proceedings if he or she is not already
70 a party;

71 (iv) Court proceedings as to disclosure of test results
72 shall be conducted in camera unless the subject of the
73 test agrees to a hearing in open court or unless the court
74 determines that the public hearing is necessary to the
75 public interest and the proper administration of justice;
76 and

77 (v) Upon the issuance of an order to disclose test
78 results, the court shall impose appropriate safeguards
79 against unauthorized disclosure, which shall specify the
80 person who may have access to the information, the
81 purposes for which the information may be used and
82 appropriate prohibitions on future disclosure.

83 (b) No person to whom the results of an HIV-related
84 test have been disclosed pursuant to subsection (a) of this
85 section may disclose the test results to another person
86 except as authorized by said subsection.

87 (c) Whenever disclosure is made pursuant to this
88 section, except when such disclosure is made to persons
89 in accordance with subdivisions (1) and (6), subsection
90 (a) of this section, it shall be accompanied by a statement
91 in writing which includes the following or substantially
92 similar language: "This information has been disclosed
93 to you from records whose confidentiality is protected
94 by state law. State law prohibits you from making any

95 further disclosure of the information without the
96 specific written consent of the person to whom it
97 pertains, or as otherwise permitted by law. A general
98 authorization for the release of medical or other
99 information is NOT sufficient for this purpose.”

100 (d) Notwithstanding the provisions set forth in
101 subsections (a) through (c) of this section, the use of HIV
102 test results to inform individuals named or identified as
103 sex partners or contacts or persons who have shared
104 needles that they may be at risk of having acquired the
105 HIV infection as a result of possible exchange of body
106 fluids, is permitted. The name or identity of the person
107 whose HIV test result was positive is to remain
108 confidential. Contacts or identified partners may be
109 tested anonymously at the state bureau of public health’s
110 designated test sites, or at their own expense by a health
111 care provider or an approved laboratory of their choice.
112 A cause of action will not arise against the bureau, a
113 physician or other health care provider from any such
114 notification.

115 (e) There is no duty on the part of the physician or
116 health care provider to notify the spouse or other sexual
117 partner of, or persons who have shared needles with, an
118 infected individual of their HIV infection and a cause
119 of action will not arise from any failure to make such
120 notification. However, if contact is not made, the bureau
121 will be so notified.

§16-3C-8. Administrative implementation.

1 (a) The commissioner of the bureau shall immediately
2 implement and enforce the provisions of this article, and
3 shall adopt rules to the extent necessary for further
4 implementation of the article. The rules proposed by the
5 bureau pursuant to this article may include procedures
6 for taking appropriate action with regard to health care
7 facilities or health care providers which violate this
8 article or the rules promulgated hereunder. The
9 provisions of the state administrative procedures act
10 apply to all administrative rules and procedures of the
11 bureau pursuant to this article, except that in case of
12 conflict between the state administrative procedures act

13 and this article, the provisions of this article shall
14 control.

15 (b) The bureau shall promulgate rules to assure
16 adequate quality control for all laboratories conducting
17 HIV tests and to provide for a reporting and monitoring
18 system for reporting to the bureau all positive HIV tests
19 results.

CHAPTER 61

(Com. Sub. for H. B. 2272—By Delegates P. White, H. White and L. White)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three and six, article two-d, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to certificates of need; defining new institutional health services; designating additional ventilator services as a new institutional health service; setting minimum criteria for certificate of need reviews; and setting criteria for certificate of need review for additional ventilator beds in health care facilities.

Be it enacted by the Legislature of West Virginia:

That sections three and six, article two-d, 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 2D. CERTIFICATE OF NEED.

§16-2D-3. Certificate of need.

§16-2D-6. Minimum criteria for certificate of need reviews.

§16-2D-3. Certificate of need.

1 Except as provided in section four of this article, any
2 new institutional health service may not be acquired,
3 offered or developed within this state except upon
4 application for and receipt of a certificate of need as
5 provided by this article. Whenever a new institutional
6 health service for which a certificate of need is required

7 by this article is proposed for a health care facility for
8 which, pursuant to section four of this article, no
9 certificate of need is or was required, a certificate of
10 need shall be issued before the new institutional health
11 service is offered or developed. No person may know-
12 ingly charge or bill for any health services associated
13 with any new institutional health service that is
14 knowingly acquired, offered or developed in violation of
15 this article, and any bill made in violation of this section
16 is legally unenforceable. For purposes of this article, a
17 proposed "new institutional health service" includes:

18 (a) The construction, development, acquisition or
19 other establishment of a new health care facility or
20 health maintenance organization;

21 (b) The partial or total closure of a health care facility
22 or health maintenance organization with which a capital
23 expenditure is associated;

24 (c) Any obligation for a capital expenditure incurred
25 by or on behalf of a health care facility, except as
26 exempted in section four of this article, or health
27 maintenance organization in excess of the expenditure
28 minimum or any obligation for a capital expenditure
29 incurred by any person to acquire a health care facility.
30 An obligation for a capital expenditure is considered to
31 be incurred by or on behalf of a health care facility:

32 (1) When a contract, enforceable under state law, is
33 entered into by or on behalf of the health care facility
34 for the construction, acquisition, lease or financing of a
35 capital asset;

36 (2) When the governing board of the health care
37 facility takes formal action to commit its own funds for
38 a construction project undertaken by the health care
39 facility as its own contractor; or

40 (3) In the case of donated property, on the date on
41 which the gift is completed under state law;

42 (d) A substantial change to the bed capacity of a
43 health care facility with which a capital expenditure is
44 associated;

45 (e) (1) The addition of health services which are
46 offered by or on behalf of a health care facility or health
47 maintenance organization and which were not offered
48 on a regular basis by or on behalf of the health care
49 facility or health maintenance organization within the
50 twelve-month period prior to the time the services would
51 be offered; and

52 (2) The addition of ventilator services for any nursing
53 facility bed by any health care facility or health
54 maintenance organization;

55 (f) The deletion of one or more health services,
56 previously offered on a regular basis by or on behalf of
57 a health care facility or health maintenance organiza-
58 tion which is associated with a capital expenditure;

59 (g) A substantial change to the bed capacity or health
60 services offered by or on behalf of a health care facility,
61 whether or not the change is associated with a proposed
62 capital expenditure, if the change is associated with a
63 previous capital expenditure for which a certificate of
64 need was issued and if the change will occur within two
65 years after the date the activity which was associated
66 with the previously approved capital expenditure was
67 undertaken;

68 (h) The acquisition of major medical equipment;

69 (i) A substantial change in an approved new institu-
70 tional health service for which a certificate of need is
71 in effect. For purposes of this subsection, "substantial
72 change" shall be defined by the state agency in
73 regulations adopted pursuant to section eight of this
74 article.

§16-2D-6. Minimum criteria for certificate of need reviews.

1 (a) Except as provided in subsections (f) and (g),
2 section nine of this article, in making its determination
3 as to whether a certificate of need shall be issued, the
4 state agency shall, at a minimum, consider all of the
5 following criteria that are applicable: *Provided*, That in
6 the case of a health maintenance organization or an
7 ambulatory care facility or health care facility con-

8 trolled, directly or indirectly, by a health maintenance
9 organization or combination of health maintenance
10 organizations, the criteria considered shall be only those
11 set forth in subdivision (12) of this subsection: *Provided,*
12 *however,* That the criteria set forth in subsection (f) of
13 this section applies to all hospitals, nursing homes and
14 health care facilities when ventilator services are to be
15 provided for any nursing facility bed:

16 (1) The recommendation of the designated health
17 systems agency for the health service area in which the
18 proposed new institutional health service is to be
19 located;

20 (2) The relationship of the health services being
21 reviewed to the state health plan and to the applicable
22 health systems plan and annual implementation plan
23 adopted by the designated health systems agency for the
24 health service area in which the proposed new institu-
25 tional health service is to be located;

26 (3) The relationship of services reviewed to the long-
27 range development plan of the person providing or
28 proposing the services;

29 (4) The need that the population served or to be served
30 by the services has for the services proposed to be
31 offered or expanded, and the extent to which all
32 residents of the area, and in particular low income
33 persons, racial and ethnic minorities, women, handi-
34 capped persons, other medically underserved popula-
35 tion, and the elderly, are likely to have access to those
36 services;

37 (5) The availability of less costly or more effective
38 alternative methods of providing the services to be
39 offered, expanded, reduced, relocated or eliminated;

40 (6) The immediate and long-term financial feasibility
41 of the proposal as well as the probable impact of the
42 proposal on the costs of and charges for providing health
43 services by the person proposing the new institutional
44 health service;

45 (7) The relationship of the services proposed to the
46 existing health care system of the area in which the

47 services are proposed to be provided;

48 (8) In the case of health services proposed to be
49 provided, the availability of resources, including health
50 care providers, management personnel, and funds for
51 capital and operating needs, for the provision of the
52 services proposed to be provided and the need for
53 alternative uses of these resources as identified by the
54 state health plan, applicable health systems plan and
55 annual implementation plan;

56 (9) The appropriate and nondiscriminatory utilization
57 of existing and available health care providers;

58 (10) The relationship, including the organizational
59 relationship, of the health services proposed to be
60 provided to ancillary or support services;

61 (11) Special needs and circumstances of those entities
62 which provide a substantial portion of their services or
63 resources, or both, to individuals not residing in the
64 health service areas in which the entities are located or
65 in adjacent health service areas. The entities may
66 include medical and other health professional schools,
67 multidisciplinary clinics and specialty centers;

68 (12) To the extent not precluded by subdivision (1),
69 subsection (f), section nine of this article, the special
70 needs and circumstances of health maintenance organ-
71 izations. These needs and circumstances are limited to:

72 (A) The needs of enrolled members and reasonably
73 anticipated new members of the health maintenance
74 organization for the health services proposed to be
75 provided by the organization; and

76 (B) The availability of the new health services from
77 nonhealth maintenance organization providers or other
78 health maintenance organizations in a reasonable and
79 cost-effective manner which is consistent with the basic
80 method of operation of the health maintenance organ-
81 ization. In assessing the availability of these health
82 services from these providers, the agency shall consider
83 only whether the services from these providers:

84 (i) Would be available under a contract of at least five

85 years' duration;

86 (ii) Would be available and conveniently accessible
87 through physicians and other health professionals
88 associated with the health maintenance organization;

89 (iii) Would cost no more than if the services were
90 provided by the health maintenance organization; and

91 (iv) Would be available in a manner which is admin-
92 istratively feasible to the health maintenance
93 organization;

94 (13) The special needs and circumstances of biomed-
95 ical and behavioral research projects which are de-
96 signed to meet a national need and for which local
97 conditions offer special advantages;

98 (14) In the case of a reduction or elimination of a
99 service, including the relocation of a facility or a service,
100 the need that the population presently served has for the
101 service, the extent to which that need will be met
102 adequately by the proposed relocation or by alternative
103 arrangements, and the effect of the reduction, elimina-
104 tion or relocation of the service on the ability of low
105 income persons, racial and ethnic minorities, women,
106 handicapped persons, other medically underserved
107 population, and the elderly, to obtain needed health care;

108 (15) In the case of a construction project: (A) The cost
109 and methods of the proposed construction, including the
110 costs and methods of energy provision and (B) the
111 probable impact of the construction project reviewed on
112 the costs of providing health services by the person
113 proposing the construction project and on the costs and
114 charges to the public of providing health services by
115 other persons;

116 (16) In the case of health services proposed to be
117 provided, the effect of the means proposed for the
118 delivery of proposed health services on the clinical needs
119 of health professional training programs in the area in
120 which the services are to be provided;

121 (17) In the case of health services proposed to be
122 provided, if the services are to be available in a limited

123 number of facilities, the extent to which the schools in
124 the area for health professions will have access to the
125 services for training purposes;

126 (18) In the case of health services proposed to be
127 provided, the extent to which the proposed services will
128 be accessible to all the residents of the area to be served
129 by the services;

130 (19) In accordance with section five of this article, the
131 factors influencing the effect of competition on the
132 supply of the health services being reviewed;

133 (20) Improvements or innovations in the financing and
134 delivery of health services which foster competition, in
135 accordance with section five of this article, and serve to
136 promote quality assurance and cost effectiveness;

137 (21) In the case of health services or facilities proposed
138 to be provided, the efficiency and appropriateness of the
139 use of existing services and facilities similar to those
140 proposed;

141 (22) In the case of existing services or facilities, the
142 quality of care provided by the services or facilities in
143 the past;

144 (23) In the case where an application is made by an
145 osteopathic or allopathic facility for a certificate of need
146 to construct, expand, or modernize a health care facility,
147 acquire major medical equipment, or add services, the
148 need for that construction, expansion, modernization,
149 acquisition of equipment, or addition of services shall be
150 considered on the basis of the need for and the avail-
151 ability in the community of services and facilities for
152 osteopathic and allopathic physicians and their patients.
153 The state agency shall consider the application in terms
154 of its impact on existing and proposed institutional
155 training programs for doctors of osteopathy and
156 medicine at the student, internship, and residency
157 training levels;

158 (24) The special circumstances of health care facilities
159 with respect to the need for conserving energy;

160 (25) The contribution of the proposed service in

161 meeting the health related needs of members of
162 medically underserved populations which have tradi-
163 tionally experienced difficulties in obtaining equal
164 access to health services, particularly those needs
165 identified in the state health plan, applicable health
166 systems plan and annual implementation plan, as
167 deserving of priority. For the purpose of determining
168 the extent to which the proposed service will be
169 accessible, the state agency shall consider:

170 (A) The extent to which medically underserved
171 populations currently use the applicant's services in
172 comparison to the percentage of the population in the
173 applicant's service area which is medically underserved,
174 and the extent to which medically underserved popula-
175 tions are expected to use the proposed services if
176 approved;

177 (B) The performance of the applicant in meeting its
178 obligation, if any, under any applicable federal regula-
179 tions requiring provision of uncompensated care,
180 community service, or access by minorities and handi-
181 capped persons to programs receiving federal financial
182 assistance, including the existence of any civil rights
183 access complaints against the applicant;

184 (C) The extent to which medicare, medicaid and
185 medically indigent patients are served by the applicant;
186 and

187 (D) The extent to which the applicant offers a range
188 of means by which a person will have access to its
189 services, including, but not limited to, outpatient
190 services, admission by a house staff and admission by
191 personal physician;

192 (26) The existence of a mechanism for soliciting
193 consumer input into the health care facility's decision
194 making process.

195 (b) The state agency may include additional criteria
196 which it prescribes by regulations adopted pursuant to
197 section eight of this article.

198 (c) Criteria for reviews may vary according to the
199 purpose for which a particular review is being con-

200 ducted or the types of health services being reviewed.

201 (d) An application for a certificate of need may not
202 be made subject to any criterion not contained in this
203 article or not contained in regulations adopted pursuant
204 to section eight of this article.

205 (e) In the case of any proposed new institutional health
206 service, the state agency may not grant a certificate of
207 need under its certificate of need program unless, after
208 consideration of the appropriateness of the use of
209 existing facilities providing services similar to those
210 being proposed, the state agency makes, in addition to
211 findings required in section nine of this article, each of
212 the following findings in writing: (1) That superior
213 alternatives to the services in terms of cost, efficiency
214 and appropriateness do not exist and the development
215 of alternatives is not practicable; (2) that existing
216 facilities providing services similar to those proposed
217 are being used in an appropriate and efficient manner;
218 (3) that in the case of new construction, alternatives to
219 new construction, such as modernization or sharing
220 arrangements, have been considered and have been
221 implemented to the maximum extent practicable; (4)
222 that patients will experience serious problems in
223 obtaining care of the type proposed in the absence of the
224 proposed new service; and (5) that in the case of a
225 proposal for the addition of beds for the provision of
226 skilled nursing or intermediate care services, the
227 addition will be consistent with the plans of other
228 agencies of the state responsible for the provision and
229 financing of long-term care facilities or services
230 including home health services.

231 (f) In the case where an application is made by a
232 hospital, nursing home or other health care facility to
233 provide ventilator services which have not previously
234 been provided for a nursing facility bed, the state
235 agency shall consider the application in terms of the
236 need for the service and whether the cost exceeds the
237 level of current medicaid services. No facility may, by
238 providing ventilator services, provide a higher level of
239 service for a nursing facility bed without demonstrating
240 that the change in level of service by provision of the

241 additional ventilator services will result in no additional
242 fiscal burden to the state.

CHAPTER 62

(Com. Sub. for H. B. 2599—By Delegates Gallagher, Huntwork,
P. White and Douglas)

[Passed April 8, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to repeal section five-a, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend said chapter sixteen by adding thereto a new article, designated article thirty-b, relating to health care surrogate act; legislative findings and purposes; definitions; applicability; private decision-making process and authority of surrogate; determination of incapacity; selection of surrogate; surrogate decision-making standards; reliance on authority of surrogate decision-maker and protection of health care providers; conscience objections; interinstitutional transfers; insurance; not suicide or murder; preservation of existing rights; relation to existing law and no abrogation of common law doctrine of medical necessity; and severability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 30B. HEALTH CARE SURROGATE ACT.

- §16-30B-1. Short title.
- §16-30B-2. Legislative findings and purpose.
- §16-30B-3. Definitions.
- §16-30B-4. Applicability.
- §16-30B-5. Private decision-making process; authority of surrogate.
- §16-30B-6. Determination of incapacity.
- §16-30B-7. Selection of a surrogate.
- §16-30B-8. Surrogate decision-making standards.

- §16-30B-9. Reliance on authority of surrogate decision-maker and protection of health care providers.
- §16-30B-10. Conscience objections.
- §16-30B-11. Interinstitutional transfers.
- §16-30B-12. Insurance.
- §16-30B-13. Not suicide or murder.
- §16-30B-14. Preservation of existing rights.
- §16-30B-15. Relation to existing law; no abrogation of common law doctrine of medical necessity.
- §16-30B-16. Severability.

§16-30B-1. Short title.

- 1 This article may be cited as the “Health Care
2 Surrogate Act.”

§16-30B-2. Legislative findings and purpose.

- 1 (a) *Findings*.—The Legislature hereby finds that:

2 (1) All adults have a right to make decisions relating
3 to their own medical treatment, including the right to
4 consent to or refuse life-prolonging intervention; and

5 (2) The right to make medical treatment decisions
6 extends to persons who are incapacitated at the moment
7 of decision. Such persons who have not made their
8 wishes known in advance through an applicable living
9 will or medical power of attorney or through other
10 means have the right to have health care decisions made
11 on their behalf by persons who will act in accordance
12 with the person’s expressed values and wishes, or, if
13 unknown, in the person’s best interests.

14 (b) *Purpose*.—It is the purpose of this article to set
15 forth a process for private health care decision-making
16 for incapacitated adults that reduces the need for
17 judicial involvement and that defines the circumstances
18 under which immunity shall be available for health care
19 providers and surrogate decision-makers who make
20 such health care decisions. It is the intent of the
21 Legislature to establish an effective method for private
22 health care decision-making for incapacitated adults,
23 and it is also the intent of the Legislature that the courts
24 should not be the usual venue for making such decisions.
25 It is not the intent of the Legislature to legalize,
26 condone, authorize, or approve mercy killing or assisted

27 suicide.

§16-30B-3. Definitions.

1 (a) "Adult" means a person who is eighteen years of
2 age or older, an emancipated minor under section
3 twenty-seven, article seven, chapter forty-nine of this
4 code, or a mature minor.

5 (b) "Attending physician" means the physician
6 selected by or assigned to the person who has primary
7 responsibility for treatment and care of the person and
8 who is a licensed physician. If more than one physician
9 shares that responsibility, any of those physicians may
10 act as the attending physician under this article.

11 (c) "Close friend" means any person eighteen years of
12 age or older who has exhibited special care and concern
13 for the person and who, to the reasonable satisfaction of
14 the attending physician, is willing and able to become
15 involved in the person's health care, and has maintained
16 such regular contact with the person as to be familiar
17 with the person's activities, health, and religious and
18 moral beliefs.

19 (d) "Committee" shall have the same meaning as
20 defined in section one, article eleven, chapter twenty-
21 seven of this code.

22 (e) "Death" shall have the same meaning as defined
23 in article ten of this chapter.

24 (f) "Guardian" shall have the same meaning as
25 defined in sections one through six, article ten-a, chapter
26 forty-four of this code.

27 (g) "Health care decision" means a decision to give,
28 withhold, or withdraw informed consent to any type of
29 health care, including, but not limited to, medical and
30 surgical treatments, including life-prolonging interven-
31 tions, nursing care, hospitalization, treatment in a
32 nursing home or other facility, and home health care.

33 (h) "Health care facility" means a type of health care
34 provider commonly known by a wide variety of titles,
35 including, but not limited to, hospitals, medical centers,
36 ambulatory health care facilities, physicians' offices and

37 clinics, extended care facilities operated in connection
38 with hospitals, nursing homes, hospital extended care
39 facilities operated in connection with rehabilitation
40 centers, and other facilities established to administer
41 health care in their ordinary course of business or
42 practice.

43 (i) "Health care provider" means any physician,
44 dentist, nurse, paramedic, psychologist or other person
45 providing medical, dental, nursing, psychological or
46 other health care services of any kind.

47 (j) "Incapacity", or words of like import, means the
48 inability because of physical or mental impairment to
49 appreciate the nature and implications of a health care
50 decision, to make an informed choice regarding the
51 alternatives presented and to communicate that choice
52 in an unambiguous manner.

53 (k) "Life-prolonging intervention" means any medical
54 procedure or intervention which, when applied to a
55 person, would serve solely to artificially prolong the
56 dying process or to maintain the person in a persistent
57 vegetative state. The term "life-prolonging intervention"
58 does not include the administration of medication or the
59 performance of any other medical procedure deemed
60 necessary to provide comfort or to alleviate pain.

61 (l) "Medical information" shall have the same mean-
62 ing as defined in section four-a, article five, chapter
63 fifty-seven of this code and such definition shall apply
64 to other health care facilities as defined in this section.

65 (m) "Parent" means a person who is the natural or
66 adoptive mother or father of the child and whose
67 parental rights have not been terminated by a court of
68 law.

69 (n) "Person" means an individual, a corporation, a
70 business trust, a trust, a partnership, an association, a
71 government, a governmental subdivision or agency, or
72 any other legal entity.

73 (o) "Qualified physician" means a physician licensed
74 to practice medicine who has personally examined the
75 person.

76 (p) "Surrogate decision-maker" means an adult
77 individual or individuals who are reasonably available,
78 are willing to make health care decisions on behalf of
79 an incapacitated person, and are identified by the
80 attending physician in accordance with the provisions of
81 this article as the person or persons who are to make
82 those decisions in accordance with the provisions of this
83 article.

§16-30B-4. Applicability.

1 Nothing in this article shall be applied in derogation
2 of a person's known wishes as expressed in an applicable
3 living will executed in accordance with section three,
4 article thirty of this chapter or a medical power of
5 attorney executed in accordance with section six, article
6 thirty-a of this chapter or by any other means the health
7 care provider determines to be reliable.

§16-30B-5. Private decision-making process; authority of surrogate.

1 (a) Health care decisions shall be made by capable
2 adults without regard to guidelines contained in this
3 article.

4 (b) Health care providers may rely upon health care
5 decisions on behalf of an incapacitated person without
6 resort to the courts or legal process, if the decisions are
7 made in accordance with the provisions of this article.

8 (c) The surrogate shall have the authority to make
9 any and all health care decisions on the person's behalf.

10 The surrogate's authority shall commence upon a
11 determination, made pursuant to section six of this
12 article, of the incapacity of the adult. In the event the
13 person no longer is incapacitated, the surrogate's
14 authority shall cease, but shall recommence if the person
15 subsequently becomes incapacitated as determined
16 pursuant to section six of this article.

17 (d) The surrogate shall seek medical information
18 necessary to make health care decisions. For the sole
19 purpose of making health care decisions for the person,
20 the surrogate shall have the same right of access to the

21 person's medical information and to discuss this
22 information with the person's attending physician that
23 the person would have had.

§16-30B-6. Determination of incapacity.

1 For the purposes of this article, a person shall not be
2 presumed to be incapacitated merely by reason of
3 advanced age or disability. With respect to a person who
4 has a diagnosis of mental illness or mental retardation,
5 such a diagnosis is not a presumption that the person
6 is incapacitated. A determination that a person is
7 incapacitated shall be made by the attending physician.

8 Before implementation of a decision by a surrogate
9 decision-maker to withhold or withdraw life-prolonging
10 intervention, at least one other qualified physician or a
11 licensed psychologist who has personally examined the
12 person must concur in the determination of incapacity
13 of an adult.

14 The determination of incapacity shall be recorded
15 contemporaneously in the person's medical record by the
16 attending physician, and, if one is required, by the
17 second physician or licensed psychologist. The recording
18 shall state the basis for the determination of incapacity,
19 including the cause, nature, and expected duration of
20 the person's incapacity, if these are known.

21 If the person is conscious, the attending physician
22 shall inform the person that he or she has been
23 determined to be incapacitated and that a surrogate
24 decision-maker may be making decisions regarding life-
25 prolonging intervention for the person.

§16-30B-7. Selection of a surrogate.

1 (a) When a person is incapacitated, the health care
2 provider must make reasonable inquiry as to the
3 availability and authority of a medical power of attorney
4 representative under the provisions of article thirty-a of
5 this chapter. When no representative is authorized or
6 available, and willing to serve, the health care provider
7 must make a reasonable inquiry as to the availability
8 of possible surrogates listed in items (1) through (8) of
9 this subsection:

- 10 (1) The person's guardian of the person or committee;
- 11 (2) The person's spouse;
- 12 (3) Any adult child of the person;
- 13 (4) Either parent of the person;
- 14 (5) Any adult sibling of the person;
- 15 (6) Any adult grandchild of the person;
- 16 (7) A close friend of the person;
- 17 (8) Such other persons or classes of persons including,
- 18 but not limited to, such public agencies, public
- 19 guardians, other public officials, public and private
- 20 corporations, and other representatives as the depart-
- 21 ment of health and human resources may from time to
- 22 time designate in rules and regulations promulgated
- 23 pursuant to chapter twenty-nine-a of this code.

24 (b) After such inquiry, the health care provider shall
25 rely on surrogates in the order of priority set forth
26 above, provided:

27 (1) Where there are multiple possible surrogate
28 decision-makers at the same priority level, the health
29 care provider shall, after reasonable inquiry, choose as
30 the surrogate the one who reasonably appears to be best
31 qualified. In determining who appears to be best
32 qualified, the health care provider shall give special
33 consideration to whether the proposed surrogate reason-
34 ably appears to be better able to make decisions either
35 in accordance with the known wishes of the person or
36 in accordance with the person's best interests. The
37 health care provider shall consider in this determination
38 the proposed surrogate's regular contact with the person
39 prior to and during the incapacitating illness, his or her
40 demonstrated care and concern, and his or her availa-
41 bility to visit the person during the illness and to engage
42 in face-to-face contact with the provider for the purposes
43 of fully participating in the decision-making process; or

44 (2) The health care provider may rely instead on a
45 proposed surrogate lower in the priority if, in the
46 provider's judgment, such individual is best qualified, as

47 described in subsection (b) of this section, to serve as the
48 person's surrogate. The health care provider shall
49 document in the medical record his or her reasons for
50 selecting a surrogate in exception to the priority order
51 in subsection (a) of this section.

52 (c) The surrogate decision-maker, as identified by the
53 health care provider, is authorized to make health care
54 decisions on behalf of the person without court order or
55 judicial involvement. The health care provider may rely
56 on the decisions of the surrogate if the provider believes,
57 after reasonable inquiry, that a representative under a
58 valid, applicable medical power of attorney is unavail-
59 able, and there is no other applicable advance directive:
60 *Provided*, That there is not reason to believe such health
61 care decisions are contrary to the person's religious
62 beliefs or that there is not actual notice of opposition to
63 such health care decisions to the health care provider
64 by a member of the same or a prior class.

65 (d) In the event an individual in a higher, or lower,
66 or the same priority level seeks to challenge the selection
67 of or the decision of the identified surrogate decision-
68 maker, the challenging party may initiate declaratory
69 proceedings in the circuit court of the county in which
70 the incapacitated person resides. No health care
71 provider or other person is required to seek declaratory
72 relief.

73 (e) Any surrogate who becomes unavailable for any
74 reason may be replaced by applying the provisions of
75 this section in the same manner as for the initial choice
76 of surrogate.

77 (f) In the event an individual of a higher priority to
78 an identified surrogate becomes available and willing to
79 be the surrogate, the individual with higher priority
80 may be identified as the surrogate unless the provisions
81 of subsection (b) of this section apply.

82 (g) The authority of the surrogate expires when the
83 person is no longer incapacitated or when the surrogate
84 is unwilling or unable to continue to serve.

§16-30B-8. Surrogate decision-making standards.

1 (a) *General standards.*—

2 The surrogate shall make health care decisions:

3 (1) In accordance with the person's wishes, including
4 religious and moral beliefs; or

5 (2) In accordance with the person's best interests if
6 these wishes are not reasonably known and cannot with
7 reasonable diligence be ascertained; and

8 (3) Which reflect the values of the person, including
9 the person's religious and moral beliefs, to the extent
10 they are reasonably known or can with reasonable
11 diligence be ascertained.

12 (b) *Assessment of best interests.*—

13 An assessment of the person's best interests shall
14 include consideration of the person's medical condition,
15 prognosis, the dignity and uniqueness of every person,
16 the possibility and extent of preserving the person's life,
17 the possibility of preserving, improving or restoring the
18 person's functioning, the possibility of relieving the
19 person's suffering, the balance of the burdens to the
20 benefits of the proposed treatment or intervention, and
21 such other concerns and values as a reasonable individ-
22 ual in the person's circumstances would wish to
23 consider.

**§16-30B-9. Reliance on authority of surrogate decision-
maker and protection of health care
providers.**

1 A health care provider shall not be subject to civil or
2 criminal liability for surrogate selection or good faith
3 compliance and reliance upon the directions of the
4 surrogate in accordance with the provisions of this
5 article.

6 Nothing in this article shall be deemed to protect a
7 provider from liability for the provider's own negligence
8 in the performance of the provider's duties or in
9 carrying out any instructions of the surrogate. Nothing
10 in this article shall be deemed to alter the law of
11 negligence as it applies to the acts of any surrogate or
12 provider, and nothing herein shall be interpreted as

13 establishing a standard of care for health care providers
14 for purposes of the law of negligence.

§16-30B-10. Conscience objections.

1 (a) *Health care facilities.*—Nothing in this article
2 shall be construed to require a health care facility to
3 change published policy of the health care facility that
4 is expressly based on sincerely held religious beliefs or
5 sincerely held moral convictions central to the facility's
6 operating principles.

7 (b) *Health care providers.*—Nothing in this article
8 shall be construed to require an individual health care
9 provider to honor a health care decision made pursuant
10 to this article if:

11 (1) The decision is contrary to the individual provid-
12 er's sincerely held religious beliefs or sincerely held
13 moral convictions; and

14 (2) The individual health care provider promptly
15 informs the person who made the decision and the
16 health care facility of his or her refusal to honor the
17 decision. In such event, the surrogate decision-maker
18 shall have responsibility for arranging the transfer of
19 the person to another health care provider. The individ-
20 ual health care provider shall cooperate in facilitating
21 such transfer, and a transfer under these circumstances
22 shall not constitute abandonment.

§16-30B-11. Interinstitutional transfers.

1 If a person with an order to withhold or withdraw
2 life-prolonging intervention is transferred from one
3 health care facility to another, the existence of such
4 order shall be communicated to the receiving facility
5 prior to the transfer, and the written order shall
6 accompany the person to the receiving facility and shall
7 remain effective until a physician at the receiving
8 facility issues admission orders.

§16-30B-12. Insurance.

1 No policy of life insurance, or annuity or other type
2 of contract that is conditioned on the life or death of the
3 person, shall be legally impaired or invalidated in any

4 manner by the withholding or withdrawal of life-
5 prolonging intervention from a person in accordance
6 with the provisions of this article, notwithstanding any
7 terms of the policy to the contrary.

§16-30B-13. Not suicide or murder.

1 The withholding or withdrawal of life-prolonging
2 intervention from a person in accordance with the
3 decision of a surrogate decision-maker made pursuant
4 to the provisions of this article does not, for any purpose,
5 constitute assisted suicide or murder. The withholding
6 or withdrawal of life-prolonging intervention from a
7 person in accordance with the decisions of a surrogate
8 decision-maker made pursuant to the provisions of this
9 article, however, shall not relieve any individual of
10 responsibility for any criminal acts that may have
11 caused the person's condition. Nothing in this article
12 shall be construed to legalize, condone, authorize, or
13 approve mercy killing or assisted suicide.

§16-30B-14. Preservation of existing rights.

1 The provisions of this article are cumulative with
2 existing law regarding an individual's right to consent
3 to or refuse medical treatment. The provisions of this
4 article shall not impair any existing rights or respon-
5 sibilities that a health care provider, a person, including
6 a minor or an incapacitated person, or a person's family
7 may have in regard to the withholding or withdrawal
8 of life-prolonging intervention, including any rights to
9 seek or forego judicial review of decisions regarding life-
10 prolonging intervention under the common law or
11 statutes of this state.

**§16-30B-15. Relation to existing law; no abrogation of
common law doctrine of medical
necessity.**

1 (a) Individuals designated as patient representatives
2 pursuant to section five-a of article five-c heretofore set
3 forth in this chapter may agree to become surrogate
4 decision-makers subject to the provisions of this article.

5 (b) Nothing in this article shall be construed to
6 abrogate the common law doctrine of medical necessity.

§16-30B-16. Severability.

1 The provisions of this article are severable and if any
 2 provision, section or part thereof shall be held 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 63

(Com. Sub. for H. B. 2616—By Delegates Gallagher, Huntwork,
 P. White and Douglas)

[Passed April 8, 1993; in effect July 1, 1993. 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 thirty-c, relating to do not resuscitate act; legislative findings and purpose; definitions; applicability; presumed consent to cardiopulmonary resuscitation; health care facilities not required to expand to provide cardiopulmonary resuscitation; issuance of a do not resuscitate order; order to be written by a physician; compliance with a do not resuscitate order; revocation; protection of persons carrying out in good faith do not resuscitate order; notification by physician refusing to comply with do not resuscitate order; insurance; interinstitutional transfers; preservation of existing rights; do not resuscitate order form; do not resuscitate identification; public education; not suicide or murder; full faith and credit; 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 thirty-c, to read as follows:

ARTICLE 30C. DO NOT RESUSCITATE ACT.

- §16-30C-1. Short title.
§16-30C-2. Legislative findings and purposes.
§16-30C-3. Definitions.
§16-30C-4. Applicability.
§16-30C-5. Presumed consent to cardiopulmonary resuscitation; health care facilities not required to expand to provide cardiopulmonary resuscitation.
§16-30C-6. Issuance of a do not resuscitate order; order to be written by a physician.
§16-30C-7. Compliance with a do not resuscitate order.
§16-30C-8. Revocation of do not resuscitate order.
§16-30C-9. Protection of persons carrying out in good faith do not resuscitate order; notification of representative or surrogate decision-maker by physician refusing to comply with do not resuscitate order.
§16-30C-10. Insurance.
§16-30C-11. Interinstitutional transfers.
§16-30C-12. Preservation of existing rights.
§16-30C-13. Do not resuscitate order form; do not resuscitate identification; public education.
§16-30C-14. Not suicide or murder.
§16-30C-15. Full faith and credit.
§16-30C-16. Severability.

§16-30C-1. Short title.

- 1 The article may be cited as the "Do Not Resuscitate
2 Act."

§16-30C-2. Legislative findings and purposes.

- 1 (a) *Findings.* — The Legislature hereby finds that:

2 (1) Although cardiopulmonary resuscitation has saved
3 the lives of persons experiencing sudden, unexpected
4 death, present medical data indicates that cardiopulmo-
5 nary resuscitation rarely leads to prolonged survival in
6 persons with chronic illnesses in whom death is
7 expected;

8 (2) In many circumstances, the performance of
9 cardiopulmonary resuscitation on persons may cause
10 infliction of unwanted and unnecessary pain and
11 suffering;

12 (3) All persons have a right to make health care
13 decisions including the right to refuse cardiopulmonary
14 resuscitation;

15 (4) Persons with incapacity have the right to have

16 health care decisions made for them by surrogate
17 decision-makers;

18 (5) Existing emergency medical services protocols
19 require their personnel to proceed with cardiopulmo-
20 nary resuscitation when they find a person in a cardiac
21 or respiratory arrest even if such person has completed
22 a living will or medical power of attorney, indicating
23 that he/she does not wish to receive cardiopulmonary
24 resuscitation; and

25 (6) The administration of cardiopulmonary resuscita-
26 tion by emergency medical services personnel to persons
27 who have indicated by a living will or medical power
28 of attorney or other means that they do not wish to
29 receive such resuscitation offends the dignity of the
30 person and conflicts with standards of accepted medical
31 practice.

32 (b) *Purpose.* — It is the purpose of this article to
33 ensure that the right of a person to self-determination
34 relating to cardiopulmonary resuscitation is protected.
35 It is the intent of the Legislature by enacting this article
36 to give direction to emergency medical services person-
37 nel and other health care providers in regard to the
38 performance of cardiopulmonary resuscitation.

§16-30C-3. Definitions.

1 As used in this article, unless the context clearly
2 requires otherwise, the following definitions apply:

3 (a) “Attending physician” means the physician
4 selected by or assigned to the person who has primary
5 responsibility for treatment or care of the person and
6 who is a licensed physician. If more than one physician
7 shares that responsibility, any of those physicians may
8 act as the attending physician under the provisions of
9 this article.

10 (b) “Cardiopulmonary resuscitation” means those
11 measures used to restore or support cardiac or respira-
12 tory function in the event of a cardiac or respiratory
13 arrest.

14 (c) “Do not resuscitate identification” means a

15 standardized identification necklace, bracelet or card as
16 set forth in this article that signifies that a do not
17 resuscitate order has been issued for the possessor.

18 (d) "Do not resuscitate order" means an order issued
19 by a licensed physician that cardiopulmonary resuscita-
20 tion should not be administered to a particular person.

21 (e) "Emergency medical services personnel" means
22 paid or volunteer firefighters, law-enforcement officers,
23 emergency medical technicians, paramedics, or other
24 emergency services personnel, providers or entities,
25 acting within the usual course of their professions.

26 (f) "Health care decision" means a decision to give,
27 withhold, or withdraw informed consent to any type of
28 health care including, but not limited to, medical and
29 surgical treatments including life-prolonging interven-
30 tions, nursing care, hospitalization, treatment in a
31 nursing home or other extended care facility, home
32 health care, and the gift or donation of a body organ or
33 tissue.

34 (g) "Health care facility" means a facility established
35 to administer and provide health care services and
36 which is commonly known by a wide variety of titles,
37 including, but not limited to, hospitals, medical centers,
38 ambulatory health care facilities, physicians' offices and
39 clinics, extended care facilities operated in connection
40 with hospitals, nursing homes, and extended care
41 facilities operated in connection with rehabilitation
42 centers.

43 (h) "Health care provider" means any physician,
44 dentist, nurse, paramedic, psychologist or other person
45 providing medical, dental, nursing, psychological or
46 other health care services of any kind.

47 (i) "Home" means any place of residence other than
48 a health care facility and includes residential board and
49 care homes and personal care homes.

50 (j) "Incapacity" or words of like import, means the
51 inability because of physical or mental impairment, to
52 appreciate the nature and implications of a health care
53 decision, to make an informed choice regarding the

54 alternatives presented and to communicate that choice
55 in an unambiguous manner.

56 (k) "Representative" means a person designated by a
57 principal to make health care decisions in accordance
58 with article thirty-a of this chapter.

59 (l) "Surrogate decision-maker" means a person or
60 persons over eighteen years of age with mental capacity
61 who is reasonably available, is willing to make health
62 care decisions on behalf of an incapacitated person, and
63 is identified by the attending physician in accordance
64 with applicable provisions of this code as the person or
65 persons who is to make decisions pursuant to this article:
66 *Provided*, That a representative named in the incapac-
67 itated person's medical power of attorney, if such
68 document has been completed, shall have priority over
69 a surrogate decision-maker.

70 (m) "Trauma" means blunt or penetrating bodily
71 injuries from impact which occur in situations includ-
72 ing, but not limited to, motor vehicle collisions, mass
73 casualty incidents and industrial accidents.

§16-30C-4. Applicability.

1 The provisions of this article apply to all persons
2 regardless of whether or not they have completed a
3 living will or medical power of attorney. For the
4 purposes of direction to emergency medical services
5 personnel, a do not resuscitate order does not apply to
6 treatment rendered at the site where trauma has
7 occurred to persons who experience a cardiac or
8 respiratory arrest as the result of severe trauma.

§16-30C-5. Presumed consent to cardiopulmonary resus- citation; health care facilities not required to expand to provide cardiopulmonary resuscitation.

1 (a) Every person shall be presumed to consent to the
2 administration of cardiopulmonary resuscitation in the
3 event of cardiac or respiratory arrest, unless one or
4 more of the following conditions, of which the health
5 care provider has actual knowledge, apply:

6 (1) A do not resuscitate order in accordance with the
7 provisions of this article has been issued for that person;

8 (2) A completed living will for that person is in effect,
9 pursuant to the provisions of article thirty of this
10 chapter, and the person is in a terminal condition or a
11 persistent vegetative state; or

12 (3) A completed medical power of attorney for that
13 person is in effect, pursuant to the provisions of article
14 thirty-a of this chapter, in which the person indicated
15 that he or she does not wish to receive cardiopulmonary
16 resuscitation, or his or her representative has deter-
17 mined that the person would not wish to receive
18 cardiopulmonary resuscitation.

19 (b) Nothing in this article shall require a nursing
20 home, personal care home, or extended care facility
21 operated in connection with hospitals to institute or
22 maintain the ability to provide cardiopulmonary resus-
23 citation or to expand its existing equipment, facilities or
24 personnel to provide cardiopulmonary resuscitation:
25 *Provided*, That if a health care facility does not provide
26 cardiopulmonary resuscitation, this policy shall be
27 communicated in writing to the person, representative
28 or surrogate decision-maker prior to admission.

**§16-30C-6. Issuance of a do not resuscitate order; order
to be written by a physician.**

1 (a) It shall be lawful for the attending physician to
2 issue a do not resuscitate order for persons who are
3 present in or residing at home or in a health care
4 facility, provided that the person, representative, or
5 surrogate has consented to the order. A do not resusci-
6 tate order shall be issued in writing in the form as
7 described in this section for a person not present or
8 residing in a health care facility. For persons present
9 in health care facilities, a do not resuscitate order shall
10 be issued in accordance with the policies and procedures
11 of the health care facility or in accordance with the
12 provisions of this article.

13 (b) Persons may request their physicians to issue do
14 not resuscitate orders for them.

15 (c) The representative or surrogate decision-maker
16 may consent to a do not resuscitate order for a person
17 with incapacity. A do not resuscitate order written by
18 a physician for a person with incapacity with the
19 consent of the representative or surrogate decision-
20 maker is valid and shall be respected by health care
21 providers.

22 (d) A parent may consent to a do not resuscitate order
23 for his or her minor child, provided that a second
24 physician who has examined the child concurs with the
25 opinion of the attending physician that the provision of
26 cardiopulmonary resuscitation would be contrary to
27 accepted medical standards. If the minor is between the
28 ages of sixteen and eighteen, and in the opinion of the
29 attending physician, the minor is of sufficient maturity
30 to understand the nature and effect of a do not
31 resuscitate order, then no such order shall be valid
32 without the consent of such minor. In the event of a
33 conflict between the wishes of the parents or guardians
34 and the wishes of the mature minor, the wishes of the
35 mature minor shall prevail. For purposes of this section,
36 no minor less than sixteen years of age shall be
37 considered mature. Nothing in this article shall be
38 interpreted to conflict with the provisions of the Child
39 Abuse Prevention and Treatment Act and implementing
40 regulations at 45 CFR 1340. In the event conflict is
41 unavoidable, federal law and regulation shall govern.

42 (e) If a surrogate decision-maker is not reasonably
43 available or capable of making a decision regarding a
44 do not resuscitate order, an attending physician may
45 issue a do not resuscitate order for a person with
46 incapacity in a health care facility: *Provided*, That a
47 second physician who has personally examined the
48 person concurs in the opinion of the attending physician
49 that the provision of cardiopulmonary resuscitation
50 would be contrary to accepted medical standards.

51 (f) For persons not present or residing in a health care
52 facility, the do not resuscitate order shall be in the
53 following form on a card suitable for carrying on the
54 person.

55

Do Not Resuscitate Order

56

“As treating physician of _____ and a
57 licensed physician, I order that this person SHALL
58 NOT BE RESUSCITATED in the event of cardiac or
59 respiratory arrest. This order has been discussed with
60 _____ or his/her representative
61 _____ or his/her surrogate decision-maker
62 _____ who has given consent as evidenced
63 by his/her signature below.

64

Physician Name _____

65

Physician Signature _____

66

Address _____

67

Person Signature _____

68

Address _____

69

Surrogate Decision-maker Signature _____

70

Address _____

§16-30C-7. Compliance with a do not resuscitate order.

1

(a) Health care providers shall comply with the do not
2 resuscitate order when presented with:

3

(1) A do not resuscitate order completed by a
4 physician on a form as specified in section six of this
5 article;

6

(2) Do not resuscitate identification as set forth in
7 section thirteen of this article; or

8

(3) A do not resuscitate order for a person present or
9 residing in a health care facility issued in accordance
10 with the health care facility's policies and procedures.

11

(b) Pursuant to this article, health care providers shall
12 respect do not resuscitate orders for persons in health
13 care facilities, ambulances, homes and communities
14 within this state.

§16-30C-8. Revocation of do not resuscitate order.

1

(a) At any time a person in a health care facility may
2 revoke his or her previous request for or consent to a

3 do not resuscitate order by making either a written, oral
4 or other act of communication to a physician or other
5 professional staff of the health care facility.

6 (b) At any time a person residing at home may revoke
7 his/her do not resuscitate order by destroying such order
8 and removing do not resuscitate identification on his or
9 her person. The person is responsible for notifying his
10 or her physician of the revocation.

11 (c) At any time a representative or surrogate decision-
12 maker may revoke his or her consent to a do not
13 resuscitate order for a person with incapacity in a health
14 care facility by notifying a physician or other profes-
15 sional staff of the health care facility of the revocation
16 of consent in writing, or by orally notifying the
17 attending physician in the presence of a witness
18 eighteen years of age or older.

19 (d) At any time a representative or surrogate decision-
20 maker may revoke his or her consent for a person with
21 incapacity residing at home by destroying such order
22 and removing do not resuscitate identification from the
23 person. The representative or surrogate decision-maker
24 is responsible for notifying the person's physician of the
25 revocation.

26 (e) The attending physician who is informed of or
27 provided with a revocation of consent pursuant to this
28 section shall immediately cancel the do not resuscitate
29 order if the person is in a health care facility and notify
30 the professional staff of the health care facility respon-
31 sible for the person's care of the revocation and
32 cancellation. Any professional staff of the health care
33 facility who is informed of or provided with a revocation
34 of consent pursuant to this section shall immediately
35 notify the attending physician of such revocation.

36 (f) Only a licensed physician may cancel the issuance
37 of a do not resuscitate order.

**§16-30C-9. Protection of persons carrying out in good
faith do not resuscitate order; notification
of representative or surrogate decision-
maker by physician refusing to comply
with do not resuscitate order.**

1 (a) No health care provider, health care facility, or
2 individual employed by, acting as the agent of, or under
3 contract with any of the foregoing shall be subject to
4 criminal prosecution or civil liability for carrying out in
5 good faith a do not resuscitate order authorized by this
6 article on behalf of a person as instructed by the person,
7 representative or surrogate decision-maker or for those
8 actions taken in compliance with the standards and
9 procedures set forth in this article.

10 (b) No health care provider, health care facility,
11 individual employed by, acting as agent of, or under
12 contract with any of the foregoing or other individual
13 who witnesses a cardiac or respiratory arrest shall be
14 subject to criminal prosecution or civil liability for
15 providing cardiopulmonary resuscitation to a person for
16 whom a do not resuscitate order has been issued,
17 provided that such physician or individual:

18 (1) Reasonably and in good faith was unaware of the
19 issuance of a do not resuscitate order; or

20 (2) Reasonably and in good faith believed that consent
21 to the do not resuscitate order had been revoked or
22 canceled.

23 (c) Any physician who refused to issue a do not
24 resuscitate order at a person's request or to comply with
25 a do not resuscitate order entered pursuant to this
26 article shall take reasonable steps to advise promptly the
27 person, representative, or surrogate decision-maker of
28 the person that such physician is unwilling to effectuate
29 the order. The attending physician shall thereafter at
30 the election of the person, representative or surrogate
31 decision-maker permit the person, representative or
32 surrogate decision-maker to obtain another physician.

§16-30C-10. Insurance.

1 (a) No policy of life insurance shall be legally
2 impaired, modified, or invalidated in any manner by the
3 issuance of a do not resuscitate order notwithstanding
4 any term of the policy to the contrary.

5 (b) A person may not prohibit or require the issuance
6 of a do not resuscitate order for an individual as a

7 condition of such individual's being insured or receiving
8 health care services.

§16-30C-11. Interinstitutional transfers.

1 If a person with a do not resuscitate order is
2 transferred from one health care facility to another
3 health care facility, the existence of a do not resuscitate
4 order shall be communicated to the receiving facility
5 prior to the transfer, and the written do not resuscitate
6 order shall accompany the person to the health care
7 facility receiving the person and shall remain effective
8 until a physician at the receiving facility issues
9 admission orders.

§16-30C-12. Preservation of existing rights.

1 (a) Nothing in this article shall impair or supersede
2 any legal right or legal responsibility which any person
3 may have to effect the withholding of cardiopulmonary
4 resuscitation in any lawful manner. In such respect, the
5 provisions of this article are cumulative.

6 (b) Nothing in this article shall be construed to
7 preclude a court of competent jurisdiction from approv-
8 ing the issuance of a do not resuscitate order under
9 circumstances other than those under which such an
10 order may be issued pursuant to the provisions of this
11 article.

**§16-30C-13. Do not resuscitate order form; do not resus-
cite identification; public education.**

1 (a) The secretary of the department of health and
2 human resources, no later than one year after the
3 passage of this article, shall implement the statewide
4 distribution of do not resuscitate forms as described in
5 section six of this article.

6 (b) Do not resuscitate identification as set forth in this
7 article shall consist of either a medical condition
8 bracelet or necklace with the inscription of the patient's
9 name, date of birth in numerical form, and "WV do not
10 resuscitate" on it. No other identification or wording
11 shall be deemed to comply with the provisions of this
12 article. Such identification shall be issued only upon

13 presentation of a properly executed do not resuscitate
14 order form as set forth in section six of this article or
15 a do not resuscitate order properly executed in accor-
16 dance with a health care facility's written policy and
17 procedure.

18 (c) The secretary of the department of health and
19 human resources, no later than one year after the
20 passage of this article, shall be responsible for establish-
21 ing a system for the distribution of the do not resuscitate
22 identification bracelets and necklaces.

23 (d) The secretary of the department of health and
24 human resources, no later than one year after the
25 passage of this article, shall develop and implement a
26 statewide educational effort to inform the public of their
27 right to accept or refuse cardiopulmonary resuscitation
28 and to request their physician to write a do not
29 resuscitate order for them.

§16-30C-14. Not suicide or murder.

1 The withholding of cardiopulmonary resuscitation
2 from a person in accordance with the provisions of this
3 article does not, for any purpose, constitute suicide or
4 murder. The withholding of cardiopulmonary resuscita-
5 tion from a person in accordance with the provisions of
6 this article, however, shall not relieve any individual of
7 responsibility for any criminal acts that may have
8 caused the person's condition. Nothing in this article
9 shall be construed to legalize, condone, authorize or
10 approve mercy killing or assisted suicide.

§16-30C-15. Full faith and credit.

1 It is the intention of the Legislature to recognize that
2 existence of do not resuscitate identification correctly
3 expresses the will of any person who bears it and that
4 foreign courts recognize this expression and give full
5 faith and credit to do not resuscitate identification.

§16-30C-16. Severability.

1 The provisions of this article are severable and if any
2 provision, section or part thereof shall be held 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 64

(S. B. 502—By Senator Brackenrich)

[Passed April 10, 1993; 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, eleven, twelve, thirteen, fifteen and sixteen, article thirty-two, 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 nine-a, nine-b and nine-c, all relating to definitions; powers and duties of the director of health; asbestos management planner's license required; asbestos abatement project designer's license required; asbestos contractor's license required; asbestos abatement supervisor's license required; asbestos inspector's license required; asbestos worker's license required; asbestos analytical laboratory license required; asbestos clearance air monitor license required; resilient floor covering worker license required; special revenue account; notification; waivers; exemptions; approval of asbestos abatement courses; reciprocity; reprimands; suspensions or revocation of license; violations; orders; hearings; and penalties.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, thirteen, fifteen and sixteen, article thirty-two, 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 nine-a, nine-b and nine-c, all to read as follows:

ARTICLE 32. ASBESTOS ABATEMENT.

- §16-32-2. Definitions.
- §16-32-3. Powers and duties of the director of health.
- §16-32-4. Asbestos management planner's license required.
- §16-32-5. Asbestos abatement project designer's license required.
- §16-32-6. Asbestos contractor's license required.
- §16-32-7. Asbestos abatement supervisor's license required.
- §16-32-8. Asbestos inspector's license required.
- §16-32-9. Asbestos worker's license required.
- §16-32-9a. Asbestos analytical laboratory license required.
- §16-32-9b. Asbestos clearance air monitor license required.
- §16-32-9c. Resilient floor covering worker license required.
- §16-32-10. Special revenue account.
- §16-32-11. Notification; waivers; exemptions.
- §16-32-12. Approval of asbestos abatement courses.
- §16-32-13. Reciprocity.
- §16-32-15. Reprimands; suspension or revocation of license; violations; orders; hearings.
- §16-32-16. Penalties.

§16-32-2. Definitions.

- 1 (a) "Asbestos" means the asbestiform varieties of
2 chrysolite (serpentine), crocidolite (riebeckite), amosite
3 (cummintonite-grunerite), anthophyllite, tremolite and
4 actinolite.
- 5 (b) "Asbestos analytical laboratory" means a facility
6 or place which analyzes asbestos bulk samples or
7 asbestos air samples.
- 8 (c) "Asbestos abatement project designer" means a
9 person who specifies engineering controls, methods and
10 work practices to be used during asbestos abatement
11 projects.
- 12 (d) "Asbestos abatement supervisor" means a person
13 responsible for direction of asbestos abatement projects.
- 14 (e) "Asbestos clearance air monitor" means a person
15 who performs air monitoring to confirm clearance levels
16 to establish that an area is safe for reoccupancy after
17 an asbestos abatement project.
- 18 (f) "Asbestos-containing material" means any material
19 or product which contains more than one percent
20 asbestos by weight.
- 21 (g) "Asbestos contractor" means a person who enters
22 into contract for an asbestos abatement project.

- 23 (h) "Asbestos inspector" means a person employed to
24 inspect for the presence of asbestos containing mate-
25 rials, evaluate the condition of such materials and collect
26 samples for asbestos content confirmation.
- 27 (i) "Asbestos management planner" means a person
28 employed to interpret survey results, make hazard
29 assessment, evaluation and selection of control options or
30 develop an operation and maintenance plan.
- 31 (j) "Asbestos abatement project" means an activity
32 involving the repair, removal, enclosure or encapsula-
33 tion of asbestos-containing material.
- 34 (k) "Asbestos worker" means a person who works on
35 an asbestos abatement project.
- 36 (l) "Contained work area" means designated rooms,
37 spaces or other areas where asbestos abatement activ-
38 ities are being performed, including decontamination
39 structures. The contained work area shall be separated
40 from the uncontaminated environment by polyethylene
41 sheeting or other materials used in conjunction with the
42 existing floors, ceilings and walls of the structure.
- 43 (m) "Director" means the director of the division of
44 health or the director's duly authorized representative.
- 45 (n) "Division" means the division of health of the
46 department of health and human resources.
- 47 (o) "Encapsulate" means the application of any
48 material onto any asbestos containing material to bridge
49 or penetrate the material to prevent fiber release.
- 50 (p) "Enclosure" means the permanent confinement of
51 friable asbestos containing materials with an airtight
52 barrier in an area not used or designed as an air
53 plenum.
- 54 (q) "Friable" means material which is capable of
55 being crumbled, pulverized or reduced to powder by
56 hand pressure of which under normal use or mainte-
57 nance emits or can be expected to emit asbestos fibers
58 into the air.
- 59 (r) "Good faith report" means a report of conduct

60 defined in this article as wrongdoing or waste which is
61 made without malice or consideration of personal
62 benefit and which the person making the report has
63 reasonable cause to believe is true.

64 (s) "License" means a document authorizing a person
65 to perform certain specific asbestos related work
66 activities.

67 (t) "Person" means a corporation, partnership, sole
68 proprietorship, firm, enterprise, franchise, association
69 or any individual or entity.

70 (u) "Resilient floor covering" means floor tile, sheet
71 vinyl and associated adhesives which contain more than
72 one percent asbestos by weight.

73 (v) "Resilient floor covering worker" means a person
74 who is employed to remove resilient floor covering in
75 single-family dwellings.

76 (w) "Waste" means an employer's conduct or omissions
77 which result in substantial abuse, misuse, destruction or
78 loss of funds or resources belonging to or derived from
79 federal, state or political subdivision sources.

80 (x) "Wrongdoing" means a violation which is not of a
81 merely technical or minimal nature of a federal or state
82 statute or regulation, of a political subdivision ordinance
83 or regulation or of a code of conduct or ethics designed
84 to protect the interest of the public or the employer.

§16-32-3. Powers and duties of the director of health.

1 The director of health shall administer and enforce
2 this article. The director has the following powers and
3 duties:

4 (a) To issue licenses and assess fees pursuant to this
5 article and the rules promulgated thereunder.

6 (b) To promulgate rules necessary to carry out the
7 requirements of this article in accordance with the
8 provisions of chapter twenty-nine-a of this code, to
9 include, but not be limited to, the required training, the
10 prescription of fees and procedures for the issuance and
11 renewal of licenses.

12 (c) To approve the training courses administered to
13 licensure applicants.

§16-32-4. Asbestos management planner's license required.

1 (a) It is unlawful for an individual who does not
2 possess a valid asbestos management planner's license
3 to design a building's or facility's asbestos management
4 plan.

5 (b) To qualify for an asbestos management planner's
6 license, an applicant shall:

7 (1) Satisfactorily complete a United States environ-
8 mental protection agency approved training course for
9 asbestos management planners;

10 (2) Possess a valid asbestos inspector's license;

11 (3) Demonstrate to the satisfaction of the director that
12 the applicant is familiar with and capable of complying
13 fully with all applicable requirements, procedures and
14 standards of the United States environmental protection
15 agency, the United States occupational safety and health
16 administration and the state departments of health and
17 human resources and commerce, labor and environmen-
18 tal resources covering any part of an asbestos abatement
19 project; and

20 (4) Meet the requirements otherwise set forth by the
21 director.

22 (c) Applicants for an asbestos management planner's
23 license shall submit an application and a certificate that
24 shows satisfactory completion of the United States
25 environmental protection agency training course for
26 asbestos management planners to the division and shall
27 pay the applicable fee to the division. The director may
28 deny a license if there has been a failure to comply with
29 the application procedures or if the applicant fails to
30 satisfy the application criteria. Written notice of such
31 denial and an opportunity for reapplication shall be
32 afforded to all applicants.

§16-32-5. Asbestos abatement project designer's license required.

1 (a) It is unlawful for any person who does not possess
2 a valid asbestos abatement project designer's license to
3 specify engineering controls, methods and work practi-
4 ces under an asbestos abatement project contract to
5 another person.

6 (b) To qualify for an asbestos abatement project
7 designer's license, an applicant shall:

8 (1) Satisfactorily complete a United States environ-
9 mental protection agency approved training course for
10 abatement project designers;

11 (2) Demonstrate to the satisfaction of the director that
12 the applicant is familiar with and capable of complying
13 fully with all applicable requirements, procedures and
14 standards of the United States environmental protection
15 agency, the United States occupational safety and health
16 administration and the state departments of health and
17 human resources and commerce, labor and environmen-
18 tal resources covering any part of an asbestos abatement
19 project; and

20 (3) Meet the requirements otherwise set forth by the
21 director.

22 (c) Applicants for an asbestos abatement project
23 designer's license shall submit an application and a
24 certificate that shows satisfactory completion of the
25 United States environmental protection agency training
26 course for asbestos abatement project designers to the
27 division on the required form and shall pay the
28 applicable fee to the division. The director may deny a
29 license if there has been a failure to comply with the
30 application procedure or if the applicant fails to satisfy
31 the application criteria. Written notice of denial and an
32 opportunity for reapplication shall be afforded to all
33 applicants.

§16-32-6. Asbestos contractor's license required.

1 (a) It is unlawful for any person who does not possess
2 a valid asbestos contractor's license to contract with
3 another person for an asbestos abatement project.

4 (b) To qualify for an asbestos contractor's license, an

5 applicant shall:

6 (1) Satisfactorily complete a United States environ-
7 mental protection agency approved training course for
8 asbestos supervisors;

9 (2) Demonstrate to the satisfaction of the director that
10 the applicant and the applicant's employees or agents
11 are familiar with and are capable of complying fully
12 with all applicable requirements, procedures and
13 standards of the United States environmental protection
14 agency, the United States occupational safety and health
15 administration and the state departments of health and
16 human resources and commerce, labor and environmen-
17 tal resources covering any part of an asbestos abatement
18 project; and

19 (3) Meet the requirements otherwise set forth by the
20 director.

21 (c) Applicants for an asbestos contractor's license shall
22 submit an application and a certificate that shows
23 satisfactory completion of the United States environ-
24 mental protection agency asbestos training course for
25 supervisors to the division on the required form and
26 shall pay the applicable fee to the division. The director
27 may deny a license if there has been a failure to comply
28 with the application procedure or if the applicant fails
29 to satisfy the application criteria. Written notice of
30 denial and an opportunity for reapplication shall be
31 afforded to all applicants.

32 (d) Licensed asbestos contractors shall carry out the
33 following duties:

34 (1) Ensure that each of the contractor's employees or
35 agents who will come into contact with asbestos or who
36 will be responsible for an asbestos abatement project is
37 licensed as required by this article;

38 (2) Ensure that each asbestos project is supervised by
39 a licensed asbestos abatement supervisor;

40 (3) Keep a record of each asbestos abatement project
41 and make the record available to the state departments
42 of health and human resources and commerce, labor and

43 environmental resources upon request. Records required
44 by this section shall be kept for at least thirty years. The
45 records shall include:

46 (A) The name, address and license number of the
47 individual who supervised the asbestos abatement
48 project and each employee or agent who worked on the
49 project;

50 (B) The location and design of the project and the
51 amount of asbestos-containing material that was
52 removed;

53 (C) The starting and completion dates of each project
54 and a summary of the procedures that were used to
55 comply with all federal and state standards;

56 (D) The name and address of each asbestos disposal
57 site where waste containing asbestos was deposited and
58 the disposal site receipts; and

59 (E) Ensure that each contained work area of an
60 asbestos abatement project meets minimum clearance
61 standards established by the director before allowing
62 reoccupancy.

63 (e) The following situations and relationships involv-
64 ing asbestos abatement contractors are prohibited:

65 (1) A financial or proprietary interest of the contrac-
66 tor in a laboratory utilized by the contractor to perform
67 asbestos sample analysis related to asbestos abatement
68 projects performed or contracted for by the contractor;

69 (2) An employer-employee relationship between the
70 contractor and an asbestos clearance air monitor for an
71 asbestos abatement project performed or contracted for
72 by the contractor; and

73 (3) A financial or proprietary interest of the contrac-
74 tor in the firm which performs asbestos clearance air
75 monitoring for an asbestos abatement project performed
76 or contracted for by the contractor.

77 (f) Persons who contract to remove resilient floor
78 covering materials in single-family dwellings are not
79 required to be licensed as asbestos contractors: *Pro-*

80 *vided*, That the individuals engaged in removal shall
81 meet the requirements of this article and any rules
82 promulgated hereunder relating to resilient floor
83 covering removal.

§16-32-7. Asbestos abatement supervisor's license required.

1 (a) It is unlawful for an individual who does not
2 possess a valid asbestos abatement supervisor's license
3 to direct an asbestos abatement project.

4 (b) To qualify for an asbestos abatement supervisor's
5 license, an applicant shall:

6 (1) Satisfactorily complete a United States environ-
7 mental protection agency approved training course for
8 asbestos abatement supervisors;

9 (2) Demonstrate to the satisfaction of the director that
10 the applicant is familiar with and capable of complying
11 fully with all applicable requirements, procedures and
12 standards of the United States environmental protection
13 agency, United States occupational safety and health
14 administration and the state departments of health and
15 human resources and commerce, labor and environmen-
16 tal resources covering any part of an asbestos abatement
17 project; and

18 (3) Meet the requirements otherwise set forth by the
19 director.

20 (c) Applicants for an asbestos abatement supervisor's
21 license shall submit an application and a certificate that
22 shows satisfactory completion of the United States
23 environmental protection agency training course for
24 asbestos abatement supervisors to the division and shall
25 pay the applicable fee to the division. The director may
26 deny a license if there has been a failure to comply with
27 the application procedures or if the applicant fails to
28 satisfy the application criteria. Written notice of such
29 denial and an opportunity for reapplication shall be
30 afforded to all applicants.

§16-32-8. Asbestos inspector's license required.

1 (a) It is unlawful for an individual who does not

2 possess a valid asbestos inspector's license to work as an
3 asbestos inspector on an asbestos abatement project.

4 (b) To qualify for an asbestos inspector's license, an
5 applicant shall:

6 (1) Satisfactorily complete a United States environ-
7 mental protection agency approved training course for
8 asbestos inspectors;

9 (2) Demonstrate to the satisfaction of the director that
10 the applicant is familiar with and capable of complying
11 fully with all applicable requirements, procedures and
12 standards of the United States environmental protection
13 agency, United States occupational safety and health
14 administration and the state departments of health and
15 human resources and commerce, labor and environmen-
16 tal resources covering any part of an asbestos abatement
17 project; and

18 (3) Meet the requirements otherwise set forth by the
19 director.

20 (c) Applicants for an asbestos inspector's license shall
21 submit an application and a certificate that shows
22 satisfactory completion of the United States environ-
23 mental protection agency training course for asbestos
24 inspectors to the division and shall pay the applicable
25 fee to the division. The director may deny a license if
26 there has been a failure to comply with the application
27 procedures or if the applicant fails to satisfy the
28 application criteria. Written notice of such denial and
29 an opportunity for reapplication shall be afforded to all
30 applicants.

§16-32-9. Asbestos worker's license required.

1 (a) It is unlawful for an individual who does not
2 possess a valid asbestos worker's license to work as an
3 asbestos worker on an asbestos abatement project.

4 (b) To qualify for an asbestos worker's license an
5 individual shall:

6 (1) Satisfactorily complete a United States environ-
7 mental protection agency approved training course for
8 asbestos workers;

9 (2) Demonstrate to the satisfaction of the director that
10 the applicant is familiar with and is capable of
11 complying fully with all applicable requirements,
12 procedures and standards of the United States environ-
13 mental protection agency, the United States occupa-
14 tional safety and health administration and the state
15 departments of health and human resources and
16 commerce, labor and environmental resources covering
17 any part of an asbestos abatement project; and

18 (3) Meet the requirements otherwise set forth by the
19 director.

20 (c) Applicants for an asbestos worker's license shall
21 submit an application and a certificate that shows
22 satisfactory completion of the United States environ-
23 mental protection agency training course for asbestos
24 workers to the division and shall pay the applicable fee
25 to the division. The director may deny a license if there
26 has been a failure to comply with the application
27 procedures or if the applicant fails to satisfy the
28 application criteria. Written notice of such denial and
29 an opportunity for reapplication shall be afforded to all
30 applicants.

**§16-32-9a. Asbestos analytical laboratory license
required.**

1 (a) After the first day of January, one thousand nine
2 hundred ninety-four, it shall be unlawful for any
3 laboratory that does not possess a valid asbestos
4 analytical laboratory license to analyze asbestos bulk
5 samples or asbestos air monitoring samples.

6 (b) To qualify for an asbestos analytical laboratory
7 license, an applicant shall:

8 (1) Demonstrate to the satisfaction of the director that
9 the applicant is familiar with and capable of complying
10 fully with all applicable requirements, procedures and
11 standards of the United States environmental protection
12 agency, the United States occupational safety and health
13 administration and the state departments of health and
14 human resources and commerce, labor and environmen-
15 tal resources covering analysis of asbestos bulk samples

16 or air monitoring samples; and

17 (2) Meet the requirements otherwise set forth by the
18 director.

19 (c) Applicants for an asbestos analytical laboratory
20 license shall submit an application to the division and
21 shall pay the applicable fee to the division. The director
22 may deny a license if there has been a failure to comply
23 with the application procedure or if the applicant fails
24 to satisfy the application criteria. Written notice of
25 denial and an opportunity for reapplication shall be
26 afforded to all applicants.

**§16-32-9b. Asbestos clearance air monitor license
required.**

1 (a) After the first day of January, one thousand nine
2 hundred ninety-four, it shall be unlawful for any
3 individual who does not possess a valid asbestos
4 clearance air monitor license to sample asbestos
5 abatement project areas for clearance.

6 (b) To qualify for an asbestos clearance air monitor
7 license, an applicant shall:

8 (1) Satisfactorily complete a course approved by the
9 director for asbestos clearance air monitors;

10 (2) Demonstrate to the satisfaction of the director that
11 the applicant is familiar with and capable of complying
12 fully with all applicable requirements, procedures and
13 standards of the United States environmental protection
14 agency, the United States occupational safety and health
15 administration and the state departments of health and
16 human resources and commerce, labor and environmen-
17 tal resources covering final air clearances for asbestos
18 abatement projects; and

19 (3) Meet the requirements otherwise set forth by the
20 director.

21 (c) Applicants shall submit an application and a
22 certificate that shows satisfactory completion of a course
23 approved by the director for asbestos air clearance
24 monitors to the division and shall pay the applicable fee
25 to the division. The director may deny a license if there

26 has been a failure to comply with the application
27 procedure or if the applicant fails to satisfy the
28 application criteria. Written notice of such denial and
29 an opportunity for reapplication shall be afforded to all
30 applicants.

§16-32-9c. Resilient floor covering worker license required.

1 (a) After the first day of January, one thousand nine
2 hundred ninety-four, it shall be unlawful for an
3 individual who does not possess a valid resilient floor
4 covering worker's license to be employed as a resilient
5 floor covering worker.

6 (b) To qualify for a resilient floor covering worker's
7 license an individual shall:

8 (1) Satisfactorily complete a training course approved
9 by the director for resilient floor covering workers;

10 (2) Demonstrate to the satisfaction of the director that
11 the applicant is familiar with and is capable of
12 complying fully with all applicable requirements,
13 procedures and standards of the United States occupa-
14 tional safety and health administration and the state
15 departments of health and human resources and
16 commerce, labor and environmental resources covering
17 resilient floor covering removal; and

18 (3) Meet the requirements otherwise set forth by the
19 director.

20 (c) Applicants for a resilient floor covering worker's
21 license shall submit an application and a certificate that
22 shows satisfactory completion of a training course
23 approved by the director for resilient floor covering
24 workers to the division and shall pay the applicable fee
25 to the division. The director may deny a license if there
26 has been a failure to comply with the application
27 procedures or if the applicant fails to satisfy the
28 application criteria. Written notice of denial and an
29 opportunity for reapplication shall be afforded to all
30 applicants.

§16-32-10. Special revenue account.

1 Fees and fines collected under this article and any
2 rules promulgated hereunder shall be deposited in a
3 special revenue account in the state treasury to be used
4 by the director for purposes related to the implementa-
5 tion of this article.

§16-32-11. Notification; waivers; exemptions.

1 (a) Each owner or other person responsible for the
2 operation of a building or facility where an asbestos
3 abatement project is to occur shall notify the division at
4 least ten working days prior to commencement of each
5 asbestos abatement project and shall comply with other
6 applicable state and federal legal and regulatory
7 notification requirements for asbestos abatement
8 projects.

9 (b) In an emergency that results from a sudden
10 unexpected event that is not a planned renovation or
11 demolition, the director may waive the requirement of
12 ten working days prior notification, but in all cases
13 notification shall be made to the division after the
14 emergency within the specified time required by the
15 director.

16 (c) Asbestos abatement projects involving less than
17 one hundred sixty square feet or two hundred sixty
18 linear feet of asbestos containing material are exempt
19 from the prior notification requirement, unless the
20 project takes place in a school for any of grades
21 kindergarten through twelve. A summary of such
22 projects shall be submitted to the division within a
23 specified time as required by the director.

24 (d) Persons who remove resilient floor covering
25 materials in single-family dwellings are exempt from
26 notification requirements.

§16-32-12. Approval of asbestos abatement courses.

1 A person or organization may apply for department
2 and United States environmental protection agency
3 approval of a course on the health and safety aspects of
4 asbestos abatement, removal, enclosure and encapsula-
5 tion by submitting a full description of the curriculum
6 and a written application on forms prescribed by the

7 department.

§16-32-13. Reciprocity.

1 The director may set standards for accepting licenses
2 issued by other states. The director may grant licenses
3 to individuals from other states if that other state has
4 as stringent licensing requirements as West Virginia.

**§16-32-15. Reprimands; suspension or revocation of
license; violations; orders; hearings.**

1 (a) The director may reprimand, suspend or revoke
2 the license of an asbestos analytical laboratory, clear-
3 ance air monitor, contractor, inspector, management
4 planner or worker, or of an asbestos abatement project
5 designer or supervisor, or of a resilient floor covering
6 worker, if the licensee:

7 (1) Fraudulently or deceptively obtains or attempts to
8 obtain a license or knowingly aids another in such fraud
9 or deception;

10 (2) Fails at any time to meet the qualifications for a
11 license or to comply with the requirements of this article
12 or any applicable rules or regulations adopted by the
13 director;

14 (3) Fails to meet applicable federal or state standards
15 for asbestos abatement projects; or

16 (4) Employs or permits an individual not licensed as
17 required by this article to work on an asbestos abate-
18 ment project.

19 (b) The director may investigate all suspected viola-
20 tions of this article or any rules promulgated hereunder.
21 Upon the finding of a violation in connection with any
22 asbestos abatement project, the director shall issue a
23 cease and desist order directing that all work on the
24 project be halted forthwith. Posting of the cease and
25 desist order on the project site shall constitute notice of
26 its contents to the property owner and all persons
27 working on the asbestos abatement project. Where
28 practicable, however, the director shall deliver a copy
29 of such order by certified mail, return receipt requested,
30 to the property owner and to the contractor.

31 (c) Hearings regarding violations of this article and
32 any rules promulgated hereunder shall be conducted in
33 accordance with the administrative procedures act of
34 chapter twenty-nine-a of this code.

§16-32-16. Penalties.

1 The director may impose a civil penalty of not less
2 than two hundred fifty dollars and not more than five
3 thousand dollars for each separate violation of this
4 article or any rules promulgated hereunder.

5 Notwithstanding any other provision of this code, any
6 person who violates any provision of this article or any
7 rule or regulation related hereto shall be guilty of a
8 misdemeanor.

9 In any case where a person fails to halt work
10 following the issuance of a cease and desist order by the
11 director, the violation shall be presumed to be willful
12 and shall be assessed a civil penalty by the director of
13 not less than ten thousand dollars nor more than twenty-
14 five thousand dollars for an initial violation and not less
15 than twenty-five thousand dollars nor more than fifty
16 thousand dollars for each subsequent violation.

CHAPTER 65

(H. B. 2296—By Delegate Gallagher)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article eleven-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the board of directors of the not-for-profit corporation established to carry out the patient care activities of the West Virginia University medical center; requiring that, of the seven members appointed to the board of directors of the corporation to represent the public interest, at least one member come from each congressional district and all seven members be appointed to assure geographic diversity.

Be it enacted by the Legislature of West Virginia:

That section three, article eleven-c, 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 11C. LEASE AND AGREEMENT OF THE UNIVERSITY OF WEST VIRGINIA BOARD OF TRUSTEES RELATING TO WEST VIRGINIA UNIVERSITY HOSPITAL.

§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.

1 The board is hereby authorized to enter into the
2 agreement and any other contractual relationships
3 authorized by this article with the corporation, but only
4 if the corporation meets the following description:

5 (a) The directors of the corporation, all of whom shall
6 be voting, shall consist of the president of the university,
7 who shall serve ex officio as chairman of the directors,
8 the president of the board or his designee, the vice
9 chancellor for health affairs of the board, the vice
10 president for health sciences of the university, the vice
11 president for administration and finance of the univer-
12 sity, the chief of the medical staff of the hospital, the
13 dean of the school of medicine of the university, the dean
14 of the school of nursing of the university and the chief
15 executive officer of the corporation, as ex officio
16 members of the directors, a representative elected at
17 large by the corporation employees and seven directors
18 to be appointed by the governor, subject to confirmation
19 by the Senate of the state Legislature, which seven
20 appointed directors shall be selected in conformance
21 with the provisions of section six-a, article five-b,
22 chapter sixteen of this code: *Provided*, That said seven
23 directors shall be appointed to six-year terms, but at
24 least one member shall be from each congressional
25 district and all shall be appointed to assure geographic
26 diversity: *Provided, however*, That of the seven directors
27 so appointed by the governor for terms beginning the
28 year one thousand nine hundred eighty-four, three such
29 appointments shall be for a term of two years, two shall
30 be for a term of four years and two shall be for a term
31 of six years.

32 (b) The audited records of the corporation shall be
33 reported publicly and to the joint committee on govern-
34 ment and finance at least annually.

35 (c) Upon liquidation of the corporation, the assets of
36 the corporation shall be transferred to the board for the
37 benefit of the university.

CHAPTER 66

(Com. Sub. for H. B. 2785—By Delegate Manuel)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten, twelve-b and thirteen-b, article twenty-three, chapter nineteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the daily license tax; the pari-mutuel pools tax; method of paying the taxes; alternative taxes; providing for alternative participation in the thoroughbred development fund; supplemental purses for West Virginia whelped dogs; televised racing days; providing for exemptions to the number of live racing dates required; appointment of binding arbitration board; providing that licensee pay one tenth of one percent of certain commissions to the general fund of certain counties; merging of pari-mutuel wagering pools; qualifications for merged simulcast pools; providing for payment of certain commissions into the pari-mutuel clerks' pension fund; distribution of thoroughbred development fund; restricted races; and nonrestricted purse supplements.

Be it enacted by the Legislature of West Virginia:

That sections ten, twelve-b and 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, all to read as follows:

ARTICLE 23. HORSE AND DOG RACING.

- §19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.
- §19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.
- §19-23-13b. West Virginia thoroughbred development fund; distribution; restricted races; nonrestricted purse supplements.

PART VII. TAXATION OF HORSE AND DOG RACING AND PARI-MUTUEL WAGERING; DISPOSITION OF REVENUES

§19-23-10. Daily license tax; pari-mutuel pools tax; how taxes paid; alternate tax; credits.

1 (a) Any racing association conducting thoroughbred
2 racing at any horse racetrack in this state shall pay each
3 day upon which horse races are run a daily license tax
4 of two hundred fifty dollars. Any racing association
5 conducting harness racing at any horse racetrack in this
6 state shall pay each day upon which horse races are run
7 a daily license tax of one hundred fifty dollars. Any
8 racing association conducting dog races shall pay each
9 day upon which dog races are run a daily license tax
10 of one hundred fifty dollars. In the event thoroughbred
11 racing, harness racing, dog racing, or any combination
12 of the foregoing are conducted on the same day at the
13 same racetrack by the same racing association, only one
14 daily license tax in the amount of two hundred fifty
15 dollars shall be paid for that day. Any daily license tax
16 shall not apply to any local, county or state fair, horse
17 show or agricultural or livestock exposition at which
18 horse racing is conducted for not more than six days.

19 (b) Any racing association licensed by the racing
20 commission to conduct thoroughbred racing and permit-
21 ting and conducting pari-mutuel wagering under the
22 provisions of this article shall, in addition to the daily
23 license tax set forth in subsection (a) of this section, pay
24 to the racing commission, from the commission deducted
25 each day by the licensee from the pari-mutuel pools on
26 thoroughbred racing a tax calculated on the total daily
27 contribution of all pari-mutuel pools conducted or made
28 at any and every thoroughbred race meeting of the
29 licensee licensed under the provisions of this article. The
30 tax, on the pari-mutuel pools conducted or made each
31 day during the months of January, February, March,
32 October, November and December, shall from the
33 effective date of this section and for fiscal year one
34 thousand nine hundred eighty-five be calculated at two
35 and six-tenths percent; for fiscal year one thousand nine
36 hundred eighty-six, be calculated at two and three-

37 tenths percent; for fiscal year one thousand nine
38 hundred eighty-seven, be calculated at two percent of
39 the pool; for fiscal year one thousand nine hundred
40 eighty-eight, be calculated at one and one-half percent;
41 for fiscal year one thousand nine hundred eighty-nine,
42 be calculated at one percent of the pool; for fiscal year
43 one thousand nine hundred ninety, seven tenths of one
44 percent, and for fiscal year one thousand nine hundred
45 ninety-one and each fiscal year thereafter, be calculated
46 at four tenths of one percent of the pool; and, on the pari-
47 mutuel pools conducted or made each day during all
48 other months, shall from the effective date of this section
49 and for fiscal year one thousand nine hundred eighty-
50 five, be calculated at three and six-tenths percent; for
51 fiscal year one thousand nine hundred eighty-six, be
52 calculated at three and three-tenths percent; for fiscal
53 year one thousand nine hundred eighty-seven, be
54 calculated at three percent of the pool; for fiscal year
55 one thousand nine hundred eighty-eight, be calculated
56 at two and one-half percent; for fiscal year one thousand
57 nine hundred eighty-nine, be calculated at two percent
58 of the pool; for fiscal year one thousand nine hundred
59 ninety, be calculated at one and seven-tenths percent of
60 the pool; and for fiscal year one thousand nine hundred
61 ninety-one and each fiscal year thereafter, be calculated
62 at one and four-tenths percent of the pool: *Provided*,
63 That out of the amount realized from the three tenths
64 of one percent decrease in the tax effective for fiscal
65 year one thousand nine hundred ninety-one and thereaf-
66 ter, which decrease correspondingly increases the
67 amount of commission retained by the licensee, the
68 licensee shall annually expend or dedicate (i) one half
69 of the realized amount for capital improvements in its
70 barn area at the track, subject to the racing commis-
71 sion's prior approval of the plans for the improvements,
72 and (ii) the remaining one half of the realized amount
73 for capital improvements as the licensee may determine
74 appropriate at the track. The term "capital improve-
75 ment" shall be as defined by the Internal Revenue Code:
76 *Provided, however*, That any racing association operat-
77 ing a horse racetrack in this state having an average
78 daily pari-mutuel pool on horse racing of two hundred

79 eighty thousand dollars or less per day for the race
80 meetings of the preceding calendar year shall, in lieu
81 of payment of the pari-mutuel pool tax, calculated as in
82 this subsection, be permitted to conduct pari-mutuel
83 wagering at the horse racetrack on the basis of a daily
84 pari-mutuel pool tax fixed as follows: On the daily pari-
85 mutuel pool not exceeding three hundred thousand
86 dollars the daily pari-mutuel pool tax shall be one
87 thousand dollars plus the otherwise applicable percen-
88 tage rate imposed by this subsection of the daily pari-
89 mutuel pool, if any, in excess of three hundred thousand
90 dollars: *Provided further*, That upon the effective date
91 of the reduction of the daily pari-mutuel pool tax to one
92 thousand dollars from the former two thousand dollars,
93 the association or licensee shall daily deposit five
94 hundred dollars into the special fund for regular purses
95 established by subdivision (1), subsection (b), section
96 nine of this article: *And provided further*, That if an
97 association or licensee qualifying for the foregoing
98 alternate tax conducts more than one racing perfor-
99 mance, each consisting of up to ten races in a calendar
100 day, the association or licensee shall pay both the daily
101 license tax imposed in subsection (a) of this section and
102 the alternate tax in this subsection for each perfor-
103 mance: *And provided further*, That a licensee qualifying
104 for the foregoing alternate tax is excluded from
105 participation in the fund established by section thirteen-
106 b of this article: *And provided further*, That this
107 exclusion shall not apply to any thoroughbred racetrack
108 at which the licensee has participated in the West
109 Virginia thoroughbred development fund for more than
110 four consecutive years prior to the thirty-first day of
111 December, one thousand nine hundred ninety-two.

112 (c) Any racing association licensed by the racing
113 commission to conduct harness racing and permitting
114 and conducting pari-mutuel wagering under the provi-
115 sions of this article shall, in addition to the daily license
116 tax required under subsection (a) of this section, pay to
117 the racing commission, from the commission deducted
118 each day by the licensee from the pari-mutuel pools on
119 harness racing, as a tax, three percent of the first one
120 hundred thousand dollars wagered, or any part thereof;

121 four percent of the next one hundred fifty thousand
122 dollars; and five and three-fourths percent of all over
123 that amount wagered each day in all pari-mutuel pools
124 conducted or made at any and every harness race
125 meeting of the licensee licensed under the provisions of
126 this article.

127 (d) Any racing association licensed by the racing
128 commission to conduct dog racing and permitting and
129 conducting pari-mutuel wagering under the provisions
130 of this article shall, in addition to the daily license tax
131 required under subsection (a) of this section, pay to the
132 racing commission, from the commission deducted each
133 day by the licensee from the pari-mutuel pools on dog
134 racing, as a tax, four percent of the first fifty thousand
135 dollars or any part thereof of the pari-mutuel pools, five
136 percent of the next fifty thousand dollars of the pari-
137 mutuel pools, six percent of the next one hundred
138 thousand dollars of the pari-mutuel pools, seven percent
139 of the next one hundred fifty thousand dollars of the
140 pari-mutuel pools, and eight percent of all over three
141 hundred fifty thousand dollars wagered each day:
142 *Provided*, That the licensee shall deduct daily from the
143 pari-mutuel tax an amount equal to one tenth of one
144 percent of the daily pari-mutuel pools in dog racing in
145 fiscal year one thousand nine hundred ninety; fifteen
146 hundredths of one percent in fiscal year one thousand
147 nine hundred ninety-one; two tenths of one percent in
148 fiscal year one thousand nine hundred ninety-two; one
149 quarter of one percent in fiscal year one thousand nine
150 hundred ninety-three; and three tenths of one percent in
151 fiscal year one thousand nine hundred ninety-four and
152 every fiscal year thereafter. The amounts deducted shall
153 be paid to the racing commission to be deposited by the
154 racing commission in a banking institution of its choice
155 in a special account to be known as "West Virginia
156 Racing Commission-Special Account-West Virginia
157 Greyhound Breeding Development Fund." The purpose
158 of the fund is to promote better breeding and racing of
159 greyhounds in the state through awards and purses for
160 accredited West Virginia whelped greyhounds. The
161 moneys shall be expended by the racing commission for
162 purses for stake races, supplemental purse awards,

163 administration, promotion and educational programs
164 involving West Virginia whelped dogs, under rules and
165 regulations promulgated by the racing commission. The
166 racing commission shall pay out of the greyhound
167 breeding development fund to each of the licensed dog
168 racing tracks the sum of seventy-five thousand dollars
169 for the fiscal year ending the thirtieth day of June, one
170 thousand nine hundred ninety-four. The licensee shall
171 deposit the sum into the special fund for regular purses
172 established under the provisions of section nine of this
173 article. The funds shall be expended solely for the
174 purpose of supplementing regular purses under rules
175 and regulations promulgated by the racing commission.

176 Supplemental purse awards will be distributed as
177 follows: Supplemental purses shall be paid directly to
178 the owner of an accredited greyhound or, if the
179 greyhound is leased, the owner may choose to designate
180 a percentage of the purse earned directly to the lessor
181 as agreed to via a written purse distribution form on file
182 with the racing commission.

183 The owner of accredited West Virginia whelped
184 greyhounds that earn a purse at any West Virginia meet
185 will receive a bonus award calculated at the end of each
186 month as a percentage of the fund dedicated to the
187 owners as purse supplements, which shall be a min-
188 imum of fifty percent of the total moneys deposited into
189 the West Virginia greyhound breeding development
190 fund monthly.

191 The total amount of the fund available for the owners'
192 awards shall be distributed according to the ratio of
193 purses earned by an accredited greyhound to the total
194 amount earned in races by all accredited West Virginia
195 whelped greyhounds for that month as a percentage of
196 the funds dedicated to the owners' purse supplements.

197 The owner of an accredited West Virginia whelped
198 greyhound shall file a purse distribution form with the
199 racing commission for a percentage of his or her dog's
200 earnings to be paid directly to the lessor of the
201 greyhound. Distribution shall be made on the fifteenth
202 day of each month for the preceding month's

203 achievements.

204 In no event shall purses earned at a meet held at a
205 track which did not make contributions to the West
206 Virginia greyhound breeder's development fund out of
207 the daily pool on the day the meet was held qualify or
208 count toward eligibility for supplemental purse awards.

209 Any balance in the purse supplement funds after all
210 distributions have been made for the year revert to the
211 general account of the fund for distribution in the
212 following year.

213 In an effort to further promote the breeding of quality
214 West Virginia whelped greyhounds, a bonus purse
215 supplement shall be established in the amount of fifty
216 thousand dollars per annum, to be paid in equal
217 quarterly installments of twelve thousand five hundred
218 dollars per quarter using the same method to calculate
219 and distribute these funds as the regular supplemental
220 purse awards. This bonus purse supplement is for three
221 years only, commencing on the first day of July, one
222 thousand nine hundred ninety-three, and ending the
223 thirtieth day of June, one thousand nine hundred ninety-
224 six. This money would come from the current existing
225 balance in the greyhound development fund.

226 Each pari-mutuel greyhound track shall provide
227 stakes races for accredited West Virginia whelped
228 greyhounds: *Provided*, That each pari-mutuel track
229 shall have one juvenile and one open stake race annually.
230 The racing commission shall oversee and approve racing
231 schedules and purse amounts.

232 Ten percent of the deposits into the greyhound
233 breeding development fund beginning the first day of
234 July, one thousand nine hundred ninety-three and
235 continuing each year thereafter, shall be withheld by the
236 racing commission and placed in a special revenue
237 account hereby created in the state treasury called the
238 "administration, promotion and educational account".
239 The racing commission is authorized to expend the
240 moneys deposited in the administration, promotion and
241 educational account at such times and in such amounts
242 as the commission determines to be necessary for

243 purposes of administering and promoting the greyhound
244 development program: *Provided*, That beginning with
245 fiscal year one thousand nine hundred ninety-five and
246 in each fiscal year thereafter in which the commission
247 anticipates spending any money from the account, the
248 commission shall submit to the executive department
249 during the budget preparation period prior to the
250 Legislature convening before that fiscal year for
251 inclusion in the executive budget document and budget
252 bill, the recommended expenditures, as well as requests
253 of appropriations for the purpose of administration,
254 promotion and education. The commission shall make an
255 annual report to the Legislature on the status of the
256 administration, promotion and education account,
257 including the previous year's expenditures and projected
258 expenditures for the next year.

259 The racing commission, for the fiscal year one
260 thousand nine hundred ninety-four only, may expend up
261 to thirty-five thousand dollars from the West Virginia
262 greyhound breeding development fund to accomplish
263 the purposes of this section without strictly following the
264 requirements in the previous paragraph.

265 (e) All daily license and pari-mutuel pools tax
266 payments required under the provisions of this section
267 shall be made to the racing commission or its agent after
268 the last race of each day of each horse or dog race
269 meeting, and the pari-mutuel pools tax payments shall
270 be made from all contributions to all pari-mutuel pools
271 to each and every race of the day.

272 (f) Every association or licensee subject to the
273 provisions of this article, including the changed provi-
274 sions of sections nine and ten of this article, shall
275 annually submit to the racing commission and the
276 Legislature financial statements, including a balance
277 sheet, income statement, statement of change in finan-
278 cial position and an audit of any electronic data system
279 used for pari-mutuel tickets and betting, prepared in
280 accordance with generally accepted auditing standards,
281 as certified by an experienced public accountant or a
282 certified public accountant.

§19-23-12b. Televised racing days; merging of pari-mutuel wagering pools.

1 (a) For the purposes of this section:

2 (1) "Televised racing day" means a calendar day,
3 assigned by the commission, at a licensed racetrack on
4 which pari-mutuel betting is conducted on horse or dog
5 races run at racetracks outside of the state which are
6 broadcast by television at a licensed racetrack and
7 which day or days have had the prior written approval
8 of the representative of the majority of the owners and
9 trainers who hold permits required by section two of
10 this article; and

11 (2) "Host racing association" means any person who,
12 pursuant to a license or other permission granted by the
13 host state, conducts the horse or dog race subject to the
14 interstate wager.

15 (b) A licensee conducting not less than two hundred
16 twenty live racing dates for each horse or dog race
17 meeting may, with the prior approval of the state racing
18 commission, contract with any legal wagering entity in
19 any other state to receive telecasts and accept wagers
20 on races conducted by the legal wagering entity:
21 *Provided*, That at those thoroughbred racetracks
22 participating in the West Virginia thoroughbred
23 development fund authorized by section thirteen-b of
24 this article, the licensee, in applying for racing dates,
25 shall apply for not less than two hundred twenty live
26 racing dates for each horse race meeting. If, thereafter,
27 for reasons beyond the licensees control, the licensee
28 concludes that this number of racing days cannot be
29 attained, the licensee may file a request with the racing
30 commission to reduce the authorized live racing days.
31 Upon receipt of the request the racing commission shall
32 within seventy-two hours of the receipt of the request
33 notify the licensee and the representative of a majority
34 of the owners and trainers at the requesting track that
35 such request has been received and that if no objection
36 to the request is received within ten days of the
37 notification the request will be approved. If an objection
38 is received by the commission within the time limits, the

39 commission shall establish a binding arbitration board.
40 The board shall consist of one member appointed by the
41 licensee, one member appointed by the representative of
42 a majority of the owners and trainers at the racetrack
43 and a third member to be selected by the two appointed
44 members. In the event the two members cannot agree
45 on the third member, each member shall submit two
46 names to the racing commission and from those names
47 the racing commission shall appoint the third member
48 of the board. The board shall hear from all parties
49 concerned and thereupon shall make recommendations
50 to the racing commission on the required number of live
51 racing days. The recommendations of the board are
52 final. The telecasts may be received and wagers
53 accepted at any location authorized by the provisions of
54 section twelve-a of this article. The contract must
55 receive the approval of the representative of the
56 majority of the owners and trainers who hold permits
57 required by section two of this article at the receiving
58 racetrack.

59 (c) The commission may allow the licensee to com-
60 mingle its wagering pools with the wagering pools of the
61 host racing association. If the pools are commingled, the
62 wagering at the licensee's racetrack must be on
63 tabulating equipment capable of issuing pari-mutuel
64 tickets and be electronically linked with the equipment
65 at the sending racetrack. Subject to the approval of the
66 commission, the types of betting, licensee commissions
67 and distribution of winnings on pari-mutuel pools of the
68 sending licensee racetrack are those in effect at the
69 licensee racetrack. Breakage for pari-mutuel pools on a
70 televised racing day must be calculated in accordance
71 with the law or rules governing the sending racetrack
72 and must be distributed in a manner agreed to between
73 the licensee and the sending racetrack.

74 (d) The commission may assign televised racing days
75 at any time. When a televised racing day is assigned,
76 the commission shall assign either a steward or an
77 auditor to preside over the televised races at the licensee
78 racetrack.

79 (e) (1) From the licensee commissions authorized by

80 subsection (c) of this section, the licensee shall pay one
81 tenth of one percent of each commission into the general
82 fund of the county, in which the racetrack is located and
83 at which the wagering occurred and there is imposed
84 and the licensee shall pay, for each televised racing day
85 on which the total pari-mutuel pool exceeds one hundred
86 thousand dollars, the greater of either: (i) The total of
87 the daily license tax and the pari-mutuel pools tax
88 required by section ten of this article; or (ii) a daily
89 license tax of one thousand two hundred fifty dollars.
90 For each televised racing day on which the total pari-
91 mutuel pool is one hundred thousand dollars or less, the
92 licensee shall pay a daily license tax of five hundred
93 dollars plus an additional license tax of one hundred
94 dollars for each ten thousand dollars, or part thereof,
95 that the pari-mutuel pool exceeds fifty thousand dollars,
96 but does not exceed one hundred thousand dollars.
97 Payments of the tax imposed by this section are subject
98 to the requirements of subsection (e), section ten of this
99 article.

100 (2) From the license commissions authorized by
101 subsection (c) of this section, after payments are made
102 in accordance with the provisions of subdivision (1) of
103 this subsection, the licensee shall pay, for each televised
104 racing day, one fourth of one percent of the total pari-
105 mutuel pools for and on behalf of the pari-mutuel clerks.
106 The payment shall be made for and on behalf of the
107 pari-mutuel clerks by making a deposit into a special
108 fund to be established by the racing commission to be
109 used for payment into the pari-mutuel clerks' pension
110 plan.

111 (f) After deducting the tax required by subsection (e)
112 of this section, the amount required to be paid under the
113 terms of the contract with the legal wagering entity of
114 another state and the cost of transmission, the horse
115 racing association shall make a deposit equal to fifty
116 percent of the remainder into the purse fund established
117 under the provisions of subdivision (1), subsection (b),
118 section nine of this article.

119 (g) The provisions of the "Federal Interstate Horse-
120 racing Act of 1978", also known as Public Law 95-515,

121 Section 3001-3007 of Title 15, U.S. Code, as amended,
122 controls in determining the intent of this section.

123 (h) The handle from televised simulcast racing shall
124 not be included in the calculation of "average daily
125 handle" as it is calculated in section ten of this article
126 to determine the alternative daily pari-mutuel pool tax.

PART IX. DISPOSITION OF PERMIT FEES,
REGISTRATION FEES AND FINES.

**§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 the 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 the
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 immediately and
44 operate 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
63 available 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 the 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 the
97 funds. The bonus referred to in this subdivision shall
98 only be paid on the first one hundred thousand dollars
99 of any purse, and not on any amounts in excess thereof.

100 (ii) The owner of a West Virginia sire of an accredited
101 thoroughbred horse that earns a purse in any race at
102 a West Virginia meet will receive a bonus award
103 calculated at the end of the year as a percentage of the
104 fund dedicated to sire owners, which shall be fifteen
105 percent of the fund available for distribution in any one
106 year. The total amount available for the sire owners'
107 awards shall be distributed according to the ratio purses
108 earned by the progeny of accredited West Virginia
109 stallions in the races for a particular stallion to the total

110 purses earned by the progeny of all accredited West
111 Virginia stallions in the races. However, no sire owner
112 may receive from the fund dedicated to sire owners an
113 amount in excess of thirty-five percent of the accredited
114 earnings for each sire. The bonus referred to in this
115 subdivision shall only be paid on the first one hundred
116 thousand dollars of any purse, and not on any amounts
117 in excess thereof.

118 (iii) The owner of an accredited thoroughbred horse
119 that earns a purse in any race at a West Virginia meet
120 will receive a restricted purse supplement award
121 calculated at the end of the year, which shall be twenty-
122 five percent of the fund available for distribution in any
123 one year, based on the ratio of the earnings in the races
124 of a particular race horse to the total amount earned by
125 all accredited race horses in the races during that year
126 as a percentage of the fund dedicated to purse supple-
127 ments. However, the owners may not receive from the
128 fund dedicated to purse supplements an amount in
129 excess of thirty-five percent of the total accredited
130 earnings for each accredited race horse. The bonus
131 referred to in this subdivision shall only be paid on the
132 first one hundred thousand dollars of any purse, and not
133 on any amounts in excess thereof.

134 (iv) In no event shall purses earned at a meet held at
135 a track which did not make a contribution to the
136 thoroughbred development fund out of the daily pool on
137 the day the meet was held qualify or count toward
138 eligibility for an award under this section.

139 (v) Any balance in the breeders/raisers, sire owners
140 and purse supplement funds after yearly distributions
141 shall: (1) Be utilized to fund the races established in
142 subsection (d) of this section; and (2) revert back into the
143 general account of the fund for distribution in the next
144 year.

145 Distribution shall be made on the fifteenth day of each
146 February for the preceding year's achievements.

147 (c) The remainder, if any, of the fund that is not
148 available for distribution in the program provided for
149 in this subsection in any one year is reserved for regular

150 purses, marketing expenses and for capital improve-
151 ments in the amounts and under the conditions provided
152 in this subsection. Fifty percent of the remainder shall
153 be reserved for payments into the regular purse fund
154 established in subsection (b), section nine of this article.
155 Up to five hundred thousand dollars per year shall be
156 available for: (1) Capital improvements at the eligible
157 licensed horse racing tracks in the state; and (2)
158 marketing and advertising programs above and beyond
159 two hundred fifty thousand dollars for the eligible
160 licensed horse racing tracks in the state: *Provided*, That
161 moneys shall be expended for capital improvements or
162 marketing and advertising purposes as described in this
163 subsection only in accordance with a plan filed with and
164 receiving the prior approval of the racing commission,
165 and on a basis of fifty percent participation by the
166 licensee and fifty percent participation by moneys from
167 the fund, in the total cost of approved projects: *Provided*,
168 *however*, That funds approved for one track may not be
169 used at another track unless the first track ceases to
170 operate or is viewed by the commission as unworthy of
171 additional investment due to financial or ethical reasons.

172 (d) Each pari-mutuel thoroughbred horse track shall
173 provide at least the following restricted races in
174 accordance with the following time schedules:

175 (i) From the first day of July, one thousand nine
176 hundred eighty-four, to the thirty-first day of December,
177 one thousand nine hundred eighty-four — one restricted
178 race per eight racing days;

179 (ii) From the first day of January, one thousand nine
180 hundred eighty-five, to the thirty-first day of December,
181 one thousand nine hundred eighty-five — one restricted
182 race per seven racing days;

183 (iii) From the first day of January, one thousand nine
184 hundred eighty-six, to the thirty-first day of December,
185 one thousand nine hundred eighty-six — one restricted
186 race per six racing days;

187 (iv) From the first day of January, one thousand nine
188 hundred eighty-seven, to the thirty-first day of De-
189 cember, one thousand nine hundred eighty-seven — one

190 restricted race per five racing days;

191 (v) From the first day of January, one thousand nine
192 hundred eighty-eight, to the thirty-first day of De-
193 cember, one thousand nine hundred eighty-eight — one
194 restricted race per four racing days;

195 (vi) From the first day of January, one thousand nine
196 hundred eighty-nine, to the thirty-first day of December,
197 one thousand nine hundred eighty-nine — one restricted
198 race per three racing days; and thereafter.

199 The restricted races established in this subsection
200 shall be administered by a three-member committee
201 consisting of: (A) The racing secretary; (B) a member
202 appointed by the authorized representative of a majority
203 of the owners and trainers at the thoroughbred track;
204 and (C) a member appointed by a majority of the
205 thoroughbred breeders. The purses shall be twenty
206 percent larger than the purses for similar type races at
207 each track. Restricted races shall be funded by each
208 racing association from:

209 (1) Moneys placed in the general purse fund up to a
210 maximum of one hundred fifty thousand dollars per
211 year.

212 (2) Moneys as provided in subdivision (v), subsection
213 (b) of this section shall be placed in a special fund called
214 the "West Virginia accredited race fund". The racing
215 schedules, purse amounts and types of races are subject
216 to the approval of the West Virginia racing commission.

217 (e) No association or licensee qualifying for the
218 alternate tax provision of subsection (b), section ten of
219 this article is eligible for participation in any of the
220 provisions of this section: *Provided*, That the provisions
221 of this subsection shall not apply to a thoroughbred race-
222 track at which the licensee has participated in the West
223 Virginia thoroughbred development fund for a period of
224 more than four consecutive calendar years prior to the
225 thirty-first day of December, one thousand nine hundred
226 ninety-two.

CHAPTER 67

(H. B. 2286—By Delegates Phillips, P. White,
Carper, Michael and Huntwork)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal sections five and five-a, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section nine, article two of said chapter; to amend and reenact sections one and five-b, article three; sections fifteen and fifteen-a, article four; section four, article twenty-four; section six, article twenty-five; section two, article twenty-seven, all of said chapter thirty-three; to further amend said article twenty-seven by adding thereto a new section, designated section fourteen; to amend and reenact section eleven, article thirty-one; sections four and seventeen, article thirty-two; sections one, two, three, four, five, six, seven, nine, ten, eleven and thirteen, article thirty-three; to further amend article thirty-three by adding thereto three new sections, designated sections ten-a, fourteen and fifteen; to amend and reenact section four, article thirty-four-a; to amend and reenact article thirty-six, all of chapter thirty-three; and to further amend said chapter thirty-three by adding thereto a new article, designated article thirty-eight, all relating to insurance; insurance commissioner; examination of insurers, agents, brokers and solicitors; access to books, records, etc.; licensing, fees and taxation of insurers; license required; capital and surplus requirements; general provisions; reinsurance; credit for reinsurance; hospital service corporations, medical service corporations, dental service corporations and health service corporations; exemptions; applicability of insurance laws; health care corporations; supervision and regulation by insurance commissioner; exemption from insurance laws; annual audited financial report; designation of independent certified public accountant; evaluation of accounting procedures and system of internal control; exemption from compliance; Canadian and British

companies; insurance holding company systems; definitions; regulatory authority; captive insurance; reinsurance; risk retention act; risk retention groups not chartered in this state; notice and registration requirements of purchasing groups; standards and commissioner's authority for companies deemed to be in hazardous financial condition; commissioner's authority; business transacted with producer controlled property/casualty insurer act; short title; definitions; applicability; minimum standards; disclosure; penalties; effective date; reinsurance intermediary act; short title; definitions; licensure; required contract provisions reinsurance intermediary-brokers; books and records reinsurance intermediary-brokers; duties of insurers utilizing the services of a reinsurance intermediary-broker; required contract provisions reinsurance intermediary-managers; prohibited acts; duties of reinsurers utilizing the services of a reinsurance intermediary-manager; examination authority; penalties and liabilities; regulatory authority; effective date.

Be it enacted by the Legislature of West Virginia:

That sections five and five-a, article three, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section nine, article two of said chapter be amended and reenacted; that sections one and five-b, article three; sections fifteen and fifteen-a, article four; section four, article twenty-four; section six, article twenty-five; section two, article twenty-seven of said chapter thirty-three be amended and reenacted; that said article twenty-seven be further amended by adding thereto a new section, designated section fourteen; that section eleven, article thirty-one; sections four and seventeen, article thirty-two; sections one, two, three, four, five, six, seven, nine, ten, eleven and thirteen, article thirty-three, be amended and reenacted; that said article thirty-three be further amended by adding thereto three new sections, designated sections ten-a, fourteen and fifteen; that section four, article thirty-four-a be amended and reenacted; that article thirty-six be amended and reenacted; and that said chapter thirty-three be further amended by adding thereto a new article, designated article thirty-eight, all to read as follows:

Article

2. Insurance Commissioner.
3. Licensing, Fees and Taxation of Insurers.
4. General Provisions.
24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
25. Health Care Corporations.
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.
36. Business Transacted with Producer Controlled Property/Casualty Insurer Act.
38. Reinsurance Intermediary Act.

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

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

12 (b) For purposes of this section, the following defini-
13 tions shall apply:

14 (1) "Commissioner" means the commissioner of
15 insurance of this state.

16 (2) "Company" or "insurance company" means any
17 person engaging in or proposing or attempting to
18 engage in any transaction or kind of insurance or surety
19 business and any person or group of persons who may
20 otherwise be subject to the administrative, regulatory or
21 taxing authority of the commissioner, including, but not
22 limited to, any domestic or foreign stock company,

23 mutual company, mutual protective association, farmers
24 mutual fire companies, fraternal benefit society,
25 reciprocal or inter-insurance exchange, nonprofit
26 medical care corporation, nonprofit health care corpo-
27 ration, nonprofit hospital service association, nonprofit
28 dental care corporation, health maintenance organiza-
29 tion, captive insurance company, risk retention group or
30 other insurer, regardless of the type of coverage written,
31 benefits provided or guarantees made by each.

32 (3) "Department" means the department of insurance
33 of this state.

34 (4) "Examiners" means the commissioner of insu-
35 rance, or any individual or firm having been authorized
36 by the commissioner to conduct an examination pursu-
37 ant to this section, including, but not limited to, the
38 commissioner's deputies, other employees, appointed
39 examiners or other appointed individuals or firms who
40 are not employees of the department of insurance.

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

52 (d) The commissioner or his examiners shall, at a
53 minimum, conduct an examination of every foreign or
54 alien insurer licensed in this state not less frequently
55 than once every five years. The examination of an alien
56 insurer may be limited to its United States business:
57 *Provided*, That in lieu of an examination under this
58 section of any foreign or alien insurer licensed in this
59 state, the commissioner may accept an examination
60 report on the company as prepared by the insurance
61 department for the company's state of domicile or port-
62 of-entry state until the first day of January, one

63 thousand nine hundred ninety-four. Thereafter, such
64 reports may only be accepted if:

65 (1) The insurance department was at the time of the
66 examination accredited under the national association of
67 insurance commissioners' financial regulation standards
68 and accreditation program; or

69 (2) The examination is performed under the supervi-
70 sion of an accredited insurance department or with the
71 participation of one or more examiners who are
72 employed by such an accredited state insurance depart-
73 ment and who, after a review of the examination work
74 papers and report, state under oath that the examina-
75 tion was performed in a manner consistent with the
76 standards and procedures required by their insurance
77 department.

78 (e) In scheduling and determining the nature, scope
79 and frequency of examinations conducted pursuant to
80 this section, the commissioner may consider such
81 matters as the results of financial statement analyses
82 and ratios, changes in management or ownership,
83 actuarial opinions, reports of independent certified
84 public accountants and other criteria as set forth in the
85 examiners' handbook adopted by the national association
86 of insurance commissioners and in effect when the
87 commissioner exercises discretion under this section.

88 (f) For purposes of completing an examination of any
89 company under this section, the commissioner may
90 examine or investigate any person, or the business of
91 any person, insofar as the examination or investigation
92 is, in the sole discretion of the commissioner, necessary
93 or material to the examination of the company.

94 (g) The commissioner may also cause to be examined
95 at such times as he or she deems necessary the books,
96 records, papers, documents, correspondence and meth-
97 ods of doing business of any agent, broker, excess lines
98 broker or solicitor licensed by this state. For these
99 purposes the commissioner or his examiners shall have
100 free access to all books, records, papers, documents and
101 correspondence of all the agents, brokers, excess lines
102 brokers and solicitors wherever the books, records,

103 papers, documents and records are situate. The commis-
104 sioner may revoke the license of any agent, broker,
105 excess lines broker or solicitor who refuses to submit to
106 such examination.

107 (h) In addition to conducting an examination, the
108 commissioner or his examiners may, as the commis-
109 sioner deems necessary, analyze or review any phase of
110 the operations or methods of doing business of an
111 insurer, agent, broker, excess lines broker, solicitor or
112 other individual or corporation transacting or attempt-
113 ing to transact an insurance business in the state of West
114 Virginia. The commissioner may use the full resources
115 provided by this section in carrying out these responsi-
116 bilities, including any personnel and equipment pro-
117 vided by this section as the commissioner deems
118 necessary.

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

121 (1) Upon determining that an examination should be
122 conducted, the commissioner or his designee shall issue
123 an examination warrant appointing one or more
124 examiners to perform the examination and instructing
125 them as to the scope of the examination. In conducting
126 the examination, the examiner shall observe those
127 guidelines and procedures set forth in the examiners'
128 handbook adopted by the national association of insu-
129 rance commissioners. The commissioner may also
130 employ any other guidelines or procedures as the
131 commissioner may deem appropriate.

132 (2) Every company or person from whom information
133 is sought, its officers, directors and agents shall provide
134 to the examiners appointed under subdivision (1) timely,
135 convenient and free access at all reasonable hours at its
136 offices to all books, records, accounts, papers, documents
137 and any or all computer or other recordings relating to
138 the property, assets, business and affairs of the company
139 being examined. The officers, directors, employees and
140 agents of the company or person shall facilitate the
141 examination and aid in the examination so far as it is
142 in their power to do so.

143 (3) The refusal of any company, by its officers,
144 directors, employees or agents, to submit to examination
145 or to comply with any reasonable written request of the
146 examiners shall be grounds for suspension, revocation,
147 refusal or nonrenewal of any license or authority held
148 by the company to engage in an insurance or other
149 business subject to the commissioner's jurisdiction. Any
150 proceedings for suspension, revocation, refusal, or
151 nonrenewal of any license or authority shall be con-
152 ducted pursuant to section eleven, article two of this
153 chapter.

154 (4) The commissioner or his examiners shall have the
155 power to issue subpoenas, to administer oaths and to
156 examine under oath any person as to any matter
157 pertinent to the examination, analysis or review. The
158 subpoenas shall be enforced pursuant to the provisions
159 of section six, article two of this chapter.

160 (5) When making an examination, analysis or review
161 under this section, the commissioner may retain
162 attorneys, appraisers, independent actuaries, independ-
163 ent certified public accountants or other professionals
164 and specialists as examiners, the cost of which shall be
165 borne by the company which is the subject of the
166 examination, analysis or review.

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

178 (7) Nothing contained in this section may be construed
179 to limit the commissioner's authority to use and, if
180 appropriate, to make public any final or preliminary
181 examination report, any examiner or company workpap-
182 ers or other documents or any other information

183 discovered or developed during the course of any
184 examination, analysis or review in the furtherance of
185 any legal or regulatory action which the commissioner
186 may, in his or her sole discretion, deem appropriate. An
187 examination report, when filed, shall be admissible in
188 evidence in any action or proceeding brought by the
189 commissioner against an insurance company, its officers
190 or agents and shall be prima facie evidence of the facts
191 stated therein.

192 (j) Examination reports prepared pursuant to the
193 provisions of this section shall comply with the following
194 requirements:

195 (1) All examination reports shall be comprised of only
196 facts appearing upon the books, records or other
197 documents of the company, its agents or other persons
198 examined or as ascertained from the testimony of its
199 officers or agents or other persons examined concerning
200 its affairs and any conclusions and recommendations the
201 examiners find reasonably warranted from the facts.

202 (2) No later than sixty days following completion of
203 the examination, the examiner in charge shall file with
204 the commissioner a verified written report of examina-
205 tion under oath. Upon receipt of the verified report, the
206 commissioner shall transmit the report to the company
207 examined, together with a notice which shall afford the
208 company examined a reasonable opportunity of not more
209 than ten days to make a written submission or rebuttal
210 with respect to any matters contained in the examina-
211 tion report.

212 (3) Within thirty days of the end of the period allowed
213 for the receipt of written submissions or rebuttals, the
214 commissioner shall fully consider and review the report,
215 together with any written submissions or rebuttals and
216 any relevant portions of the examiner's workpapers and
217 enter an order:

218 (A) Adopting the examination report as filed or with
219 modification or corrections. If the examination report
220 reveals that the company is operating in violation of any
221 law, rule or prior order of the commissioner, the
222 commissioner may order the company to take any action

223 the commissioner considers necessary and appropriate
224 to cure such violation; or

225 (B) Rejecting the examination report with directions
226 to the examiners to reopen the examination for purposes
227 of obtaining additional data, documentation or informa-
228 tion and refileing pursuant to subdivision (2) above; or

229 (C) Calling for an investigatory hearing with no less
230 than twenty days notice to the company for purposes of
231 obtaining additional documentation, data, information
232 and testimony.

233 (4) All orders entered pursuant to this subsection shall
234 be accompanied by findings and conclusions resulting
235 from the commissioner's consideration and review of the
236 examination report, relevant examiner workpapers and
237 any written submissions or rebuttals. Any order issued
238 pursuant to paragraph (A), subdivision three of this
239 subsection shall be considered a final administrative
240 decision and may be appealed pursuant to section
241 fourteen, article two of this chapter and shall be served
242 upon the company by certified mail, together with a
243 copy of the adopted examination report. Within thirty
244 days of the issuance of the adopted report, the company
245 shall file affidavits executed by each of its directors
246 stating under oath that they have received a copy of the
247 adopted report and related orders.

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

250 (1) Any hearing conducted pursuant to this section by
251 the commissioner or the commissioner's authorized
252 representative shall be conducted as a nonadversarial
253 confidential investigatory proceeding as necessary for
254 the resolution of any inconsistencies, discrepancies or
255 disputed issues apparent upon the face of the filed
256 examination report or raised by or as a result of the
257 commissioner's review of relevant workpapers or by the
258 written submission or rebuttal of the company. Within
259 twenty days of the conclusion of any such hearing, the
260 commissioner shall enter an order pursuant to para-
261 graph (A), subdivision (3), subsection (j) of this section.

262 (2) The commissioner may not appoint an examiner
263 as an authorized representative to conduct the hearing.
264 The hearing shall proceed expeditiously with discovery
265 by the company limited to the examiner's workpapers
266 which tend to substantiate any assertions set forth in
267 any written submission or rebuttal. The commissioner
268 or the commissioner's representative may issue subpoenas
269 for the attendance of any witnesses or the production
270 of any documents deemed relevant to the investigation
271 whether under the control of the commissioner,
272 the company or other persons. The documents produced
273 shall be included in the record and testimony taken by
274 the commissioner or the commissioner's representative
275 shall be under oath and preserved for the record.
276 Nothing contained in this section shall require the
277 commissioner to disclose any information or records
278 which would indicate or show the existence or content
279 of any investigation or activity of a criminal justice
280 agency.

281 (3) The hearing shall proceed with the commissioner
282 or the commissioner's representative posing questions to
283 the persons subpoenaed. Thereafter the company and
284 the department may present testimony relevant to the
285 investigation. Cross-examination may be conducted only
286 by the commissioner or the commissioner's representative.
287 The company and the commissioner shall be
288 permitted to make closing statements and may be
289 represented by counsel of their choice.

290 (1) Adoption of the examination report shall be subject
291 to the following requirements:

292 (1) Upon the adoption of the examination report under
293 paragraph (A), subdivision (3), subsection (j), of this
294 section, the commissioner may continue to hold the
295 content of the examination report as private and
296 confidential information for a period of ninety days
297 except to the extent provided in subdivision (6),
298 subsection (i) of this section. Thereafter, the commis-
299 sioner may open the report for public inspection so long
300 as no court of competent jurisdiction has stayed its
301 publication.

302 (2) Nothing contained in this section may prevent or
303 be construed as prohibiting the commissioner from
304 disclosing the content of an examination report, preli-
305 minary examination report or results or any matter
306 relating thereto or the results of any analysis or review
307 to the insurance department of this or any other state
308 or country or to law-enforcement officials of this or any
309 other state or agency of the federal government at any
310 time, so long as the agency or office receiving the report
311 or matters relating thereto agrees in writing to hold it
312 confidential and in a manner consistent with this
313 section.

314 (3) In the event the commissioner determines that
315 regulatory action is appropriate as a result of any
316 examination, analysis or review, he or she may initiate
317 any proceedings or actions as provided by law.

318 (4) All working papers, recorded information, docu-
319 ments and copies thereof produced by, obtained by or
320 disclosed to the commissioner or any other person in the
321 course of an examination, analysis or review made
322 under this section must be given confidential treatment
323 and are not subject to subpoena and may not be made
324 public by the commissioner or any other person, except
325 to the extent provided in subdivision (5), subsection (i)
326 of this section. Access may also be granted to the
327 national association of insurance commissioners. The
328 parties must agree in writing prior to receiving the
329 information to provide to it the same confidential
330 treatment as required by this section, unless the prior
331 written consent of the company to which it pertains has
332 been obtained.

333 (m) No examiner may be appointed by the commis-
334 sioner if the examiner, either directly or indirectly, has
335 a conflict of interest or is affiliated with the manage-
336 ment of or owns a pecuniary interest in any person
337 subject to examination under this section. This section
338 shall not be construed to automatically preclude an
339 examiner from being:

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

342 (2) A grantor of a mortgage or similar instrument on

343 the examiner's residence to a regulated entity if done
344 under customary terms and in the ordinary course of
345 business;

346 (3) An investment owner in shares of regulated
347 diversified investment companies; or

348 (4) A settlor or beneficiary of a "blind trust" into
349 which any otherwise impermissible holdings have been
350 placed.

351 (5) Notwithstanding the requirements of this subsec-
352 tion, the commissioner may retain from time to time, on
353 an individual basis, qualified actuaries, certified public
354 accountants or other similar individuals who are
355 independently practicing their professions, even though
356 these persons may from time to time be similarly
357 employed or retained by persons subject to examination
358 under this section.

359 (n) Personnel conducting examinations, analyses or
360 reviews of either a domestic, foreign or alien insurer
361 shall be compensated for each day worked at a rate set
362 by the commissioner. The personnel shall also be
363 reimbursed for their travel and living expenses at the
364 rate set by the commissioner. Other individuals who are
365 not employees of the department of insurance shall all
366 be compensated for their work, travel and living
367 expenses at rates approved by the commissioner, or as
368 otherwise provided by law. As used in this section the
369 costs of an examination, analysis or review means:

370 (1) The entire compensation for each day worked by
371 all personnel, including those who are not employees of
372 the department of insurance, the conduct of such
373 examination, analysis or review calculated as hereinbe-
374 fore provided;

375 (2) Travel and living expenses of all personnel,
376 including those who are not employees of the depart-
377 ment of insurance, directly engaged in the conduct of
378 the examination, analysis or review calculated at the
379 rates as hereinbefore provided for;

380 (3) All other incidental expenses incurred by or on
381 behalf of the personnel in the conduct of any authorized

382 examination, analysis or review.

383 (o) All insurers subject to the provisions of this section
384 of the code shall annually pay to the commissioner on
385 or before the first day of July, one thousand nine
386 hundred ninety-one and every first day of July thereaf-
387 ter an examination assessment fee of eight hundred
388 dollars. Four hundred fifty dollars of this fee shall be
389 paid to the treasurer of the state to the credit of a special
390 revolving fund to be known as the "Commissioner's
391 Examination Revolving Fund" which is hereby estab-
392 lished and three hundred fifty dollars shall be paid to
393 the treasurer of the state. The commissioner may at his
394 discretion, upon notice to the insurers subject to this
395 section, increase this examination assessment fee or levy
396 an additional examination assessment fee of two
397 hundred fifty dollars. In no event may the total
398 examination assessment fee including any additional
399 examination assessment fee levied exceed one thousand
400 five hundred dollars per insurer in any calendar year.

401 (p) The moneys collected by the commissioner from an
402 increase or additional examination assessment fee shall
403 be paid to the treasurer of the state to be credited to
404 the "Commissioner's Examination Revolving Fund."
405 Any funds expended or obligated by the commissioner
406 from the "Commissioner's Examination Revolving
407 Fund" may be expended or obligated solely for defray-
408 ment of the costs of examinations, analyses or reviews
409 of the financial affairs and business practices of
410 insurance companies, agents, brokers, excess lines
411 brokers, solicitors or other individuals or corporations
412 transacting or attempting to transact an insurance
413 business in this state made by the commissioner
414 pursuant to this section or for the purchase of equipment
415 and supplies, travel, education and training for the
416 commissioner's deputies, other employees and appointed
417 examiners necessary for the commissioner to fulfill the
418 statutory obligations created by this section.

419 (q) The commissioner may require other individuals
420 who are not employees of the department of insurance
421 who have been appointed by the commissioner to
422 conduct or participate in the examination, analysis or

423 review of insurers, agents, brokers, excess lines brokers,
424 solicitors or other individuals or corporations transact-
425 ing or attempting to transact an insurance business in
426 this state to:

427 (1) Bill and receive payments directly from the
428 insurance company being examined, analyzed or re-
429 viewed for their work, travel and living expenses as
430 previously provided for in this section; or

431 (2) If an individual agent, broker or solicitor is being
432 examined, analyzed or reviewed, bill and receive
433 payments directly from the "Commissioner's Examina-
434 tion Revolving Fund" for their work, travel and living
435 expenses as previously provided for in this section.

436 (r) The commissioner and his examiners shall be
437 entitled to immunity to the following extent:

438 (1) No cause of action shall arise nor shall any liability
439 be imposed against the commissioner or his examiners
440 for any statements made or conduct performed in good
441 faith while carrying out the provisions of this section.

442 (2) No cause of action shall arise, nor shall any
443 liability be imposed against any person for the act of
444 communicating or delivering information or data to the
445 commissioner or his examiners pursuant to an exami-
446 nation, analysis or review made under this section, if the
447 act of communication or delivery was performed in good
448 faith and without fraudulent intent or the intent to
449 deceive.

450 (3) The commissioner or any examiner shall be
451 entitled to an award of attorney's fees and costs if he
452 or she is the prevailing party in a civil cause of action
453 for libel, slander or any other relevant tort arising out
454 of activities in carrying out the provisions of this section
455 and the party bringing the action was not substantially
456 justified in doing so. For purposes of this section a
457 proceeding is "substantially justified" if it had a
458 reasonable basis in law or fact at the time that it was
459 initiated.

460 (4) This subsection does not abrogate or modify in any
461 way any constitutional immunity or common law or

462 statutory privilege or immunity heretofore enjoyed by
463 any person identified in subdivision (1) of this subsection.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-1. License required.

§33-3-5b. Capital and surplus requirements.

§33-3-1. License required.

1 (a) No person may act as an insurer and no insurer
2 may transact insurance in West Virginia except as
3 authorized by a valid license issued by the commis-
4 sioner, except as to such transactions as are expressly
5 otherwise provided for in this chapter.

6 (b) No license may be required for an insurer,
7 formerly holding a valid license, to enable it to inves-
8 tigate and settle losses under its policies lawfully
9 written in West Virginia while the license was in effect,
10 or to liquidate such assets and liabilities of the insurer
11 as may have resulted from its former authorized
12 operations in West Virginia: *Provided*, That nothing
13 herein allows an insurer to issue new policies or renew
14 policies of insurance or collect premiums on those
15 policies unless the insurer is authorized by a valid
16 license issued by the commissioner, except as to the
17 transactions that are otherwise provided for in this
18 chapter.

19 (c) An insurer not transacting new insurance business
20 in West Virginia but collecting premiums on and
21 servicing of policies in force as to residents of or risks
22 located in West Virginia, and where the policies were
23 originally issued on nonresidents of or risks located
24 outside of this state, is transacting insurance in West
25 Virginia for the purpose of premium and annuity tax
26 requirements but is not required to have a license
27 therefor.

28 (d) A domestic insurer or a foreign insurer from
29 offices or by personnel or facilities located in this state
30 shall not solicit insurance applications or otherwise
31 transact insurance in another state or country unless it
32 holds a subsisting license granted to it by the commis-
33 sioner authorizing it to transact the same kind or kinds

34 of insurance in this state.

35 (e) Any officer, director, agent, representative or
36 employee of any insurer who willfully authorizes,
37 negotiates, makes or issues any insurance contract in
38 violation of this section is guilty of a misdemeanor, and,
39 upon conviction thereof, shall be fined not more than ten
40 thousand dollars, or imprisoned in the county jail not
41 more than one year, or both fined and imprisoned.

§33-3-5b. Capital and surplus requirements.

1 (a) No insurer shall hereafter be licensed to transact
2 the 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
14 unencumbered.

15 (b) The commissioner may for the protection of the
16 policyholders and the general public of this state require
17 an insurer to maintain funds in excess of the amounts
18 required by subsection (a) of this section, due to the
19 amount, kind or combination of kinds of insurance
20 transacted by the insurer. Any additional amounts
21 required shall be based upon all the kinds of insurance
22 transacted by the insurer in all areas in which it
23 operates or proposes to operate, whether or not only a
24 portion of the kinds of insurance are to be transacted
25 in this state. Failure of an insurer to maintain funds as
26 ordered by the commissioner is grounds for suspension,
27 revocation, refusal or nonrenewal of the insurer's
28 license.

29 (c) An order issued pursuant to the provisions of this
30 section is subject to review pursuant to applicable state
31 administrative proceedings under article two of this
32 chapter.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15. Reinsurance.

§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date.

§33-4-15. Reinsurance.

1 (a) For purposes of this section, an “assumption
2 reinsurance agreement” means any contract which:

3 (1) Transfers insurance obligations and/or risks of
4 existing or in-force contracts of insurance from a
5 transferring insurer to an assuming insurer; and

6 (2) Is intended to effect a novation of the transferred
7 contract of insurance with the result that the assuming
8 insurer becomes directly liable to the policyholders of
9 the transferring insurer and the transferring insurer’s
10 insurance obligations and/or risks under the contracts
11 are extinguished.

12 (b) An insurer shall reinsure its risks, or any part
13 thereof, only in solvent insurers complying with the
14 capital and surplus requirements of section five-b,
15 article three of this chapter.

16 (c) Credit for reinsurance shall be governed by the
17 provisions of sections fifteen-a and fifteen-b of this
18 article. Credit shall not be allowed unless the reinsu-
19 rance is payable by the assuming insurer on the basis
20 of the 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 the 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) A licensed insurer may reinsure all or substan-
30 tially all of its risks on property or lives located in West
31 Virginia, or substantially all of a major class thereof,
32 with another insurer by an assumption reinsurance
33 agreement: *Provided*, That the assumption reinsurance

34 agreement shall not become effective unless filed in
35 advance with and approved in writing by the commis-
36 sioner: *Provided, however,* That if a licensed insurer is
37 deemed by the commissioner to be in hazardous
38 financial condition, as defined in article thirty-four-a of
39 this chapter, or an administrative or judicial proceeding
40 has been instituted against it for the purpose of
41 liquidating, reorganizing or conserving such insurer,
42 and the transfer of the contracts of insurance is
43 determined by the commissioner to be in the best
44 interest of the policyholders, the commissioner may by
45 written order waive the advance filing and approval
46 required by this section, which such waiver may include
47 a form of implied consent and adequate notification to
48 the policyholder of the circumstances requiring the
49 transfer.

50 (f) The commissioner shall approve such agreement
51 within one hundred twenty days after the filing of the
52 same unless he or she finds that it is inequitable to the
53 licensed insurer, its owners or its policyholders or would
54 substantially reduce the protection or service to its
55 policyholders. If the commissioner does not approve the
56 agreement, he or she shall so notify the insurer in
57 writing specifying his or her reasons therefor. If the
58 commissioner does not disapprove the agreement within
59 one hundred twenty days, the agreement shall be
60 deemed approved.

61 (g) A filing may not be made pursuant to this section
62 unless the reinsurance agreement is certified under oath
63 by responsible officers of the reinsurer and the rein-
64 sured to contain the entire agreement between the
65 parties to the reinsurance agreement.

66 (h) The commissioner shall promulgate rules and
67 regulations pursuant to chapter twenty-nine-a of this
68 code for the implementation and administration of the
69 provisions of this section to include, but not be limited
70 to, the type of assumption agreements subject to the
71 provisions of this section, their content and the stand-
72 ards the commissioner may utilize in reviewing the
73 agreements.

74 (i) Any insurer subject to this section is also subject
75 to the provisions of article thirty-eight of this chapter.

§33-4-15a. Credit for reinsurance; definitions; requirements; trust accounts; reductions from liability; security; effective date.

1 (a) For purposes of this section, an “accredited
2 reinsurer” is one which:

3 (1) Has filed an application for accreditation and
4 received a letter of accreditation from the commissioner;

5 (2) Is licensed to transact insurance or reinsurance in
6 at least one of the fifty states of the United States or
7 the District of Columbia or, in the case of a United
8 States branch of an alien assuming insurer, is entered
9 through and licensed to transact insurance or reinsu-
10 rance in at least one of the fifty states of the United
11 States or the District of Columbia;

12 (3) Has filed with the application a certified statement
13 that the company submits to this state’s jurisdiction and
14 that the company will comply with the laws, rules and
15 regulations of the state of West Virginia;

16 (4) Has filed with the application a certified statement
17 that the company submits to the examination authority
18 granted the commissioner by section nine, article two of
19 this chapter and will pay all examination costs and fees
20 as required by that section;

21 (5) Has filed with the application a copy of its most
22 recent annual statement in a form consistent with the
23 requirements of subdivision (8) of this subsection and a
24 copy of its last audited financial statement;

25 (6) Has filed any other information the commissioner
26 requests to determine that the company qualifies for
27 accreditation under this section;

28 (7) Has remitted the applicable processing fee with its
29 application for accreditation;

30 (8) Files with the commissioner after initial accred-
31 itation on or before the first day of March of each year
32 a true statement of its financial condition, transactions

33 and affairs as of the preceding thirty-first day of
34 December. The statement shall be on the appropriate
35 national association of insurance commissioners annual
36 statement blank; shall be prepared in accordance with
37 the national association of insurance commissioners
38 annual statement instructions; and shall follow the
39 accounting practices and procedures prescribed by the
40 national association of insurance commissioners account-
41 ing practices and procedures manual as amended. The
42 statement shall be accompanied by the applicable
43 annual statement filing fee. The commissioner may
44 grant extensions of time for filing of this annual
45 statement upon application by the accredited reinsurer;
46 and

47 (9) Files with the commissioner after initial accred-
48 itation by the first day of June of each year a copy of
49 its audited financial statement for the period ending the
50 preceding thirty-first day of December.

51 (b) If the commissioner determines that the assuming
52 insurer has failed to continue to meet any of these
53 qualifications, he or she may upon written notice and
54 hearing, as prescribed by section thirteen, article two of
55 this chapter, revoke an assuming insurer's accreditation.
56 Credit shall not be allowed to a ceding insurer if the
57 assuming insurers' accreditation has been revoked by
58 the commissioner after notice and hearing.

59 (c) Credit for reinsurance shall be allowed a domestic
60 ceding insurer or any foreign or alien insurer transact-
61 ing insurance in West Virginia that is domiciled in a
62 jurisdiction that employs standards regarding credit for
63 reinsurance that are not substantially similar to those
64 applicable under this article as either an asset or a
65 deduction from liability on account of reinsurance ceded
66 only when the reinsurer meets one of the following
67 requirements:

68 (1) Credit shall be allowed when the reinsurance is
69 ceded to an assuming insurer which is licensed to
70 transact insurance or reinsurance in this state.

71 (2) Credit shall be allowed when the reinsurance is
72 ceded to an assuming insurer which is accredited as a

73 reinsurer in this state prior to the effective date of the
74 reinsurance contract.

75 (3) Credit shall be allowed when the reinsurance is
76 ceded to an assuming insurer which is domiciled and
77 licensed in, or in the case of a United States branch of
78 an alien assuming insurer, is entered through one of the
79 fifty states of the United States or the District of
80 Columbia and which employs standards regarding
81 credit for reinsurance substantially similar to those
82 applicable under this statute, and the ceding insurer
83 provides evidence suitable to the commissioner that the
84 assuming insurer:

85 (A) Maintains a surplus as regards policyholders in
86 an amount not less than twenty million dollars: *Pro-*
87 *vided*, That the requirements of this paragraph do not
88 apply to reinsurance ceded and assumed pursuant to
89 pooling arrangements among insurers in the same
90 holding company system;

91 (B) The ceding insurer provides the commissioner
92 with a certified statement from the assuming insurer
93 that the assuming insurer submits to the authority of
94 this state to examine its books and records granted the
95 commissioner by section nine, article two of this chapter
96 and will pay all examination costs and fees as required
97 by that section; and

98 (C) The reinsurer complies with the provisions of
99 subdivision (6), subsection (c) herein.

100 (4) Credit shall be allowed when the reinsurance is
101 ceded to an assuming insurer which maintains a trust
102 fund as required by subsection (d) herein in a qualified
103 United States financial institution, as defined by this
104 section, for the payment of the valid claims of its United
105 States policyholders and ceding insurers, their assigns
106 and successors in interest, and complies with the
107 provisions of subdivision (6) herein.

108 (5) Credit shall be allowed when the reinsurance is
109 ceded to an assuming insurer not meeting the require-
110 ments of subdivisions (1) through (4), subsection (c) of
111 this section, but only with respect to the insurance of

112 risks located in jurisdictions where such reinsurance is
113 required by applicable law or regulation of that
114 jurisdiction.

115 (6) If the assuming insurer is not licensed or accre-
116 dited to transact insurance or reinsurance in this state,
117 the credit permitted by subdivisions (3) and (4) of this
118 subsection shall not be allowed unless the assuming
119 insurer agrees in the reinsurance agreements:

120 (A) That in the event of the failure of the assuming
121 insurer to perform its obligations under the terms of the
122 reinsurance agreement, the assuming insurer, at the
123 request of the ceding insurer, shall submit to the
124 jurisdiction of any court of competent jurisdiction in any
125 state of the United States, shall comply with all
126 requirements necessary to give such court jurisdiction,
127 and shall abide by the final decision of such court or of
128 any appellate court in the event of an appeal; and

129 (B) To designate the secretary of state as its true and
130 lawful attorney upon whom may be served any lawful
131 process in any action, suit or proceeding instituted by
132 or on behalf of the ceding company. Process shall be
133 served upon the secretary of state, or accepted by him
134 or her, in the same manner as provided for service of
135 process upon unlicensed insurers under section thirteen
136 of this article: *Provided*, That this provision is not
137 intended to conflict with or override the obligation of the
138 parties to a reinsurance agreement to arbitrate their
139 disputes, if such an obligation is created in the
140 agreement.

141 (d) Whenever an assuming insurer establishes a trust
142 fund for the payment of claims pursuant to the provi-
143 sions of this section, the following requirements shall
144 apply:

145 (1) The assuming insurer shall report annually to the
146 commissioner information substantially the same as that
147 required to be reported on the national association of
148 insurance commissioners annual statement form by
149 licensed insurers to enable the commissioner to deter-
150 mine the sufficiency of the trust fund. In the case of a
151 single assuming insurer, the trust shall consist of a

152 trusted account representing the assuming insurer's
153 liabilities attributable to business written in the United
154 States and, in addition, the assuming insurer shall
155 maintain a trusted surplus of not less than twenty
156 million dollars. In the case of a group of individual
157 unincorporated underwriters, the trust shall consist of
158 a trusted account representing the group's liabilities
159 attributable to business written in the United States
160 and, in addition, the group shall maintain a trusted
161 surplus of which one hundred million dollars shall be
162 held jointly for the benefit of United States ceding
163 insurers of any member of the group. The group shall
164 make available to the commissioner an annual certifi-
165 cation of the solvency of each underwriter by the group's
166 domiciliary regulator and its independent public
167 accountants.

168 (2) In the case of a group of incorporated insurers
169 under common administration which complies with the
170 filing requirements contained in the previous para-
171 graph; which has continuously transacted an insurance
172 business outside the United States for at least three
173 years immediately prior to making application for
174 accreditation; which submits to this state's authority to
175 examine its books and records and bears the expense of
176 the examination; and which has aggregate policy-
177 holders' surplus of ten billion dollars, the trust shall be
178 in an amount equal to the group's several liabilities
179 attributable to business ceded by United States ceding
180 insurers to any member of the group pursuant to
181 reinsurance contracts issued in the name of the group.
182 The group shall also maintain a joint trusted surplus
183 of which one hundred million dollars shall be held
184 jointly for the benefit of United States ceding insurers
185 of any member of the group as additional security for
186 any such liabilities. Each member of the group shall
187 make available to the commissioner an annual certifi-
188 cation of the member's solvency by the member's
189 domiciliary regulator and its independent public
190 accountants.

191 (3) Any trust that is subject to the provisions of this
192 section shall be established in a form approved by the

193 commissioner. The trust instrument shall provide that
194 contested claims shall be valid and enforceable upon the
195 final order of any court of competent jurisdiction in the
196 United States. The trust shall vest legal title to its assets
197 in the trustees of the trust for its United States
198 policyholders and ceding insurers, their assigns and
199 successors in interest. The trust and the assuming
200 insurer shall be subject to examination as determined
201 by the commissioner. The trust described herein shall
202 remain in effect for as long as the assuming insurer
203 shall have outstanding obligations due under the
204 reinsurance agreements subject to the trust.

205 (4) No later than the twenty-eighth day of February
206 of each year the trustees of the trust shall report to the
207 commissioner in writing setting forth the balance of the
208 trust and listing the trust's investments at the preceding
209 year's end. The trustees shall certify the date of
210 termination of the trust, if so planned, or certify that
211 the trust shall not expire prior to the next following
212 December thirty-first.

213 (e) A reduction from liability for the reinsurance
214 ceded by a ceding insurer subject to the requirements
215 of this article to an assuming insurer not meeting the
216 requirements of subsection (c) of this section shall be
217 allowed in an amount not exceeding the liabilities
218 carried by the ceding insurer. The reduction shall be in
219 the amount of funds held by or on behalf of the ceding
220 insurer, including funds held in trust for the ceding
221 insurer, under a reinsurance contract with the assuming
222 insurer as security for the payment of obligations
223 thereunder: *Provided*, That the security is held in the
224 United States subject to withdrawal solely by, and
225 under the exclusive control of, the ceding insurer; or, in
226 the case of a trust, held in a qualified United States
227 financial institution, as defined by this section. The
228 security may be in the form of:

229 (1) Cash;

230 (2) Securities listed by the securities valuation office
231 of the national association of insurance commissioners
232 and qualifying as admitted assets; or

233 (3) Clean, irrevocable, unconditional letters of credit,
234 issued or confirmed by a qualified United States
235 financial institution, as defined by this section, no later
236 than the thirty-first day of December of the year for
237 which filing is being made, and in the possession of the
238 ceding company on or before the filing date of its annual
239 statement: *Provided*, That letters of credit meeting
240 applicable standards of issuer acceptability as of the
241 dates of their issuance or confirmation shall, notwith-
242 standing the issuing or confirming institution's subse-
243 quent failure to meet applicable standards of issuer
244 acceptability, continue to be acceptable as security until
245 their expiration, extension, renewal, modification or
246 amendment, whichever first occurs.

247 (f) For purposes of this section, a "qualified United
248 States financial institution" means an institution that:

249 (1) Is organized or licensed under the laws of the
250 United States or any state thereof;

251 (2) Is regulated, supervised and examined by United
252 States federal or state authorities having regulatory
253 authority over banks and trust companies; and

254 (3) Has been determined by either the commissioner,
255 or the securities valuation office of the national associ-
256 ation of insurance commissioners, to meet the standards
257 of financial condition and standing as are considered
258 necessary and appropriate to regulate the quality of
259 financial institutions whose letters of credit will be
260 acceptable to the commissioner.

261 (g) A "qualified United States financial institution"
262 means, for purposes of those provisions of this law
263 specifying those institutions that are eligible to act as
264 a fiduciary of a trust, an institution that:

265 (1) Is organized or, in the case of a United States
266 branch or agency office of a foreign banking organiza-
267 tion, licensed under the laws of the United States or any
268 state thereof and has been granted authority to operate
269 with fiduciary powers; and

270 (2) Is regulated, supervised and examined by federal
271 or state authorities having regulatory authority over
272 banks and trust companies.

273 (h) The provisions of this section shall apply to all
274 sessions on or after the first day of January, one
275 thousand nine hundred ninety-three.

**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 corporation defined in section two of this
2 article is hereby declared to be a scientific, nonprofit
3 institution and exempt from the payment of all property
4 and other taxes. Every corporation, to the same extent
5 the provisions are applicable to insurers transacting
6 similar kinds of insurance and not inconsistent with the
7 provisions of this article, shall be governed by and be
8 subject to the provisions as hereinbelow indicated, of the
9 following articles of this chapter: Article two (insurance
10 commissioner), except that, under section nine of said
11 article, examinations shall be conducted at least once
12 every four years; article four (general provisions), except
13 that section sixteen of said article shall not be applicable
14 thereto; article six, section thirty-four (fee for form and
15 rate filing); article six-c (guaranteed loss ratio); article
16 seven (assets and liabilities); article eleven (unfair trade
17 practices); article twelve (agents, brokers and solicitors),
18 except that the agent's license fee shall be five dollars;
19 section fourteen, article fifteen (individual accident and
20 sickness insurance); article fifteen-a (long-term care
21 insurance); section three, article sixteen (required policy
22 provisions); section three-a, article sixteen (mental
23 illness); section three-c, article sixteen (group accident
24 and sickness insurance); section three-d, article sixteen
25 (medicare supplement insurance); section three-f, article
26 sixteen (treatment of temporomandibular joint disorder
27 and craniomandibular disorder); article sixteen-a (group
28 health insurance conversion); article sixteen-c (small
29 employer group policies); article sixteen-d (marketing
30 and rate practices for small employers); article twenty-
31 six-a (West Virginia life and health insurance guaranty
32 association act), after the first day of October, one

* Clerk's Note: This section was also amended by S. B. 326 (Chapter 77), which passed prior to this act, and by H. B. 2181 (Chapter 79), which passed subsequent to this act.

33 thousand nine hundred ninety-one; article twenty-seven
34 (insurance holding company systems); article twenty-
35 eight (individual accident and sickness insurance
36 minimum standards); article thirty-three (annual
37 audited financial report); article thirty-four (administra-
38 tive supervision); article thirty-four-a (standards and
39 commissioner's authority for companies deemed to be in
40 hazardous financial condition); article thirty-five
41 (criminal sanctions for failure to report impairment);
42 and article thirty-seven (managing general agents); and
43 no other provision of this chapter may apply to these
44 corporations unless specifically made applicable by the
45 provisions of this article. If, however, the corporation is
46 converted into a corporation organized for a pecuniary
47 profit or if it transacts business without having obtained
48 a license as required by section five of this article, it
49 shall thereupon forfeit its right to these 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 are subject
2 to supervision and regulation of the insurance commis-
3 sioner. The corporations organized under this article, to
4 the same extent these provisions are applicable to
5 insurers transacting similar kinds of insurance and not
6 inconsistent with the provisions of this article, shall be
7 governed by and be subject to the provisions as
8 hereinbelow indicated, of the following articles of this
9 chapter: Article four (general provisions), except that
10 section sixteen of said article shall not be applicable
11 thereto; article six-c (guaranteed loss ratio); article
12 seven (assets and liabilities); article eight (investments);
13 article ten (rehabilitation and liquidation); section
14 fourteen, article fifteen (individual accident and sick-
15 ness insurance); section three, article sixteen (required
16 policy provisions); article sixteen-a (group health
17 insurance conversion); article sixteen-c (small employer
18 group policies); article sixteen-d (marketing and rate
19 practices for small employers); article twenty-six-a

*Clerk's Note: This section was also amended by S. B. 326 (Chapter 77), which passed prior to this act, and by H. B. 2181 (Chapter 79), which passed subsequent to this act.

20 (West Virginia life and health insurance guaranty
21 association act); article twenty-seven (insurance holding
22 company systems); article thirty-three (annual audited
23 financial report); article thirty-four-a (standards and
24 commissioner's authority for companies deemed to be in
25 hazardous financial condition); article thirty-five
26 (criminal sanctions for failure to report impairment);
27 and article thirty-seven (managing general agents); and
28 no other provision of this chapter may apply to these
29 corporations unless specifically made applicable by the
30 provisions of this article.

ARTICLE 27. INSURANCE HOLDING COMPANY SYSTEMS.

§33-27-2. Definitions.

§33-27-14. Regulatory authority.

§33-27-2. Definitions.

1 As used in this article:

2 (a) An "affiliate" of, or person "affiliated" with, a
3 specific person, is a person that, directly or indirectly
4 through one or more intermediaries, controls, or is
5 controlled by, or is under common control with, the
6 person specified.

7 (b) "Commissioner" means the insurance commis-
8 sioner, his or her deputies, or the insurance department,
9 as appropriate.

10 (c) "Control" (including the terms "controlling,"
11 "controlled by" and "under common control with")
12 means the possession, direct or indirect, of the power to
13 direct or cause the direction of the management and
14 policies of a person, whether through the ownership of
15 voting securities, by contract other than a commercial
16 contract for goods or nonmanagement services, or
17 otherwise, unless the power is the result of an official
18 position with or corporate office held by the person.
19 Control shall be presumed to exist if any person, directly
20 or indirectly, owns, controls, holds with the power to
21 vote, or holds proxies representing ten percent or more
22 of the voting securities of any other person or controls
23 or appoints a majority of the board of directors, voting
24 members or similar governing body of any other person.
25 This presumption may be rebutted by a showing made

26 in the manner provided by subsection (l) , section four
27 of this article that control does not exist in fact. The
28 commissioner may determine, after furnishing all
29 persons in interest notice and opportunity to be heard
30 and making specific findings of fact to support the
31 determination, that control exists in fact, notwithstand-
32 ing the absence of a presumption to that effect.

33 (d) "Insurance holding company system" consists of
34 two or more affiliated persons, one or more of which is
35 an insurer.

36 (e) "Insurer" means any person or persons or corpo-
37 ration, partnership or company authorized by the laws
38 of this state to transact the business of insurance in this
39 state, except that it shall not include agencies, author-
40 ities or instrumentalities of the United States, its
41 possessions and territories, the commonwealth of Puerto
42 Rico, the District of Columbia, or a state or political
43 subdivision of a state.

44 (f) A "person" is an individual, a corporation, a
45 partnership, an association, a joint-stock company, a
46 trust, an unincorporated organization, any other legal
47 entity or any combination of the foregoing acting in
48 concert, but does not include any securities broker
49 performing no more than the usual and customary
50 broker's function and holding less than twenty percent
51 of the voting securities of an insurance company or of
52 any person which controls an insurance company.

53 (g) A "security holder" of a specified person is one who
54 owns any security of such person, including common
55 stock, preferred stock, debt obligations and any other
56 security convertible into or evidencing the right to
57 acquire any of the foregoing.

58 (h) A "subsidiary" of a specified person is an affiliate
59 controlled by such person directly or indirectly through
60 one or more intermediaries.

61 (i) "Voting security" includes any security convertible
62 into or evidencing a right to acquire a voting security.

§33-27-14. Regulatory authority.

1 The insurance commissioner shall promulgate rules
2 pursuant to the provisions of chapter twenty-nine-a of
3 this code setting forth procedural requirements neces-
4 sary to implement the provisions of this article and
5 specifying the reporting forms required by this article
6 prior to the first day of August, one thousand nine
7 hundred ninety-three.

ARTICLE 31. CAPTIVE INSURANCE.

§33-31-11. Reinsurance.

1 A captive insurance company may procure reinsu-
2 rance or issue policies of reinsurance to other licensed
3 insurers transacting like kinds of insurance, pursuant to
4 the provisions of section fifteen, article four of this
5 chapter.

ARTICLE 32. RISK RETENTION ACT.

§33-32-4. Risk retention groups not chartered in this state.

§33-32-17. Notice and registration requirements of purchasing groups.

§33-32-4. Risk retention groups not chartered in this state.

1 (a) Risk retention groups chartered in states other
2 than this state and seeking to do business as a risk
3 retention group in this state must observe and abide by
4 the laws of this state.

5 (b) Before offering insurance in this state, a risk
6 retention group shall submit the following information
7 to the commissioner on a form prescribed by the
8 national association of insurance commissioners:

9 (1) A statement identifying the state or states in which
10 the risk retention group is chartered and licensed as a
11 liability insurance company, date of chartering, its
12 principal place of business, and any other information
13 including information on its membership, as the
14 commissioner of this state may require to verify that the
15 risk retention group is qualified under this article;

16 (2) A copy of its plan of operations or a feasibility
17 study and revisions of such plan or study submitted to
18 its state of domicile: *Provided*, That the provision
19 relating to the submission of a plan of operation or a

20 feasibility study shall not apply with respect to any line
21 or classification of liability insurance which (A) was
22 defined in the federal product liability risk retention act
23 of 1981 before the twenty-seventh day of October, one
24 thousand nine hundred eighty-six, and (B) was offered
25 before that date by any risk retention group which had
26 been chartered and operating for not less than three
27 years before such date;

28 (3) A statement of registration which designates the
29 commissioner as its agent for the purpose of receiving
30 service of legal documents or process; and

31 (4) A risk retention group that has been chartered and
32 operating in any state and has previously filed an annual
33 financial statement as required by this section with its
34 state of domicile, must submit a copy of the most recent
35 annual statement with the registration form required by
36 this subsection.

37 (c) The risk retention group shall submit a copy of any
38 revision to its plan of operation or feasibility study
39 required by section three of this article at the same time
40 that the revision is submitted to the commissioner of its
41 chartering state.

42 (d) A risk retention group shall not commence
43 offering insurance in this state prior to receiving a
44 certificate of registration from the commissioner.

45 (e) Any risk retention group registered in this state
46 shall submit to the commissioner:

47 (1) Annually a copy of the group's financial statement
48 submitted to its state of domicile, which shall be
49 certified by an independent public accountant and
50 contain a statement of opinion on loss and loss adjust-
51 ment expense reserves made by a member of the
52 American academy of actuaries or a qualified loss
53 reserve specialist pursuant to criteria established by the
54 national association of insurance commissioners;

55 (2) A copy of each examination of the risk retention
56 group as certified by the commissioner or public official
57 conducting the examination;

58 (3) Upon request by the commissioner, a copy of any
59 audit performed with respect to the risk retention
60 group; and

61 (4) Any information as may be required to verify its
62 continuing qualification as a risk retention group under
63 this article.

64 (f) The commissioner shall promulgate rules pursuant
65 to the provisions of chapter twenty-nine-a of this code
66 regarding all fees to be submitted with the filings
67 required by this section.

**§33-32-17. Notice and registration requirements of
purchasing groups.**

1 (a) A purchasing group which intends to do business
2 in this state shall, prior to doing business, furnish notice
3 to the commissioner, on forms prescribed by the national
4 association of insurance commissioners, which such
5 forms shall:

6 (1) Identify the state in which the group is domiciled;

7 (2) Identify all other states in which the group intends
8 to do business;

9 (3) Specify the lines and classifications of liability
10 insurance which the purchasing group intends to
11 purchase;

12 (4) Identify the insurance company or companies from
13 which the group intends to purchase its insurance and
14 the domicile of such company;

15 (5) Specify the method by which, and the person or
16 persons, if any, through whom insurance will be offered
17 to its members whose risks are resident or located in
18 this state;

19 (6) Identify the principal place of business of the
20 groups; and

21 (7) Provide any other information as may be required
22 by the commissioner to verify that the purchasing group
23 is qualified under this article.

24 (b) A purchasing group shall, within ten days, notify

25 the commissioner of any changes in any of the items set
26 forth in this section.

27 (c) The purchasing group shall register with and
28 designate the commissioner, or other appropriate
29 authority, as its agent solely for the purpose of receiving
30 service of legal documents or process: *Provided*, That
31 these requirements do not apply in the case of a
32 purchasing group which:

33 (1) Was domiciled before the first day of April, one
34 thousand nine hundred eighty-six, in any state of the
35 United States; and

36 (2) Is domiciled on and after the twenty-seventh day
37 of October, one thousand nine hundred eighty-six, in any
38 state of the United States and which:

39 (A) Before the twenty-seventh day of October, one
40 thousand nine hundred eighty-six, purchased insurance
41 from an insurance carrier licensed in any state; and

42 (B) Since the twenty-seventh day of October, one
43 thousand nine hundred eighty-six, purchased its insu-
44 rance from an insurance carrier licensed in any state;

45 (3) Which was a purchasing group under the require-
46 ments of the product liability risk retention act of 1981,
47 before the twenty-seventh day of October, one thousand
48 nine hundred eighty-six; and

49 (4) Which does not purchase insurance that was not
50 authorized for purposes of an exemption under that act,
51 as in effect before the twenty-seventh day of October,
52 one thousand nine hundred eighty-six.

53 (d) Each purchasing group that is required to give
54 notice pursuant to subsection (a) of this section shall also
55 furnish such information as may be required by the
56 commissioner to:

57 (1) Verify that the entity qualifies as a purchasing
58 group;

59 (2) Determine where the purchasing group is located;
60 and

61 (3) Determine appropriate tax treatment.

62 (e) The insurance commissioner shall promulgate
63 rules pursuant to the provisions of chapter twenty-nine-
64 a of this code regarding the amount of all registration
65 or filing fees required by this section.

ARTICLE 33. ANNUAL AUDITED FINANCIAL REPORT.

- §33-33-1. Declaration of policy and purpose.
- §33-33-2. Definitions.
- §33-33-3. Filing and extensions for filing of annual audited financial reports.
- §33-33-4. Contents of annual audited financial report.
- §33-33-5. Designation of independent certified public accountant.
- §33-33-6. Qualifications of independent certified public accountants.
- §33-33-7. Consolidated or combined audits.
- §33-33-9. Notification of adverse financial condition.
- §33-33-10. Evaluation of accounting procedures and system of internal control.
- §33-33-10a. Accountant's Letter of Qualifications.
- §33-33-11. Definition, availability and maintenance of certified public accountant (CPA) workpapers.
- §33-33-13. Exemptions from compliance.
- §33-33-14. Canadian and British companies.
- §33-33-15. Severability.

§33-33-1. Declaration of policy and purpose.

1 (a) The purpose of this article is to improve the
2 insurance commissioner's surveillance of the financial
3 condition of insurers by requiring an annual examina-
4 tion by independent certified public accountants of the
5 financial statements reporting the financial condition
6 and the results of operations of insurers.

7 (b) Foreign or alien insurers filing audited financial
8 reports in another state, pursuant to the other state's
9 requirement of audited financial reports which has been
10 found by the commissioner to be substantially similar
11 to the requirements herein, are exempt from this article
12 if:

13 (1) A copy of the audited financial report, report on
14 significant deficiencies in internal controls, and the
15 accountant's letter of qualifications which are filed with
16 the other state are filed with the commissioner in
17 accordance with the filing dates specified in sections
18 three, ten and ten-a, respectively. Canadian insurers
19 may submit accountants' reports as filed with the

20 Canadian Dominion Department of Insurance.

21 (2) A copy of any notification of adverse financial
22 condition report filed with the other state is filed with
23 the commissioner within the time specified in section
24 nine.

25 (c) This article shall not prohibit or preclude or in any
26 way limit the commissioner from performing examina-
27 tions of insurers as specified in section nine, article two
28 of this chapter or such any other examinations as the
29 commissioner may be authorized to perform by this
30 chapter.

§33-33-2. Definitions.

1 (a) "Accountant," and "independent certified public
2 accountant" means an independent certified public
3 accountant or accounting firm in good standing with the
4 American institute of certified public accountants and
5 in all states in which they are licensed to practice; for
6 Canadian and British companies, it means a Canadian-
7 chartered or British-chartered accountant.

8 (b) "Annual statement" means the annual financial
9 statement required to be filed by insurers with the
10 commissioner pursuant to the provisions of this chapter.

11 (c) "Audited financial report" means and includes
12 those items specified in section four of this article.

13 (d) "Insurer" for purposes of this article means any
14 domestic insurer as defined in section six, article one of
15 this chapter, and includes any domestic stock insurance
16 company, mutual insurance company, reciprocal insu-
17 rance company, farmers' mutual fire insurance com-
18 pany, fraternal benefit society, hospital service corpora-
19 tion, medical service corporation, health care corpora-
20 tion, health maintenance organization, captive insurance
21 company or risk retention group and any licensed
22 foreign or alien insurer defined in article one of this
23 chapter.

§33-33-3. Filing and extensions for filing of annual audited financial reports.

1 (a) Annual audited financial reports must be filed by

2 all insurers with the commissioner on or before the first
3 day of June for the year ending the thirty-first day of
4 December immediately preceding. The commissioner
5 may require an insurer to file an audited financial
6 report earlier than the first day of June with ninety days
7 advance notice to the insurer.

8 (b) Extensions of the filing date on the first day of
9 June may be granted by the commissioner for thirty-day
10 periods upon showing by the insurer and its independent
11 certified public accountant the reasons for requesting
12 the extension and determination by the commissioner of
13 good cause for an extension. A request for extension
14 must be submitted in writing not less than ten days
15 prior to the due date in sufficient detail to permit the
16 commissioner to make an informed decision with respect
17 to the requested extension.

§33-33-4. Contents of annual audited financial report.

1 (a) The annual audited financial report shall report
2 the financial condition of the insurer as of the end of the
3 most recent calendar year and the results of its
4 operations, cash flows and changes in capital and
5 surplus for the year then ended in conformity with
6 statutory accounting practices for preparation of the
7 annual statement or as otherwise permitted by the
8 commissioner.

9 (b) The annual audited financial report shall include
10 the following:

- 11 (1) Report of independent certified public accountant;
- 12 (2) Balance sheet reporting admitted assets, liabilities,
13 capital and surplus;
- 14 (3) Statement of gain or loss from operations or
15 statement of revenue and expenses;
- 16 (4) Statement of cash flows statement;
- 17 (5) Statement of changes in capital and surplus;
- 18 (6) Notes to financial statements. These notes shall be
19 those required by the appropriate national association of
20 insurance commissioners annual statement instructions

21 and any other notes required by generally accepted
22 accounting principles and shall also include:

23 (A) A reconciliation of differences, if any, between the
24 audited statutory financial statements and the annual
25 statement with a written description of the nature of
26 these differences;

27 (B) A summary of ownership and relationships of the
28 insurer and all affiliated companies.

29 (7) The financial statements included in the audited
30 financial report shall be prepared in a form and using
31 language and groupings substantially the same as the
32 relevant sections of the annual statement of the insurer
33 filed with the commissioner; and:

34 (A) The financial statement shall be comparative,
35 presenting the amounts as of the thirty-first day of
36 December of the current year and the amounts as of the
37 immediately preceding thirty-first day of December:
38 *Provided*, That in the first year in which an insurer is
39 required to file an audited financial report, the compar-
40 ative data may be omitted.

41 (B) Amounts may be rounded to the nearest thousand
42 dollars;

43 (8) Supplementary data and information. This shall
44 include any additional clarifying information or data
45 which the commissioner may require to be disclosed.

**§33-33-5. Designation of independent certified public
accountant.**

1 (a) Each insurer required by this article to file an
2 annual audited financial report must, within sixty days
3 after becoming subject to such requirements, register
4 with the commissioner in writing the name and address
5 of the certified public accountant or accounting firm
6 (generally referred to in this article as the "accountant")
7 retained to conduct the annual audit set forth in this
8 article.

9 (b) The insurer shall obtain a letter from the accoun-
10 tant, and file a copy with the commissioner stating that
11 the accountant is aware of the provisions of this code and

12 rules that relate to accounting and financial matters and
13 affirming that he or she will express his or her opinion
14 on the financial statements in terms of their conformity
15 to the statutory accounting practices prescribed or
16 otherwise permitted by the commissioner specifying any
17 exceptions as he may believe appropriate.

18 (c) If an accountant who was not the accountant for
19 the immediately preceding filed audited financial report
20 is engaged to audit the insurer's financial statements,
21 the insurer shall within thirty days of the date the
22 accountant is engaged notify the commissioner of this
23 event.

24 (d) If an accountant who was the accountant for the
25 immediately preceding filed audited financial report is
26 dismissed or resigns, the insurer shall within five
27 business days notify the commissioner of this event. The
28 insurer shall also furnish the commissioner with a
29 separate letter within ten business days of the above
30 notification stating whether in the twenty-four months
31 preceding the notification there were any disagreements
32 with the former accountant on any matter of accounting
33 principles or practices, financial statement disclosure,
34 or auditing scope or procedure, which disagreements, if
35 not resolved to the satisfaction of the former accountant,
36 would have caused him or her to make reference to the
37 subject matter of the disagreement in connection with
38 his or her opinion. The disagreements required to be
39 reported in response to this section include both those
40 resolved to the former accountant's satisfaction and
41 those not resolved to the former accountant's satisfac-
42 tion. Disagreements contemplated by this section are
43 those that occur at the decision-making level between
44 personnel of the insurer responsible for presentation of
45 its financial statements and personnel of the accounting
46 firm responsible for rendering its report. The insurer
47 shall also in writing request the former accountant to
48 furnish it a letter addressed to the insurer stating
49 whether the accountant agrees with the statements
50 contained in the insurer's letter and, if not, stating the
51 reasons for which he does not agree; and the insurer
52 shall furnish the responsive letter from the former

53 accountant to the commissioner together with its own.

§33-33-6. Qualifications of independent certified public accountants.

1 (a) The commissioner shall not recognize any person
2 or firm as a qualified independent certified public
3 accountant that is not in good standing with the
4 American institute of certified public accountants and
5 in all states in which the accountant is licensed to
6 practice, or, for a Canadian or British company, that is
7 not a chartered accountant.

8 (b) Except as otherwise provided herein, an independ-
9 ent certified public accountant shall be recognized as
10 qualified as long as he or she conforms to the standards
11 of his or her profession, as contained in the code of
12 professional ethics of the American institute of certified
13 public accountants and the rules and regulations and
14 code of ethics and rules of professional conduct of the
15 West Virginia board of accountancy.

16 (c) No partner or other person responsible for
17 rendering a report may act in that capacity for more
18 than seven consecutive years. Following any period of
19 service the person shall be disqualified from acting in
20 that or a similar capacity for the same company or its
21 insurance subsidiaries or affiliates for a period of two
22 years. An insurer may make application to the commis-
23 sioner for relief from the above rotation requirement on
24 the basis of unusual circumstances. The commissioner
25 may consider the following factors in determining if the
26 relief should be granted:

27 (1) Number of partners, expertise of the partners or
28 the number of insurance clients in the currently
29 registered firm;

30 (2) Premium volume of the insurer; or

31 (3) Number of jurisdictions in which the insurer
32 transacts business: *Provided*, That the requirements of
33 this subsection shall become effective two years after the
34 enactment of this article.

35 (d) The commissioner shall not recognize as a qual-

36 ified independent certified public accountant, nor accept
37 any annual audited financial report, prepared in whole
38 or in part by, any natural person who:

39 (1) Has been convicted of fraud, bribery, a violation
40 of the Racketeer Influenced and Corrupt Organizations
41 Act, 18 U.S.C. Sections 1961-1968, or any dishonest
42 conduct or practices under federal or state law;

43 (2) Has been found to have violated the insurance laws
44 of this state with respect to any previous reports
45 submitted under this article; or

46 (3) Has demonstrated a pattern or practice of failing
47 to detect or disclose material information in previous
48 reports filed under the provisions of this article.

49 (e) The commissioner may hold a hearing to deter-
50 mine whether a certified public accountant is qualified
51 and considering the evidence presented, may rule that
52 the accountant is not qualified for purposes of express-
53 ing an opinion on the financial statements in the audited
54 financial report made pursuant to this article and
55 require the insurer to replace the accountant with
56 another whose relationship with the insurer is qualified
57 within the meaning of this article.

§33-33-7. Consolidated or combined audits.

1 (a) An insurer may make written application to the
2 commissioner for approval to file audited consolidated
3 or combined financial statements in lieu of separate
4 annual audited financial statements if the insurer is
5 part of a group of insurance companies which utilizes
6 a pooling or one hundred percent reinsurance agree-
7 ment that affects the solvency and integrity of the
8 insurer's reserves and the insurer cedes all of its direct
9 and assumed business to the pool. If an approval is
10 granted, a columnar consolidating or combining work-
11 sheet shall be filed with the report incorporating the
12 following:

13 (1) Amounts shown on the consolidated or combined
14 audited financial report shall be shown on the
15 worksheet;

16 (2) Amounts for each insurer subject to this section
17 shall be stated separately;

18 (3) Noninsurance operations may be shown on the
19 worksheet on a combined or individual basis;

20 (4) Explanations of consolidating and eliminating
21 entries shall be included; and

22 (5) A reconciliation shall be included of any differen-
23 ces between the amounts shown in the individual insurer
24 columns of the worksheet and comparable amounts
25 shown on the annual statements of the insurers.

26 (b) The commissioner shall require any insurer to file
27 separate annual audited financial statements although
28 permission had previously been given to file on a
29 consolidated basis or combined basis if the commissioner
30 determines the reasons or circumstances given for
31 approval of the consolidated audit, pursuant to subsec-
32 tion (a) of this section, no longer exist.

33 (c) An insurer who does not receive approval from the
34 commissioner to file an audited financial report cover-
35 ing combined or consolidated audited financial state-
36 ments for the insurer and any of its subsidiaries or
37 affiliates must file pursuant to all the requirements of
38 this article a separate audited financial report for the
39 insurer and each subsidiary or affiliate.

40 (d) Notwithstanding any provision of this section, the
41 commissioner may require an insurer to file a separate
42 audited financial report for the insurer and each
43 subsidiary or affiliate.

§33-33-9. Notification of adverse financial condition.

1 (a) The independent certified public accountant shall
2 immediately notify, in writing, an officer or director of
3 the insurer and the commissioner of any determination
4 by the independent certified public accountant that the
5 insurer has materially misstated its financial condition
6 as reported to the commissioner as of the thirty-first day
7 of December immediately preceding, or of any determi-
8 nation that the insurer does not meet the applicable
9 minimum capital and surplus requirement of this

10 chapter or in the case of an insurer not subject to capital
11 and surplus requirement, that the surplus of the insurer
12 is less than one hundred thousand dollars as of the
13 thirty-first day of December immediately preceding.
14 For purposes of this article material misstatement shall
15 have the meaning prescribed by the professional
16 standards and pronouncements of the American insti-
17 tute of certified public accountants: *Provided*, That the
18 independent certified public accountant shall report a
19 misstatement that overstates the surplus as regards
20 policyholders in single financial statement items by five
21 percent or more, or when taken together with all
22 financial statement items, the surplus as regards
23 policyholders is overstated by ten percent or more.

24 (b) No independent public accountant shall be liable
25 in any manner to any person for any statement made
26 in connection with the above paragraph if the statement
27 is made in good faith in compliance with the above
28 paragraph.

29 (c) If the accountant, subsequent to the date of the
30 audited financial report filed pursuant to this article,
31 becomes aware of facts which might have affected the
32 report, the commissioner notes the obligation of the
33 accountant to take action as prescribed in Volume 1,
34 Section AU 561 of the professional standards of the
35 American institute of certified public accountants.

**§33-33-10. Evaluation of accounting procedures and
system of internal control.**

1 (a) In addition to the annual audited financial reports,
2 each insurer shall furnish the commissioner with a
3 written report prepared by the accountant describing
4 significant deficiencies in the insurer's internal control
5 structure noted by the accountant during the audit.
6 Statement on auditing standards (SAS) No. 60, "Com-
7 munication of Internal Control Structure Matters Noted
8 in an Audit", AU Section 325 of the professional
9 standards of the American institute of certified public
10 accountants, requires an accountant to communicate
11 significant deficiencies, known as "reportable condi-
12 tions", noted during a financial statement audit to the

13 appropriate parties within an entity. No report should
14 be issued if the accountant does not identify significant
15 deficiencies.

16 (b) If significant deficiencies are noted, the written
17 report shall be filed annually by the insurer with the
18 commissioner within sixty days after the filing of the
19 annual audited financial reports. The insurer is re-
20 quired to provide a description of remedial actions taken
21 or proposed to correct significant deficiencies, if the
22 actions are not described in the accountant's report.

§33-33-10a. Accountant's letter of qualifications.

1 (a) The accountant shall furnish the insurer in
2 connection with, and for inclusion in, the filing of the
3 annual audited financial report, a letter stating:

4 (1) That the accountant is independent with respect
5 to the insurer and conforms to the standards of his or
6 her profession as contained in the code of professional
7 ethics and pronouncements of the American institute of
8 certified public accountants and the rules of professional
9 conduct of the West Virginia board of accountancy.

10 (2) The background and experience in general, and
11 the experience in audits of insurers of the staff assigned
12 to the engagement and whether each is an independent
13 certified public accountant. Nothing within this article
14 shall be construed as prohibiting the accountant from
15 utilizing staff as he or she deems appropriate where use
16 is consistent with the standards prescribed by generally
17 accepted auditing standards.

18 (3) That the accountant understands the annual
19 audited financial report and the opinion thereon will be
20 filed in compliance with this article and that the
21 commissioner will be relying on this information in the
22 monitoring and regulation of the financial position of
23 insurers.

24 (4) That the accountant consents to the requirements
25 of section eleven of this article and that the accountant
26 consents and agrees to make available for review by the
27 commissioner, or the commissioner's designee or ap-
28 pointed agent, the workpapers, as defined in section
29 eleven.

30 (5) A representation that the accountant is properly
31 licensed by the West Virginia board of accountancy and
32 is a member in good standing in the American institute
33 of certified public accountants.

34 (6) A representation that the accountant is in com-
35 pliance with the requirements of section six of this
36 article.

**§33-33-11. Definition, availability and maintenance of
certified public accountant (CPA) work-
papers.**

1 (a) Workpapers shall be kept by the independent
2 certified public accountant of the procedures followed,
3 the tests performed, the information obtained and the
4 conclusions reached pertinent to the examination of the
5 financial statements of an insurer. Workpapers shall
6 include audit planning documentation, work programs,
7 analyses, memoranda, letters of confirmation and
8 representation, abstracts of company documents and
9 schedules or commentaries prepared or obtained by the
10 independent certified public accountant in the course of
11 the examination of the financial statements of an insurer
12 and which support the opinion thereon.

13 (b) Every insurer required to file an audited financial
14 report pursuant to this article, shall require the
15 accountant to make available for review by the commis-
16 sioner the workpapers prepared in the conduct of the
17 examination. The insurer shall require that the accoun-
18 tant retain the audit workpapers and any communica-
19 tions related to the audit between the accountant and the
20 insurer, at the offices of the insurer, at the insurance
21 department or at any other reasonable place designated
22 by the commissioner. The insurer shall require that the
23 accountant retain the audit workpapers and communi-
24 cations until the commissioner has filed a report of
25 examination, as required by section nine, article two of
26 this chapter, covering the period of the audit but no
27 longer than seven years from the date of the audit
28 report.

29 (c) In the conduct of the aforementioned periodic
30 review by the commissioner, it shall be agreed that

31 photocopies of pertinent audit workpapers may be made
32 and retained by the commissioner. Reviews by the
33 commissioner shall be considered investigations and all
34 workpapers and communications obtained during the
35 course of any investigations shall be afforded the same
36 confidentiality as other examination workpapers gener-
37 ated by the commissioner.

§33-33-13. Exemptions from compliance.

1 (a) Upon written application by an insurer, the
2 commissioner may grant an exemption from compliance
3 with this article if the commissioner finds, upon review
4 of the application, that compliance with this article
5 would constitute a financial or organizational hardship
6 upon the insurer. An exemption may be granted at any
7 time and from time to time for a specified period or
8 periods. Within ten days of a denial of an insurer's
9 written request for an exemption from this article, the
10 insurer may request in writing a hearing on its
11 application for an exemption.

12 (b) Foreign insurers shall comply with this article for
13 the year ending the thirty-first day of December, one
14 thousand nine hundred ninety-three and each year
15 thereafter, unless the commissioner permits otherwise.

§33-33-14. Canadian and British companies.

1 (a) In the case of Canadian and British insurers, the
2 annual audited financial report shall be defined as the
3 annual statement of total business on the form filed by
4 the companies with their domiciliary supervision
5 authority duly audited by an independent chartered
6 accountant.

7 (b) For these insurers, the letter required in section
8 five shall state that the accountant is aware of the
9 requirements relating to the annual audited statement
10 filed with the commissioner pursuant to section three
11 and shall affirm that the opinion expressed is in
12 conformity with those requirements.

§33-33-15. Severability.

1 If any section or portion of a section of this article or

2 the applicability thereof to any person or circumstance
3 is held invalid by a court, the remainder of the article
4 or the applicability of the provision to other persons or
5 circumstances shall not be affected thereby.

ARTICLE 34A. STANDARDS AND COMMISSIONER'S AUTHORITY FOR COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION.

§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
5 resulting 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, after notice of hearing, the commissioner
21 determines that the continued operation of the insurer
22 licensed to transact business in this state may be
23 hazardous to the policyholders or the general public,
24 then the commissioner may, upon his determination,
25 issue an order requiring the insurer to:

26 (1) Reduce the total amount of present and potential
27 liability for policy benefits by reinsurance;

28 (2) Reduce, suspend or limit the volume of business
29 being accepted or renewed;

- 30 (3) Reduce general insurance and commission ex-
31 penses by specified methods;
- 32 (4) Increase the insurer's capital and surplus;
- 33 (5) Suspend or limit the declaration and payment of
34 dividend by an insurer to its stockholders or to its
35 policyholders;
- 36 (6) File reports in a form acceptable to the commis-
37 sioner concerning the market value of an insurer's
38 assets;
- 39 (7) Limit or withdraw from certain investments or
40 discontinue certain investment practices to the extent
41 the commissioner deems necessary;
- 42 (8) Document the adequacy of premium rates in
43 relation to the risks insured; or
- 44 (9) File, in addition to regular annual statements,
45 interim financial reports on the form adopted by the
46 national association of insurance commissioners or on
47 such format as promulgated by the commissioner. If the
48 insurer is a foreign insurer the commissioner's order
49 may be limited to the extent provided by statute.
- 50 (c) An order issued pursuant to the provisions of this
51 article is subject to review pursuant to applicable state
52 administrative proceedings under article two of this
53 chapter: *Provided*, That all hearings pursuant to this
54 section shall be held privately, unless the insurer
55 requests a public hearing, in which case the hearing
56 shall be public.

**ARTICLE 36. BUSINESS TRANSACTED WITH PRODUCER CON-
TROLLED PROPERTY/CASUALTY INSURER
ACT.**

- §33-36-1. Short title.
§33-36-2. Definitions.
§33-36-3. Applicability.
§33-36-4. Minimum standards.
§33-36-5. Disclosure.
§33-36-6. Penalties.
§33-36-7. Effective date.

§33-36-1. Short title.

1 This article may be cited as the "Business Transacted
2 with Producer Controlled Insurer Act."

§33-36-2. Definitions.

1 As used in this article:

2 (a) "Accredited state" means a state in which the
3 insurance department or regulatory agency has quali-
4 fied as meeting the minimum financial regulatory
5 standards promulgated and established from time to
6 time by the national association of insurance
7 commissioners.

8 (b) "Control" or "controlled" means the possession,
9 direct or indirect, of the power to direct or cause the
10 direction of the management and policies of a person,
11 whether through the ownership of voting securities, by
12 contract other than a commercial contract for goods or
13 nonmanagement services, or otherwise, unless the power
14 is the result of an official position with or corporate
15 office held by the person. Control shall be presumed to
16 exist if any person, directly or indirectly, owns, controls,
17 holds with the power to vote, or holds proxies repres-
18 enting ten percent or more of the voting securities of any
19 other person or controls or appoints a majority of the
20 board of directors, voting members or similar governing
21 body of any other person. This presumption may be
22 rebutted by a showing made in the manner provided by
23 subsection (l), section four, article twenty-seven of this
24 chapter that control does not exist in fact. The commis-
25 sioner may determine, after furnishing all persons in
26 interest notice and opportunity to be heard and making
27 specific findings of fact to support the determination,
28 that control exists in fact, notwithstanding the absence
29 of a presumption to that effect.

30 (c) "Controlled insurer" means a licensed insurer
31 which is controlled, directly or indirectly, by a producer.

32 (d) "Controlling producer" means a producer who,
33 directly or indirectly, controls an insurer.

34 (e) "Licensed insurer" or "insurer" means any person,
35 firm, association or corporation duly licensed to transact
36 a property or casualty insurance business, or both
37 property and casualty insurance, in this state: *Provided*,
38 That the following are not licensed insurers for the
39 purposes of this article:

40 (1) All risk retention groups as defined in article
41 thirty-two of this chapter;

42 (2) All residual market pools and joint underwriting
43 authorities or associations; and

44 (3) All captive insurance companies as defined in
45 article thirty-one of this chapter.

46 (f) "Producer" means an insurance broker or brokers
47 or any other person, firm, association or corporation,
48 when, for any compensation, commission or other thing
49 of value, the person, firm, association or corporation acts
50 or aids in any manner in soliciting, negotiating or
51 procuring the making of any insurance contract on
52 behalf of an insured other than the person, firm,
53 association or corporation: *Provided*, That the designa-
54 tion of any individual or entity as a producer does not
55 expand upon or provide for activities beyond those
56 permitted by article twelve of this chapter.

§33-36-3. Applicability.

1 This article applies to licensed insurers as defined in
2 section two of this article, either domiciled in this state
3 or domiciled in a state that does not have in effect a
4 substantially similar law. All provisions of article
5 twenty-seven of this chapter, to the extent they are not
6 superseded by this article, shall continue to apply to all
7 parties within holding company systems subject to this
8 article.

§33-36-4. Minimum standards.

1 (a) The provisions of this section apply if, in any
2 calendar year, the aggregate amount of gross written
3 premium on business placed with a controlled insurer
4 by a controlling producer is equal to or greater than five

5 percent of the admitted assets of the controlled insurer,
6 as reported in the controlled insurers' quarterly
7 statement filed as of the thirtieth day of September of
8 the prior year: *Provided*, That the provisions of this
9 section shall not apply if:

10 (1) The controlling producer:

11 (A) Places insurance only with the controlled insurer
12 or only with the controlled insurer and a member or
13 members of the controlled insurer's holding company
14 system or the controlled insurer's parent, affiliate or
15 subsidiary and receives no compensation based upon the
16 amount of premiums written in connection with such
17 insurance; and

18 (B) Accepts insurance placements only from nonaffil-
19 iated subproducers, and not directly from insureds; and

20 (2) The controlled insurer accepts insurance business
21 only from a controlling producer, a producer controlled
22 by the controlled insurer, or a producer that is a
23 subsidiary of the controlled insurer: *Provided*, That the
24 provisions of this subdivision do not apply to insurance
25 business written through a residual market facility such
26 as the "West Virginia Essential Property Insurance
27 Association" or the "West Virginia Automobile Insu-
28 rance Plan."

29 (b) A controlled insurer may not accept business from
30 a controlling producer and a controlling producer may
31 not place business with a controlled insurer unless there
32 is a written contract between the controlling producer
33 and the insurer specifying the responsibilities of each
34 party, which contract has been approved by the board
35 of directors of the insurer and contains the following
36 minimum provisions:

37 (1) The controlled insurer may terminate the contract
38 for cause, upon written notice to the controlling
39 producer. The controlled insurer shall suspend the
40 authority of the controlling producer to write business
41 during the pendency of any dispute regarding the cause
42 for the termination;

43 (2) The controlling producer shall render accounts to

44 the controlled insurer detailing all material transac-
45 tions, including information necessary to support all
46 commissions, charges and other fees received by, or
47 owing to, the controlling producer;

48 (3) The controlling producer shall remit all funds due
49 under the terms of the contract to the controlled insurer
50 on at least a monthly basis. The due date shall be fixed
51 so that premiums or installments thereof collected shall
52 be remitted no later than ninety days after the effective
53 date of any policy placed with the controlled insurer
54 under this contract;

55 (4) All funds collected for the controlled insurer's
56 account shall be held by the controlling producer in a
57 fiduciary capacity, in one or more appropriately
58 identified bank accounts in banks that are members of
59 the federal reserve system, in accordance with the
60 applicable provisions of this chapter. However, funds of
61 a controlling producer not required to be licensed in this
62 state shall be maintained in compliance with the
63 requirements of the controlling producer's domiciliary
64 jurisdiction;

65 (5) The controlling producer shall maintain separately
66 identifiable records of business written for the con-
67 trolled insurer;

68 (6) The contract may not be assigned in whole or in
69 part by the controlling producer;

70 (7) The controlled insurer shall provide the controlling
71 producer with its underwriting standards, rules and
72 procedures manuals setting forth the rates to be charged
73 and the conditions for the acceptance or rejection of
74 risks. The controlling producer shall adhere to the
75 standards, rules, procedures, rates and conditions. The
76 standards, rules, procedures, rates and conditions shall
77 be the same as those applicable to comparable business
78 placed with the controlled insurer by a producer other
79 than the controlling producer;

80 (8) The rates and terms of the controlling producer's
81 commissions, charges or other fees and the purposes for
82 those charges or fees. The rates of the commissions,

83 charges and other fees may be no greater than those
84 applicable to comparable business placed with the
85 controlled insurer by producers other than controlling
86 producers. For purposes of this subdivision and subdivi-
87 sion (7) of this subsection, examples of "comparable
88 business" includes the same lines of insurance, same
89 kinds of insurance, same kinds of risks, similar policy
90 limits and similar quality of business;

91 (9) If the contract provides that the controlling
92 producer, on insurance business placed with the insurer,
93 is to be compensated contingent upon the insurer's
94 profits on that business, then the compensation may not
95 be determined and paid until at least five years after
96 the premiums on liability insurance are earned and at
97 least one year after the premiums are earned on any
98 other insurance. In no event may the commissions be
99 paid until the adequacy of the controlled insurer's
100 reserves on remaining claims has been independently
101 verified pursuant to subdivision (1), subsection (d) of this
102 section;

103 (10) A limit on the controlling producer's writings in
104 relation to the controlled insurer's surplus and total
105 writings. The insurer may establish a different limit for
106 each line or subline of business. The controlled insurer
107 shall notify the controlling producer when the applica-
108 ble limit is approached and shall not accept business
109 from the controlling producer if the limit is reached.
110 The controlling producer may not place business with
111 the controlled insurer if it has been notified by the
112 controlled insurer that the limit has been reached; and

113 (11) The controlling producer may negotiate but may
114 not bind reinsurance on behalf of the controlled insurer
115 on business the controlling producer places with the
116 controlled insurer, except that the controlling producer
117 may bind facultative reinsurance contracts pursuant to
118 obligatory facultative agreements if the contract with
119 the controlled insurer contains underwriting guidelines
120 including, for both reinsurance assumed and ceded, a
121 list of reinsurers with which the automatic agreements
122 are in effect, the coverages and amounts or percentages
123 that may be reinsured and commission schedules.

124 (c) Every controlled insurer shall have an audit
125 committee of the board of directors composed of
126 independent directors. The audit committee shall
127 annually meet with management, the insurer's inde-
128 pendent certified public accountants, and an independ-
129 ent casualty actuary or other independent loss reserve
130 specialist acceptable to the commissioner to review the
131 adequacy of the insurer's loss reserves.

132 (d) In addition to any other required loss reserve
133 certification, the controlled insurer shall annually, on
134 the first day of April of each year, file with the
135 commissioner the following:

136 (1) An opinion of an independent casualty actuary or
137 any other independent loss reserve specialist acceptable
138 to the commissioner, reporting loss ratios for each line
139 of business written and attesting to the adequacy of loss
140 reserves established for losses incurred and outstanding
141 as of year-end, including incurred but not reported
142 losses, on business placed by the producer; and

143 (2) A report and summary of the amount of commis-
144 sions paid to the producer, the percentage such amount
145 represents of the net premiums written and comparable
146 amounts and percentage paid to noncontrolling produc-
147 ers for placements of the same kinds of insurance.

§33-36-5. Disclosure.

1 The producer, prior to the effective date of the policy,
2 shall deliver written notice to the prospective insured
3 disclosing the relationship between the producer and the
4 controlled insurer. If the business is placed through a
5 subproducer who is not a controlling producer, the
6 controlling producer shall retain in his records a signed
7 commitment from the subproducer that the subproducer
8 is aware of the relationship between the insurer and the
9 producer and that the subproducer has or will notify the
10 insured.

§33-36-6. Penalties.

1 (a) If the commissioner believes that the controlling
2 producer or any other person has not materially
3 complied with this article, or any rule or order promul-

4 gated hereunder, after notice and opportunity to be
5 heard, the commissioner may order the controlling
6 producer to cease placing business with the controlled
7 insurer.

8 (b) If it is found that because of any material
9 noncompliance that the controlled insurer or any
10 policyholder thereof has suffered any loss or damage,
11 the commissioner may maintain a civil action or
12 intervene in an action brought by or on behalf of the
13 insurer or policyholder for recovery of compensatory
14 damages for the benefit of the insurer or policyholder
15 or other appropriate relief.

16 (c) If an order for liquidation or rehabilitation of the
17 controlled insurer has been entered pursuant to article
18 ten of this chapter and the receiver appointed under that
19 order believes that the controlling producer or any other
20 person has not materially complied with this article or
21 any rule or order promulgated hereunder, and the
22 insurer suffered any loss or damage therefrom, the
23 receiver may maintain a civil action for recovery of
24 damages or other appropriate sanctions for the benefit
25 of the insurer.

26 (d) Nothing contained in this section may affect the
27 right of the commissioner to impose any other penalties
28 provided for in this chapter.

29 (e) Nothing contained in this section is intended to or
30 may in any manner alter or affect the rights of
31 policyholders, claimants, creditors or other third
32 parties.

§33-36-7. Effective date.

1 Controlled insurers and controlling producers who are
2 not in compliance with section four of this article on its
3 effective date have sixty days to come into compliance.
4 The controlled insurers and controlling producers have
5 sixty days after the effective date of this article to
6 comply with section five of this article.

ARTICLE 38. REINSURANCE INTERMEDIARY ACT.

§33-38-1. Short title.

§33-38-2. Definitions.

- §33-38-3. Licensure.
- §33-38-4. Required contract provisions; reinsurance intermediary-brokers.
- §33-38-5. Books and records; reinsurance intermediary-brokers.
- §33-38-6. Duties of insurers utilizing the services of a reinsurance intermediary-broker.
- §33-38-7. Required contract provisions; reinsurance intermediary-managers.
- §33-38-8. Prohibited acts.
- §33-38-9. Duties of reinsurers utilizing the services of a reinsurance intermediary-manager.
- §33-38-10. Examination authority.
- §33-38-11. Penalties and liabilities.
- §33-38-12. Regulatory authority.
- §33-38-13. Effective date.

§33-38-1. Short title.

- 1 This article may be cited as the "Reinsurance
- 2 Intermediary Act."

§33-38-2. Definitions.

- 1 As used in this article:
- 2 (a) "Actuary" means a person who is a member in
- 3 good standing of the American academy of actuaries.
- 4 (b) "Controlling person" means any person, firm,
- 5 association or corporation who directly or indirectly has
- 6 the power to direct or cause to be directed, the
- 7 management, control or activities of the reinsurance
- 8 intermediary.
- 9 (c) "Commissioner" means the insurance commis-
- 10 sioner of West Virginia.
- 11 (d) "Insurer" means any person, firm, association or
- 12 corporation duly licensed in this state pursuant to the
- 13 applicable provisions of this chapter as an insurer.
- 14 (e) "Licensed producer" means an agent or reinsu-
- 15 rance intermediary licensed pursuant to the applicable
- 16 provisions of this chapter.
- 17 (f) "Reinsurance intermediary" means a reinsurance
- 18 intermediary-broker or a reinsurance intermediary-
- 19 manager as these terms are defined in subdivisions (g)
- 20 and (h) of this section.
- 21 (g) "Reinsurance intermediary-broker" means any

22 person, other than an officer or employee of the ceding
23 insurer, firm, association or corporation who solicits,
24 negotiates or places reinsurance cessions or retroces-
25 sions on behalf of a ceding insurer without the authority
26 or power to bind reinsurance on behalf of such insurer.

27 (h) "Reinsurance intermediary-manager" means any
28 person, firm, association or corporation who has
29 authority to bind or manages all or part of the assumed
30 reinsurance business of a reinsurer including the
31 management of a separate division, department or
32 underwriting office and acts as an agent for such
33 reinsurer whether known as a reinsurance interme-
34 diary-manager, manager or other similar term. Not-
35 withstanding the above, the following persons are not
36 considered a reinsurance intermediary-manager, with
37 respect to such reinsurer, for the purposes of this article:

38 (1) An employee of the reinsurer;

39 (2) A United States manager of the United States
40 branch of an alien reinsurer;

41 (3) An underwriting manager who, pursuant to
42 contract, manages all the reinsurance operations of the
43 reinsurer, is under common control with the reinsurer,
44 subject to article twenty-seven of this chapter, and
45 whose compensation is not based on the volume of
46 premiums written.

47 (4) The manager of a group, association, pool or
48 organization of insurers which engage in joint under-
49 writing or joint reinsurance and who are subject to
50 examination by the official charged with regulation of
51 insurance in the state in which the manager's principal
52 business office is located.

53 (i) "Reinsurer" means any person, firm, association or
54 corporation duly licensed or accredited in this state
55 pursuant to the applicable provisions of this chapter as
56 an insurer with the authority to assume reinsurance.

57 (j) "To be in violation" means that the reinsurance
58 intermediary, insurer or reinsurer for whom the
59 reinsurance intermediary was acting failed to substan-
60 tially comply with the provisions of this article.

61 (k) For purposes of this article, a “qualified United
62 States financial institution” means an institution that:

63 (1) Is organized or, in the case of a United States
64 office of a foreign banking organization, licensed under
65 the laws of the United States or any state thereof;

66 (2) Is regulated, supervised and examined by federal
67 or state authorities having regulatory authority over
68 banks and trust companies; and

69 (3) Has been determined by either the commissioner
70 or the securities valuation office of the national associ-
71 ation of insurance commissioners, to meet such stand-
72 ards of financial condition and standing as are consi-
73 dered necessary and appropriate to regulate the quality
74 of financial institutions whose letters of credit will be
75 acceptable to the commissioner.

§33-38-3. Licensure.

1 (a) No person, firm, association or corporation may act
2 as a reinsurance intermediary-broker in this state if the
3 reinsurance intermediary-broker maintains an office
4 either directly or as a member or employee of a firm
5 or association, or an officer, director or employee of a
6 corporation:

7 (1) In this state, unless such reinsurance interme-
8 diary-broker is a licensed producer in this state; or

9 (2) In another state, unless such reinsurance interme-
10 diary-broker is a licensed producer in this state or
11 another state having an article substantially similar to
12 this law or such reinsurance intermediary-broker is
13 licensed in this state as a nonresident reinsurance
14 intermediary.

15 (b) No person, firm, association or corporation may
16 act as a reinsurance intermediary-manager:

17 (1) For a reinsurer domiciled in this state, unless such
18 reinsurance intermediary-manager is a licensed pro-
19 ducer in this state;

20 (2) In this state, if the reinsurance intermediary-
21 manager maintains an office either directly or as a

22 member or employee of a firm or association, or an
23 officer, director or employee of a corporation in this
24 state, unless such reinsurance intermediary-manager is
25 a licensed producer in this state;

26 (3) In another state for a nondomestic insurer, unless
27 such reinsurance intermediary-manager is a licensed
28 producer in this state or another state having an article
29 substantially similar to this law or such person is
30 licensed in this state as a nonresident reinsurance
31 intermediary.

32 (c) The commissioner may require a reinsurance
33 intermediary-manager subject to the provisions of
34 subsection (b) of this section to:

35 (1) File a bond in an amount from an insurer
36 acceptable to the commissioner for the protection of the
37 reinsurer; and

38 (2) Maintain an errors and omissions policy in an
39 amount acceptable to the commissioner.

40 (d) The commissioner may issue a reinsurance
41 intermediary license to any person, firm, association or
42 corporation who has complied with the requirements of
43 this article. Any license issued to a firm or association
44 authorizes all the members of the firm or association
45 and any designated employees to act as reinsurance
46 intermediaries under the license, and all of these
47 persons shall be named in the application and any
48 supplements thereto. Any license issued to a corporation
49 shall authorize all of the officers, and any designated
50 employees and directors thereof to act as reinsurance
51 intermediaries on behalf of such corporation, and all of
52 these persons shall be named in the application and any
53 supplements thereto.

54 (e) If the applicant for a reinsurance intermediary
55 license is a nonresident, the applicant as a condition
56 precedent to receiving or holding a license, shall
57 designate the commissioner as agent for service of
58 process in the manner and with the same legal effect
59 provided for by this chapter for designation of service
60 of process upon unauthorized insurers. The applicant

61 shall also furnish the commissioner with the name and
62 address of a resident of this state upon whom notices or
63 orders of the commissioner or process affecting such
64 nonresident reinsurance intermediary may be served.
65 The licensee shall promptly notify the commissioner in
66 writing of every change in its designated agent for
67 service of process, and the change shall not become
68 effective until acknowledged by the commissioner.

69 (f) The commissioner may refuse to issue a reinsu-
70 rance intermediary license if, in his or her judgment,
71 the applicant, any one named on the application or any
72 member, principal, officer or director of the applicant
73 is not trustworthy or that any controlling person of the
74 applicant is not trustworthy to act as a reinsurance
75 intermediary or that any of the foregoing has given
76 cause for revocation or suspension of such license or has
77 failed to comply with any prerequisite for the issuance
78 of the license. Upon written request therefor, the
79 commissioner shall furnish a summary of the basis for
80 refusal to issue a license, which document shall be
81 privileged and not subject to the provisions of article
82 one, chapter twenty-nine of this code.

83 (g) Licensed attorneys at law of this state when acting
84 in their professional capacity are exempt from this
85 section.

**§33-38-4. Required contract provisions; reinsurance
intermediary-brokers.**

1 (a) Transactions between a reinsurance intermediary-
2 broker and the insurer it represents in that capacity
3 may only be entered into pursuant to a written author-
4 ization, specifying the responsibilities of each party.

5 (b) Each written authorization shall, at a minimum,
6 provide that:

7 (1) The insurer may terminate the reinsurance
8 intermediary-broker's authority at any time.

9 (2) The reinsurance intermediary-broker shall render
10 accounts to the insurer accurately detailing all material
11 transactions, including information necessary to support
12 all commissions, charges and other fees received by, or

13 owing, to the reinsurance intermediary-broker, and
14 remit all funds due to the insurer within thirty days of
15 receipt.

16 (3) All funds collected for the insurer's account shall
17 be held by the reinsurance intermediary-broker in a
18 fiduciary capacity in a bank which is a qualified United
19 States financial institution as defined herein.

20 (4) The reinsurance intermediary-broker shall comply
21 with section five of this article.

22 (5) The reinsurance intermediary-broker shall comply
23 with the written standards established by the insurer
24 for the cession or retrocession of all risks.

25 (6) The reinsurance intermediary-broker shall dis-
26 close to the insurer any relationship with any reinsurer
27 to which business will be ceded or retroceded.

**§33-38-5. Books and records; reinsurance intermediary-
brokers.**

1 (a) For at least ten years after expiration of each
2 contract of reinsurance transacted by the reinsurance
3 intermediary-broker, the reinsurance intermediary-
4 broker will keep a complete record for each transaction
5 showing:

6 (1) The type of contract, limits, underwriting restric-
7 tions, classes or risks and territory;

8 (2) Period of coverage, including effective and
9 expiration dates, cancellation provisions and notice
10 required of cancellation;

11 (3) Reporting and settlement requirements of
12 balances;

13 (4) Rate used to compute the reinsurance premium;

14 (5) Names and addresses of assuming reinsurers;

15 (6) Rates of all reinsurance commissions, including
16 the commissions on any retrocessions handled by the
17 reinsurance intermediary-broker;

18 (7) Related correspondence and memoranda;

19 (8) Proof of placement;

20 (9) Details regarding retrocessions handled by the
21 reinsurance intermediary-broker including the identity
22 of retrocessionaires and percentage of each contract
23 assumed or ceded;

24 (10) Financial records, including but not limited to,
25 premium and loss accounts; and

26 (11) When the reinsurance intermediary-broker
27 procures a reinsurance contract on behalf of a licensed
28 ceding insurer:

29 (A) Directly from any assuming reinsurer, written
30 evidence that the assuming reinsurer has agreed to
31 assume the risk; or

32 (B) If placed through a representative of the assuming
33 reinsurer, other than an employee, written evidence that
34 such reinsurer has delegated binding authority to the
35 representative.

36 (b) The insurer shall have access and the right to copy
37 and audit all accounts and records maintained by the
38 reinsurance intermediary-broker related to its business
39 in a form usable by the insurer.

**§33-38-6. Duties of insurers utilizing the services of a
reinsurance intermediary-broker.**

1 (a) An insurer may not engage the services of any
2 person, firm, association or corporation to act as a
3 reinsurance intermediary-broker on its behalf unless
4 that person is licensed as required by subsection (a),
5 section three of this article.

6 (b) An insurer may not employ an individual who is
7 employed by a reinsurance intermediary-broker with
8 which it transacts business, unless the reinsurance
9 intermediary-broker is under common control with the
10 insurer and subject to article twenty-seven of this
11 chapter.

12 (c) The insurer shall annually obtain a copy of
13 statements of the financial condition of each reinsurance
14 intermediary-broker with which it transacts business.

§33-38-7. Required contract provisions; reinsurance intermediary-managers.

1 (a) Transactions between a reinsurance intermediary-
2 manager and the reinsurer it represents in that capacity
3 may only be entered into pursuant to a written contract,
4 specifying the responsibilities of each party, which shall
5 be approved by the reinsurer's board of directors. At
6 least thirty days before such reinsurer assumes or cedes
7 business through such producer, a true copy of the
8 approved contract shall be filed with the commissioner
9 for approval.

10 (b) Every contract required by this section shall, at
11 a minimum, provide, that:

12 (1) The reinsurer may terminate the contract for
13 cause upon written notice to the reinsurance interme-
14 diary-manager. The reinsurer may immediately sus-
15 pend the authority of the reinsurance intermediary-
16 manager to assume or cede business during the pen-
17 dency of any dispute regarding the cause for
18 termination.

19 (2) The reinsurance intermediary-manager shall
20 render accounts to the reinsurer accurately detailing all
21 material transactions, including information necessary
22 to support all commissions, charges and other fees
23 received by, or owing to the reinsurance intermediary-
24 manager, and remit all funds due under the contract to
25 the reinsurer on not less than a monthly basis.

26 (3) All funds collected for the reinsurer's account shall
27 be held by the reinsurance intermediary-manager in a
28 fiduciary capacity in a bank which is a qualified United
29 States financial institution as defined herein. The
30 reinsurance intermediary-manager may retain no more
31 than three months estimated claims payments and
32 allocated loss adjustment expenses. The reinsurance
33 intermediary-manager shall maintain a separate bank
34 account for each reinsurer that it represents.

35 (4) For at least ten years after expiration of each
36 contract of reinsurance transacted by the reinsurance
37 intermediary-manager, the reinsurance intermediary-

38 manager shall keep a complete record for each transac-
39 tion showing:

40 (A) The type of contract, limits, underwriting restric-
41 tions, classes of risks and territory;

42 (B) Period of coverage, including effective and
43 expiration dates, cancellation provisions and notice
44 required of cancellation, and disposition of outstanding
45 reserves on covered risks;

46 (C) Reporting and settlement requirements of
47 balances;

48 (D) Rate used to compute the reinsurance premium;

49 (E) Names and addresses of reinsurers;

50 (F) Rates of all reinsurance commissions, including
51 the commissions on any retrocessions handled by the
52 reinsurance intermediary-manager;

53 (G) Related correspondence and memoranda;

54 (H) Proof of placement;

55 (I) Details regarding retrocessions handled by the
56 reinsurance intermediary-manager, as permitted by
57 subsection (d), section nine of this article, including the
58 identity of retrocessionaires and percentage of each
59 contract assumed or ceded;

60 (J) Financial records, including but not limited to,
61 premium and loss accounts; and

62 (K) When the reinsurance intermediary-manager
63 places a reinsurance contract on behalf of a ceding
64 insurer:

65 (i) Directly from any assuming reinsurer, written
66 evidence that the assuming reinsurer has agreed to
67 assume the risk; or

68 (ii) If placed through a representative of the assuming
69 reinsurer, other than an employee, written evidence that
70 such reinsurer has delegated binding authority to the
71 representative.

72 (5) The reinsurer shall have access and the right to

73 copy all accounts and records maintained by the
74 reinsurance intermediary-manager related to its busi-
75 ness in a form usable by the reinsurer.

76 (6) The contract cannot be assigned in whole or in part
77 by the reinsurance intermediary-manager.

78 (7) The reinsurance intermediary-manager shall
79 comply with the written underwriting and rating
80 standards established by the insurer for the acceptance,
81 rejection or cession of all risks.

82 (8) Sets forth the rates, terms and purposes of
83 commissions, charges and other fees which the reinsu-
84 rance intermediary-manager may levy against the
85 reinsurer.

86 (9) If the contract permits the reinsurance interme-
87 diary-manager to settle claims on behalf of the
88 reinsurer:

89 (A) All claims shall be reported to the reinsurer in
90 a timely manner;

91 (B) A copy of the claim file shall be sent to the
92 reinsurer at its request or as soon as it becomes known
93 that the claim:

94 (i) Has the potential to exceed the lesser of an amount
95 determined by the commissioner or the limit set by the
96 reinsurer;

97 (ii) Involves a coverage dispute;

98 (iii) May exceed the reinsurance intermediary-
99 manager's claims settlement authority;

100 (iv) Is open for more than six months; or

101 (v) Is closed by payment of the lesser of an amount
102 set by the commissioner or an amount set by the
103 reinsurer;

104 (C) All claim files will be the joint property of the
105 reinsurer and reinsurance intermediary-manager.
106 However, upon an order of liquidation of the reinsurer
107 these files shall become the sole property of the
108 reinsurer or its estate. The reinsurance intermediary-

109 manager shall have reasonable access to and the right
110 to copy the files on a timely basis;

111 (D) Any settlement authority granted to the reinsu-
112 rance intermediary-manager may be terminated for
113 cause upon the reinsurer's written notice to the reinsu-
114 rance intermediary-manager or upon the termination of
115 the contract. The reinsurer may suspend the settlement
116 authority during the pendency of the dispute regarding
117 the cause of termination.

118 (10) If the contract provides for a sharing of interim
119 profits by the reinsurance intermediary-manager that
120 these interim profits may not be paid until one year
121 after the end of each underwriting period for property
122 business, and five years after the end of each under-
123 writing period for casualty business, or a later period
124 set by the commissioner for specified lines of insurance,
125 and not until the adequacy of reserves on remaining
126 claims has been verified pursuant to subsection (c),
127 section nine of this article.

128 (11) The reinsurance intermediary-manager shall
129 annually provide the reinsurer with a statement of its
130 financial condition prepared by an independent certified
131 public accountant.

132 (12) The reinsurer shall periodically, at least semi-
133 annually, conduct an on-site review of the underwriting
134 and claims processing operations of the reinsurance
135 intermediary-manager.

136 (13) The reinsurance intermediary-manager shall
137 disclose to the reinsurer any relationship it has with any
138 insurer prior to ceding or assuming any business with
139 such insurer pursuant to this contract.

140 (14) Within the scope of its actual or apparent
141 authority, the acts of the reinsurance intermediary-
142 manager are deemed to be the acts of the reinsurer on
143 whose behalf it is acting.

§33-38-8. Prohibited acts.

1 The reinsurance intermediary-manager may not:

2 (a) Cede retrocessions on behalf of the reinsurer,

3 except that the reinsurance intermediary-manager may
4 cede facultative retrocessions pursuant to obligatory
5 facultative agreements if the contract with the reinsurer
6 contains reinsurance underwriting guidelines for the
7 retrocessions. The guidelines shall include a list of
8 reinsurers with which the automatic agreements are in
9 effect, and for each reinsurer, the coverages and
10 amounts or percentages that may be reinsured, and
11 commission schedules.

12 (b) Commit the reinsurer to participate in reinsurance
13 syndicates.

14 (c) Appoint any producer without assuring that the
15 producer is lawfully licensed to transact the type of
16 reinsurance for which he is appointed.

17 (d) Without prior approval of the reinsurer, pay or
18 commit the reinsurer to pay a claim, net of retroces-
19 sions, that exceeds the lesser of an amount specified by
20 the reinsurer or one percent of the reinsurer's policy-
21 holder's surplus as of the thirty-first day of December,
22 next preceding.

23 (e) Collect any payment from a retrocessionaire or
24 commit the reinsurer to any claim settlement with a
25 retrocessionaire, without prior approval of the rein-
26 surer. If prior approval is given, a report must be
27 promptly forwarded to the reinsurer.

28 (f) Jointly employ an individual who is employed by
29 the reinsurer unless such reinsurance intermediary-
30 manager is under common control with the reinsurer
31 subject to article twenty-seven of this chapter.

32 (g) Appoint a subreinsurance intermediary-manager.

**§33-38-9. Duties of reinsurers utilizing the services of a
reinsurance intermediary-manager.**

1 (a) A reinsurer may not engage the services of any
2 person, firm, association or corporation to act as a
3 reinsurance intermediary-manager on its behalf unless
4 that person is licensed as required by subsection (b),
5 section three of this article.

6 (b) The reinsurer shall annually obtain a copy of

7 statements of the financial condition of each reinsurance
8 intermediary-manager which such reinsurer has en-
9 gaged prepared by an independent certified public
10 accountant in a form acceptable to the commissioner.

11 (c) If a reinsurance intermediary-manager establishes
12 loss reserves, the reinsurer shall annually obtain the
13 opinion of an actuary attesting to the adequacy of loss
14 reserves established for losses incurred and outstanding
15 on business produced by the reinsurance intermediary-
16 manager. This opinion shall be in addition to any other
17 required loss reserve certification.

18 (d) Binding authority for all retrocessional contracts
19 or participation in reinsurance syndicates shall rest with
20 an officer of the reinsurer who may not be affiliated
21 with the reinsurance intermediary-manager.

22 (e) Within thirty days of termination of a contract
23 with a reinsurance intermediary-manager, the reinsurer
24 shall provide written notification of such termination to
25 the commissioner.

26 (f) A reinsurer may not appoint to its board of
27 directors, any officer, director, employee, controlling
28 shareholder or subproducer of its reinsurance interme-
29 diary-manager. This subsection does not apply to
30 relationships governed by article twenty-seven of this
31 chapter.

§33-38-10. Examination authority.

1 (a) A reinsurance intermediary is subject to examina-
2 tion by the commissioner at his or her discretion. The
3 commissioner shall have access to all books, bank
4 accounts and records of the reinsurance intermediary in
5 a form usable to the commissioner.

6 (b) A reinsurance intermediary-manager may be
7 examined as if it were the reinsurer.

§33-38-11. Penalties and liabilities.

1 (a) A reinsurance intermediary, insurer or reinsurer
2 found by the commissioner, after a hearing conducted

3 in accordance with section thirteen, article two of this
4 chapter, to be in violation of any provision or provisions
5 of this article, shall:

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

8 (2) Be subject to revocation or suspension of its license;
9 and

10 (3) If a violation was committed by the reinsurance
11 intermediary, such reinsurance intermediary shall
12 make restitution to the insurer, reinsurer, rehabilitator
13 or liquidator of the insurer or reinsurer for the net losses
14 incurred by the insurer or reinsurer attributable to the
15 violation.

16 (b) The decision, determination or order of the
17 commissioner pursuant to subsection (a) of this section
18 is subject to judicial review pursuant to section fourteen,
19 article two of this chapter.

20 (c) Nothing contained in this section may affect the
21 right of the commissioner to impose any other penalties
22 provided in the insurance law.

23 (d) Nothing contained in this article is intended to or
24 may in any manner limit or restrict the rights of
25 policyholders, claimants, creditors or other third parties
26 or confer any rights to such persons.

§33-38-12. Regulatory authority.

1 The commissioner is hereby authorized to promulgate
2 reasonable rules, pursuant to chapter twenty-nine-a of
3 the West Virginia code, for the implementation and
4 administration of the provisions of this article, these
5 rules to include, but not be limited to, setting reasonable
6 fees and standards for licensing.

§33-38-13. Effective date.

1 This article shall take effect on the first day of
2 January, one thousand nine hundred ninety-four. No
3 insurer or reinsurer may continue to utilize the services
4 of a reinsurance intermediary on and after the effective
5 date unless utilization is in compliance with this article.

CHAPTER 68

(H. B. 2518—By Delegates Carper and Michael)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven-b, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the right to return a life or accident and sickness insurance policy, certificate or contract, to clarify the rights of group insurance certificate holders; and to exempt from the requirements of this section certain group annuity contracts.

Be it enacted by the Legislature of West Virginia:

That section eleven-b, 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.

§33-6-11b. 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, certificate or
7 contract within ten days of its receipt and to have the
8 premium refunded if, after examination of the policy,
9 certificate or contract, the person obtaining the insu-
10 rance is not satisfied for any reason: *Provided*, That this
11 section does not apply to group annuity policies,
12 contracts or certificates issued in connection with a
13 pension or profit-sharing plan qualified or exempt
14 under sections 401, 403, 408, 457 or 501 of the Internal
15 Revenue Code.

CHAPTER 69

(H. B. 2179—By Delegates Phillips, Gallagher,
Douglas and Michael)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twenty-three, article six, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to release by minors for payments made by a life insurer under the provisions of an insurance policy, annuity contract or settlement agreement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§1. Repeal of section relating to release by minor of certain payments made by insurance company.

- 1 Section twenty-three, article six, chapter thirty-three
- 2 of the code of West Virginia, one thousand nine hundred
- 3 thirty-one, as amended, is hereby repealed.

CHAPTER 70

(H. B. 2728—By Delegates Phillips, Michael, Dempsey,
Staton, Carper, Harrison and Douglas)

[Passed April 8, 1993; in effect July 1, 1993. 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 a new section, designated section thirty-one-c, relating to substandard risk motor vehicle insurance policies; definitions; required notices and provisions; the promulgation of rules by the insurance commissioner; and effective date.

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 a new section, designated section thirty-one-c, to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31c. Substandard risk motor vehicle insurance policies; definitions; required notices and provisions; promulgation of rules; effective date.

1 (a) For purposes of this section, the following defini-
2 tions shall apply:

3 (1) A "substandard risk" means an applicant for
4 insurance who presents a greater exposure to loss than
5 that contemplated by commonly used rate classifica-
6 tions, as evidenced by one or more of the following
7 conditions:

8 (A) Record of traffic accidents;

9 (B) Record of traffic law violations;

10 (C) Undesirable occupational circumstances;

11 (D) Undesirable moral characteristics.

12 (2) "Substandard risk rate" means a rate or premium
13 charge that reflects the greater than normal exposure
14 to loss which is assumed by an insurer writing insurance
15 for a substandard risk.

16 (b) Every application for a motor vehicle insurance
17 policy to be issued in this state and written on the basis
18 of a substandard risk rate schedule shall have printed
19 thereon, in bold-faced type in a contrasting color, a
20 statement reading substantially as follows: THE POL-
21 ICY FOR WHICH YOU ARE APPLYING HAS BEEN
22 RATED IN ACCORDANCE WITH A SPECIAL RAT-
23 ING SCHEDULE FILED WITH THE COMMIS-
24 SIONER OF INSURANCE PROVIDING FOR
25 HIGHER PREMIUM CHARGES THAN THOSE
26 GENERALLY APPLICABLE FOR AVERAGE
27 RISKS. IF THE COVERAGE OR PREMIUM IS NOT
28 SATISFACTORY, YOU MAY BE ELIGIBLE FOR
29 OTHER INSURANCE.

30 (c) Every motor vehicle insurance policy issued in

31 this state and written on the basis of a substandard risk
32 rate schedule shall have printed thereon, in bold-faced
33 type in a contrasting color, a statement reading
34 substantially as follows: THIS POLICY HAS BEEN
35 RATED IN ACCORDANCE WITH A SPECIAL RAT-
36 ING SCHEDULE FILED WITH THE COMMIS-
37 SIONER OF INSURANCE PROVIDING FOR
38 HIGHER PREMIUM CHARGES THAN THOSE
39 GENERALLY APPLICABLE FOR AVERAGE
40 RISKS. IF THE COVERAGE OR PREMIUM IS NOT
41 SATISFACTORY, YOU MAY BE ELIGIBLE FOR
42 OTHER INSURANCE.

43 (d) On or before the first day of July, one thousand
44 nine hundred ninety-three, all insurers licensed or
45 registered in this state to market or sell substandard
46 risk motor vehicle insurance policies shall submit all
47 applications and policies for substandard risk insurance
48 to the commissioner of insurance for approval prior to
49 being used by the insurer.

50 (e) The commissioner shall promulgate rules in
51 accordance with the provisions of chapter twenty-nine-
52 a of this code regarding the format, style, design and
53 approval of substandard risk insurance applications and
54 policies and such other procedures as may be required
55 by this section.

56 (f) The effective date of this section shall be the first
57 day of July, one thousand nine hundred ninety-three.

CHAPTER 71

(H. B. 2580—By Mr. Speaker, Mr. Chambers, and Delegates Ashley,
Staton, Rowe, Phillips and Michael)

[Passed April 10, 1993; in effect 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 a new section, designated section thirty-one-d; and to amend article twelve of said chapter by adding thereto a new section, designated

section thirty-one, all relating to uninsured and underinsured insurance coverage.

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 a new section, designated section thirty-one-d; and that article twelve of said chapter be amended by adding thereto a new section, designated section thirty-one, all to read as follows:

CHAPTER 33. INSURANCE.

Article

6. The Insurance Policy.

12. Agents, Brokers, Solicitors and Excess Line.

ARTICLE 6. THE INSURANCE POLICY.

§33-6-31d. Form for making offer of optional uninsured and underinsured coverage.

1 (a) Optional limits of uninsured motor vehicle cover-
2 age and underinsured motor vehicle coverage required
3 by section thirty-one of this article shall be made
4 available to the named insured at the time of initial
5 application for liability coverage and upon any request
6 of the named insured on a form prepared and made
7 available by the insurance commissioner. The contents
8 of the form shall be as prescribed by the commissioner
9 and shall specifically inform the named insured of the
10 coverage offered and the rate calculation therefor,
11 including, but not limited to, all levels and amounts of
12 such coverage available and the number of vehicles
13 which will be subject to the coverage. The form shall
14 be made available for use on or before the effective date
15 of this section. The form shall allow any named insured
16 to waive any or all of the coverage offered.

17 (b) Any insurer who issues a motor vehicle insurance
18 policy in this state shall provide the form to each person
19 who applies for the issuance of such policy by delivering
20 the form to the applicant or by mailing the form to the
21 applicant together with the applicant's initial premium
22 notice. The applicant shall complete, date and sign the
23 form and return the form to the insurer within thirty

24 days after receipt thereof. No insurer or agent thereof
25 is liable for payment of any damages applicable under
26 any optional uninsured or underinsured coverage
27 authorized by section thirty-one of this article for any
28 incident which occurs from the date the form was
29 mailed or delivered to the applicant until the insurer
30 receives the form and accepts payment of the appropri-
31 ate premium for the coverage requested therein from
32 the applicant: *Provided*, That if prior to the insurer's
33 receipt of the executed form the insurer issues a policy
34 to the applicant which provides for such optional
35 uninsured or underinsured coverage, the insurer shall
36 be liable for payment of claims against such optional
37 coverage up to the limits provided therefor in such
38 policy. The contents of a form described in this section
39 which has been signed by an applicant shall create a
40 presumption that such applicant and all named insureds
41 received an effective offer of the optional coverages
42 described in this section and that such applicant
43 exercised a knowing and intelligent election or rejection,
44 as the case may be, of such offer as specified in the form.
45 Such election or rejection shall be binding on all persons
46 insured under the policy.

47 (c) Any insurer who has issued a motor vehicle
48 insurance policy in this state which is in effect on the
49 effective date of this section shall mail or otherwise
50 deliver the form to any person who is designated in the
51 policy as a named insured. A named insured shall
52 complete, date and sign the form and return the form
53 to the insurer within thirty days after receipt thereof.
54 No insurer or agent thereof is liable for payment of any
55 damages in any amount greater than any limits of such
56 coverage, if any, provided by the policy in effect on the
57 date the form was mailed or delivered to such named
58 insured for any incident which occurs from the date the
59 form was mailed or delivered to such named insured
60 until the insurer receives the form and accepts payment
61 of the appropriate premium for the coverage requested
62 therein from the applicant. The contents of a form
63 described in this section which has been signed by any
64 named insured shall create a presumption that all

65 named insureds under the policy received an effective
66 offer of the optional coverages described in this section
67 and that all such named insured exercised a knowing
68 and intelligent election or rejection, as the case may be,
69 of such offer as specified in the form. Such election or
70 rejection is binding on all persons insured under the
71 policy.

72 (d) Failure of the applicant or a named insured to
73 return the form described in this section to the insurer
74 as required by this section within the time periods
75 specified in this section creates a presumption that such
76 person received an effective offer of the optional
77 coverages described in this section and that such person
78 exercised a knowing and intelligent rejection of such
79 offer. Such rejection is binding on all persons insured
80 under the policy.

81 (e) The insurer shall make such forms available to any
82 named insured who requests different coverage limits
83 on or after the effective date of this section. No insurer
84 is required to make such form available or notify any
85 person of the availability of such optional coverages
86 authorized by this section except as required by this
87 section.

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-31. Termination of contractual relationship prohibited.

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

CHAPTER 72

(Com. Sub. for H. B. 2271—By Delegates Phillips, Douglas, P. White, Brown, Vest, Rowe and Compton)

[Passed April 10, 1993; 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 a new section, designated section thirty-six, relating to insurance policies; the continuation of coverage under automobile liability policies; exclusions; notice; and rules to be promulgated by the commissioner of insurance.

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 a new section, designated section thirty-six, to read as follows:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-36. Continuation of coverage under automobile liability policy; selection of coverage; exclusions; notice.

1 (a) In the event of death, legal separation or termi-
2 nation of the marital relationship of the named insured,
3 the named insured or spouse covered by a motor vehicle
4 liability policy for a period of two or more years shall,
5 upon request of the named insured or spouse within
6 thirty days of the expiration of said policy, be issued his
7 or her own individual motor vehicle liability insurance
8 policy providing the same coverage as the original policy
9 through the same insurer, without any lapse in cover-
10 age: *Provided*, That any such named insured or spouse
11 may elect to increase or decrease the amount of coverage
12 in his or her respective policies without affecting any
13 privilege provided by this section. Any named insured
14 or spouse requesting an individual policy pursuant to
15 this section shall be entitled to the continuation of all
16 rights and privileges afforded by section one-a and

17 section four of article six-a of this chapter which were
18 accrued under the original policy: *Provided, however,*
19 That this section shall not apply to any motor vehicle
20 liability insurance policy canceled, nonrenewed or
21 terminated pursuant to the provisions of section one or
22 section four, article six-a of this chapter.

23 (b) Insurers shall notify all named insureds at policy
24 issuance or the first renewal after the effective date of
25 this section and upon any change or termination of the
26 policy for reasons other than those provided in sections
27 one and four of article six-a of this chapter of the right
28 of the named insured or spouse to continue coverage as
29 provided by this section.

30 (c) The commissioner shall promulgate rules in
31 accordance with the provisions of chapter twenty-nine-
32 a of this code regarding the form of such notice and
33 procedures required by this section.

CHAPTER 73

(Com. Sub. for S. B. 510—By Senators Minard, Jones, Helmick,
Blatnik, Dittmar, Manchin, Sharpe, Felton,
Wiedebusch, Bailey, Wooton and Grubb)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two and four, article six-c, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article fifteen of said chapter by adding thereto a new section, designated section one-a; to amend and reenact sections two, three, four, five, six, seven, eight, nine, ten and twelve, article sixteen-d of said chapter; and to further amend said chapter by adding thereto a new article, designated article sixteen-e, all relating to accident and sickness insurance; excepting individual limited benefits accident and sickness insurance policies and certificates from optional guaranteed loss ratio provisions of article six-c, chapter thirty-three of said code; increasing the optional minimum guaranteed loss ratio for individual accident

and sickness insurance policies and certificates; establishing requirements for rate increase requests after the first day of July, one thousand nine hundred ninety-four, for insurers issuing individual accident and sickness insurance policies; revising certain definitions and eliminating others relating to marketing and rate practices for small employer accident and sickness insurance policies; substituting the term "carrier" for "insurer"; applying the provisions of article sixteen-d of said chapter to any health benefit plan described therein that covers one or more employees of a small employer situate in West Virginia; specifying additional premium rating restrictions; eliminating provisions on the insurance commissioner conducting a public hearing before increasing the anticipated loss ratio for a small employer carrier; eliminating enumerated rule-making mandates; granting permissive rule-making authority to the insurance commissioner; requiring disclosure of preexisting conditions limitations in such health benefit plans; requiring certification of compliance with statutory premium rating provisions; creating a new article sixteen-e of said chapter on limited benefits accident and sickness insurance policies and certificates; defining the scope of and terms used in said article; establishing loss ratio standards for premium rate increase requests made after the first day of July, one thousand nine hundred ninety-three, for such policies and certificates; establishing loss ratios requiring premium refunds to be made after the first day of July, one thousand nine hundred ninety-four; requiring annual filing of verified statements of actual loss ratio; requiring sixty days' notice of cancellation or nonrenewal of such policies or certificates; prohibiting preexisting conditions limitations, waiting periods and the like upon replacement of such policies and certificates; providing for extraterritorial jurisdiction of the insurance commissioner over certain policies; specifying severability of provisions of said article; providing for the promulgation of rules; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

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

Article

- 6C. **Guaranteed Loss Ratios as Applied to Individual Sickness and Accident Insurance Policies.**
- 15. **Accident and Sickness Insurance.**
- 16D. **Marketing and Rate Practices for Small Employer Accident and Sickness Insurance Policies.**
- 16E. **Limited Benefits Accident and Sickness Insurance Policies and Certificates.**

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-4. Form of guarantee; requirements.

§33-6C-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, other
15 than a form for a limited benefits policy or certificate

16 as defined in section two, article sixteen-e of this
17 chapter;

18 (d) "Loss ratio" means the ratio of incurred claims to
19 earned premium; and

20 (e) "Successive experience period" means the expe-
21 rience period beginning on the first day following the
22 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 other than limited benefits accident
5 and sickness insurance policies or certificates, which are
6 subject to loss ratio requirements set forth in sections
7 three and four, article sixteen-e of this chapter. The loss
8 ratios shall be calculated by the commissioner and each
9 individual insurer and shall be based upon studies and
10 relevant information collected from various sources,
11 including, but not limited to, the health care cost review
12 authority and the national association of insurance
13 commissioners' rate filing guidelines: *Provided*, That the
14 guaranteed loss ratio shall not be less than sixty percent.
15 The guaranteed loss ratio for each insurer shall be
16 published by the insurance commissioner in the register
17 maintained by the secretary of state.

18 (b) The guaranteed loss ratio shall be based upon
19 experience periods during which the insurer earns one
20 million dollars in premium in West Virginia: *Provided*,
21 That if the annual earned premium volume in West
22 Virginia is less than one million dollars, the loss ratio
23 guarantee shall be based on such other actuarially sound
24 methods as the commissioner may determine are
25 appropriate, including, but not limited to, the actual
26 nationwide loss ratios: *Provided, however*, That if the
27 aggregate earned premium for all states is less than one
28 million dollars, the experience period will be extended
29 until the end of the calendar year in which one million

30 dollars of earned premium is attained.

31 (c) Any insurer may apply to the commissioner to
32 operate on a guaranteed loss ratio basis. The insurance
33 commissioner may review each application and, in his
34 or her discretion, approve or reject the same. Any
35 insurer approved by the commissioner shall be exempt
36 from filing rate increase applications as required by the
37 commissioner and other provisions of this chapter.

§33-6C-4. Form of guarantee; requirements.

1 (a) Individual sickness and accident policy benefits
2 under a policy form other than a limited benefits policy
3 form or certificate shall be deemed reasonable in
4 relation to the premium charged, as required by
5 subdivision (e), section nine, article six of this chapter,
6 if the premium rates are filed pursuant to a loss ratio
7 guarantee which meets the requirements of this article.
8 The insurance commissioner shall not withdraw appro-
9 val of a form on the grounds that benefits are unreas-
10 onable in relation to premiums charged so long as the
11 insurer complies with the terms of the loss ratio
12 guarantee.

13 (b) Each insurer of individual sickness and accident
14 policy benefits other than benefits under limited
15 benefits policy forms or certificates shall execute and
16 deliver to the insurance commissioner a loss ratio
17 guarantee, to be provided by the commissioner, which
18 guarantee shall be signed by an officer of the insurer.

19 (c) Each loss ratio guarantee shall contain, at a
20 minimum, the following:

21 (1) A recitation of the anticipated lifetime and
22 durational target loss ratios contained in the original
23 actuarial memorandum filed with the policy form when
24 it was originally approved;

25 (2) A guarantee that the actual West Virginia loss
26 ratios for the experience period in which the new rates
27 take effect, and for each experience period thereafter
28 until new rates are filed, will meet or exceed the
29 anticipated lifetime and durational target loss ratios
30 contained in the original actuarial memorandum noted

31 above;

32 (3) A guarantee that the actual West Virginia or, if
33 applicable, national, loss ratio results for the experience
34 period at issue will be independently audited at the
35 insurer's expense; that such audit will be completed in
36 the second quarter of the year following the end of the
37 experience period; and that the results of such audit will
38 be reported to the insurance commissioner not later than
39 the thirtieth day of June following the end of the
40 experience period;

41 (4) A guarantee that if the actual loss ratio during an
42 experience period is less than the anticipated loss ratio
43 for that period, then West Virginia policyholders will
44 receive a proportional refund based on premium earned,
45 which refunds shall be calculated and paid pursuant to
46 section thirty-nine of this article; and

47 (5) A guarantee that the insurer does not engage in
48 any discriminatory practices prohibited by section four,
49 article eleven of this chapter or any such practice which
50 discriminates against any individual on the basis of his
51 or her legal occupation, race, religion or residence.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-1a. Premium rate increase requests; loss ratio requirement.

1 To be eligible to make a premium rate increase
2 request after the first day of July, one thousand nine
3 hundred ninety-four, any insurer issuing accident and
4 sickness insurance policies which are subject to the
5 provisions of this article shall have a minimum antic-
6 ipated loss ratio of sixty-five percent. In calculating its
7 minimum anticipated loss ratio, an insurer shall include
8 in its actual incurred claims the amount of premium
9 taxes for the same experience period which are attrib-
10 utable to the policy forms affected by this section and
11 which were paid to the state of West Virginia pursuant
12 to the provisions of article three of this chapter.

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICK- NESS INSURANCE POLICIES.

- §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-12. Equality of terms; preexisting conditions; continuous coverage restrictions.

§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 carrier is in
5 compliance with the provisions of section five of this
6 article, based upon that person's examination, including
7 a review of the appropriate records and of the actuarial
8 assumptions and methods utilized by the carrier in
9 establishing premium rates for applicable health benefit
10 plans.

11 (b) "Base premium rate" means, for each class of
12 business as to a rating period, the lowest premium rate
13 charged or which could have been charged under a
14 rating system for that class of business by the small
15 employer carrier to small employers with similar case
16 characteristics for health benefit plans with the same or
17 similar coverage.

18 (c) "Carrier" means any person who provides accident
19 and sickness insurance in this state. For purposes of this
20 article, carrier includes a licensed insurance company;
21 a hospital service corporation, medical service corpora-
22 tion or health service corporation organized pursuant to
23 article twenty-four of this chapter; a health care
24 corporation organized pursuant to article twenty-five of
25 this chapter; a health maintenance organization organ-
26 ized pursuant to article twenty-five-a of this chapter; a
27 multiple-employer trust or multiple-employer welfare
28 arrangement; or any other person providing a plan of

29 accident and sickness insurance subject to state insu-
30 rance regulations.

31 (d) "Case characteristics" means demographic or other
32 relevant characteristics of a small employer, as deter-
33 mined by a small employer carrier, which are consi-
34 dered by the carrier in the determination of premium
35 rates for the small employer. Claim experience, health
36 status and duration of coverage since issue are not case
37 characteristics for the purposes of this article.

38 (e) "Class of business" means all or any distinct
39 grouping of small employers as shown on the records of
40 the small employer carrier, which shall be subject to the
41 following requirements:

42 (1) A distinct grouping may only be established by the
43 small employer carrier on the basis that the applicable
44 health benefit plans:

45 (A) Are marketed and sold through individuals and
46 organizations which are not participating in the
47 marketing or sale of other distinct groupings of small
48 employers for such small employer carrier;

49 (B) Have been acquired from another small employer
50 carrier as a distinct grouping of plans;

51 (C) Are provided through an association with mem-
52 bership of not less than two small employers which has
53 been formed for purposes other than obtaining insu-
54 rance; or

55 (D) Are in a class of business that meets the require-
56 ments for exception to the restrictions related to
57 premium rates provided in paragraph (A), subdivision
58 (1), subsection (a), section five of this article.

59 (2) A small employer carrier may establish no more
60 than two additional groupings under subdivision (1) of
61 this subsection on the basis of underwriting criteria
62 which are expected to produce substantial variation in
63 the health care costs.

64 (3) The commissioner may approve the establishment
65 of additional distinct groupings upon application to the
66 commissioner and a finding by the commissioner that

67 such action would enhance the efficiency and fairness of
68 the small employer insurance marketplace.

69 (f) "Commissioner" means the insurance commissioner
70 of West Virginia.

71 (g) "Department" means the department of insurance.

72 (h) "Health benefit plan" means any hospital or
73 medical expense incurred policy; health, hospital or
74 medical service corporation contract; plan provided by
75 a multiple-employer trust or a multiple-employer
76 welfare arrangement; health maintenance organization
77 contract offered by an employer; or any other policy or
78 plan issued by a carrier which provides health related
79 benefits to small employers: *Provided*, That for purposes
80 of this article, a health benefit plan shall not include
81 accident only, credit, dental or disability income
82 insurance; coverage issued as a supplement to liability
83 insurance; insurance arising out of a workers' compen-
84 sation or similar law; automobile medical-payment
85 insurance, or insurance under which benefits are
86 payable with or without regard to fault and which is
87 statutorily required to be contained in any liability
88 insurance policy or equivalent self-insurance.

89 (i) "Index rate" means for each class of business for
90 small employers with similar case characteristics the
91 arithmetic average of the applicable base premium rate
92 and the corresponding highest premium rate.

93 (j) "New business premium rate" means, for each class
94 of business as to a rating period, the premium rate
95 charged or offered by the small employer carrier to
96 small employers with similar case characteristics for
97 newly issued health benefit plans with the same or
98 similar coverage.

99 (k) "Rating period" means the calendar period of at
100 least twelve months for which premium rates estab-
101 lished by a small employer carrier are assumed to be
102 in effect, as determined by the small employer carrier.

103 (l) "Small employer" means any person, firm, corpo-
104 ration, partnership or association actively engaged in
105 business in the state of West Virginia for at least one

106 year who, on at least fifty percent of its working days
107 during the preceding year, employed no more than sixty
108 or not fewer than two eligible employees: *Provided*, That
109 companies which are affiliated companies or which are
110 eligible to file a combined tax return for state tax
111 purposes shall be considered one employer.

112 (m) "Small employer carrier" means any carrier
113 which offers health benefit plans covering the employees
114 of a small employer situate within the state of West
115 Virginia.

§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 one 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; viola-
tions and penalties.**

1 (a) All carriers 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 carriers 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) of this subsection for a period of
50 five years following the effective date of this article. In
51 that case, the percentage increase in the premium rate
52 charged to a small employer in such a class of business
53 for a new rating period may not exceed the sum of the
54 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) Adjustments in rates for claim experience, health
74 status and duration of coverage may not be charged to
75 individual employees or dependents. Any such adjust-
76 ment shall be applied uniformly to the rates charged for
77 all employees and dependents of the small employer.

78 (d) A small employer carrier shall utilize industry as
79 a case characteristic in establishing premium rates:
80 *Provided*, That the highest rate factor associated with
81 any industry classification shall not exceed the lowest
82 rate factor associated with any industry classification by
83 more than fifteen percent.

84 (e) Small employer carriers shall apply rating factors,
85 including case characteristics, consistently with respect
86 to all small employers in a class of business. Rating
87 factors shall produce premiums for identical groups
88 which differ only by amounts attributable to plan design
89 and do not reflect differences due to the nature of the
90 groups assumed to select particular health benefit plans.

91 (f) A small employer carrier may not involuntarily
92 transfer a small employer into or out of a class of
93 business. A small employer carrier may not offer to
94 transfer a small employer into or out of a class of
95 business unless such offer is made to transfer all small
96 employers in the class of business without regard to case
97 characteristics, claim experience, health status or
98 duration since issue.

99 (g) To be eligible to make a rate increase request after
100 the first day of July, one thousand nine hundred ninety-
101 three, a carrier shall have a minimum anticipated loss
102 ratio of seventy-three percent. In calculating its
103 minimum anticipated loss ratio, an insurer shall include
104 in its actual incurred claims the amount of premium
105 taxes for the same experience period which are attrib-
106 utable to the policy forms or certificates affected by this
107 section and which were paid to the state of West
108 Virginia pursuant to the provisions of article three of
109 this chapter.

110 (h) All insurance carriers subject to this article,
111 effective the first day of July, one thousand nine
112 hundred ninety-three, shall be prohibited from distin-
113 guishing more than four classes of business within its
114 small group insurance coverage.

115 (i) If any health benefit plan is provided by a carrier
116 through an association of small employers not in the
117 business of selling insurance and with not fewer than

118 two hundred cumulative employees, and if such associ-
119 ation is rated on the basis of the number of employees
120 and not on the basis of the individual small employers,
121 such association or group is exempt from the provisions
122 of this article.

§33-16D-6. Insurance commissioner to promulgate rules.

1 Pursuant to chapter twenty-nine-a of this code, the
2 insurance commissioner may promulgate rules neces-
3 sary to implement the provisions of this article.

§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 a carrier may refuse
4 to renew a health benefit plan for any of the following
5 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 fewer than the number or less than the percentage
12 of eligible individuals necessary pursuant to the
13 percentage 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 carrier may cease to renew all
18 plans under a class of business. Upon the small
19 employer's election of nonrenewal, the carrier 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) A carrier which exercises its right to cease to
26 renew all plans in a class of business may 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 carrier 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 carrier 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 carrier'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
15 coverage;

16 (5) The provisions relating to any preexisting conditions
17 limitations; and

18 (6) An explanation, if applicable, that the small
19 employer is purchasing a minimum benefits plan issued
20 pursuant to article sixteen-c of this chapter.

21 (b) All disclosure statements shall be presented in
22 clear and understandable form and format and shall be
23 separate from any policy, certificate or evidence of
24 coverage otherwise provided.

§33-16D-9. Maintenance of records.

1 (a) Each small employer carrier 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 documen-
5 tation which demonstrate that its rating methods and
6 practices are based upon commonly accepted actuarial
7 principles.

8 (b) Each small employer carrier shall file each first
9 day of March with the commissioner an actuarial
10 certification that the carrier is in compliance with the
11 provisions of section five of this article and that the
12 rating methods of the carrier are actuarially sound. A
13 copy of such certification shall be retained by the carrier
14 at its principal place of business.

15 (c) A small employer carrier 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 carrier and a
5 finding by the commissioner that either the suspension
6 is reasonable in light of the financial condition of the
7 carrier or that the suspension would enhance the
8 efficiency and fairness of the marketplace for small
9 employer health insurance.

**§33-16D-12. Equality of terms; preexisting conditions;
continuous coverage restrictions.**

1 Health benefit plans and, to the extent permitted by
2 the federal Employee Retirement Income Security Act
3 (ERISA), other benefit arrangements covering small
4 employers shall be subject to the following provisions:

5 (a) Preexisting conditions provisions may not exclude
6 coverage for a period beyond twelve months following
7 an individual's effective date of coverage and may only
8 relate to conditions which had, during the twelve
9 months immediately preceding the effective date of
10 coverage, manifested themselves in such a manner as

11 would cause an ordinarily prudent person to seek
 12 medical advice, diagnosis, care or treatment or for
 13 which medical advice, diagnosis, care or treatment was
 14 recommended or received, or as to a pregnancy existing
 15 on the effective date of coverage.

16 (b) In determining whether a preexisting condition
 17 limitation provision applies to an eligible employee or
 18 dependent, all health benefit plans shall credit the time
 19 such person was covered under a previous employer-
 20 based health benefit plan, a comparable individual
 21 health benefit plan, or a self-insured plan if the previous
 22 coverage was continuous to a date not more than thirty
 23 days prior to the effective date of the new coverage,
 24 exclusive of any applicable waiting period under such
 25 plan.

26 (c) Subject to subsections (a) and (b) of this section,
 27 when a small group employer converts its health benefit
 28 plan from one health benefit plan to another health
 29 benefit plan or from one carrier to another carrier, all
 30 eligible employees who at the time of conversion are
 31 covered by the health benefit plan shall be offered
 32 health benefits coverage under the subsequent plan, and
 33 no employee who at the time of conversion is covered by
 34 a health benefit plan offered by said employer may be
 35 treated any differently relative to other covered em-
 36 ployees under the new health benefit plan than he or she
 37 is treated under the current health benefit plan.

**ARTICLE 16E. LIMITED BENEFITS ACCIDENT AND SICKNESS
 INSURANCE POLICIES AND CERTIFICATES.**

- §33-16E-1. Scope of article.
- §33-16E-2. Definitions.
- §33-16E-3. Premium rate increase requests; loss ratio requirements.
- §33-16E-4. Premium refunds; calculation of refunds; payments.
- §33-16E-5. Statement of actual loss ratios to be filed with commissioner;
form; examinations.
- §33-16E-6. Notice of cancellation or nonrenewal.
- §33-16E-7. Prohibition against preexisting conditions, waiting periods,
elimination periods and probationary periods in replacement
policies or certificates.
- §33-16E-8. Extraterritorial jurisdiction.
- §33-16E-9. Applicability of other provisions.
- §33-16E-10. Commissioner to promulgate rules.
- §33-16E-11. Severability.

§33-16E-1. Scope of article.

1 The provisions of this article shall apply to all limited
2 benefits policies and certificates in force on the effective
3 date of this article, as well as to any limited benefits
4 policy or certificate delivered or issued for delivery in
5 this state after the effective date hereof.

§33-16E-2. Definitions.

1 For purposes of this article:

2 (a) "Limited benefits policy or certificate" means any
3 individual or group accident and sickness insurance
4 policy that is not required to offer or provide all benefits
5 mandated by any other applicable provision of this
6 chapter. Such policies include, but are not limited to,
7 accident and sickness disability, accident only, sickness
8 only disability, sickness only, accident only disability,
9 hospital indemnity, specified disease, and travel acci-
10 dent insurance policies: *Provided*, That the following
11 types of policies and certificates are excluded from the
12 definition of "limited benefits policy or certificate" for
13 purposes of this article:

14 (1) Credit accident and sickness insurance;

15 (2) Long-term care insurance;

16 (3) Medicare supplement insurance; and

17 (4) Minimum benefits accident and sickness insurance
18 issued pursuant to section fifteen, article fifteen or
19 article sixteen-c of this chapter.

20 (b) "Experience period" means the period beginning
21 on the first day of the calendar year during which a
22 premium rate first takes effect and ending on the last
23 day of the calendar year during which the insurer earns
24 five hundred thousand dollars in premiums on the form
25 in West Virginia or, if the annual premium earned on
26 the form in West Virginia is less than five hundred
27 thousand dollars, earns nationally.

28 (c) "Successive experience period" means the expe-
29 rience period beginning on the first day following the
30 end of the preceding experience period.

§33-16E-3. Premium rate increase requests; loss ratio requirements.

1 (a) To be eligible to make a premium rate increase
2 request after the first day of July, one thousand nine
3 hundred ninety-three, any insurer offering a limited
4 benefits policy form or certificate form in West Virginia
5 shall be expected to return to policyholders and
6 certificateholders in the form of five-year aggregate loss
7 ratios under the policy form or certificate form:

8 (1) At least seventy-five percent of the earned
9 premiums in the case of a group policy or certificate;

10 (2) At least sixty-five percent of the earned premiums
11 in the case of an individual policy; and

12 (3) At least fifty-five percent of the earned premiums
13 in the case of an individual or group accident and
14 sickness disability policy or certificate.

15 (b) With respect to a policy form or certificate form
16 which has been offered by an insurer in West Virginia
17 or nationally for five years or less the insurer may use
18 the anticipated loss ratio filed with and approved by the
19 commissioner for that form to determine compliance
20 with the requirements of this section.

21 (c) For purposes of this section, limited benefits
22 policies and certificates issued as a result of solicitation
23 of individuals through the mail or mass media adver-
24 tising, including both print and broadcast advertising,
25 shall be treated as individual policies.

§33-16E-4. Premium refunds; calculation of refunds; payments.

1 (a) Beginning on the first day of July, one thousand
2 nine hundred ninety-four, any insurer offering a limited
3 benefits policy or certificate in West Virginia shall
4 make premium refunds to policyholders and certificate-
5 holders if it fails to return to such policyholders and
6 certificateholders in the form of annual loss ratios under
7 the policy or certificate:

8 (1) At least sixty-five percent of the earned premiums
9 in the case of a group policy or certificate;

10 (2) At least fifty-five percent of the earned premiums
11 in the case of an individual policy; and

12 (3) At least forty-five percent of the earned premiums
13 in the case of an individual or group accident and
14 sickness disability policy or certificate.

15 (b) With respect to a policy form or certificate form
16 which has been offered by an insurer either in West
17 Virginia or nationally for more than five years, refunds
18 to West Virginia policyholders or certificateholders
19 made pursuant to the requirements of this section and
20 based upon annual earned premium volume in West
21 Virginia shall be calculated by multiplying the antici-
22 pated loss ratio by the applicable earned premium
23 during the experience period and subtracting from that
24 result the actual incurred claims during the experience
25 period.

26 (c) With respect to a policy form or certificate form
27 which has been offered by an insurer for more than five
28 years, refunds to West Virginia policyholders or
29 certificateholders made pursuant to the requirements of
30 this section and based upon national annual earned
31 premium volume shall be calculated by:

32 (1) Multiplying the anticipated loss ratio by the
33 applicable earned premium during the experience
34 period and subtracting from that result the actual
35 incurred claims during the experience period; and

36 (2) Multiplying the results of subdivision (1) of this
37 subsection by the total earned premium during the
38 experience period from all West Virginia policyholders
39 or certificateholders eligible for refunds; and

40 (3) Dividing the results of subdivision (2) of this
41 subsection by the total earned premium during that
42 period in all states on the policy form.

43 (d) With respect to a policy form or certificate form
44 which has been offered by an insurer in West Virginia
45 or nationally for five years or less, the insurer may use
46 the anticipated loss ratio filed with and approved by the
47 commissioner to determine the amount of premium
48 refunds, if any, that must be made pursuant to subsec-

49 tion (a) of this section.

50 (e) Refunds shall be made to all West Virginia
51 policyholders and certificateholders who are insured
52 under the applicable policy form or certificate as of the
53 last day of the experience period. Such refund shall
54 include interest, at the current accident and health
55 reserve interest rate established by the national associ-
56 ation of insurance commissioners, from the end of the
57 experience period until the date of payment. Payment
58 shall be made during the third quarter of the year
59 following the experience period for which a refund is
60 determined to be due.

61 (f) Refunds of less than ten dollars shall be aggregated
62 and held by the insurer in a policyholders' and certifi-
63 cateholders' liability fund and shall be used to offset any
64 future rate increases.

**§33-16E-5. Statement of actual loss ratios to be filed with
commissioner; form; examinations.**

1 (a) Every insurer offering limited benefits policy
2 forms or certificate forms which have been in effect for
3 five years or more in West Virginia shall file with the
4 commissioner, on or before the first day of September
5 of each year, a statement of the actual loss ratios for
6 each policy form or certificate form issued in this state.
7 Such statement shall be made under the oath of the
8 insurer's president or other authorized officer on a form
9 prescribed by the commissioner.

10 (b) The commissioner shall have the authority to
11 examine the records and files of any insurer offering
12 limited benefits policy forms or certificate forms in
13 West Virginia to determine compliance with the
14 provisions of this article.

§33-16E-6. Notice of cancellation or nonrenewal.

1 No insurer may cancel or nonrenew a limited benefits
2 policy or certificate unless written notice of such
3 cancellation or nonrenewal is forwarded to the policy-
4 holder or certificateholder not less than sixty days prior
5 to the expiration date of the policy or certificate.

§33-16E-7. Prohibition against preexisting conditions, waiting periods, elimination periods and probationary periods in replacement policies or certificates.

1 (a) If a limited benefits policy or certificate replaces
2 another limited benefits policy or certificate providing
3 similar coverage, the replacing insurer shall waive any
4 time periods applicable to preexisting conditions,
5 waiting periods, elimination periods and probationary
6 periods in the new limited benefits policy or certificate
7 to the extent that such time was spent under the original
8 policy or certificate.

9 (b) If a limited benefits policy or certificate replaces
10 another limited benefits policy or certificate providing
11 similar coverage that has been in effect for at least six
12 months, the replacing policy may not provide any time
13 periods applicable to preexisting conditions, waiting
14 periods, elimination periods and probationary periods.

§33-16E-8. Extraterritorial jurisdiction.

1 (a) No limited benefits policy or certificate may be
2 offered to a resident of this state under a policy issued
3 in another state, unless this state or another state having
4 statutory and regulatory limited benefits policy or
5 certificate requirements substantially similar to those
6 adopted in this state has made a determination that such
7 requirements have been met.

8 (b) Any such limited benefits policy form or certifi-
9 cate form offered to a resident of this state under a
10 policy issued in another state shall be filed with the
11 insurance commissioner.

§33-16E-9. Applicability of other provisions.

1 Except as otherwise provided, and except where the
2 context clearly requires otherwise, all the provisions of
3 article fifteen of this chapter are applicable to individ-
4 ual limited benefits policies and all provisions of article
5 sixteen of this chapter are applicable to group limited
6 benefits policies and certificates.

§33-16E-10. Commissioner to promulgate rules.

1 The commissioner may promulgate rules in accor-
 2 dance with the provisions of chapter twenty-nine-a of
 3 this code regarding the implementation, regulation and
 4 enforcement of the provisions of this article.

§33-16E-11. Severability.

1 If any provision of this article or the application
 2 thereof to any person or circumstance is for any reason
 3 held to be invalid, the remainder of the article and
 4 application of such provision to other persons or
 5 circumstances shall not be affected thereby.

CHAPTER 74

(Com. Sub. for H. B. 2182—By Delegates Phillips, Gallagher, Vest and Michael)

[Passed April 9, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article twelve, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to prohibiting an insurance agent from transacting any business with unlicensed insurers, brokers or solicitors or transacting any business on behalf of an insurer prior to being appointed as agent for such insurer; exceptions.

Be it enacted by the Legislature of West Virginia:

That section nineteen, article twelve, 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 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-19. Agent to deal only with licensed insurer, broker or solicitor; appointment as agent required prior to transacting business.

1 (a) An agent may not accept any risk, place any
 2 insurance or issue any policy except with an insurer
 3 licensed in this state and for which insurer such agent
 4 has been appointed and licensed.

5 (b) An agent may not accept any contract of insurance
6 from any broker not licensed in this state.

7 (c) An agent may not employ or accept the services
8 of any solicitor not duly appointed and licensed as
9 solicitor for such agent.

10 (d) An agent may not solicit, market, sell or transact
11 any business of any kind on behalf of any insurer until
12 after the agent has been appointed as agent for that
13 insurer pursuant to the provisions of this article and
14 such appointment has been approved by the commis-
15 sioner of insurance.

16 (e) Notwithstanding any other provision in this section
17 to the contrary, an agent may, without an appointment,
18 submit to an insurer an inquiry and obtain a bid for any
19 kind of life insurance, health insurance or annuity for
20 which the agent has a valid and effective license if due
21 insurer has a valid and effective certificate of authority
22 under this article for the kind of insurance with respect
23 to which the inquiry is made.

CHAPTER 75

(Com. Sub. for H. B. 2440—By Delegates Phillips, Farris, Louisos,
L. White and Beane)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twelve, 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 thirty; and to amend article twelve-b of said chapter by adding thereto a new section, designated section fourteen, all relating to the requirement of agents, solicitors, excess line brokers, service representatives and adjusters to keep current addresses on file with the insurance commissioner so that proper notices of hearing can be served; requiring procedures for serving notice of hearing; permitting hearings to proceed if individual fails to appear; requiring evidence at hearings; setting an appeal period for reconsideration

and judicial review.

Be it enacted by the Legislature of West Virginia:

That article twelve, 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 thirty; and that article twelve-b of said chapter be amended by adding thereto a new section, designated section fourteen, all to read as follows:

Article

12. Agents, Brokers, Solicitors and Excess Line.

12B. Adjusters.

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINE.

§33-12-30. Notice of hearing before the commissioner; failure to appear; entry of orders; appeal.

1 (a) When conducting any hearing authorized by
2 section thirteen, article two of this chapter which
3 concerns any agent, solicitor, excess line broker or
4 service representative, the commissioner shall give
5 notice of such hearing and the matters to be determined
6 therein to such agent, solicitor, excess line broker or
7 service representative by certified mail, return receipt
8 requested, sent to the last address filed by such person
9 or entity pursuant to section twenty-nine of this article.

10 (b) If an agent, solicitor, excess line broker or service
11 representative fails to appear at such hearing, the
12 hearing may proceed, at which time the commissioner
13 shall establish that notice was sent to such person
14 pursuant to this section prior to the entry of any orders
15 adverse to the interests of such agent, solicitor, excess
16 line broker or service representative based upon the
17 allegations against such person which were set forth in
18 the notice of hearing. Certified copies of all orders
19 entered by the commissioner shall be sent to the person
20 affected therein by certified mail, return receipt
21 requested, at the last address filed by such person with
22 the division.

23 (c) An agent, solicitor, excess line broker or service
24 representative who fails to appear at a hearing of which

25 notice has been provided pursuant to this section, and
26 who has had an adverse order entered by the commis-
27 sioner against them as a result of their failure to so
28 appear may, within thirty calendar days of the entry of
29 such adverse order, file with the commissioner a written
30 verified appeal with any relevant documents attached
31 thereto, which demonstrates good and reasonable cause
32 for such person's failure to appear, and may request
33 reconsideration of the matter and a new hearing. The
34 commissioner in his discretion, and upon a finding that
35 the agent, solicitor, excess line broker or service
36 representative has shown good and reasonable cause for
37 his failure to appear, shall issue an order that the
38 previous order be rescinded, that the matter be recon-
39 sidered, and that a new hearing be set.

40 (d) Orders entered pursuant to this section are
41 subject to the judicial review provisions of section
42 fourteen, article two of this chapter.

ARTICLE 12B. ADJUSTERS.

§33-12B-14. Current address of adjusters to be filed; effective notice of appearance at hearing before commissioner.

1 (a) Each adjuster shall file with the commissioner the
2 complete address of his principal place of business and
3 the complete address of his residence including the
4 name and number of the street, or if the street where
5 the business is located is not numbered, the number of
6 the post office box. Within thirty days of a change of
7 business or residence address by an adjuster the
8 adjuster must file with the commissioner notice of such
9 change of address.

10 (b) When conducting any hearing authorized by
11 section thirteen, article two of this chapter which
12 concerns any adjuster, the commissioner shall give
13 notice of such hearing and the matters to be determined
14 therein to such adjuster by certified mail, return receipt
15 requested, sent to the last address filed by such person
16 or entity pursuant to this section.

17 (c) If an adjuster fails to appear at such hearing, the

18 hearing may proceed, at which time the commissioner
19 shall establish that notice was sent to such person
20 pursuant to this section prior to the entry of any orders
21 adverse to the interests of such adjuster based upon the
22 allegations against such person which were set forth in
23 the notice of hearing. Certified copies of all orders
24 entered by the commissioner shall be sent to the person
25 affected therein by certified mail, return receipt
26 requested, at the last address filed by such person with
27 the division.

28 (d) An adjuster who fails to appear at a hearing of
29 which notice has been provided pursuant to this section,
30 and who has had an adverse order entered by the
31 commissioner against them as a result of their failure
32 to so appear may, within thirty calendar days of the
33 entry of such adverse order, file with the commissioner
34 a written verified appeal with any relevant documents
35 attached thereto, which demonstrates good and reason-
36 able cause for the adjuster's failure to appear, and may
37 request reconsideration of the matter and a new
38 hearing. The commissioner in his discretion, and upon
39 a finding that the adjuster has shown good and reason-
40 able cause for his failure to appear shall issue an order
41 that the previous order be rescinded, that the matter be
42 reconsidered, and that a new hearing be set.

43 (e) Orders entered pursuant to this section are subject
44 to the judicial review provisions of section fourteen,
45 article two of this chapter.

CHAPTER 76

(Com. Sub. for H. B. 2758—By Delegates Carper, Ashley,
L. White, Rutledge and Douglas)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections four, five, six and eight, article twelve-b, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section eleven-

a, all relating to insurance adjusters; license requirements and exceptions; applications for licenses; fees and exceptions; authorizing emergency insurance adjusters; application of insurance company; approval and limitations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12B. ADJUSTERS.

§33-12B-4. License required; exception for emergency adjusters.

§33-12B-5. Qualifications for adjuster's license; examinations; exemptions.

§33-12B-6. Application.

§33-12B-8. License fee; exemptions.

§33-12B-11a. Emergency adjusters and insurance emergencies; definitions; authorization of temporary emergency adjusters; applications; limitations and authority.

§33-12B-4. License required; exception for emergency adjusters.

1 No person shall in West Virginia act as or hold
2 himself out to be an adjuster unless then licensed
3 therefor pursuant to this article: *Provided*, That the
4 provisions of this section do not apply to emergency
5 insurance adjusters as defined in section eleven-a of this
6 article.

§33-12B-5. Qualifications for adjuster's license; examinations; exemptions.

1 (a) For the protection of the people of West Virginia,
2 the commissioner shall not issue, renew or permit to
3 exist any adjuster's license, except to an individual who:

4 (1) Is eighteen years of age or more.

5 (2) Is a resident of West Virginia, except for nonres-
6 ident adjusters as provided in section nine of this article.

7 (3) Satisfies the commissioner that he is trustworthy
8 and competent.

9 (b) For purposes of subdivision (3) of subsection (a)
10 herein, the commissioner may, at his discretion, test the
11 competency of an applicant for a license under this
12 section by examination. If such examination is required
13 by the commissioner, each examinee shall pay a twenty-
14 five dollar examination fee for each examination to the
15 commissioner which fees shall be used for the purposes
16 set forth in section thirteen, article three of this chapter.
17 The commissioner may, at his discretion, designate an
18 independent testing service to prepare and administer
19 such examination subject to direction and approval by
20 the commissioner, and examination fees charged by
21 such service shall be paid by the applicant.

22 (c) Any applicant who is engaged in the practice of
23 professional insurance adjusting prior to the first day of
24 July, one thousand nine hundred eighty-nine, shall be
25 exempt from the examination requirement of subsection
26 (b) of this section.

27 (d) The requirements of this section shall not apply
28 to licenses issued to emergency adjusters as defined in
29 section eleven-a of this article.

§33-12B-6. Application.

1 (a) Application for an adjuster's license or renewal
2 thereof or emergency adjusters' licenses shall be made
3 to the commissioner upon a form prescribed by him and
4 shall contain such information and be accompanied by
5 such supporting documents as the commissioner may
6 require, and the commissioner may require such
7 application to be made under the applicant's oath.

8 (b) Willful misrepresentation of any fact in any such
9 application or any documents in support thereof is a
10 violation of this chapter.

§33-12B-8. License fee; exemptions.

1 The fee for an adjuster's license shall be twenty-five
2 dollars as provided in section thirteen, article three of
3 this chapter: *Provided*, That when any other state
4 imposes a tax, bond, fine, penalty, license fee or other
5 obligation or prohibition on adjusters resident in this

6 state, the same tax, bond, fine, penalty, license fee or
7 other obligation or prohibition shall be imposed upon
8 adjusters (where licensing of nonresident adjusters is
9 permitted under this article) of each other state licensed
10 or seeking a license in this state. All fees and moneys
11 so collected shall be used for the purposes set forth in
12 section thirteen, article three of this chapter: *Provided,*
13 *however,* That the provisions of this section shall not
14 apply to emergency insurance adjusters as defined in
15 section eleven-a of this article.

§33-12B-11a. Emergency adjusters and insurance emergencies; definitions; authorization of temporary emergency adjusters; applications; limitations and authority.

1 (a) For purposes of this section, the following defini-
2 tions shall apply:

3 (1) "Emergency adjuster" means an individual
4 authorized by the commissioner to act as an insurance
5 adjuster in the circumstances of an insurance
6 emergency.

7 (2) "Insurance emergency" means a temporary
8 situation as declared by the insurance commissioner
9 when the number of licensed adjusters in the state of
10 West Virginia is inadequate to meet the demands of the
11 public.

12 (b) Whenever the commissioner determines that a
13 state insurance emergency exists in the state of West
14 Virginia, the commissioner may authorize individuals to
15 be emergency adjusters. The commissioner may autho-
16 rize such number of additional adjusters as he considers
17 necessary to adequately address the emergency condi-
18 tion existing in the state.

19 (c) Any insurance company licensed to do business in
20 this state may submit to the commissioner an applica-
21 tion requesting appointment and authorization of one or
22 more emergency adjusters. Each such application shall
23 state the names of any individuals that the company
24 wishes to be authorized as emergency adjusters and
25 other information as the commissioner may require.

26 (d) The commissioner shall act on the application
27 within twenty-four hours after such application has been
28 submitted to him. Emergency adjusters shall be
29 authorized to act as such only upon approval of the
30 application by the commissioner.

31 (e) Any such emergency license is valid only for so
32 long as the commissioner specifies, not to exceed a
33 period of one hundred twenty days.

34 (f) During the time an individual is licensed as an
35 emergency adjuster, he or she has the same power,
36 authority and responsibility as other adjusters autho-
37 rized by this article.

CHAPTER 77

(Com. Sub. for S. B. 326—By Senators Minard and Helmick)

[Passed April 5, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section four, article twenty-four of said chapter; to amend and reenact section six, article twenty-five of said chapter; and to amend and reenact section twenty-four, article twenty-five-a of said chapter, all relating to the promulgation of rules for minimum policy provisions on group accident and sickness coverage; applying the same to hospital service corporations, medical service corporations, dental service corporations, health service corporations, health care corporations and health maintenance organizations.

Be it enacted by the Legislature of West Virginia:

That section three, article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section four, article twenty-four of said chapter be amended and reenacted; that section six, article twenty-five of said chapter be amended and reenacted; and that section twenty-four, article twenty-

five-a of said chapter be amended and reenacted, all to read as follows:

Article

16. **Group Accident and Sickness Insurance.**
24. **Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.**
25. **Health Care Corporations.**
- 25A. **Health Maintenance Organization Act.**

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3. Required policy provisions.

1 Each such policy hereafter delivered or issued for
2 delivery in this state shall contain in substance the
3 following provisions:

4 (a) A provision that the policy, the application of the
5 policyholder, a copy of which shall be attached to such
6 policy, and the individual applications, if any, submitted
7 in connection with such policy by the employees or
8 members shall constitute the entire contract between
9 the parties, and that all statements made by any
10 applicant or applicants shall be deemed representations
11 and not warranties, and that no such statement shall
12 void the insurance or reduce benefits thereunder unless
13 contained in a written application.

14 (b) A provision that the insurer will furnish to the
15 policyholder, for delivery to each employee or member
16 of the insured group, an individual certificate setting
17 forth in substance the essential features of the insurance
18 coverage of such employee or member and to whom
19 benefits thereunder are payable. If dependents are
20 included in the coverage, only one certificate need be
21 issued for each family unit.

22 (c) A provision that all new employees or members,
23 as the case may be, in the groups or classes eligible for
24 insurance, shall from time to time be added to such
25 groups or classes eligible to obtain such insurance in
26 accordance with the terms of the policy.

27 (d) No provision relative to notice or proof of loss or
28 the time for paying benefits or the time within which

29 suit may be brought upon the policy shall be less
30 favorable to the insured than would be permitted in the
31 case of an individual policy by the provisions set forth
32 in article fifteen of this chapter.

33 (e) A provision that all members in groups or classes
34 eligible for insurance provided through an employee's
35 group plan shall be permitted to pay the premiums at
36 the same group rate and receive the same coverages for
37 a period not to exceed eighteen months when they are
38 involuntarily laid off from work.

39 (f) Such further provisions establishing group acci-
40 dent and sickness minimum policy coverage standards
41 as the commissioner shall promulgate by rule pursuant
42 to chapter twenty-nine-a of this code.

**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 corporation defined in section two of this
2 article is hereby declared to be a scientific, nonprofit
3 institution and exempt from the payment of all property
4 and other taxes. Every corporation, to the same extent
5 the provisions are applicable to insurers transacting
6 similar kinds of insurance and not inconsistent with the
7 provisions of this article, shall be governed by and be
8 subject to the provisions as hereinbelow indicated, of the
9 following articles of this chapter: Article two (insurance
10 commissioner), except that, under section nine of said
11 article, examinations shall be conducted at least once
12 every four years; article four (general provisions), except
13 that section sixteen of said article shall not be applicable
14 thereto; section thirty-four, article six (fee for form and
15 rate filing); article six-c (guaranteed loss ratio); article
16 seven (assets and liabilities); article eleven (unfair trade
17 practices); article twelve (agents, brokers and solicitors),
18 except that the agent's license fee shall be five dollars;
19 section fourteen, article fifteen (individual accident and

* Clerk's Note: This section was also amended by H. B. 2286 (Chapter 67) and H. B. 2181 (Chapter 79), which passed subsequent to this act.

20 sickness insurance); article fifteen-a (long-term care
21 insurance); section three, article sixteen (required policy
22 provisions); section three-a, article sixteen (mental
23 illness); section three-c, article sixteen (group accident
24 and sickness insurance); section three-d, article sixteen
25 (medicare supplement insurance); section three-f, article
26 sixteen (treatment of temporomandibular joint disorder
27 and craniomandibular disorder); article sixteen-a (group
28 health insurance conversion); article sixteen-c (small
29 employer group policies); article sixteen-d (marketing
30 and rate practices for small employers); article twenty-
31 six-a (West Virginia life and health insurance guaranty
32 association act), after the first day of October, one
33 thousand nine hundred ninety-one; article twenty-seven
34 (insurance holding company systems); article twenty-
35 eight (individual accident and sickness insurance
36 minimum standards); article thirty-three (annual
37 audited financial report); article thirty-four (administra-
38 tive supervision); article thirty-four-a (standards and
39 commissioner's authority for companies deemed to be in
40 hazardous financial condition); article thirty-five
41 (criminal sanctions for failure to report impairment);
42 and article thirty-seven (managing general agents); and
43 no other provision of this chapter may apply to these
44 corporations unless specifically made applicable by the
45 provisions of this article. If, however, the corporation is
46 converted into a corporation organized for a pecuniary
47 profit or if it transacts business without having obtained
48 a license as required by section five of this article, it
49 shall thereupon forfeit its right to these 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 are subject
2 to supervision and regulation of the insurance commis-
3 sioner. The corporations organized under this article, to
4 the same extent these provisions are applicable to
5 insurers transacting similar kinds of insurance and not

* Clerk's Note: This section was also amended by H. B. 2286 (Chapter 67) and H. B. 2181 (Chapter 79), which passed subsequent to this act.

6 inconsistent with the provisions of this article, shall be
7 governed by and be subject to the provisions as
8 hereinbelow indicated, of the following articles of this
9 chapter: Article four (general provisions), except that
10 section sixteen of said article shall not be applicable
11 thereto; article six-c (guaranteed loss ratio); article
12 seven (assets and liabilities); article eight (investments);
13 article ten (rehabilitation and liquidation); section
14 fourteen, article fifteen (individual accident and sick-
15 ness insurance); section three, article sixteen (required
16 policy provisions); article sixteen-a (group health
17 insurance conversion); article sixteen-c (small employer
18 group policies); article sixteen-d (marketing and rate
19 practices for small employers); article twenty-six-a
20 (West Virginia life and health insurance guaranty
21 association act); article twenty-seven (insurance holding
22 company systems); article thirty-three (annual audited
23 financial report); article thirty-four-a (standards and
24 commissioner's authority for companies deemed to be in
25 hazardous financial condition); article thirty-five
26 (criminal sanctions for failure to report impairment);
27 and article thirty-seven (managing general agents); and
28 no other provision of this chapter may apply to these
29 corporations unless specifically made applicable by the
30 provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

***§33-25A-24. Statutory construction and relationship to other laws.**

1 (a) Except as otherwise provided in this article,
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

*Clerk's Note: This section was also amended by H. B. 2181 (Chapter 79), which passed subsequent to this act.

11 activities authorized and regulated pursuant to this
12 article.

13 (b) 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
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 con-
25 cerning any provider.

26 (c) 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 (d) The provisions of section fifteen, article four
32 (general provisions); article six-c (guaranteed loss ratio);
33 article seven (assets and liabilities); article eight
34 (investments); section fourteen, article fifteen (individ-
35 ual accident and sickness insurance); article fifteen-b
36 (uniform health care administration act); section three,
37 article sixteen (required policy provisions); section
38 three-f, article sixteen (treatment of temporomandibular
39 disorder and craniomandibular disorder); article six-
40 teen-a (group health insurance conversion); article
41 sixteen-c (small employer group policies); article
42 sixteen-d (marketing and rate practices for small
43 employers); article twenty-seven (insurance holding
44 company systems); article thirty-four-a (standards and
45 commissioner's authority for companies deemed to be in
46 hazardous financial condition); article thirty-five
47 (criminal sanctions for failure to report impairment)
48 and article thirty-seven (managing general agents) shall
49 be applicable to any health maintenance organization
50 granted a certificate of authority under this article.

51 (e) Any long-term care insurance policy delivered or
52 issued for delivery in this state by a health maintenance
53 organization shall comply with the provisions of article
54 fifteen-a of this chapter.

CHAPTER 78

(S. B. 282—By Senators Minard and Helmick)

[Passed April 7, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three-d, article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section five-b, article twenty-eight of said chapter, all relating to medicare supplement insurance; revising the definition of medicare supplement policy; requiring disclosure in a medicare supplement policy of any automatic renewal premium increases based on a policyholder's age; increasing the free examination period from ten to thirty days for a medicare supplement policy issued other than by direct response solicitation; requiring that any premium refund requested pursuant to a free examination of such a policy be paid directly to the policy applicant in a timely manner; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That section three-d, article sixteen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section five-b, article twenty-eight of said chapter be amended and reenacted, all to read as follows:

Article

16. Group Accident and Sickness Insurance.

28. Individual Accident and Sickness Insurance Minimum Standards.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3d. Medicare supplement insurance.

1 (a) *Definitions.* —

2 (1) "Applicant" means, in the case of a group medicare
3 supplement policy or subscriber contract, the proposed
4 certificate holder.

5 (2) "Certificate" means, for the purposes of this
6 section, any certificate issued under a group medicare
7 supplement policy, which policy has been delivered or
8 issued for delivery in this state.

9 (3) "Medicare supplement policy" means a group
10 policy of accident and sickness insurance or a subscriber
11 contract (of hospital and medical service corporations or
12 health maintenance organizations), other than a policy
13 issued pursuant to a contract under Section 1876 or 1833
14 of the federal Social Security Act (42 U.S.C. Section
15 1395 et seq.) or an issued policy under a demonstration
16 project authorized pursuant to amendments to the
17 federal Social Security Act, which is advertised,
18 marketed or designed primarily as a supplement to
19 reimbursements under medicare for the hospital,
20 medical or surgical expenses of persons eligible for
21 medicare. Such term does not include:

22 (A) A policy or contract of one or more employers or
23 labor organizations, or of the trustees of a fund
24 established by one or more employers or labor organ-
25 izations, or a combination thereof, for employees or
26 former employees, or combination thereof, or for
27 members or former members, or combination thereof,
28 of the labor organizations; or

29 (B) A policy or contract of any professional, trade or
30 occupational association for its members or former or
31 retired members, or combination thereof, if such
32 association is composed of individuals all of whom are
33 actively engaged in the same profession, trade or
34 occupation; has been maintained in good faith for
35 purposes other than obtaining insurance; and has been
36 in existence for at least two years prior to the date of
37 its initial offering of such policy or plan to its members;
38 or

39 (C) Individual policies or contracts issued pursuant to
40 a conversion privilege under a policy or contract of
41 group or individual insurance when such group or

42 individual policy or contract includes provisions which
43 are inconsistent with the requirements of this section.

44 (4) "Medicare" means the Health Insurance for the
45 Aged Act, Title XVIII of the Social Security Amend-
46 ments of 1965, as then constituted or later amended.

47 (b) *Standards for policy provisions.* —

48 (1) The commissioner shall issue reasonable rules to
49 establish specific standards for policy provisions of
50 medicare supplement policies. Such standards shall be
51 in addition to and in accordance with the applicable
52 laws of this state and may cover, but shall not be limited
53 to:

54 (A) Terms of renewability;

55 (B) Initial and subsequent conditions of eligibility;

56 (C) Nonduplication of coverage;

57 (D) Probationary period;

58 (E) Benefit limitations, exceptions and reductions;

59 (F) Elimination period;

60 (G) Requirements for replacement;

61 (H) Recurrent conditions; and

62 (I) Definitions of terms.

63 (2) The commissioner may issue reasonable rules that
64 specify prohibited policy provisions not otherwise
65 specifically authorized by statute which, in the opinion
66 of the commissioner, are unjust, unfair or unfairly
67 discriminatory to any person insured or proposed for
68 coverage under a medicare supplement policy.

69 (3) Notwithstanding any other provisions of the law,
70 a medicare supplement policy may not deny a claim for
71 losses incurred more than six months from the effective
72 date of coverage for a preexisting condition. The policy
73 may not define a preexisting condition more restric-
74 tively than a condition for which medical advice was
75 given or treatment was recommended by or received
76 from a physician within six months before the effective

77 date of coverage.

78 (c) *Minimum standards for benefits.* — The commis-
79 sioner shall issue reasonable rules to establish minimum
80 standards for benefits under medicare supplement
81 policies.

82 (d) *Loss ratio standards.* — Medicare supplement
83 policies shall be expected to return to policyholders
84 benefits which are reasonable in relation to the pre-
85 mium charge. The commissioner shall issue reasonable
86 rules to establish minimum standards for loss ratios and
87 for medicare supplement policies on the basis of
88 incurred claims experience and earned premiums for
89 the entire period for which rates are computed to
90 provide coverage and in accordance with accepted
91 actuarial principles and practices. For purposes of rules
92 issued pursuant to this subsection, medicare supplement
93 policies issued as a result of solicitations of individuals
94 through the mail or mass media advertising, including
95 both print and broadcast advertising, shall be treated
96 as individual policies.

97 (e) *Disclosure standards.* —

98 (1) In order to provide for full and fair disclosure in
99 the sale of accident and sickness policies, to persons
100 eligible for medicare, the commissioner may require by
101 rule that no policy of accident and sickness insurance
102 may be issued for delivery in this state and no certificate
103 may be delivered pursuant to such a policy unless an
104 outline of coverage is delivered to the applicant at the
105 time application is made.

106 (2) The commissioner shall prescribe the format and
107 content of the outline of coverage required by subdivi-
108 sion (1) above. For purposes of this subdivision, "format"
109 means style, arrangements and overall appearance,
110 including such items as size, color and prominence of
111 type and the arrangement of text and captions. Such
112 outline of coverage shall include:

113 (A) A description of the principal benefits and
114 coverage provided in the policy;

115 (B) A statement of the exceptions, reductions and

116 limitations contained in the policy;

117 (C) A statement of the renewal provisions including
118 any reservation by the insurer of the right to change
119 premiums and disclosure of the existence of any
120 automatic renewal premium increases based on the
121 policyholder's age;

122 (D) A statement that the outline of coverage is a
123 summary of the policy issued or applied for and that the
124 policy should be consulted to determine governing
125 contractual provisions.

126 (3) The commissioner may prescribe by rule a
127 standard form and the contents of an informational
128 brochure for persons eligible for medicare, which is
129 intended to improve the buyer's ability to select the most
130 appropriate coverage and improve the buyer's under-
131 standing of medicare. Except in the case of direct
132 response insurance policies, the commissioner may
133 require by rule that the information brochure be
134 provided to any prospective insureds eligible for
135 medicare concurrently with delivery of the outline of
136 coverage. With respect to direct response insurance
137 policies, the commissioner may require by rule that the
138 prescribed brochure be provided upon request to any
139 prospective insureds eligible for medicare, but in no
140 event later than the time of policy delivery.

141 (4) The commissioner may further promulgate rea-
142 sonable rules to govern the full and fair disclosure of the
143 information in connection with the replacement of
144 accident and sickness policies, subscriber contracts or
145 certificates by persons eligible for medicare.

146 (f) *Notice of free examination.* — Medicare supplement
147 policies or certificates, other than those issued pursuant
148 to direct response solicitation, shall have a notice
149 prominently printed on the first page of the policy or
150 attached thereto stating in substance that the applicant
151 shall have the right to return the policy or certificate
152 within thirty days from its delivery and have the
153 premium refunded if, after examination of the policy or
154 certificate, the applicant is not satisfied for any reason.
155 Any refund made pursuant to this section shall be paid

156 directly to the applicant by the issuer in a timely
157 manner. Medicare supplement policies or certificates
158 issued pursuant to a direct response solicitation to
159 persons eligible for medicare shall have a notice
160 prominently printed on the first page or attached
161 thereto stating in substance that the applicant shall have
162 the right to return the policy or certificate within thirty
163 days of its delivery and to have the premium refunded
164 if, after examination, the applicant is not satisfied for
165 any reason. Any refund made pursuant to this section
166 shall be paid directly to the applicant by the issuer in
167 a timely manner.

168 (g) *Administrative procedures.* — Rules promulgated
169 pursuant to this section shall be subject to the provisions
170 of chapter twenty-nine-a (the West Virginia Administra-
171 tive Procedures Act) of this code.

172 (h) *Severability.* — If any provision of this section or
173 the application thereof to any person or circumstance is
174 for any reason held to be invalid, the remainder of the
175 section and the application of such provision to other
176 persons or circumstances shall not be affected thereby.

**ARTICLE 28. INDIVIDUAL ACCIDENT AND SICKNESS INSU-
RANCE MINIMUM STANDARDS.**

§33-28-5b. Medicare supplement insurance.

1 (a) *Definitions.* —

2 (1) "Applicant" means, in the case of an individual
3 medicare supplement policy or subscriber contract, the
4 person who seeks to contract for insurance benefits.

5 (2) "Medicare supplement policy" means an individual
6 policy of accident and sickness insurance or a subscriber
7 contract (of hospital and medical service corporations or
8 health maintenance organizations), other than a policy
9 issued pursuant to a contract under Section 1876 or 1833
10 of the federal Social Security Act (42 U.S.C. Section
11 1395 et seq.), or an issued policy under a demonstration
12 project authorized pursuant to amendments to the
13 federal Social Security Act, which is advertised,
14 marketed or designed primarily as a supplement to
15 reimbursements under medicare for the hospital,

16 medical or surgical expenses of persons eligible for
17 medicare. Such term does not include:

18 (A) A policy or contract of one or more employers or
19 labor organizations, or of the trustees of a fund
20 established by one or more employers or labor organ-
21 izations, or a combination thereof, for employees or
22 former employees, or combination thereof, or for
23 members or former members, or combination thereof,
24 of the labor organizations; or

25 (B) A policy or contract of any professional, trade or
26 occupational association for its members or former or
27 retired members, or combination thereof, if such
28 association is composed of individuals all of whom are
29 actively engaged in the same profession, trade or
30 occupation; has been maintained in good faith for
31 purposes other than obtaining insurance; and has been
32 in existence for at least two years prior to the date of
33 its initial offering of such policy or plan to its members;
34 or

35 (C) Individual policies or contracts issued pursuant to
36 a conversion privilege under a policy or contract of
37 group or individual insurance when such group or
38 individual policy or contract includes provisions which
39 are inconsistent with the requirements of this section.

40 (3) "Medicare" means the Health Insurance for the
41 Aged Act, Title XVIII of the Social Security Amend-
42 ments of 1965, as then constituted or later amended.

43 (b) *Standards for policy provisions.* —

44 (1) The commissioner shall issue reasonable rules to
45 establish specific standards for policy provisions of
46 medicare supplement policies. Such standards shall be
47 in addition to and in accordance with the applicable
48 laws of this state and may cover, but shall not be limited
49 to:

50 (A) Terms of renewability;

51 (B) Initial and subsequent conditions of eligibility;

52 (C) Nonduplication of coverage;

- 53 (D) Probationary period;
- 54 (E) Benefit limitations, exceptions and reductions;
- 55 (F) Elimination period;
- 56 (G) Requirements for replacement;
- 57 (H) Recurrent conditions; and
- 58 (I) Definitions of terms.

59 (2) The commissioner may issue reasonable rules that
60 specify prohibited policy provisions not otherwise
61 specifically authorized by statute which, in the opinion
62 of the commissioner, are unjust, unfair or unfairly
63 discriminatory to any person insured or proposed for
64 coverage under a medicare supplement policy.

65 (3) Notwithstanding any other provisions of the law,
66 a medicare supplement policy may not deny a claim for
67 losses incurred more than six months from the effective
68 date of coverage for a preexisting condition. The policy
69 may not define a preexisting condition more restric-
70 tively than a condition for which medical advice was
71 given or treatment was recommended by or received
72 from a physician within six months before the effective
73 date of coverage.

74 (c) *Minimum standards for benefits.* — The commis-
75 sioner shall issue reasonable rules to establish minimum
76 standards for benefits under medicare supplement
77 policies.

78 (d) *Loss ratio standards.* — Medicare supplement
79 policies shall be expected to return to policyholders
80 benefits which are reasonable in relation to the pre-
81 mium charge. The commissioner shall issue reasonable
82 rules to establish minimum standards for loss ratios for
83 medicare supplement policies on the basis of incurred
84 claims experience and earned premiums for the entire
85 period for which rates are computed to provide coverage
86 and in accordance with accepted actuarial principles
87 and practices. For purposes of rules issued pursuant to
88 this subsection, medicare supplement policies issued as
89 a result of solicitations of individuals through the mail
90 or mass media advertising, including both print and

91 broadcast advertising, shall be treated as individual
92 policies.

93 (e) *Disclosure standards.* —

94 (1) In order to provide for full and fair disclosure in
95 the sale of accident and sickness policies, to persons
96 eligible for medicare, the commissioner may require by
97 rule that no policy of accident and sickness insurance
98 may be issued for delivery in this state and no certificate
99 may be delivered pursuant to such a policy unless an
100 outline of coverage is delivered to the applicant at the
101 time application is made.

102 (2) The commissioner shall prescribe the format and
103 content of the outline of coverage required by subdivi-
104 sion (1) above. For purposes of this subdivision, "format"
105 means style, arrangements and overall appearance,
106 including such items as size, color and prominence of
107 type and the arrangement of text and captions. Such
108 outline of coverage shall include:

109 (A) A description of the principal benefits and
110 coverage provided in the policy;

111 (B) A statement of the exceptions, reductions and
112 limitations contained in the policy;

113 (C) A statement of the renewal provisions including
114 any reservation by the insurer of the right to change
115 premiums and disclosure of the existence of any
116 automatic renewal premium increases based on the
117 policyholder's age;

118 (D) A statement that the outline of coverage is a
119 summary of the policy issued or applied for and that the
120 policy should be consulted to determine governing
121 contractual provisions.

122 (3) The commissioner may prescribe by rule a
123 standard form and the contents of an informational
124 brochure for persons eligible for medicare, which is
125 intended to improve the buyer's ability to select the most
126 appropriate coverage and improve the buyer's under-
127 standing of medicare. Except in the case of direct
128 response insurance policies, the commissioner may

129 require by rule that the information brochure be
130 provided to any prospective insureds eligible for
131 medicare concurrently with delivery of the outline of
132 coverage. With respect to direct response insurance
133 policies, the commissioner may require by rule that the
134 prescribed brochure be provided upon request to any
135 prospective insureds eligible for medicare, but in no
136 event later than the time of policy delivery.

137 (4) The commissioner may further promulgate rea-
138 sonable rules to govern the full and fair disclosure of the
139 information in connection with the replacement of
140 accident and sickness policies, subscriber contracts or
141 certificates by persons eligible for medicare.

142 (f) *Notice of free examination.* — Medicare supplement
143 policies or certificates, other than those issued pursuant
144 to direct response solicitation, shall have a notice
145 prominently printed on the first page of the policy or
146 attached thereto stating in substance that the applicant
147 shall have the right to return the policy or certificate
148 within thirty days from its delivery and have the
149 premium refunded if, after examination of the policy or
150 certificate, the applicant is not satisfied for any reason.
151 Any refund made pursuant to this section shall be paid
152 directly to the applicant by the issuer in a timely
153 manner. Medicare supplement policies or certificates
154 issued pursuant to a direct response solicitation to
155 persons eligible for medicare shall have a notice
156 prominently printed on the first page or attached
157 thereto stating in substance that the applicant shall have
158 the right to return the policy or certificate within thirty
159 days of its delivery and to have the premium refunded
160 if, after examination, the applicant is not satisfied for
161 any reason. Any refund made pursuant to this section
162 shall be paid directly to the applicant by the issuer in
163 a timely manner.

164 (g) *Administrative procedures.* — Rules promulgated
165 pursuant to this section shall be subject to the provisions
166 of chapter twenty-nine-a (the West Virginia Administra-
167 tive Procedures Act) of this code.

168 (h) *Severability.* — If any provision of this section or

169 the application thereof to any person or circumstance is
170 for any reason held to be invalid, the remainder of the
171 section and the application of such provision to other
172 persons or circumstances shall not be affected thereby.

CHAPTER 79

(Com. Sub. for H. B. 2181—By Delegates Phillips, Gallagher, P. White,
Kessel, Douglas, Michael and Williams)

[Passed April 9, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article sixteen-a; section four, article twenty-four; section six, article twenty-five; and section twenty-four, article twenty-five-a, all of chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to advance notice by insurers to covered employees, members, spouses, children or dependents of conversion rights upon termination of the policy and the requirement that certain health care providers, insurers, health care corporations and other such agencies comply with the provisions of article sixteen-a regarding group health insurance conversion.

Be it enacted by the Legislature of West Virginia:

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

Article

- 16A. Group Health Insurance Conversion.
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.
- 25. Health Care Corporations.
- 25A. Health Maintenance Organization Act.

ARTICLE 16A. GROUP HEALTH INSURANCE CONVERSION.

§33-16A-14. Benefit levels; election to provide group coverage; notification of conversion privilege; policy delivered outside state.

1 (a) If the benefit levels required in section nine of this
2 article exceed the benefit levels provided under the
3 group policy, the conversion policy may offer benefits
4 which are substantially similar to those provided under
5 the group policy in lieu of those required in section nine.

6 (b) The insurer may elect to provide group insurance
7 coverage in lieu of the issuance of a converted individual
8 policy.

9 (c) The insurer, prior to terminating the policy for any
10 reason, shall notify each employee or member, or such
11 employee's or member's spouse, child or dependent
12 entitled to the conversion privilege under this article, at
13 least sixty days in advance of the termination, in
14 writing, of the pending termination. The notice shall
15 inform the employee or member of the conversion
16 privilege provided in this article.

17 (d) A notification of the conversion privilege shall also
18 be included in each certificate of coverage.

19 (e) A converted policy which is delivered outside this
20 state must be on a form which could be delivered in such
21 other jurisdiction as a converted policy had the group
22 policy been issued in that jurisdiction.

**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 corporation defined in section two of this
2 article is hereby declared to be a scientific, nonprofit
3 institution and exempt from the payment of all property
4 and other taxes. Every corporation, to the same extent
5 the provisions are applicable to insurers transacting
6 similar kinds of insurance and not inconsistent with the
7 provisions of this article, shall be governed by and be

*Clerk's Note: This section was also amended by S. B. 326 (Chapter 77) and H. B. 2286 (Chapter 67), which passed prior to this act.

8 subject to the provisions as hereinbelow indicated, of the
9 following articles of this chapter: Article two (insurance
10 commissioner), except that, under section nine of said
11 article, examinations shall be conducted at least once
12 every four years; article four (general provisions), except
13 that section sixteen of said article shall not be applicable
14 thereto; article six, section thirty-four (fee for form and
15 rate filing); article six-c (guaranteed loss ratio); article
16 seven (assets and liabilities); article eleven (unfair trade
17 practices); article twelve (agents, brokers and solicitors),
18 except that the agent's license fee shall be five dollars;
19 section fourteen, article fifteen (individual accident and
20 sickness insurance); article fifteen-a (long-term care
21 insurance); section three, article sixteen (required policy
22 provisions); section three-a, article sixteen (mental
23 illness); section three-c, article sixteen (group accident
24 and sickness insurance); section three-d, article sixteen
25 (medicare supplement insurance); section three-f, article
26 sixteen (treatment of temporomandibular joint disorder
27 and craniomandibular disorder); article sixteen-a (group
28 health insurance conversion); article sixteen-c (small
29 employer group policies); article sixteen-d (marketing
30 and rate practices for small employers); article twenty-
31 six-a (West Virginia life and health insurance guaranty
32 association act), after the first day of October, one
33 thousand nine hundred ninety-one; article twenty-seven
34 (insurance holding company systems); article twenty-
35 eight (individual accident and sickness insurance
36 minimum standards); article thirty-three (annual
37 audited financial report); article thirty-four (administra-
38 tive supervision); article thirty-four-a (standards and
39 commissioner's authority for companies deemed to be in
40 hazardous financial condition); article thirty-five
41 (criminal sanctions for failure to report impairment);
42 and article thirty-seven (managing general agents); and
43 no other provision of this chapter may apply to these
44 corporations unless specifically made applicable by the
45 provisions of this article. If, however, the corporation is
46 converted into a corporation organized for a pecuniary
47 profit or if it transacts business without having obtained
48 a license as required by section five of this article, it

49 shall thereupon forfeit its right to these 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 are subject
2 to supervision and regulation of the insurance commis-
3 sioner. The corporations organized under this article, to
4 the same extent these provisions are applicable to
5 insurers transacting similar kinds of insurance and not
6 inconsistent with the provisions of this article, shall be
7 governed by and be subject to the provisions as
8 hereinbelow indicated, of the following articles of this
9 chapter: Article four (general provisions), except that
10 section sixteen of said article shall not be applicable
11 thereto; article six-c (guaranteed loss ratio); article
12 seven (assets and liabilities); article eight (investments);
13 article ten (rehabilitation and liquidation); section
14 fourteen, article fifteen (individual accident and sick-
15 ness insurance); section three, article sixteen (required
16 policy provisions); article sixteen-a (group health
17 insurance conversion); article sixteen-c (small employer
18 group policies); article sixteen-d (marketing and rate
19 practices for small employers); article twenty-six-a
20 (West Virginia life and health insurance guaranty
21 association act); article twenty-seven (insurance holding
22 company systems); article thirty-three (annual audited
23 financial report); article thirty-four-a (standards and
24 commissioner's authority for companies deemed to be in
25 hazardous financial condition); article thirty-five
26 (criminal sanctions for failure to report impairment);
27 and article thirty-seven (managing general agents); and
28 no other provision of this chapter may apply to these
29 corporations unless specifically made applicable by the
30 provisions of this article.

*Clerk's Note: This section was also amended by S. B. 326 (Chapter 77) and H. B. 2286 (Chapter 67), which passed prior to this act.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.***§33-25A-24. Statutory construction and relationship to other laws.**

1 (a) Except as otherwise provided in this article,
2 provisions of the insurance laws 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 (b) 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
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 (c) 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 (d) The provisions of section fifteen, article four
32 (general provisions), article six-c (guaranteed loss ratio),
33 article seven (assets and liabilities), article eight
34 (investments), section fourteen, article fifteen (individ-
35 ual accident and sickness insurance), article fifteen-b

*Clerk's Note: This section was also amended by S. B. 326 (Chapter 77), which passed prior to this act.

36 (uniform health care administration act), section three-
37 f, article sixteen (treatment of temporomandibular
38 disorder and craniomandibular disorder), article six-
39 teen-a (group health insurance conversion), article
40 sixteen-c (small employer group policies), article
41 sixteen-d (marketing and rate practices for small
42 employers), article twenty-seven (insurance holding
43 company systems), article thirty-four-a (standards and
44 commissioner's authority for companies deemed to be in
45 hazardous financial condition), article thirty-five
46 (criminal sanctions for failure to report impairment)
47 and article thirty-seven (managing general agents) shall
48 be applicable to any health maintenance organization
49 granted a certificate of authority under this article.

50 (e) Any long-term care insurance policy delivered or
51 issued for delivery in this state by a health maintenance
52 organization shall comply with the provisions of article
53 fifteen-a of this chapter.

CHAPTER 80

(H. B. 2180—By Delegates Phillips, Gallagher and Michael)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section ten, article seventeen, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to fire and marine insurance auditing and stamping offices.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. FIRE AND MARINE INSURANCE.

§1. Repeal of section relating to fire and marine insurance auditing and stamping offices.

1 Section ten, article seventeen, chapter thirty-three of
2 the code of West Virginia, one thousand nine hundred
3 thirty-one, as amended, is hereby repealed.

CHAPTER 81

(Com. Sub. for H. B. 2467—By Delegates Walters, Kiss, Petersen,
Gallagher, Rutledge, Michael and Facemyer)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty-five-b, relating to authorizing nonprofit corporations to provide federal insurance subsidy for children's health funds; providing definitions; powers of corporation; administration; civil penalties; voucher applications; duties and responsibilities of corporation; training sessions by the department of health and human resources; annual reports and audits; tax exempt status; and limiting personal liability of members of corporation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 25B. FEDERAL INSURANCE SUBSIDY FOR CHILDREN'S HEALTH.

- §33-25B-1. Definitions.
- §33-25B-2. Purpose.
- §33-25B-3. General powers.
- §33-25B-4. Voucher applications; contents.
- §33-25B-5. Duties and responsibilities of corporation.
- §33-25B-6. Duties and responsibilities of department of health and human resources to provide training and other services.
- §33-25B-7. Allowable commission for applicant aides; prohibited practices.
- §33-25B-8. Activities not deemed the sale of insurance; exemptions from benefits and taxation.
- §33-25B-9. Annual report and audits.
- §33-25B-10. Tax exemption.
- §33-25B-11. Personal liability of members or persons acting on behalf of the corporation.

§33-25B-1. Definitions.

1 The following words, as used in this article, have the
2 meanings set forth below, unless the context clearly
3 requires otherwise:

4 (a) "Applicant aide" means an individual licensed by
5 the state to care for the physical or emotional needs of
6 children or an employee authorized by his employer
7 where the employer is an institution licensed by the
8 state to care for the physical or emotional needs of
9 children and who has received an applicant aide
10 certificate. Individuals include, but are not limited to,
11 licensed teachers, child care workers, social workers,
12 guidance counselors, psychologists, nurses and physi-
13 cians. Licensed institutions include, but are not limited
14 to, hospitals, schools, local human services offices, child
15 care centers and medical clinics;

16 (b) "Approved providers" means any accident and
17 health insurer licensed by the state or any health
18 services organization licensed by the state or any other
19 entity approved by the insurance commissioner for
20 provision of health care coverage for children;

21 (c) "Corporation" means a nonprofit corporation
22 organized under the laws of West Virginia which has
23 undertaken to implement a federal insurance subsidy
24 for children's health insurance created by this article;
25 and

26 (d) "Insurance subsidy fund" or "fund" means a fund
27 or account established by the corporation for the deposit
28 of moneys to implement the insurance subsidy program.

§33-25B-2. Purpose.

1 The purpose of this article is to:

2 (a) Assist, promote, encourage, develop and advance
3 the knowledge of lower to moderate income families
4 with dependent children of the earned income credit
5 available for money spent on health insurance;

6 (b) Cooperate and act in conjunction with other
7 organizations, public and private, the objects of which
8 are the promotion and education of lower to moderate
9 income families with dependent children of the earned

10 income credit available for money spent on health
11 insurance;

12 (c) Establish a system of qualified applicant aides who
13 shall be trained by the department of health and human
14 services and, who, for a modest dollar incentive, will on
15 a volunteer basis make knowledge of this program
16 available to the targeted families; and

17 (d) Establish a mechanism by which to provide
18 counseling and assistance to families and aid them in
19 filing for the insurance voucher, selecting an approp-
20 priate health insurance policy and completing the
21 required federal income tax return.

§33-25B-3. General powers.

1 In order for a nonprofit corporation to participate in
2 the program provided pursuant to this article, the
3 nonprofit corporation must be organized and incorpo-
4 rated as a nonprofit corporation pursuant to the
5 provisions of article one, section thirty-one of this code.
6 The nonprofit corporation, in addition to all other lawful
7 powers, shall have the power to provide counseling
8 services to West Virginia families on the purchase of
9 federally subsidized health insurance and to accept
10 gifts, grants, or loans from and enter into contracts or
11 other transactions with any federal or state agency, any
12 municipality, any private organization or any other
13 source as may be authorized by law.

§33-25B-4. Voucher applications; contents.

1 A guardian or applicant aide may file with a non-
2 profit corporation, organized for the purposes of this
3 article, a sworn voucher application signed by the
4 guardian asserting:

5 (a) That the guardian meets the requirements for the
6 federal earned income credit for child health insurance
7 for the current or next calendar year;

8 (b) The good-faith estimate value of the health
9 insurance earned income credit for the year in question;

10 (c) That the guardian will use the voucher to purchase
11 health insurance covering dependent children;

12 (d) That the guardian will prepare a federal tax
13 return for the year in question; and

14 (e) That the guardian agrees to assign the value of any
15 federal tax refund, in the amount of the voucher issued
16 by the corporation to the corporation when filing the
17 guardian's federal tax return.

§33-25B-5. Duties and responsibilities of corporation.

1 Upon presentation of a valid voucher application, the
2 corporation shall issue from its insurance subsidy fund
3 a voucher to the guardian or applicant aide, made out
4 in behalf of the guardian and redeemable for the face
5 amount by any approved provider. The corporation shall
6 retain in the fund all moneys received from refundable
7 tax credits of guardians. These moneys shall be used to
8 extend additional vouchers. The corporation may solicit
9 and receive donations of moneys for the fund. No
10 corporation may require that vouchers be presented to
11 a specific approved provider in order to be eligible to
12 participate in the program.

§33-25B-6. Duties and responsibilities of department of health and human resources to provide training and other services.

1 (a) The department of health and human resources
2 shall design and provide the vouchers to any corporation
3 wishing to participate in the program at a cost not to
4 exceed the actual cost of the voucher.

5 (b) No later than ninety days after a request is made
6 by a corporation wishing to participate in the insurance
7 subsidy program, the department of health and human
8 resources in cooperation with the corporations partici-
9 pating in the program, shall begin to conduct regional
10 training and information sessions in all regions of the
11 state. The purpose of these sessions is to train guardians
12 and potential applicant aides in the necessary rules to
13 qualify under the federal guidelines for earned income
14 credits and the requirements of this section. These
15 sessions shall be open to the public and potential
16 applicant aides, at a charge not to exceed ten dollars
17 which shall be used solely to defray the costs of

18 conducting the training sessions. Sessions shall be
19 available in at least the first and fourth quarter of the
20 calendar year in all regions of the state after a request
21 has been made by a corporation to commence such
22 training sessions. The department of health and human
23 resources may waive the fee for guardians.

24 (c) Potential applicant aides shall be tested by the
25 department of health and human resources. Potential
26 applicant aides who successfully complete the test shall
27 be awarded a certificate entitling them to work as an
28 applicant aide. The department of health and human
29 resources shall propose legislative rules for promulga-
30 tion in accordance with the provisions of article three,
31 chapter twenty-nine-a of this code.

**§33-25B-7. Allowable commission for applicant aides;
prohibited practices.**

1 (a) Applicant aides may receive a commission not to
2 exceed five percent of the voucher, from an approved
3 provider. No commission may be paid until the fund is
4 fully reimbursed for the voucher. Applicant aides may
5 not solicit or accept any compensation from guardians
6 or potential guardians.

7 (b) An applicant aide shall be prohibited from
8 entering into any agreement with an approved provider,
9 whether such agreement is for profit or not for profit,
10 to recommend a specific approved provider, to the
11 exclusion of all other approved providers, in the course
12 of counseling guardians or applicants.

13 (c) Applicant aides who engage in deceptive practices
14 or who aid or encourage deception or fraud may, upon
15 hearing by the corporation, have their certificate as an
16 applicant aide revoked for a period of not less than five
17 years. This action shall be in addition to any other
18 penalties available at law.

19 (d) The corporation may pursue triple damages in
20 civil court for any losses to the fund attributable to
21 actions or the conduct of applicant aides or guardians.

**§33-25B-8. Activities not deemed the sale of insurance;
exemptions from benefits and taxation.**

1 (a) Assisting individuals in the preparation of appli-

2 cations to the fund and selection of the providers does
3 not constitute the sale of insurance and shall not be
4 subject to regulation by the insurance commissioner.

5 (b) Insurance coverage bought by the guardian
6 through the use of a voucher provided pursuant to the
7 provisions of this article will be exempt from state law
8 and regulations requiring certain mandatory state
9 insurance coverages or benefits.

10 (c) Insurance coverage bought by guardians through
11 the use of a voucher provided pursuant to the provisions
12 of this article shall not be subject to state premium
13 taxes.

§33-25B-9. Annual report and audits.

1 On the first day of January of each year the corpo-
2 ration shall report on its operations for the preceding
3 fiscal year to the governor and the state Legislature. The
4 report shall include a summary of the activities of the
5 corporation and a complete operating and financial
6 statement. A corporation shall cause an annual audit to
7 be made by a resident certified public accountant or a
8 registered public accountant of its books, accounts and
9 records, with respect to its receipts, disbursements and
10 all other matters related to the operation of the
11 insurance subsidy program. The person performing
12 such audit shall also furnish copies of the audit report
13 to the joint committee on government and finance and
14 the legislative auditor.

§33-25B-10. Tax exemption.

1 Any corporation organized for the purposes of this
2 article is exempt from all franchise, corporate, business
3 and taxes of every nature levied by the state.

§33-25B-11. Personal liability of members or persons acting on behalf of the corporation.

1 No person acting on behalf of the corporation execut-
2 ing any contracts, commitments or agreements issued
3 pursuant to this article may be liable personally upon
4 the contracts, commitments or agreements or be subject
5 to any personal liability or accountability by reason
6 thereof.

CHAPTER 82

(Com. Sub. for H. B. 2632—By Delegates Phillips, Beane, Michael and L. White)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact article twenty-six-a, chapter thirty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the life and health insurance guaranty association.

Be it enacted by the Legislature of West Virginia:

That article twenty-six-a, 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 26A. WEST VIRGINIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT.

- §33-26A-1. Short title.
- §33-26A-2. Purpose of article and association of insurers.
- §33-26A-3. Scope of article; policies and contracts covered; exclusions; extent of liability.
- §33-26A-4. Construction of article.
- §33-26A-5. Definitions.
- §33-26A-6. Creation of association; required accounts; supervision of commissioner; meetings and records.
- §33-26A-7. Board of directors; members; vacancies; voting rights, appointment and reimbursement.
- §33-26A-8. Powers and duties of association.
- §33-26A-9. Assessments.
- §33-26A-10. Plan of operation.
- §33-26A-11. Duties and powers of commissioner of insurance.
- §33-26A-12. Prevention of insolvencies; duties of commissioner; coordination with board of directors; duties of the board of directors; requested examinations; procedures and reports.
- §33-26A-13. Appointment of special deputy.
- §33-26A-14. Miscellaneous provisions.
- §33-26A-15. Examination of association; annual report.
- §33-26A-16. Tax exemptions.
- §33-26A-17. Immunity.
- §33-26A-18. Stay of court proceedings; reopening default judgments.
- §33-26A-19. Prohibited advertisement of insurance guaranty association act in insurance sales; notice to policyholders.

§33-26A-1. Short title.

1 This article shall be known and may be cited as the

- 2 "West Virginia Life and Health Insurance Guaranty
3 Association Act."

§33-26A-2. Purpose of article and association of insurers.

1 (a) The purpose of this article is to protect, subject to
2 certain limitations, the persons specified in subsection
3 (a) of section three of this article against failure in the
4 performance of contractual obligations, under life and
5 health insurance policies and annuity contracts specified
6 in subsection (b) of section three of this article, because
7 of the impairment or insolvency of the member insurer
8 that issued the policies or contracts.

9 (b) To provide this protection, an association of
10 insurers is created to pay benefits and to continue
11 coverages as limited herein, and members of the
12 association are subject to assessment to provide funds to
13 carry out the purpose of this article.

§33-26A-3. Scope of article; policies and contracts covered; exclusions; extent of liability.

1 (a) This article shall provide coverage for the policies
2 and contracts specified in subsection (b) of this section:

3 (1) To persons who, regardless of where they reside,
4 are the beneficiaries, assignees or payees of the persons
5 covered under subdivision (2) below: *Provided*, That the
6 provisions of this subdivision shall not apply to nonres-
7 ident certificate holders under group policies or
8 contracts;

9 (2) To persons who are owners of or certificate
10 holders under such policies or contracts; or in the case
11 of unallocated annuity contracts, persons who are
12 contract holders, and who

13 (A) Are residents of the state; or

14 (B) Are not residents of this state, but only under all
15 of the following conditions:

16 (i) Such insurers which issued these policies or
17 contracts are domiciled in this state;

18 (ii) Such insurers never held a license or certificate
19 of authority in the state in which such person resides;

20 (iii) Such states have associations similar to the
21 association created by this article; and

22 (iv) The persons are not eligible for coverage by such
23 associations.

24 (b) Coverage as provided by this article shall be as
25 follows:

26 (1) This article shall provide coverage to the persons
27 specified in subsection (a) of this section for direct,
28 nongroup life, health, annuity and supplemental policies
29 or contracts, for certificates under direct group policies
30 and contracts, and for unallocated annuity contracts,
31 issued by member insurers, except as limited by this
32 article. Annuity contracts and certificates under group
33 annuity contracts include, but are not limited to,
34 guaranteed investment contracts, deposit administration
35 contracts, unallocated funding agreements, allocated
36 funding agreements, structured settlement agreements,
37 lottery contracts and any immediate or deferred annuity
38 contracts.

39 (2) This article shall not provide coverage for:

40 (A) Any portion of a policy or contract not guaranteed
41 by the insurer, or under which the risk is borne by the
42 policy or contract holder;

43 (B) Any policy or contract of reinsurance, unless
44 assumption certificates have been issued;

45 (C) Any portion of a policy or contract to the extent
46 that the rate of interest on which it is based:

47 (i) Averaged over the period of four years prior to the
48 date on which the association becomes obligated with
49 respect to such policy or contract, exceeds a rate of
50 interest determined by subtracting two percentage
51 points from Moody's Corporate Bond Yield Average
52 averaged for that same four-year period or for such
53 lesser period if the policy or contract was issued less
54 than four years before the association became obligated;
55 and

56 (ii) On and after the date on which the association
57 becomes obligated with respect to such policy or

58 contract, exceeds the rate of interest determined by
59 subtracting three percentage points from Moody's
60 Corporate Bond Yield Average as most recently
61 available;

62 (D) Any plan or program of an employer, association
63 or similar entity to provide life, health or annuity
64 benefits to its employees or members to the extent that
65 the plan or program is self-funded or uninsured,
66 including, but not limited to, benefits payable by an
67 employer, association or similar entity under:

68 (i) A multiple employer welfare arrangement as
69 defined in section 514 of the Employee Retirement
70 Income Security Act of 1974, as amended;

71 (ii) A minimum premium group insurance plan;

72 (iii) A stop-loss group insurance plan; or

73 (iv) An administrative services only contract;

74 (E) Any portion of a policy or contract to the extent
75 that it provides dividends or experience rating credits,
76 or provides that any fees or allowances be paid to any
77 person, including the policy or contract holder, in
78 connection with the service to or administration of the
79 policy or contract;

80 (F) Any policy or contract issued in this state by a
81 member insurer at a time when it was not licensed or
82 did not have a certificate of authority to issue the policy
83 or contract in this state;

84 (G) Any unallocated annuity contract issued to an
85 employee benefit plan protected under the federal
86 pension benefit guaranty corporation; and

87 (H) Any portion of any unallocated annuity contract
88 which is not issued to or in connection with a specific
89 employee, union or association of natural persons benefit
90 plan or a government lottery.

91 (c) The benefits for which the association may become
92 liable shall in no event exceed the lesser of:

93 (1) The contractual obligations for which the insurer
94 is liable or would have been liable if it were not an

95 impaired or insolvent insurer; or

96 (2) (A) With respect to any one life, regardless of the
97 number of policies or contracts:

98 (i) Three hundred thousand dollars in life insurance
99 death benefits, but no more than one hundred thousand
100 dollars in net cash surrender and net cash withdrawal
101 values for life insurance;

102 (ii) One hundred thousand dollars in health insurance
103 benefits, including any net cash surrender and net cash
104 withdrawal values;

105 (iii) One hundred thousand dollars in the present
106 value of annuity benefits, including net cash surrender
107 and net cash withdrawal values;

108 (B) With respect to each individual participating in
109 a governmental retirement plan established under
110 section 401, 403(b) or 457 of the United States Internal
111 Revenue Code covered by an unallocated annuity
112 contract or the beneficiaries of each such individual if
113 deceased, in the aggregate, one hundred fifty thousand
114 dollars in present value annuity benefits, including net
115 cash surrender and net cash withdrawal values: *Pro-*
116 *vided*, That in no event shall the association be liable to
117 expend more than three hundred thousand dollars in the
118 aggregate with respect to any one individual under
119 paragraphs 2 (A) and (B) above;

120 (C) With respect to any one contract holder covered
121 by any unallocated annuity contract not included in
122 subsection (2) (B) of this section, one million dollars in
123 benefits, irrespective of the number of contracts held by
124 that contract holder.

125 (d) The liability of the association is strictly limited
126 by the express terms of the covered policies and
127 contracts and by the provisions of this article and shall
128 not in any event include any amount in excess of the
129 applicable limits of coverage provided by the contracts
130 or policies as limited by this article. The association is
131 not liable for any extra contractual damages, claims,
132 fees of any kind whatsoever, including interest, except
133 as specifically provided by the terms of the policies or

134 contracts as limited by this article.

§33-26A-4. Construction of article.

1 This article shall be liberally construed to effect the
2 purpose under section two of this article which shall
3 constitute an aid and guide to interpretation.

§33-26A-5. Definitions.

1 As used in this article:

2 (1) "Account" means either of the two accounts
3 created under section six of this article.

4 (2) "Association" means the West Virginia life and
5 health insurance guaranty association created under
6 section six of this article.

7 (3) "Commissioner" means the commissioner of insur-
8 ance of this state.

9 (4) "Contractual obligation" means any obligation
10 under a policy or contract or certificate under a group
11 policy or contract, or portion thereof for which coverage
12 is provided under section three of this article.

13 (5) "Covered policy" means any policy or contract
14 within the scope of this article under section three of this
15 article.

16 (6) "Impaired insurer" means a member insurer
17 which, after the effective date of this article, is not an
18 insolvent insurer, and (1) is deemed by the commissioner
19 to be potentially unable to fulfill its contractual
20 obligations or (2) is placed under an order of rehabil-
21 itation or conservation by a court of competent
22 jurisdiction.

23 (7) "Insolvent insurer" means a member insurer
24 which, after the effective date of this article, is placed
25 under an order of liquidation by a court of competent
26 jurisdiction with a finding of insolvency.

27 (8) "Member insurer" means any insurer licensed or
28 which holds a certificate of authority to transact in this
29 state any kind of insurance for which coverage is
30 provided under section three of this article, and includes

31 any insurer whose license or certificate of authority in
32 this state may have been suspended, revoked, not
33 renewed or voluntarily withdrawn, and includes non-
34 profit service corporations as defined in article twenty-
35 four of this chapter and health care corporations as
36 defined in article twenty-five of this chapter: *Provided,*
37 That the term “member insurer” does not include:

38 (A) A health maintenance organization;

39 (B) A fraternal benefit society;

40 (C) A mandatory state polling plan;

41 (D) A mutual assessment company or any entity that
42 operates on an assessment basis;

43 (E) An insurance exchange; or

44 (F) Any entity similar to any of the above.

45 (9) “Moody’s Corporate Bond Yield Average” means
46 the monthly average corporates as published by Moody’s
47 Investors Service, Inc., or any successor thereto.

48 (10) “Person” means any individual, corporation,
49 partnership, association or voluntary organization.

50 (11) “Premiums” means amounts received on covered
51 policies or contracts less premiums, considerations and
52 deposits returned thereon, and less dividends and
53 experience credits thereon. “Premiums” does not include
54 any amounts received for any policies or contracts or for
55 the portions of any policies or contracts for which
56 coverage is not provided under subsection (b) of section
57 three of this article, except that assessable premium
58 shall not be reduced on account of paragraph (C),
59 subdivision (2), subsection (b) of section three of this
60 article relating to interest limitations and subdivision
61 (2), subsection (c) of section three of this article relating
62 to limitations with respect to any one individual, any one
63 participant and any one contract holder: *Provided,* That
64 “premiums” shall not include any premiums in excess
65 of one million dollars on any unallocated annuity
66 contract not issued under a government retirement plan
67 established under section 401, 403 (b) or 457 of the
68 United States Internal Revenue Code.

69 (12) "Resident" means any person who resides in this
70 state at the time a member insurer is determined to be
71 an impaired or insolvent insurer and to whom a
72 contractual obligation is owed. A person may be a
73 resident of only one state, which in the case of a person
74 other than a natural person shall be its principal place
75 of business.

76 (13) "Health insurance" means accident and sickness
77 insurance as defined in subsection (b), section ten,
78 article one of this chapter.

79 (14) "Supplemental contract" means any agreement
80 entered into for the distribution of policy or contract
81 proceeds.

82 (15) "Unallocated annuity contract" means any
83 annuity contract or group annuity certificate which is
84 not issued to and owned by an individual, except to the
85 extent of any annuity benefits guaranteed to an individ-
86 ual by an insurer under such contract or certificate.

**§33-26A-6. Creation of association; required accounts;
supervision of commissioner; meetings and
records.**

1 (a) There is created a nonprofit legal entity to be
2 known as the West Virginia life and health insurance
3 guaranty association. All member insurers shall be and
4 remain members of the association as a condition of
5 their authority to transact insurance in this state. The
6 association shall perform its functions under the plan of
7 operation established and approved under section ten of
8 this article and shall exercise its powers through a
9 board of directors established under section seven of this
10 article. For purposes of administration and assessment,
11 the association shall maintain the following two
12 accounts:

13 (1) The life insurance and annuity account which
14 includes the following subaccounts:

15 (A) Life insurance account;

16 (B) Annuity account; and

17 (C) Unallocated annuity account which shall include

18 contracts qualified under section 403 (b) of the United
19 States Internal Revenue Code.

20 (2) The health insurance account.

21 (b) The association shall come under the immediate
22 supervision of the commissioner and shall be subject to
23 the applicable provisions of the insurance laws of this
24 state. Meetings or records of the association may be
25 opened to the public upon majority vote of the board of
26 directors of the association.

**§33-26A-7. Board of directors; members; vacancies;
voting rights; appointment and reim-
bursement.**

1 (a) The board of directors of the association shall
2 consist of not less than five nor more than nine member
3 insurers serving terms as established in the plan of
4 operation. The members of the board shall be selected
5 by member insurers subject to the approval of the
6 commissioner. Vacancies on the board shall be filled for
7 the remaining period of the term by a majority vote of
8 the remaining board members, subject to the approval
9 of the commissioner.

10 (b) To select the initial board of directors, and
11 initially organize the association, the commissioner shall
12 give notice to all member insurers of the time and place
13 of the organizational meeting. In determining voting
14 rights at the organizational meeting each member
15 insurer shall be entitled to one vote in person or by
16 proxy. If the board of directors is not selected within
17 sixty days after notice of the organizational meeting, the
18 commissioner may appoint the initial members.

19 (c) In approving selections or in appointing members
20 to the board, the commissioner shall consider, among
21 other things, whether all member insurers are fairly
22 represented.

23 (d) Members of the board may be reimbursed from
24 the assets of the association for expenses incurred by
25 them as members of the board of directors but members
26 of the board shall not otherwise be compensated by the
27 association for their services.

§33-26A-8. Powers and duties of association.

1 (a) If a member insurer is an impaired domestic
2 insurer, the association may, in its discretion, and
3 subject to any conditions imposed by the association that
4 do not impair the contractual obligations of the im-
5 paired insurer, that are approved by the commissioner,
6 and that are, except in cases of court-ordered conserva-
7 tion or rehabilitation, also approved by the impaired
8 insurer:

9 (1) Guarantee, assume, or reinsure, or cause to be
10 guaranteed, assumed or reinsured, any or all the
11 covered policies or contracts of the impaired insurer;

12 (2) Provide such moneys, pledges, notes, guarantees
13 or other means as are proper to effectuate subdivision
14 (1) of this subsection and assure payment of the
15 contractual obligations of the impaired insurer pending
16 action under said subdivision (1); or

17 (3) Loan money to the impaired insurer.

18 (b) (1) If a member insurer is an impaired insurer,
19 whether domestic, foreign or alien, and the insurer is
20 not paying claims timely, then subject to the precondi-
21 tions specified in subdivision (2) of this subsection, the
22 association shall, in its discretion, either:

23 (A) Take any of the actions specified in subsection (a)
24 of this section, subject to the conditions therein; or

25 (B) Provide substitute benefits in lieu of the contrac-
26 tual obligations of the impaired insurer solely for health
27 claims, periodic annuity benefit payments, death
28 benefits, supplemental benefits, and cash withdrawals
29 for policy or contract owners who petition therefor
30 under claims of emergency or hardship in accordance
31 with standards proposed by the association and ap-
32 proved by the commissioner.

33 (2) The association shall be subject to the require-
34 ments of subdivision (1) of this subsection only if:

35 (A) The laws of the impaired insurer's state of
36 domicile provide that until all payments of or on account
37 of the impaired insurer's contractual obligations by an

38 guaranty associations, along with all expenses thereof
39 and interest on all payments and expenses, shall have
40 been repaid to the guaranty associations or a plan of
41 repayment by the impaired insurer shall have been
42 approved by the guaranty associations:

43 (i) The delinquency proceeding shall not be
44 dismissed;

45 (ii) Neither the impaired insurer nor its assets shall
46 be returned to the control of its shareholders or private
47 management;

48 (iii) It shall not be permitted to solicit or accept new
49 business or have any suspended or revoked license
50 restored; and

51 (B) (i) If the impaired insurer is a domestic insurer,
52 it has been placed under an order of rehabilitation by
53 a court of competent jurisdiction in this state; or

54 (ii) The impaired insurer is a foreign or alien insurer;

55 (I) It has been prohibited from soliciting or accepting
56 new business in this state;

57 (II) Its certificate of authority has been suspended or
58 revoked in this state; and

59 (III) A petition for rehabilitation or liquidation has
60 been filed in a court of competent jurisdiction in its state
61 of domicile by the commissioner of the state.

62 (c) If a member insurer is an insolvent insurer, the
63 association shall, in its discretion, either:

64 (1) (A) Guarantee, assume or reinsure, or cause to be
65 guaranteed, assumed or reinsured, the policies or
66 contracts of the insolvent insurer; or

67 (B) Assure payment of the contractual obligations of
68 the insolvent insurer; and

69 (C) Provide moneys, pledges, guarantees, or other
70 means as are reasonably necessary to discharge such
71 duties; or

72 (2) With respect only to life and health insurance
73 policies, provide benefits and coverages in accordance

74 with subsection (d) of this section.

75 (d) When proceeding under (b) (1) (B) or (c) (2) of this
76 section, the association shall, with respect to only life
77 and health insurance policies:

78 (1) Assure payment of benefits for premiums identi-
79 cal to the premiums and benefits, except for terms of
80 conversion and renewability, that would have been
81 payable under the policies of the insolvent insurer, for
82 claims incurred:

83 (A) With respect to group policies, not later than the
84 earlier of the next renewal date under such policies or
85 contracts or forty-five days, but in no event less than
86 thirty days, after the date on which the association
87 becomes obligated with respect to such policies;

88 (B) With respect to individual policies, not later than
89 the earlier of the next renewal date, if any, under these
90 policies or one year, but in no event less than thirty days,
91 from the date on which the association becomes obli-
92 gated with respect to such policies;

93 (2) Make diligent efforts to provide all known in-
94 sureds or group policyholders with respect to group
95 policies thirty days' notice of the termination of the
96 benefits provided; and

97 (3) With respect to individual policies, make available
98 to each known insured, or owner if other than the
99 insured, and with respect to an individual formerly
100 insured under a group policy who is not eligible for
101 replacement group coverage, make available substitute
102 coverage on an individual basis in accordance with the
103 provisions of subdivision (4) of this subsection, if the
104 insureds had a right under law or the terminated policy
105 to convert coverage to individual coverage or to continue
106 an individual policy in force until a specified age or for
107 a specified time, during which the insurer had no right
108 unilaterally to make changes in any provision of the
109 policy or had a right only to make changes in premium
110 by class.

111 (4) (A) In providing the substitute coverage required
112 under subdivision (3) of this subsection, the association

113 may offer either to reissue the terminated coverage or
114 to issue an alternative policy.

115 (B) Alternative or reissued policies shall be offered
116 without requiring evidence of insurability, and shall not
117 provide for any waiting period or exclusion that would
118 not have applied under the terminated policy.

119 (C) The association may reinsure any alternative or
120 reissued policy.

121 (5) (A) Alternative policies adopted by the association
122 shall be subject to the approval of the commissioner. The
123 association may adopt alternative policies of various
124 types for future issuance without regard to any partic-
125 ular impairment or insolvency.

126 (B) Alternative policies shall contain at least the
127 minimum statutory provisions required in this state and
128 provide benefits that shall not be unreasonable in
129 relation to the premium charged. The association shall
130 set the premium in accordance with a table of rates
131 which it shall adopt. The premium shall reflect the
132 amount of insurance to be provided and the age and
133 class of risk of each insured, but shall not reflect any
134 changes in the health of the insured after the original
135 policy was last underwritten.

136 (C) Any alternative policy issued by the association
137 shall provide coverage of a type similar to that of the
138 policy issued by the impaired or insolvent insurer, as
139 determined by the association.

140 (6) If the association elects to reissue terminated
141 coverage at a premium rate different from that charged
142 under the terminated policy, the premium shall be set
143 by the association in accordance with the amount of
144 insurance provided and the age and class of risk, subject
145 to approval of the commissioner or by a court of
146 competent jurisdiction.

147 (7) The association's obligations with respect to
148 coverage under any policy of the impaired or insolvent
149 insurer or under any reissued or alternative policy shall
150 cease on the date that the coverage or policy is replaced
151 by another similar policy by the policyholder, the

152 insured or the association.

153 (e) When proceeding under subsection (b) (1) (B) or
154 (C) of this section with respect to any policy or contract
155 carrying guaranteed minimum interest rates, the
156 association shall assure the payment or crediting of a
157 rate of interest consistent with subsection (b) (2) (C) of
158 section three of this article.

159 (f) Nonpayment of premium within thirty-one days
160 after the date required under the terms of any guaran-
161 teed, assumed, alternative or reissued policy or contract
162 or substitute coverage shall terminate the association's
163 obligations under such policy or coverage under this
164 article with respect to such policy or coverage, except
165 with respect to any claims incurred or any net cash
166 surrender value which may be due in accordance with
167 the provisions of this article.

168 (g) Premiums due for coverage after entry of an
169 order of liquidation of an insolvent insurer shall belong
170 to and be payable at the direction of the association, and
171 the association shall be liable for unearned premiums
172 due to policy or contract owners arising after the entry
173 of the order.

174 (h) The protection provided by this article shall not
175 apply where any guaranty protection is provided to
176 residents of this state by the laws of the domiciliary
177 state or jurisdiction of the impaired or insolvent insurer
178 other than this state.

179 (i) In carrying out its duties under subsections (b) and
180 (c) of this section, the association may, subject to
181 approval by the court:

182 (1) Impose permanent policy or contract liens in
183 connection with any guarantee, assumption or reinsur-
184 ance agreement, if the association finds that the
185 amounts which can be assessed under this article are
186 less than the amounts needed to assure full and prompt
187 performance of the association's duties under this
188 article, or that the economic or financial conditions as
189 they affect member insurers are sufficiently adverse to
190 render the imposition of such permanent policy or

191 contract liens, to be in the public interest;

192 (2) Impose temporary moratoriums or liens on pay-
193 ments of cash values and policy loans, or any other right
194 to withdraw funds held in conjunction with policies or
195 contracts, in addition to any contractual provisions for
196 deferral of cash or policy loan value.

197 (j) If the association fails to act within a reasonable
198 period of time as provided in subsections (b) (1) (B), (c)
199 and (d) of this section, the commissioner shall have the
200 powers and duties of the association under this article
201 with respect to impaired or insolvent insurers.

202 (k) The association may render assistance and advice
203 to the commissioner, upon his request, concerning
204 rehabilitation, payment of claims, continuance of
205 coverage, or the performance of other contractual
206 obligations of any impaired or insolvent insurer.

207 (l) The association shall have standing to appear
208 before any court in this state with jurisdiction over an
209 impaired or insolvent insurer concerning which the
210 association is or may become obligated under this
211 article. Standing shall extend to all matters germane to
212 the powers and duties of the association, including, but
213 not limited to, proposals for reinsuring, modifying, or
214 guaranteeing the policies or contracts of the impaired
215 or insolvent insurer and the determination of the policies
216 or contracts and contractual obligations. The association
217 shall also have the right to appear or intervene before
218 a court in another state with jurisdiction over an
219 impaired or insolvent insurer for which the association
220 is or may become obligated or with jurisdiction over a
221 third party against whom the association may have
222 rights through subrogation of the insurer's
223 policyholders.

224 (m) (1) Any person receiving benefits under this
225 article shall be deemed to have assigned the rights
226 under, and any causes of action relating to, the covered
227 policy or contract to the association to the extent of the
228 benefits received because of this article, whether the
229 benefits are payments of or on account of contractual
230 obligations, continuation of coverage or provision of

231 substitute or alternative coverages. The association may
232 require an assignment to it of such rights and cause of
233 action by any payee, policy or contract owner, benefi-
234 ciary, insured or annuitant as a condition precedent to
235 the receipt of any right or benefits conferred by this
236 article upon such person.

237 (2) The subrogation rights of the association under
238 this subsection shall have the same priority against the
239 assets of the impaired or insolvent insurer as that
240 possessed by the person entitled to receive benefits
241 under this article.

242 (3) In addition to subdivisions (1) and (2) above, the
243 association shall have all common law rights of subro-
244 gation and any other equitable or legal remedy which
245 would have been available to the impaired or insolvent
246 insurer or holder of a policy or contract with respect to
247 such policy or contracts.

248 (n) The association may:

249 (1) Enter into such contracts as are necessary or
250 proper to carry out the provisions and purposes of this
251 article;

252 (2) Sue or be sued, including taking any legal actions
253 necessary or proper to recover any unpaid assessments
254 under section nine of this article and to settle claims or
255 potential claims against it;

256 (3) Borrow money to effect the purpose of this article;
257 any notes or other evidence of indebtedness of the
258 association not in default shall be legal investments for
259 domestic insurers and may be carried as admitted
260 assets;

261 (4) Employ or retain such persons as are necessary to
262 handle the financial transactions of the association, and
263 to perform such other functions as become necessary or
264 proper under this article;

265 (5) Take such legal action as may be necessary to
266 avoid payment of improper claims;

267 (6) Exercise, for the purposes of this article and to the
268 extent approved by the commissioner, the powers or a

269 domestic life or health insurer, but in no case may the
270 association issue insurance policies or annuity contracts
271 other than those issued to perform its obligations under
272 this article.

273 (o) The association may join an organization of one or
274 more other state associations of similar purposes, to
275 further the purposes and administer the powers and
276 duties of the association.

§33-26A-9. Assessments.

1 (a) For the purpose of providing the funds necessary
2 to carry out the powers and duties of the association, the
3 board of directors shall assess the member insurers,
4 separately for each account, at such time and for such
5 amounts as the board finds necessary. Assessments shall
6 be due not less than thirty days after prior written
7 notice to the member insurers and shall accrue interest
8 at ten percent per annum on and after the due date.

9 (b) There shall be two assessments, as follows:

10 (1) Class A assessments shall be made for the purpose
11 of meeting administrative and legal costs and other
12 expenses and examinations conducted under the author-
13 ity of subsection (e) of section twelve, of this article.
14 Class A assessments may be made whether or not
15 related to a particular impaired or insolvent insurer.

16 (2) Class B assessments shall be made to the extent
17 necessary to carry out the powers and duties of the
18 association under section eight with regard to an
19 impaired or insolvent insurer.

20 (c) (1) The amount of any Class A assessment shall be
21 determined by the board and may be made on a pro rata
22 or non-pro rata basis. If pro rata, the board may provide
23 that it be credited against future Class B assessments.
24 A non-pro rata assessment shall not exceed one hundred
25 fifty dollars per member insurer in any one calendar
26 year. The amount of any Class B assessment shall be
27 allocated for assessment purposes among the accounts
28 pursuant to an allocation formula which may be based
29 on the premiums or reserves of the impaired or insolvent
30 insurer or any other standard deemed by the board in

31 its sole discretion as being fair and reasonable under the
32 circumstances.

33 (2) Class B assessments against member insurers for
34 each account and subaccount shall be in the proportion
35 that the premiums received on business in this state by
36 each assessed member insurer on policies or contracts
37 covered by each account for the three most recent
38 calendar years for which information is available
39 preceding the year in which the insurer became
40 impaired or insolvent, as the case may be, bears to such
41 premiums received on business in this state for such
42 calendar years by all assessed member insurers.

43 (3) Assessments for funds to meet the requirements
44 of the association with respect to an impaired or
45 insolvent insurer shall not be made until necessary to
46 implement the purposes of this article. Classification of
47 assessments under subsection (b) of this section and
48 computation of assessments under this subsection shall
49 be made with reasonable degree of accuracy, recognizing
50 that exact determinations may not always be
51 possible.

52 (d) The association may abate or defer, in whole or
53 in part, the assessment of a member insurer if, in the
54 opinion of the board, payment of the assessment would
55 endanger the ability of the member insurer to fulfill its
56 contractual obligations. In the event an assessment
57 against a member insurer is abated, or deferred, in
58 whole or in part, the amount by which such assessment
59 is abated or deferred may be assessed against the other
60 member insurers in a manner consistent with the basis
61 for assessments set forth in this section.

62 (e) (1) The total of all assessments upon a member
63 insurer for the life and annuity account and for each
64 subaccount thereunder shall not in any one calendar
65 year exceed two percent and for the health account shall
66 not in any one calendar year exceed two percent of such
67 insurer's average premiums received in this state on the
68 policies and contracts covered by the account during the
69 three calendar years preceding the year in which the
70 insurer became an impaired or insolvent insurer. If the

71 maximum assessment, together with the other assets of
72 the association in any account, does not provide in any
73 one year in either account an amount sufficient to carry
74 out the responsibilities of the association, the necessary
75 additional funds shall be assessed as soon thereafter as
76 permitted by this article.

77 (2) The board may provide in the plan of operation
78 a method of allocating funds among claims, whether
79 relating to one or more impaired or insolvent insurers,
80 when the maximum assessment will be insufficient to
81 cover anticipated claims.

82 (3) If a one percent assessment for any subaccount of
83 the life and annuity account in any one year does not
84 provide an amount sufficient to carry out the responsi-
85 bilities of the association, then pursuant to subdivision
86 (2), subsection (c) of this section, the board shall assess
87 all subaccounts of the life and annuity account for the
88 necessary additional amount, subject to the maximum
89 stated in subdivision (1), subsection (e) of this section.

90 (f) The board may, by an equitable method as
91 established in the plan of operation, refund to member
92 insurers, in proportion to the contribution of each
93 insurer to that account, the amount by which the assets
94 of the account exceed the amount the board finds is
95 necessary to carry out during the coming year the
96 obligations of the association with regard to that
97 account, including assets accruing from assignment,
98 subrogation, net realized gains and income from
99 investments. A reasonable amount may be retained in
100 any account to provide funds for the continuing expenses
101 of the association and for future losses.

102 (g) It shall be proper for any member insurer, in
103 determining its premium rates and policy owner
104 dividends as to any kind of insurance within the scope
105 of this article, to consider the amount reasonably
106 necessary to meet its assessment obligations under this
107 article.

108 (h) The association shall issue to each insurer paying
109 an assessment under this article, other than Class A
110 assessment, a certificate of contribution, in a form

111 prescribed by the commissioner, for the amount of the
112 assessment so paid. All outstanding certificates shall be
113 of equal dignity and priority without reference to
114 amounts or dates of issue. A certificate of contribution
115 may be shown by the insurer in its financial statement
116 as an asset in such form and for such amount, if any,
117 and period of time as the commissioner may approve.

§33-26A-10. Plan of operation.

1 (a) The association shall submit to the commissioner
2 a plan of operation and any amendments thereto
3 necessary or suitable to assure the fair, reasonable and
4 equitable administration of the association. The plan of
5 operation and any amendments thereto shall become
6 effective upon the commissioner's written approval or
7 unless he has not disapproved of the same within thirty
8 days.

9 (b) If the association fails to submit a suitable plan
10 of operation within one hundred eighty days following
11 the effective date of this article or if at any time
12 thereafter the association fails to submit suitable
13 amendments to the plan, the commissioner shall, after
14 notice and hearing, adopt and promulgate such reason-
15 able rules as are necessary or advisable to effectuate
16 the provisions of this article. Such rules shall continue
17 in force until modified by the commissioner or super-
18 seded by a plan submitted by the association and
19 approved by the commissioner.

20 (c) All member insurers shall comply with the plan
21 of operation.

22 (d) The plan of operation shall, in addition to require-
23 ments enumerated elsewhere in this article:

24 (1) Establish procedures for handling the assets of the
25 association;

26 (2) Establish the amount and method of reimbursing
27 members of the board of directors under section seven
28 of this article;

29 (3) Establish regular places and times for meetings
30 including telephone conference calls of the board of

31 directors;

32 (4) Establish procedures for records to be kept of all
33 financial transactions of the association, its agents, and
34 the board of directors;

35 (5) Establish the procedures whereby selections for
36 the board of directors will be made and submitted to the
37 commissioner;

38 (6) Establish any additional procedures for assess-
39 ments under section nine of this article; and

40 (7) Contain additional provisions necessary or proper
41 for the execution of the powers and duties of the
42 association.

43 (e) The plan of operation may provide that any or all
44 powers and duties of the association, except those under
45 subdivision (3), subsection (m), section eight, and section
46 nine of this article, are delegated to a corporation,
47 association, or other organization which performs or will
48 perform functions similar to those of this association, or
49 its equivalent, in two or more states. Such a corporation,
50 association or organization shall be reimbursed for any
51 payments made on behalf of the association and shall be
52 paid for its performance of any function of the associ-
53 ation. A delegation under this subsection shall take
54 effect only with the approval of both the board of
55 directors and the commissioner, and may be made only
56 to a corporation, association or organization which
57 extends protection not substantially less favorable and
58 effective than that provided by this article.

§33-26A-11. Duties and powers of commissioner of insurance.

1 In addition to the duties and powers enumerated
2 elsewhere in this article:

3 (a) The commissioner shall:

4 (1) Upon request of the board of directors, provide the
5 association with a statement of the premiums in this and
6 any other appropriate states for each member insurer;

7 (2) When an impairment is declared and the amount

8 of the impairment is determined, serve a demand upon
9 the impaired insurer to make good the impairment
10 within a reasonable time. Notice to the impaired insurer
11 shall constitute notice to its shareholders, if any; the
12 failure of the insurer to promptly comply with the
13 demand shall not excuse the association from the
14 performance of its powers and duties under this article;
15 and

16 (3) In any liquidation or rehabilitation proceeding
17 involving a domestic insurer, be appointed as the
18 liquidator or rehabilitator.

19 (b) The commissioner may suspend or revoke, after
20 notice and hearing, the certificate of authority to
21 transact insurance in this state of any member insurer
22 which fails to pay an assessment when due or fails to
23 comply with the plan of operation. As an alternative, the
24 commissioner may levy a forfeiture on any member
25 insurer which fails to pay an assessment when due. The
26 forfeiture shall not exceed five percent of the unpaid
27 assessment per month, but no forfeiture shall be less
28 than one hundred dollars per month.

29 (c) Any action of the board of directors or the
30 association may be appealed to the commissioner by any
31 member insurer if such appeal is taken within sixty
32 days of the final action being appealed. If a member
33 company is appealing an assessment, the amount
34 assessed shall be paid to the association and available
35 to meet association obligations during the pendency of
36 an appeal. If the appeal on the assessment is upheld, the
37 amount paid in error or excess shall be returned to the
38 member company. Any final action or order of the
39 commissioner shall be subject to judicial review in a
40 court of competent jurisdiction.

41 (d) The liquidator, rehabilitator or conservator of any
42 impaired insurer may notify all interested persons of the
43 effect of this article.

**§33-26A-12. Prevention of insolvencies; duties of commis-
sioner; coordination with board of direc-
tors; duties of the board of directors;
requested examinations; procedures and
reports.**

1 To aid in the detection and prevention of insurer
2 insolvencies or impairments:

3 (a) It shall be the duty of the commissioner:

4 (1) To notify the commissioners of all the other states,
5 territories of the United States and the District of
6 Columbia when he takes any of the following actions
7 against a member insurer:

8 (A) Revocation of license;

9 (B) Suspension of license; or

10 (C) Makes any formal order that such company
11 restrict its premium writing, obtain additional contri-
12 butions to surplus, withdraw from the state, reinsure all
13 or any part of its business, or increase capital, surplus
14 or any other account for the security of policyholders or
15 creditors: *Provided*, That such notice shall be mailed to
16 all commissioners within thirty days following the
17 action taken or the date on which the action occurs.

18 (2) To report to the board of directors when he or she
19 has taken any of the actions set forth in subdivision (1)
20 of subsection (a) of this section or has received a report
21 from any other commissioner indicating that any such
22 action has been taken in another state. Such report to
23 the board of directors shall contain all significant details
24 of the action taken or the report received from another
25 commissioner.

26 (3) To report to the board of directors when he or she
27 has reasonable cause to believe from any examination,
28 whether completed or in process, of any member
29 company that the company may be an impaired or
30 insolvent insurer.

31 (4) To furnish to the board of directors the national
32 association of insurance commissioners (NAIC) insu-
33 rance regulatory information system (IRIS) ratios and
34 listings of companies not included in the ratios devel-
35 oped by the national association of insurance commis-
36 sioners, and the board may use the information con-
37 tained therein in carrying out its duties and responsi-

38 bilities under this section. The report and the informa-
39 tion contained therein shall be kept confidential by the
40 board of directors until it is made public by the
41 commissioner or other lawful authority.

42 (b) The commissioner may seek the advice and
43 recommendations of the board of directors concerning
44 any matter affecting his or her duties and responsibil-
45 ities regarding the financial condition of member
46 insurers and companies seeking admission to transact
47 insurance business in this state.

48 (c) The board of directors may, upon majority vote,
49 make reports and recommendations to the commissioner
50 upon any matter germane to the solvency, liquidation,
51 rehabilitation or conservation of any member insurer or
52 germane to the solvency of any company seeking to do
53 an insurance business in this state. The reports and
54 recommendations shall not be considered public
55 documents.

56 (d) It shall be the duty of the board of directors, upon
57 majority vote, to notify the commissioner of any
58 information indicating any member insurer may be an
59 impaired or insolvent insurer.

60 (e) The board of directors may, upon majority vote,
61 request that the commissioner order an examination of
62 any member insurer which the board in good faith
63 believes may be an impaired or insolvent insurer.
64 Within thirty days of the receipt of a request, the
65 commissioner shall begin an examination. The examina-
66 tion may be conducted as a national association of
67 insurance commissioner's examination or may be
68 conducted by persons that the commissioner designates.
69 The cost of such examination shall be paid by the
70 association and the examination report shall be treated
71 as are other examination reports. In no event shall the
72 examination report be released to the board of directors
73 prior to its release to the public, but this shall not
74 preclude the commissioner from complying with subsec-
75 tion (a) of this section. The commissioner shall notify the
76 board of directors when the examination is completed.
77 The request for an examination shall be kept on file by

78 the commissioner, but it shall not be open to public
79 inspection prior to the release of the examination report
80 to the public.

81 (f) The board of directors may, upon majority vote,
82 make recommendations to the commissioner for the
83 detection and prevention of insurer insolvencies.

84 (g) The board of directors shall, at the conclusion of
85 any insurer insolvency in which the association was
86 obligated to pay covered claims, prepare a report to the
87 commissioner containing such information as it may
88 have in its possession bearing on the history and causes
89 of such insolvency. The board shall cooperate with the
90 boards of directors of guaranty associations in other
91 states in preparing a report on the history and causes
92 of insolvency of a particular insurer, and may adopt by
93 reference any report prepared by such other associa-
94 tions.

§33-26A-13. Appointment of special deputy.

1 The association may recommend a natural person to
2 serve as a special deputy to act for the commissioner and
3 under his or her supervision in the liquidation, rehabil-
4 itation or conservation of any member insurer.

§33-26A-14. Miscellaneous provisions.

1 (a) Nothing in this article shall be construed to
2 reduce the liability for unpaid assessments of the
3 insureds of an impaired or insolvent insurer operating
4 under a plan with assessment liability.

5 (b) Records shall be kept of all negotiations and
6 meetings in which the association or its representatives
7 are involved to discuss the activities of the association
8 in carrying out its powers and duties under section eight
9 of this article. Records of such negotiations or meetings
10 shall be made public only upon the termination of a
11 liquidation, rehabilitation or conservation proceeding
12 involving the impaired or insolvent insurer, upon the
13 termination of the impairment or insolvency of the
14 insurer, or upon the order of a court of competent
15 jurisdiction. Nothing in this subsection shall limit the
16 duty of the association to render a report of its activities

17 under section fifteen of this article.

18 (c) For the purpose of carrying out its obligations
19 under this article, the association shall be deemed to be
20 a creditor of the impaired or insolvent insurer to the
21 extent of assets attributable to covered policies reduced
22 by any amounts to which the association is entitled as
23 assignee or subrogee pursuant to subsection (m), section
24 eight of this article. All assets of the impaired or
25 insolvent insurer attributable to covered policies shall be
26 used to continue all covered policies and pay all
27 contractual obligations of the impaired or insolvent
28 insurer as required by this article. Assets attributable
29 to covered policies, as used in this subsection, are that
30 proportion of the assets which the reserves that should
31 have been established for the policies bear to the
32 reserves that should have been established for all
33 policies of insurance written by the impaired or
34 insolvent insurer.

35 (d) (1) Prior to the termination of any liquidation,
36 rehabilitation or conservation proceeding, the court may
37 take into consideration the contributions of the respec-
38 tive parties, including the association, the shareholders
39 and policy owners of the insolvent insurer, and any other
40 party with a bona fide interest, in making an equitable
41 distribution of the ownership rights of such insolvent
42 insurer. In making such a determination, consideration
43 shall be given to the welfare of the policyholders of the
44 continuing or successor insurer.

45 (2) No distribution to stockholders, if any, of an
46 impaired or insolvent insurer shall be made until and
47 unless the total amount of valid claims of the association
48 with interest thereon for funds expended in carrying out
49 its powers and duties under section eight of this article
50 with respect to the insurer have been fully recovered by
51 the association.

52 (e) (1) If an order for liquidation or rehabilitation of
53 an insurer domiciled in this state has been entered, the
54 receiver appointed under such order shall have a right
55 to recover on behalf of the insurer, from any affiliate
56 that controlled it, the amount of distributions other than

57 stock dividends paid by the insurer on its capital stock
58 made at any time during the five years preceding the
59 petition for liquidation or rehabilitation subject to the
60 limitations of this subsection.

61 (2) Distribution shall not be recoverable if the insurer
62 shows that when paid the distribution was lawful and
63 reasonable, and that the insurer did not know and could
64 not reasonably have known that the distribution might
65 adversely affect the ability of the insurer to fulfill its
66 contractual obligations.

67 (3) Any person who, as an affiliate, controlled the
68 insurer at the time the distributions were paid shall be
69 liable up to the amount of distributions he or she
70 received. Any person who, as an affiliate, controlled the
71 insurer at the time the distributions were declared, shall
72 be liable up to the amount of distributions he or she
73 would have received if they had been paid immediately.
74 If two or more persons are liable with respect to the
75 same distributions, they shall be jointly and severally
76 liable.

77 (4) The maximum amount recoverable under this
78 subsection shall be the amount required in excess of all
79 other available assets of the impaired or insolvent
80 insurer to pay the contractual obligations of the
81 impaired or insolvent insurer.

82 (5) If any person under subdivision (3) is insolvent, all
83 its affiliates that controlled it at the time the distribu-
84 tion was paid shall be jointly and severally liable for any
85 resulting deficiency in the amount recovered from the
86 insolvent affiliate.

§33-26A-15. Examination of association; annual report.

1 The association shall be subject to examination and
2 regulation by the commissioner. The board of directors
3 shall submit to the commissioner, not later than the first
4 day of May of each year, a financial report for the
5 preceding calendar year in a form approved by the
6 commissioner and a report of its activities during the
7 preceding calendar year.

§33-26A-16. Tax exemptions.

1 The association shall be exempt from payment of all
2 fees and all taxes levied by this state or any of its
3 subdivisions, except taxes levied on real property.

§33-26A-17. Immunity.

1 There shall be no liability on the part of and no cause
2 of action of any nature shall arise against any member
3 insurer or its agents or employees, the association or its
4 agents or employees, members of the board of directors,
5 or the commissioner or his or her representatives, for
6 any action or omission by them in the performance of
7 their powers and duties under this article. Such
8 immunity shall extend to the participation in any
9 organization of one or more other state associations of
10 similar purposes and to any such organization and its
11 agents or employees.

§33-26A-18. Stay of court proceedings; reopening default judgments.

1 All proceedings in which the impaired or insolvent
2 insurer is a party in any court in this state shall be
3 stayed sixty days from the date an order of liquidation,
4 rehabilitation or conservation is final to permit proper
5 legal action by the association on any matters germane
6 to its powers or duties. As to a judgment under any
7 decision, order, verdict or finding based on default the
8 association may apply to have the judgment set aside by
9 the same court that made the judgment and shall be
10 permitted to defend against the suit on the merits.

§33-26A-19. Prohibited advertisement of insurance guaranty association act in insurance sales; notice to policyholders.

1 (a) A person, including any insurer, agent or affiliate
2 of an insurer shall not make, publish, disseminate,
3 circulate or place before the public, or cause directly or
4 indirectly, to be made, published, disseminated, circu-
5 lated or placed before the public, in any newspaper,
6 magazine or other publication, or in the form of a notice,
7 circular, pamphlet, letter or poster, or over any radio
8 station or television station, or in any other way, any
9 advertisement, announcement or statement, written or

10 oral, which uses the existence of the insurance guaranty
11 association of this state for the purpose of sales,
12 solicitation or inducement to purchase any form of
13 insurance covered by the West Virginia life and health
14 insurance guaranty association act: *Provided*, That this
15 section shall not apply to the association or any other
16 entity which does not sell or solicit insurance.

17 (b) Within one hundred eighty days of the effective
18 date of this section, the association shall prepare a
19 summary document describing the general purposes
20 and current limitations of the act and complying with
21 subsection (c) of this section. This document should be
22 submitted to the commissioner for approval. Sixty days
23 after receiving such approval, no insurer may deliver a
24 policy or contract described in subdivision (1) of
25 subsection (b) of section three of this article to a policy
26 or contract holder unless the document is delivered to
27 the policy or contract holder prior to or at the time of
28 delivery of the policy or contract except if subsection (d)
29 of this section applies. The document should also be
30 available upon request by a policyholder. The distribu-
31 tion, delivery, or contents or interpretation of this
32 document shall not mean that either the policy or the
33 contract of the holder thereof would be covered in the
34 event of the impairment or insolvency of a member
35 insurer. The description document shall be revised by
36 the association as amendments to the act may require.
37 Failure to receive this document does not give the
38 policyholder, contract holder, certificate holder or
39 insured any greater rights than those stated in this
40 article.

41 (c) The document prepared under subsection (b) of
42 this section shall contain a clear and conspicuous
43 disclaimer on its face. The commissioner shall promul-
44 gate a rule establishing the form and content of the
45 disclaimer. The disclaimer shall:

46 (1) State the name and address of the association and
47 insurance department;

48 (2) Prominently warn the policy or contract holder
49 that the association may not cover the policy or, if

50 coverage is available, it will be subject to substantial
51 limitations and exclusions and conditioned on continued
52 residence in the state;

53 (3) State that the insurer and its agents are prohi-
54 bited by law from using the existence of the association
55 for the purpose of sales, solicitation or inducement to
56 purchase any form of insurance;

57 (4) Emphasize that the policy or contract holder
58 should not rely on coverage under the association when
59 selecting an insurer;

60 (5) Provide other information as directed by the
61 commissioner.

62 (d) An insurer or agent may not deliver a policy or
63 contract described in subdivision (1) of subsection (b) of
64 section three of this article and excluded under para-
65 graph (A), subdivision (2), subsection (b) of section three
66 of this article from coverage under this article unless the
67 insurer or agent, prior to or at the time of delivery, gives
68 the policy or contract holder a separate written notice
69 which clearly and conspicuously discloses that the policy
70 or contract is not covered by the association. The
71 commissioner shall by rule specify the form and content
72 of the notice, which rules shall be promulgated on or
73 before the second day of August, one thousand nine
74 hundred ninety-three.

CHAPTER 83

(H. B. 2779—By Delegates Carper, Evans, Facemyer, Higgins,
Louisos, Oliverio and Vest)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nine-e, relating to establishing a fifteen million dollar revolving loan fund to be used by the West Virginia economic development authority for industrial

development; limiting the amount of the loans; legislative findings; loans for industrial development; availability of funds and interest rates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA STATE BOARD OF INVESTMENTS.

§12-6-9e. Legislative findings; loans for industrial development; availability of funds and interest rates.

1 (a) The Legislature hereby finds and declares that the
2 citizens of the state benefit from the creation of jobs and
3 businesses within the state; that an industrial develop-
4 ment loan program will provide for economic growth
5 and stimulation within the state; and that loans from
6 pools established in the consolidated fund will assist in
7 providing the needed capital to assist industrial devel-
8 opment. This section is enacted in view of these findings.

9 (b) The board of investments may make available, on
10 a revolving basis, up to fifteen million dollars from the
11 consolidated fund to loan the West Virginia economic
12 development authority for industrial development
13 projects authorized by section seven, article fifteen,
14 chapter thirty-one of this code: *Provided*, That the West
15 Virginia economic development authority may not loan
16 more than two million dollars for any one industrial
17 development project. The loans shall be secured by
18 notes, security interests or bonds issued by the West
19 Virginia economic development authority evidencing
20 the indebtedness of the economic development authority
21 to the board.

22 The notes, security interests or bonds issued by the
23 economic development authority shall be secured by
24 security equal to or better than one of the three highest
25 rating grades by an agency which is nationally known
26 in the field of rating corporate securities or by a letter
27 of credit guarantee issued by a bank having an un-

28 secured legal lending limit greater than two million
29 dollars.

30 (c) The interest rates and maturity dates on the loans
31 to the West Virginia economic development authority
32 shall be at competitive rates and maturities as deter-
33 mined by the board. The board shall determine the
34 financial condition of pools within the consolidated fund
35 and shall determine if there is sufficient liquidity within
36 the pools to make the loans specified in this section.

CHAPTER 84

(Com. Sub. for H. B. 2307—By Mr. Speaker, Mr. Chambers, and Delegate Burk,
By Request of the Executive)

[Passed March 17, 1993: in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article seven, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limitation on investments by the jobs investment trust fund; allowing an additional investment for eligible businesses; limiting the additional investment; and requiring that the additional investment be in the form of a short-term debt investment.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-7. Limitation on investments.

1 Subject to the provisions of section nine of this article,
2 the board may invest in any eligible business: *Provided*,
3 That at the time of the placement of the investment not
4 more than twenty percent of the board's total investment
5 portfolio is invested in one eligible business within any
6 two-year period: *Provided, however*, That the board may
7 invest in an eligible business up to an additional twenty

8 percent of the board's total investment portfolio, or up
 9 to a total of two million dollars, whichever is less. The
 10 additional investment must be in the form of a short-
 11 term debt investment to be repaid within twelve months
 12 of the investment.

CHAPTER 85

(S. B. 51—By Senators Wooton, Dalton,
 Plymale and Wagner)

[Passed March 1, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article two, chapter one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to apportionment of the Senate; and making technical corrections to senatorial districts to reflect the intent of the Legislature in its original reenactment of this section in one thousand nine hundred ninety-one.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-1. Senatorial districts.

1 (a) This section shall be known and may be cited as
 2 "The Senate Redistricting Act of 1991".

3 (b) As used in this section:

4 (1) "County" means the territory comprising a county
 5 of this state as such county existed on the first day of
 6 January, one thousand nine hundred ninety, notwith-
 7 standing any boundary changes thereof made subse-
 8 quent thereto;

9 (2) "Block", "block group", "census tract" and "voting
 10 district" mean those geographic areas as defined by the
 11 bureau of the census of the United States department

12 of commerce for the taking of the one thousand nine
13 hundred ninety census of population and described on
14 census maps prepared by the bureau of the census. Such
15 maps are, at the time of this enactment, maintained by
16 the bureau of the census and filed in the office of
17 legislative services;

18 (3) "Magisterial district" means the territory compris-
19 ing a magisterial district of this state as reported to and
20 used by the bureau of the census of the United States
21 department of commerce for the taking of the one
22 thousand nine hundred ninety census of population and
23 described on census maps prepared by the bureau of the
24 census; and

25 (4) "Incumbent senator" means a senator elected at
26 the general election held in the year one thousand nine
27 hundred ninety or at any general election thereafter,
28 with an unexpired term of at least two years in duration.

29 (c) The Legislature recognizes that in dividing the
30 state into senatorial districts, the Legislature is bound
31 not only by the United States constitution but also by
32 the West Virginia constitution; that in any instance
33 where the West Virginia constitution conflicts with the
34 United States constitution, the United States constitu-
35 tion must govern and control, as recognized in section
36 one, article one of the West Virginia constitution; that
37 the United States constitution, as interpreted by the
38 United States supreme court and other federal courts,
39 requires state legislatures to be apportioned so as to
40 achieve equality of population as near as is practicable,
41 population disparities being permissible where justified
42 by rational state policies; and that the West Virginia
43 constitution requires two senators to be elected from
44 each senatorial district for terms of four years each, one
45 such senator being elected every two years, with one half
46 of the senators being elected biennially, and requires
47 senatorial districts to be compact, formed of contiguous
48 territory and bounded by county lines. The Legislature
49 finds and declares that it is not possible to divide the
50 state into senatorial districts so as to achieve equality
51 of population as near as is practicable as required by
52 the United States supreme court and other federal

53 courts and at the same time adhere to all of these
54 provisions of the West Virginia constitution; but that, in
55 an effort to adhere as closely as possible to all of these
56 provisions of the West Virginia constitution, the
57 Legislature, in dividing the state into senatorial
58 districts, as described and constituted in subsection (d)
59 hereof, has:

60 (1) Adhered to the equality of population concept,
61 while at the same time recognizing that from the
62 formation of this state in the year one thousand eight
63 hundred sixty-three, each constitution of West Virginia
64 and the statutes enacted by the Legislature have
65 recognized political subdivision lines and many func-
66 tions, policies and programs of government have been
67 implemented along political subdivision lines;

68 (2) Made the senatorial districts as compact as
69 possible, consistent with the equality of population
70 concept;

71 (3) Formed the senatorial districts of "contiguous
72 territory" as that term has been construed and applied
73 by the West Virginia supreme court of appeals;

74 (4) Deviated from the long-established state policy,
75 recognized in subdivision (1) above, by crossing county
76 lines only when necessary to ensure that all senatorial
77 districts were formed of contiguous territory or when
78 adherence to county lines produced unacceptable
79 population inequalities and only to the extent necessary
80 in order to maintain contiguity of territory and to
81 achieve acceptable equality of population; and

82 (5) Also taken into account in crossing county lines,
83 to the extent feasible, the community of interests of the
84 people involved.

85 (d) The Senate shall be composed of thirty-four
86 senators, one senator to be elected at the general election
87 to be held in the year one thousand nine hundred ninety-
88 two, and biennially thereafter for a four-year term from
89 each of the senatorial districts hereinafter in this
90 subsection described and constituted as follows:

91 (1) The counties of Brooke and Hancock and all of
92 magisterial District One of Ohio county and voting

93 district EP 9, voting district EP 20, voting district EP
94 28, voting district EP 31, voting district EP 113, voting
95 district EP 115, voting district EP 116, voting district
96 EP 119, voting district EP 120, Block 302D and Block
97 320 of Block Group 3 in Census Tract 0002 contained
98 in voting district EP 24, Block 405B, Block 422 and
99 Block 499B of Block Group 4 in Census Tract 0002
100 contained in voting district EP 24, Block 101, Block 102,
101 Block 103, Block 104, Block 105, Block 106, Block 107,
102 Block 108, Block 109, Block 110, Block 111, Block 112,
103 Block 113, Block 114 and Block 116 of Block Group 1
104 in Census Tract 0004 contained in voting district EP 24,
105 Block 201 of Block Group 2 in Census Tract 0004
106 contained in voting district EP 24, Block 105, Block 106,
107 Block 107, Block 109A and Block 110A of Block Group
108 1 in Census Tract 0014 contained in voting district EP
109 43, Block 209A, Block 210, Block 211 and Block 212 of
110 Block Group 2 in Census Tract 0014 contained in voting
111 district EP 43, and Block 327, Block 328 and Block 329
112 of Block Group 3 in Census Tract 0015 contained in
113 voting district EP 43 of magisterial District Two of Ohio
114 county, and all of magisterial District Three of Ohio
115 county except voting district EP 87, voting district EP
116 95, voting district EP 100, voting district EP 103 and
117 voting district EP 104 shall constitute the first senator-
118 ial district;

119 (2) The counties of Doddridge, Marshall, Ritchie,
120 Tyler, Wetzel and that portion of the county of Ohio not
121 included in the first senatorial district and voting
122 district EP 66, voting district EP 70, voting district EP
123 72, voting district EP 74 and voting district EP 78 of
124 the West Augusta magisterial district of the county of
125 Marion shall constitute the second senatorial district;

126 (3) The counties of Calhoun, Pleasants, Wirt and Wood
127 shall constitute the third senatorial district;

128 (4) The counties of Jackson, Mason, Putnam and
129 Roane shall constitute the fourth senatorial district;

130 (5) The county of Cabell and voting district EP 12,
131 voting district VTD 101, Block 103 of Block Group 1 in
132 Census Tract 0202 contained in voting district EP 11,
133 Block 199B of Block Group 1 in Census Tract 0

134 contained in voting district EP 59, and Block 101B and
135 Block 199E of Block Group 1 in Census Tract 0202
136 contained in voting district EP 21 in the Ceredo
137 magisterial district, and that portion of voting district
138 EP 59, voting district EP 63 and Block 101, Block 102,
139 Block 103, Block 104 and Block 105 of Block Group 1
140 in Census Tract 0051 contained in voting district EP 60
141 in the Westmoreland magisterial district of the county
142 of Wayne shall constitute the fifth senatorial district;

143 (6) The counties of McDowell and Mingo, voting
144 district EP 41, voting district EP 42, voting district EP
145 49, voting district EP 52, voting district EP 60, voting
146 district EP 61, Block 412B, Block 415, Block 416, Block
147 417B and Block 422B of Block Group 4 in Census Tract
148 9509 contained in voting district EP 46, Block 510 of
149 Block Group 5 in Census Tract 9509 contained in voting
150 district EP 46, Block 304B of Block Group 3 in Census
151 Tract 9510 contained in voting district EP 46, Block
152 405C, Block 412D, Block 414, Block 417, Block 418B,
153 Block 419B, Block 422, Block 423, Block 424 and Block
154 425 of Block Group 4 in Census Tract 9516 contained
155 in voting district EP 63 of magisterial District III in the
156 county of Mercer, and voting district EP 1, voting
157 district EP 3, voting district EP 5, voting district EP
158 6, voting district EP 17, voting district EP 18, voting
159 district EP 19, and Block 510 of Block Group 5 in
160 Census Tract 0204 contained in voting district EP 22,
161 and Block 219, Block 220, Block 221, Block 222, Block
162 224, Block 225, Block 228, Block 231 and Block 232 of
163 Block Group 2 in Census Tract 0206 contained in voting
164 district EP 22 of the Butler magisterial district in the
165 county of Wayne, and voting district EP 13, voting
166 district EP 15, voting district EP 20, Block 305A, Block
167 305C, Block 306A, Block 306C and Block 307 of Block
168 Group 3 in Census Tract 0052 contained in voting
169 district EP 11, Block 210A and Block 211A of Block
170 Group 2 in Census Tract 0201 contained in voting
171 district EP 11, Block 102, Block 104, Block 105, Block
172 106, Block 107, Block 108, Block 109, Block 110, Block
173 111, Block 112, Block 113, Block 114, Block 115, Block
174 116, Block 117, Block 118, Block 119, Block 120, Block
175 121 and Block 199A of Block Group 1 in Census Tract

176 0202 contained in voting district EP 11, Block 225 and
177 Block 226 of Block Group 2 in Census Tract 0202
178 contained in voting district EP 11, and Block 218A of
179 Block Group 2 in Census Tract 0203 contained in voting
180 district EP 11, and Block 101A, Block 102A, Block 103,
181 Block 104, Block 120A, Block 122A, Block 122B, Block
182 124A, Block 156, Block 157 and Block 199A of Block
183 Group 1 in Census Tract 0204 contained in voting
184 district EP 11, voting district EP 16, Block 101B, Block
185 102, Block 103, Block 104, Block 105, Block 106, Block
186 107, Block 108, Block 109, Block 110, Block 111, Block
187 112, Block 113B, Block 114, Block 115, Block 116, Block
188 117, Block 119, Block 120, Block 121, Block 122, Block
189 123, Block 124 and Block 134 of Block Group 1 in Census
190 Tract 0203 contained in voting district EP 21, Block
191 401, Block 402, Block 417 and Block 418 of Block Group
192 4 in Census Tract 0203 contained in voting district EP
193 21, Block 505, Block 520, Block 522 and Block 523 of
194 Block Group 5 in Census Tract 0203 contained in voting
195 district EP 21 of the Ceredo magisterial district in the
196 county of Wayne, and voting district EP 30, voting
197 district EP 31, voting district EP 34, voting district EP
198 36, voting district EP 37, and that portion of voting
199 district EP 3 of the Stonewall magisterial district in the
200 county of Wayne, and voting district EP 48, Block 318
201 of Block Group 3 in Census Tract 0206 contained in
202 voting district EP 53, Block 144 and Block 145 of Block
203 Group 1 in Census Tract 0207 contained in voting
204 district EP 53, Block 255B of Block Group 2 in Census
205 Tract 0207 contained in voting district EP 53, Block
206 464B of Block Group 4 in Census Tract 0206 contained
207 in voting district EP 54, and Block 319B, Block 315B
208 and Block 314B of Block Group 3 in Census Tract 0209
209 contained in voting district EP 54 of the Union
210 magisterial district in the county of Wayne, and voting
211 district EP 14, voting district EP 19, voting district EP
212 56, voting district EP 57, voting district EP 58, voting
213 district EP 61, voting district EP 62 and Block 106 of
214 Block Group 1 in Census Tract 0051 contained in voting
215 district EP 60 of the Westmoreland magisterial district
216 in the county of Wayne shall constitute the sixth
217 senatorial district;

218 (7) The counties of Boone, Lincoln and Logan and that
219 portion of the county of Wayne not included in the fifth
220 or sixth senatorial districts shall constitute the seventh
221 senatorial district;

222 (8) The county of Kanawha shall constitute the eighth
223 senatorial district;

224 (9) The counties of Raleigh and Wyoming shall
225 constitute the ninth senatorial district;

226 (10) The counties of Monroe and Summers and that
227 portion of the county of Mercer not included in the sixth
228 senatorial district, and voting district EP 68, voting
229 district EP 72 and voting district EP 74 of the New
230 Haven magisterial district of Fayette county, and voting
231 district EP 3, voting district EP 4, voting district EP
232 5, voting district EP 9, voting district EP 10, voting
233 district EP 11, voting district EP 12, voting district EP
234 14, voting district EP 19, voting district EP 23, voting
235 district EP 24, Block 226A, Block 228A, Block 229 and
236 Block 230 of Block Group 2 in Census Tract 0202
237 contained in voting district EP 8, Block 312A, Block
238 312B, Block 312C, Block 317A, Block 317B, Block 318,
239 Block 319, Block 320A, Block 320B, Block 321, Block
240 322A, Block 322B, Block 323, Block 324, Block 325,
241 Block 326, Block 327 and Block 328 of Block Group 3
242 in Census Tract 0202 contained in voting district EP 8,
243 Block 401A, Block 409, Block 410, Block 411, Block 412,
244 Block 413, Block 414A, Block 415, Block 416 and Block
245 417 of Block Group 4 in Census Tract 0202 contained
246 in voting district EP 8, Block 536, Block 539, Block 540,
247 Block 541, Block 542, Block 543, Block 544, Block 545,
248 Block 546, Block 547, Block 548, Block 552, Block 553,
249 Block 554 and Block 555 of Block Group 5 in Census
250 Tract 0202 contained in voting district EP 8, Block 330,
251 Block 331, Block 334, Block 335, Block 337, Block 338,
252 Block 339, Block 340, Block 342, Block 343, Block 344,
253 Block 345, Block 346 and Block 347 of Block Group 3
254 in Census Tract 0203 contained in voting district EP 13,
255 Block 101A, Block 101B, Block 102A, Block 102B, Block
256 103, Block 104, Block 105, Block 106, Block 108, Block
257 109, Block 110, Block 111, Block 112, Block 113, Block
258 114, Block 116, Block 117, Block 119, Block 120, Block

259 121A, Block 121B, Block 122, Block 123A, Block 123B,
260 Block 124A, Block 124B, Block 125A, Block 126, Block
261 127 and Block 128 of Block Group 1 in Census Tract
262 0204 contained in voting district EP 13, Block 501A,
263 Block 503, Block 504, Block 505, Block 506, Block 507,
264 Block 508, Block 509, Block 510, Block 511, Block 512,
265 Block 513, Block 514, Block 515, Block 516, Block 517,
266 Block 518, Block 519, Block 520, Block 521, Block 522,
267 Block 523A, Block 524, Block 525A, Block 526, Block
268 527A, Block 528A, Block 528B, Block 529A, Block 532,
269 Block 534A, Block 535, Block 537, Block 538, Block 549,
270 Block 550 and Block 551 of Block Group 5 in Census
271 Tract 0202 contained in voting district EP 15, Block
272 601A of Block Group 6 in Census Tract 0202 contained
273 in voting district EP 15, Block 307, Block 309A, Block
274 309B and Block 315 of Block Group 3 in Census Tract
275 0202 contained in voting district EP 16, and Block 234A
276 of Block Group 2 in Census Tract 0206 contained in
277 voting district EP 18 of the Plateau magisterial district
278 of Fayette county shall constitute the tenth senatorial
279 district;

280 (11) The counties of Clay, Greenbrier, Nicholas and
281 Webster and that portion of the county of Fayette not
282 included in the tenth senatorial district shall constitute
283 the eleventh senatorial district;

284 (12) The counties of Braxton, Gilmer, Harrison and
285 Lewis shall constitute the twelfth senatorial district;

286 (13) That portion of the county of Marion not included
287 in the second senatorial district, and all of the Central
288 magisterial district of Monongalia county, and voting
289 district EP 40, voting district EP 41, voting district EP
290 42, voting district EP 44, voting district EP 46, voting
291 district EP 47, voting district EP 49, voting district EP
292 51, voting district EP 52, voting district EP 53, voting
293 district EP 54, voting district EP 55, voting district EP
294 56, voting district EP 58, voting district EP 70, voting
295 district EP 71, voting district EP 72, voting district EP
296 73, voting district EP 74, voting district EP 75 and
297 Block 301B, Block 302B and Block 399B of Block Group
298 3 in Census Tract 0112 contained in voting district EP
299 48, Block 401, Block 402, Block 403, Block 404, Block

300 405, Block 406, Block 407, Block 408, Block 409, Block
301 410, Block 411, Block 412, Block 413A, Block 413B,
302 Block 414, Block 415, Block 416, Block 417, Block 418,
303 Block 419, Block 420, Block 421, Block 422, Block 423,
304 Block 424, Block 425 and Block 499 of Block Group 4
305 in Census Tract 0112 contained in voting district EP 48,
306 Block 501B, Block 502A, Block 502B, Block 502C, Block
307 503A, Block 503B, Block 503C, Block 504A, Block 504B,
308 Block 505A, Block 505B, Block 506, Block 507A, Block
309 507B, Block 508, Block 509A, Block 509B, Block 510,
310 Block 511, Block 512, Block 513, Block 514A, Block
311 514B, Block 515A, Block 515B, Block 516A, Block 516B,
312 Block 517, Block 518, Block 519A, Block 519B, Block
313 520A, Block 520B, Block 521A and Block 521B of Block
314 Group 5 in Census Tract 0112 contained in voting
315 district EP 48, Block 301, Block 302, Block 303, Block
316 304, Block 305, Block 306, Block 307, Block 308, Block
317 309, Block 311, Block 312, Block 313, Block 314, Block
318 315, Block 316, Block 317, Block 355A, Block 355B,
319 Block 357A, Block 357B, Block 358, Block 360, Block
320 362 and Block 399 of Block Group 3 in Census Tract
321 0115 contained in voting district EP 48 of the Western
322 magisterial district of Monongalia county, and that
323 portion of voting district EP 22, that portion of voting
324 district EP 30, voting district EP 32, voting district EP
325 36, voting district EP 39, voting district EP 76, voting
326 district EP 80, voting district EP 81, voting district EP
327 82, voting district EP 83, voting district EP 84, voting
328 district EP 86, that portion of voting district EP 87,
329 voting district EP 88, voting district EP 89, voting
330 district EP 91, Block 418B, Block 419C, Block 419D and
331 Block 421B of Block Group 4 in Census Tract 0108
332 contained in voting district EP 35, Block 101D, Block
333 102, Block 103, Block 105 and Block 110 of Block Group
334 1 in Census Tract 0109 contained in voting district EP
335 35, Block 731B, Block 732B, Block 733 and Block 734B
336 of Block Group 7 in Census Tract 0109 contained in
337 voting district EP 35, Block 801C, Block 802, Block 803,
338 Block 804, Block 805, Block 806B, Block 807, Block 811,
339 Block 812 and Block 813 of Block Group 8 in Census
340 Tract 0109 contained in voting district EP 35, Block
341 315B of Block Group 3 in Census Tract 0110 contained

342 in voting district EP 35, Block 599A of Block Group 5
343 in Census Tract 0116 contained in voting district EP 79,
344 Block 126, Block 127, Block 128, Block 132, Block 133,
345 Block 134, Block 135, Block 136, Block 137A, Block
346 137B, Block 138, Block 139, Block 140, Block 141, Block
347 142, Block 143, Block 144, Block 145, Block 146, Block
348 147, Block 148, Block 149, Block 150, Block 151, Block
349 152, Block 153, Block 154, Block 155, Block 156A, Block
350 156B, Block 157, Block 158, Block 159, Block 160, Block
351 161, Block 162, Block 163, Block 164, Block 165, Block
352 166, Block 167, Block 168, Block 169, Block 170, Block
353 171, Block 172, Block 173, Block 174, Block 175, Block
354 176, Block 177, Block 178, Block 179, Block 180, Block
355 181, Block 182, Block 183, Block 184, Block 185, Block
356 186, Block 187, Block 199A, Block 199B, Block 199F,
357 Block 199G, Block 199H and Block 199J of Block Group
358 1 in Census Tract 0117 contained in voting district EP
359 79, Block 613B of Block Group 6 in Census Tract 0110
360 contained in voting district EP 85, and Block 701, Block
361 702B and Block 703 of Block Group 7 in Census Tract
362 0110 contained in voting district EP 85 of the Eastern
363 magisterial district of Monongalia county shall consti-
364 tute the thirteenth senatorial district;

365 (14) The counties of Barbour, Preston, Taylor and
366 Tucker and that portion of the county of Monongalia not
367 included in the thirteenth senatorial district, and all of
368 the Union magisterial district of Grant county, and all
369 of magisterial District Two of Mineral county, and
370 voting district EP 2, voting district EP 3, voting district
371 EP 4, voting district EP 6, voting district EP 8, voting
372 district EP 27, voting district EP 28, voting district EP
373 29, voting district EP 30, voting district EP 31, voting
374 district EP 35 and that portion of voting district EP 5
375 in magisterial District One of Mineral county, and
376 voting district EP 10, voting district EP 12, voting
377 district EP 13, voting district EP 14, voting district EP
378 15, voting district EP 32 and that portion of voting
379 district EP 5 in magisterial District Three of Mineral
380 county shall constitute the fourteenth senatorial district;

381 (15) The counties of Hampshire, Hardy, Randolph,
382 Pendleton, Pocahontas and Upshur and that portion of
383 the county of Grant not included in the fourteenth

384 senatorial district, and that portion of the county of
385 Mineral county not included in the fourteenth senatorial
386 district shall constitute the fifteenth senatorial district;

387 (16) The counties of Berkeley, Jefferson and Morgan
388 shall constitute the sixteenth senatorial district; and

389 (17) The county of Kanawha shall constitute the
390 seventeenth senatorial district.

391 (e) The West Virginia constitution further provides,
392 in section four, article VI thereof, that where a
393 senatorial district is composed of more than one county,
394 both senators for such district shall not be chosen from
395 the same county, a residency dispersal provision which
396 is clear with respect to senatorial districts which follow
397 county lines, as required by such constitution, but which
398 is not clear in application with respect to senatorial
399 districts which cross county lines. However, in an effort
400 to adhere as closely as possible to the West Virginia
401 constitution in this regard, the following additional
402 provisions, in furtherance of the rationale of such
403 residency dispersal provision and to give meaning and
404 effect thereto, are hereby established:

405 (1) With respect to a senatorial district which is
406 composed of one or more whole counties and one or more
407 parts of another county or counties, no more than one
408 senator shall be chosen from the same county or part
409 of a county to represent such senatorial district;

410 (2) With respect to a senatorial district which does not
411 contain any whole county but only parts of two or more
412 counties, no more than one senator shall be chosen from
413 the same part to represent such senatorial district; and

414 (3) With respect to superimposed senatorial districts
415 which contain only one whole county, all senators shall
416 be chosen from such county to represent such senatorial
417 districts.

418 (f) Candidates for the Senate shall be nominated as
419 provided in section four, article five, chapter three of
420 this code, except that such candidates shall be nomi-
421 nated in accordance with the residency dispersal
422 provisions specified in section four, article VI of the
423 West Virginia constitution and the additional residency

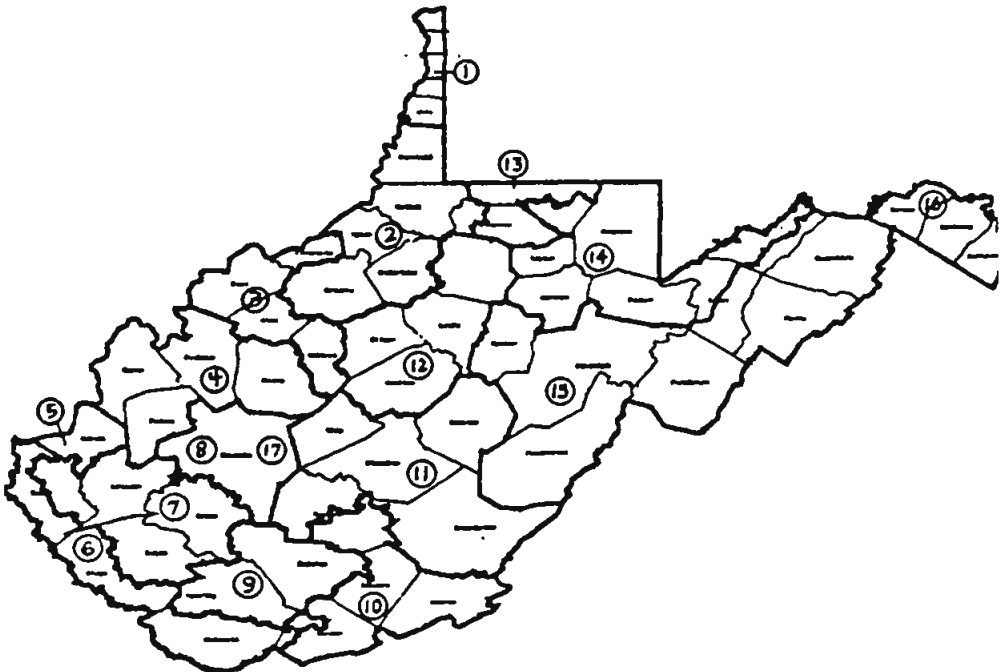
424 dispersal provisions specified in subsection (e) hereof.
425 Candidates for the Senate shall also be elected in
426 accordance with the residency dispersal provisions
427 specified in said section and the additional residency
428 dispersal provisions specified in subsection (e) hereof. In
429 furtherance of the foregoing provisions of this subsection,
430 no person may file a certificate of candidacy for
431 election from a senatorial district described and
432 constituted in subsection (d) hereof if he or she resides
433 in the same county and the same such senatorial district
434 wherein also resides an incumbent senator, whether the
435 senatorial district wherein such incumbent senator
436 resides was described and constituted by chapter ninety-
437 nine, acts of the Legislature, one thousand nine hundred
438 eighty-two, or was described and constituted in subsection
439 (d) of this section or its immediately prior reenactment.
440 Any vacancy in a nomination shall be filled, any
441 appointment to fill a vacancy in the Senate shall be
442 made, and any candidates in an election to fill a vacancy
443 in the Senate shall be chosen, so as to be consistent with
444 the residency dispersal provisions specified in section
445 four, article VI of the West Virginia constitution and the
446 additional residency dispersal provisions specified in
447 subsection (e) hereof.

448 (g) Regardless of the changes in senatorial district
449 boundaries made by the provisions of subsection (d)
450 hereof, all senators elected at the general election held
451 in the year one thousand nine hundred eighty-eight and
452 at the general election held in the year one thousand
453 nine hundred ninety shall continue to hold their seats
454 as members of the Senate for the term, and as representatives
455 of the senatorial district, for which each thereof, respectively,
456 was elected. Any appointment made or election held to fill a
457 vacancy in the Senate shall be for the remainder of the term,
458 and as a representative of the senatorial district, for which
459 the vacating senator was elected or appointed, and any such
460 election shall be held in the district as the same was described
461 and constituted at the time the vacating senator was
462 elected or appointed.
463

464 (h) The secretary of state may promulgate rules and
465 regulations to implement the provisions of this section.

466 including emergency rules and regulations promulgated
467 pursuant to the provisions of section five, article three,
468 chapter twenty-nine-a of this code.

469 (i) In amending and reenacting this section, it is not
470 the intention of the Legislature to alter or change the
471 arrangement of the senatorial districts and the appor-
472 tionment of senators as they were intended to be adopted
473 in the prior enactment of this section subsequent to the
474 United States census for the year one thousand nine
475 hundred ninety, nor does this reenactment alter or
476 change such arrangement and apportionment. Rather,
477 it is the intent of the Legislature in amending this
478 section to incorporate all the necessary geographic areas
479 which should have been included in each senatorial
480 district, such amendment being the inclusion of two
481 voting districts which were inadvertently omitted from
482 one senatorial district, which inclusion does not alter or
483 change the boundaries of that district.



CHAPTER 86

(H. B. 2429—By Delegates Browning and Prezioso)

[Passed March 25, 1993; in effect from passage. Approved by the Governor.]

AN ACT to repeal article nine, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the legislative committee on pensions and retirement.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of article creating the legislative committee on pensions and retirement.

- 1 Article nine, chapter four of the code of West
- 2 Virginia, one thousand nine hundred thirty-one, as
- 3 amended, is hereby repealed.

CHAPTER 87

(Com. Sub. for H. B. 2596—By Delegates Williams, Carper,
Rutledge and Ashley)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections ten, thirteen, fourteen, fifteen, seventeen and eighteen, article five, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to suggestions on judgments; setting forth procedures for suggestion on a judgment creditor; requiring judgment creditor to furnish information, to the extent possible, identifying the judgment debtor; defining a suggestee's obligation when served with a summons on a suggestion filed by a judgment creditor; clarifying the effective date of a suggestee execution; and making certain technical corrections.

Be it enacted by the Legislature of West Virginia:

That sections ten, thirteen, fourteen, fifteen, seventeen and

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

ARTICLE 5. PROCEEDINGS IN AID OF EXECUTION; INTERROGATORIES; SUGGESTION.

- §38-5-10. Suggestion on judgment; summons against person suggested.
- §38-5-13. Contents of answer of person suggested; verification.
- §38-5-14. Discharge of person suggested by payment of money or delivery of property; officer's receipt.
- §38-5-15. Order of court for payment by person suggested.
- §38-5-17. Failure of person suggested to answer.
- §38-5-18. Jury trial in suggestion proceedings; waiver of jury; right of appeal; costs.

§38-5-10. Suggestion on judgment; summons against person suggested.

1 (a) Upon a suggestion by the judgment creditor that
 2 a person is indebted or liable to the judgment debtor or
 3 has in the person's possession or control personal
 4 property belonging to the judgment debtor, which debt
 5 or liability could be enforced, when due, or which
 6 property could be recovered, when it became returnable,
 7 by the judgment debtor in a court of law, and which
 8 debt or liability or property is subject to the judgment
 9 creditor's writ of fieri facias, a summons against such
 10 person may be issued out of the office of the clerk of the
 11 circuit court of the county in which such person so
 12 indebted or liable, or so having such personal property,
 13 resides, or, if such person be a nonresident of the state,
 14 in the county in which the person may be found, upon
 15 an attested copy of such writ of fieri facias being filed
 16 with the clerk to be preserved in the clerk's office,
 17 requiring such person to answer the suggestion in
 18 writing and under oath. The return day of the summons
 19 shall be the next term of the court.

20 (b) The suggestion by the judgment creditor provided
 21 for herein shall include, to the extent possible, the
 22 present address and social security number of the
 23 judgment debtor, which information shall be made
 24 available to the person suggested for purposes of
 25 identifying the judgment debtor and facilitating a
 26 proper answer to the suggestion.

§38-5-13. Contents of answer of person suggested; verification.

1 The answer of the person suggested shall state, in
2 addition to the matters required to be disclosed by the
3 summons mentioned in section ten of this article, the
4 nature and amount of liability or indebtedness to the
5 judgment debtor at the time of service of the summons,
6 or a description of the property of the judgment debtor
7 held by the person suggested at the time of service of
8 the summons, and whether the liability of the person,
9 or any part thereof, is represented by a negotiable
10 instrument, and, in the case of a bailee, whether there
11 is outstanding any negotiable warehouse receipt, bill of
12 lading, or other negotiable instrument for any of the
13 personal property in the person's possession or under the
14 person's control. The answer shall be verified in the
15 manner prescribed for the verification of other plead-
16 ings.

§38-5-14. Discharge of person suggested by payment of money or delivery of property; officer's receipt.

1 A person suggested may, at any time before the
2 return day of the summons mentioned in section ten of
3 this article, deliver the property or pay the money for
4 which the person is liable at the time of service of the
5 summons, or a sufficiency thereof to satisfy the execu-
6 tion, and shall thereby be discharged from any further
7 liability under the execution, and, as to the property so
8 delivered and/or money so paid, the person shall be
9 discharged from all liability whatsoever to the judgment
10 debtor: *Provided*, That if the obligation upon which the
11 person is indebted to the judgment debtor is evidenced
12 by a negotiable instrument, the obligation shall not, as
13 to a holder in due course, be discharged by the payment:
14 *Provided, however*, That the right of a holder in due
15 course, of a negotiable warehouse receipt, bill of lading,
16 or other negotiable instrument for any property so
17 delivered, shall not be impaired by the delivery. If any
18 payment or delivery is made to the officer under the
19 provisions of this section, the officer shall give a receipt
20 for, and make a return of, what is so paid and delivered.

§38-5-15. Order of court for payment by person suggested.

1 If it appears from the answer of the person suggested
2 that, at the time the writ of fieri facias was delivered
3 to the officer to be executed, or thereafter, and before
4 the time of the service of the summons, or the return
5 day of the writ of fieri facias, whichever comes first, the
6 person was indebted or liable to the judgment debtor,
7 or had in the person's possession or under the person's
8 control any personal property belonging to the judgment
9 debtor, and that the person had not, before notice of the
10 delivery of the writ of fieri facias to the officer, paid the
11 money or delivered the property to the judgment debtor,
12 or upon the judgment debtor's order, and that the debt
13 or liability to pay the money or deliver the property was
14 not evidenced by a negotiable instrument, the court may
15 order the person to pay the amount so due from the
16 person and to deliver the property, or any part of the
17 money or property, to such person as the court may
18 designate as receiver: *Provided*, That if it shall appear
19 from the answer of the person suggested, that the
20 person's debt or liability to pay money or deliver
21 property is evidenced by a negotiable instrument, the
22 court may order the payment or delivery, but only upon
23 condition that the holder of the negotiable instrument
24 shall deliver the same to the person suggested simul-
25 taneously with the payment of the money or delivery of
26 the property: *Provided, however*, That any person
27 suggested holding property under a pledge or lien shall
28 not be required to deliver up the property except upon
29 payment to such person of the debt secured by the
30 pledge or lien.

§38-5-17. Failure of person suggested to answer.

1 If any person suggested, summoned as provided in
2 this article, fails to answer, the court may either compel
3 the person to answer, or hear proof of the matters
4 required by section fifteen of this article to be disclosed
5 by the person's answer, concerning any debt or liability
6 due by the person to, or personal property in the person's
7 possession or under the person's control of, the judgment
8 debtor at the time of service of the summons, and make

9 the orders in relation thereto as if what is so proved had
10 appeared in the person's answer.

§38-5-18. Jury trial in suggestion proceedings; waiver of jury; right of appeal; costs.

1 When it is suggested by the judgment creditor in any
2 case of suggestion that the person suggested has not
3 fully disclosed the debts or liabilities due by the person
4 to, or personal property in the person's possession or
5 under the person's control of, the judgment debtor at the
6 time of service of the summons, or has not delivered to
7 the officer the property, or paid the money, for which
8 the person was liable, the court shall cause a jury to be
9 impaneled, without any formal pleadings, to inquire as
10 to the debts or liabilities or property, or as to the
11 payment or delivery, unless a trial by jury is waived by
12 the parties, and if trial by jury be waived, the court shall
13 proceed to hear and determine the questions at issue.
14 Whether the issues of fact be found by the court or by
15 a jury, the court shall proceed in respect to any fact so
16 found, in the same manner as if they had been confessed
17 by the person suggested, but either party shall be
18 entitled to a writ of error or an appeal as in other cases.
19 If the verdict or decision of the court be for the person
20 suggested, the person shall have judgment for the
21 person's costs against the judgment creditor, and if the
22 judgment be against the person suggested, the person
23 shall be adjudged liable for the costs of the suggestion
24 proceeding.

CHAPTER 88

(S. B. 559—By Senator Wooton)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the composition of the state lottery commission; relating to compensation of commission n .

and providing that two members of the lottery commission be appointed as vacancies occur from each of the new congressional districts.

Be it enacted by the Legislature of West Virginia:

That section four, 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.

§29-22-4. State lottery commission created; composition; qualifications; appointment; terms of office; chairman's removal; vacancies; compensation and expenses; quorum; oath and bond.

1 (a) There is hereby created a state lottery commission
2 which shall consist of seven members, all residents and
3 citizens of the state, one who shall be a lawyer, one who
4 shall be a certified public accountant, one who shall be
5 a computer expert, one who shall have not less than five
6 years experience in law enforcement and one who shall
7 be qualified by experience and training in the field of
8 marketing. The two remaining members shall be
9 representative of the public at large. The commission
10 shall carry on a continuous study and investigation of
11 the lottery throughout the state and advise and assist the
12 director of the state lottery. The commission members
13 shall be appointed by the governor, by and with the
14 advice and consent of the Senate, no later than the first
15 day of July, one thousand nine hundred eighty-five. The
16 terms of members first appointed expire as designated
17 by the governor at the time of appointment: One at the
18 end of one year; two at the end of two years; one at the
19 end of three years; two at the end of four years; and one
20 at the end of five years. Upon the effective date of this
21 section, as vacancies occur, appointments to fill vacan-
22 cies shall be made so that at least two members are
23 appointed from each congressional district existing as of
24 the first day of January, one thousand nine hundred
25 ninety-three. No more than four members of such
26 commission shall belong to the same political party.
27 Members serve overlapping terms of five years and are
28 eligible for successive appointments to the commission.

29 On the first day of July of each year, the commission
30 shall select a chairman from its membership. The
31 governor may remove any commission member for
32 cause, notwithstanding the provisions of section four,
33 article six, chapter six of this code. Vacancies shall be
34 filled in the same manner as the original appointment
35 but only for the remainder of the term. No person
36 convicted of a felony or crime involving moral turpitude
37 shall be eligible for appointment nor appointed as a
38 commissioner.

39 (b) The board shall pay each member the same
40 compensation as is paid to members of the Legislature
41 for their interim duties as recommended by the citizens
42 legislative compensation commission and authorized by
43 law for each day or portion thereof engaged in the
44 discharge of official duties and shall reimburse each
45 member for actual and necessary expenses incurred in
46 the discharge of official duties: *Provided*, That the per
47 mile rate to be reimbursed shall be the same rate as
48 authorized for members of the Legislature. All such
49 payments shall be made from the state lottery fund.

50 (c) At least one meeting per month shall be held by
51 the commission. Additional meetings may be held at the
52 call of the chairman, director or majority of the
53 commission members.

54 (d) A majority of the members constitutes a quorum
55 for the transaction of business, and all actions require
56 a majority vote of the members present.

57 (e) Before entering upon the discharge of the duties
58 as commissioner, each commissioner shall take and
59 subscribe to the oath of office prescribed in section five,
60 article IV of the constitution of West Virginia and shall
61 enter into a bond in the penal sum of one hundred
62 thousand dollars with a corporate surety authorized to
63 engage in business in this state, conditioned upon the
64 faithful discharge and performance of the duties of the
65 office. The executed oath and bond shall be filed in the
66 office of the secretary of state.

CHAPTER 89

(Com. Sub. for H. B. 2277—By Delegates Douglas, Faircloth, Staton,
Beane and Manuel)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article eleven-a, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections four, five, six, seven, nine, ten and eleven, article eleven-b of said chapter; and to further amend said article by adding thereto two new sections, designated sections seven-a and twelve, all relating to permitting magistrates to impose alternative sentences upon convicted offenders; authorizing circuit courts to order home confinement in lieu of jail; authorizing magistrates to order certain offenders confined to home for a period of electronically monitored home confinement as an alternative sentence to incarceration in jail; exception for electronic monitoring requirement in magistrate court cases; requirements for home confinement; specifying sole offenders for which offenders may not be sentenced to home confinement; home confinement fees; appointment and authority of home confinement supervisors; violations of terms and conditions of home confinement order and procedures for revocation of home confinement; penalties when home confinement revoked; information to be provided to certain law-enforcement agencies regarding offenders sentenced to home confinement; and vesting circuit judges with the authority of the board of probation and parole in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

Article

11A. Release for Work and Other Purposes.

11B. Home Confinement Act.

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1a. Other sentencing alternatives.

1 (a) Any person who has been convicted in a circuit
2 court or in a magistrate court under any criminal
3 provision of this code of a misdemeanor or felony, which
4 is punishable by confinement in the county jail, may, in
5 the discretion of the sentencing judge or magistrate, as
6 an alternative to the sentence imposed by statute for
7 such crime, be sentenced under one of the following
8 programs:

9 (1) The weekend jail program under which persons
10 would be required to spend weekends or other days
11 normally off from work in jail;

12 (2) The work program under which sentenced persons
13 would be required to spend the first two or more days
14 of their sentence in jail and then, in the discretion of the
15 court, would be assigned to a county agency to perform
16 labor within the jail, or in and upon the buildings,
17 grounds, institutions, bridges, roads, including or-
18 phaned roads used by the general public, and public
19 works within the county. Eight hours of such labor shall
20 be credited as one day of the sentence imposed. Persons
21 sentenced under this program may be required to
22 provide their own transportation to and from the work
23 site, lunch and work clothes; or

24 (3) The community service program under which
25 persons sentenced would spend no time in jail but would
26 be sentenced to a number of hours or days of community
27 service work with tax supported agencies. Eight hours
28 of service work shall be credited as one day of the
29 sentence imposed. Persons sentenced under this pro-
30 gram may be required to provide their own transpor-
31 tation to and from the work site, lunch and work clothes.

32 (b) In no event may the duration of the alternate
33 sentence exceed the maximum period of incarceration
34 otherwise allowed.

35 (c) In imposing a sentence under the provisions of this
36 section, the court shall first make the following findings
37 of fact and incorporate them into the court's sentencing
38 order:

39 (1) The person sentenced was not convicted of an
40 offense for which a mandatory period of confinement is
41 imposed by statute;

42 (2) In circuit court cases, that the person sentenced
43 is not a habitual criminal within the meaning of sections
44 eighteen and nineteen, article eleven, chapter sixty-one
45 of this code;

46 (3) In circuit court cases, that adequate facilities for
47 the administration and supervision of alternative
48 sentencing programs are available through the court's
49 probation officers or the county sheriff or, in magistrate
50 court cases, that adequate facilities for the administra-
51 tion and supervision of alternative sentencing programs
52 are available through the county sheriff; and

53 (4) That an alternative sentence under provisions of
54 this article will best serve the interests of justice.

55 (d) Persons sentenced by the circuit court under the
56 provisions of this article shall remain under the
57 administrative custody and supervision of the court's
58 probation officers or the county sheriff. Persons sent-
59 enced by a magistrate shall remain under the adminis-
60 trative custody and supervision of the county sheriff.

61 (e) Persons sentenced under the provisions of this
62 section may be required to pay the costs of their
63 incarceration, including meal costs, at the discretion of
64 the court.

65 (f) Persons sentenced under the provisions of this
66 section remain under the jurisdiction of the court. The
67 court may withdraw any alternative sentence at any
68 time by order entered with or without notice and
69 require that the remainder of the sentence be served in
70 the county jail: *Provided*, That no alternative sentence
71 directed by the sentencing judge or magistrate or
72 administered under the supervision of the sheriff, his
73 deputies, a jailer or a guard, shall require the convicted

74 person to perform duties which would be considered
75 detrimental to the convicted person's health as attested
76 by a physician.

ARTICLE 11B. HOME CONFINEMENT ACT.

- §62-11B-4. Home confinement; period of home confinement; applicability.
- §62-11B-5. Requirements for order for home confinement.
- §62-11B-6. Circumstances under which home confinement may not be ordered.
- §62-11B-7. Home confinement fees; special fund.
- §62-11B-7a. Employment by county commission of home confinement supervisors; authority of supervisors.
- §62-11B-9. Violation of order of home confinement; procedures; penalties.
- §62-11B-10. Information to be provided law-enforcement agencies.
- §62-11B-11. Provisions of article not exclusive; discretion of the circuit court.
- §62-11B-12. Supervision of home confinement by circuit court.

§62-11B-4. Home confinement; period of home confinement; applicability.

1 (a) As a condition of probation or bail or as an
2 alternative sentence to another form of incarceration for
3 any criminal violation of this code over which a circuit
4 court has jurisdiction, a circuit court may order an
5 offender confined to the offender's home for a period of
6 home confinement. As an alternative sentence to
7 incarceration in jail, a magistrate may order an adult
8 offender convicted of any criminal violation under this
9 code over which a magistrate court has jurisdiction, be
10 confined to the offender's home for a period of electron-
11 ically monitored home confinement: *Provided*, That
12 electronic monitoring may not be required in a specific
13 case if a circuit court upon petition thereto finds by
14 order that electronic monitoring is not necessary.

15 (b) The period of home confinement may be contin-
16 uous or intermittent, as the circuit court orders, or
17 continuous except as provided by section five of this
18 article if ordered by a magistrate. However, the
19 aggregate time actually spent in home confinement may
20 not exceed the term of imprisonment or incarceration
21 prescribed by this code for the offense committed by the
22 offender.

23 (c) A grant of home confinement under this article
24 constitutes a waiver of any entitlement to deduction

25 from a sentence for good conduct under the provisions
26 of section twenty-seven, article five, chapter twenty-
27 eight of this code.

§62-11B-5. Requirements for order for home confinement.

1 An order for home confinement of an offender under
2 section four of this article shall include, but not be
3 limited to, the following:

4 (1) A requirement that the offender be confined to the
5 offender's home at all times except when the offender
6 is:

7 (A) Working at employment approved by the circuit
8 court or magistrate, or traveling to or from approved
9 employment;

10 (B) Unemployed and seeking employment approved
11 for the offender by the circuit court or magistrate;

12 (C) Undergoing medical, psychiatric, mental health
13 treatment, counseling or other treatment programs
14 approved for the offender by the circuit court or
15 magistrate;

16 (D) Attending an educational institution or a program
17 approved for the offender by the circuit court or
18 magistrate;

19 (E) Attending a regularly scheduled religious service
20 at a place of worship;

21 (F) Participating in a community work release or
22 community service program approved for the offender
23 by the circuit court, in circuit court cases; or

24 (G) Engaging in other activities specifically approved
25 for the offender by the circuit court or magistrate.

26 (2) Notice to the offender of the penalties which may
27 be imposed if the circuit court or magistrate subse-
28 quently finds the offender to have violated the terms and
29 conditions in the order of home detention.

30 (3) A requirement that the offender abide by a
31 schedule, prepared by the probation officer in circuit

32 court cases; or by the supervisor or sheriff in magistrate
33 court cases, specifically setting forth the times when the
34 offender may be absent from the offender's home and
35 the locations the offender is allowed to be during the
36 scheduled absences.

37 (4) A requirement that the offender is not to commit
38 another crime during the period of home confinement
39 ordered by the circuit court or magistrate.

40 (5) A requirement that the offender obtain approval
41 from the probation officer or supervisor or sheriff before
42 the offender changes residence or the schedule described
43 in subdivision (3) of this section.

44 (6) A requirement that the offender maintain:

45 (A) A working telephone in the offender's home;

46 (B) If ordered by the circuit court or as ordered by
47 the magistrate, an electronic monitoring device in the
48 offender's home, or on the offender's person, or both; and

49 (C) Electric service in the offender's home if use of
50 a monitoring device is ordered by the circuit court or
51 anytime home confinement is ordered by the magistrate.

52 (7) A requirement that the offender pay a home
53 confinement fee set by the circuit court or magistrate.
54 If a magistrate orders home confinement for an
55 offender, the magistrate shall follow a fee schedule
56 established by the supervising circuit judge in setting
57 the home confinement fee.

58 (8) A requirement that the offender abide by other
59 conditions set by the circuit court or by the magistrate.

**§62-11B-6. Circumstances under which home confine-
ment may not be ordered.**

1 (a) A circuit court or magistrate may not order home
2 confinement for an offender unless the offender agrees
3 to abide by all of the requirements set forth in the
4 court's order issued under this article.

5 (b) A circuit court or magistrate may not order home
6 confinement for an offender who is being held under a
7 detainer, warrant or process issued by a court of another

8 jurisdiction.

9 (c) A magistrate may order home confinement for an
10 offender only with electronic monitoring and only if the
11 county of the offender's home has an established
12 program of electronic monitoring that is equipped,
13 operated and staffed by the county supervisor or sheriff
14 for the purpose of supervising participants in a home
15 confinement program: *Provided*, That electronic moni-
16 toring may not be required in a specific case if a circuit
17 court upon petition thereto finds by order that such
18 electronic monitoring is not necessary.

19 (d) A magistrate may not order home confinement for
20 an offender convicted of a crime of violence against the
21 person.

§62-11B-7. Home confinement fees; special fund.

1 All home detention fees ordered by the circuit court
2 shall be paid to the circuit clerk, who shall monthly
3 remit the fees to the sheriff. All home detention fees
4 ordered by a magistrate shall be paid to the magistrate
5 court clerk, who shall monthly remit the fees to the
6 county sheriff. The county sheriff shall establish a
7 special fund designated the home confinement services
8 fund, in which the sheriff shall deposit all home
9 confinement fees remitted by the clerks. The county
10 commission shall appropriate money from the fund to
11 administer a home confinement program, including the
12 purchase of electronic monitoring devices and other
13 supervision expenses, and may as necessary supplement
14 the fund with additional appropriations.

**§62-11B-7a. Employment by county commission of home
confinement supervisors; authority of
supervisors.**

1 The county commission may employ one or more
2 persons with the approval of the circuit court and who
3 shall be subject to the supervision of the sheriff as a
4 home confinement supervisor or may designate the
5 county sheriff to supervise offenders ordered to undergo
6 home confinement and to administer the county's home
7 confinement program. Any person so supervising shall

8 have authority, equivalent to that granted to a probation
9 officer pursuant to section ten, article twelve of this
10 chapter, to arrest a home confinement participant when
11 reasonable cause exists to believe that such participant
12 has violated the conditions of his or her home detention.
13 Unless otherwise specified, the use of the term "super-
14 visor" in this article shall refer to a home confinement
15 supervisor.

**§62-11B-9. Violation of order of home confinement;
procedures; penalties.**

1 (a) If at any time during the period of home detention
2 there is reasonable cause to believe that a participant
3 in a home confinement program has violated the terms
4 and conditions of the circuit court's home confinement
5 order, he or she shall be subject to the procedures and
6 penalties set forth in section ten, article twelve of this
7 chapter.

8 (b) If at any time during the period of home confine-
9 ment there is reasonable cause to believe that a
10 participant sentenced to home confinement by the
11 circuit court has violated the terms and conditions of the
12 court's order of home confinement and said participant's
13 participation was imposed as an alternative sentence to
14 another form of incarceration, said participant shall be
15 subject to the same procedures involving revocation as
16 would a probationer charged with a violation of the
17 order of home confinement. Any participant under an
18 order of home confinement shall be subject to the same
19 penalty or penalties, upon the circuit court's finding of
20 a violation of the order of home confinement, as he or
21 she could have received at the initial disposition hearing:
22 *Provided*, That the participant shall receive credit
23 towards any sentence imposed after a finding of
24 violation for the time spent in home confinement.

25 (c) If at any time during the period of home confine-
26 ment there is reasonable cause to believe that a
27 participant sentenced to home confinement by a mag-
28 istrate has violated the terms and conditions of the
29 magistrate's order of home confinement as an alterna-
30 tive sentence to incarceration in jail, the supervisor

31 authority may arrest the participant upon the obtaining
32 of an order or warrant and take the offender before a
33 magistrate within the county of the offense. The
34 magistrate shall then conduct a prompt and summary
35 hearing on whether the participant's home confinement
36 should be revoked. If it appears to the satisfaction of the
37 magistrate that any condition of home confinement has
38 been violated, the magistrate may revoke the home
39 confinement and order that the sentence of incarceration
40 be executed. Any participant under an order of home
41 confinement shall be subject to the same penalty or
42 penalties, upon the magistrate's finding of a violation of
43 the order of home confinement, as the participant could
44 have received at the initial disposition hearing: *Pro-*
45 *vided*, That the participant shall receive credit towards
46 any sentence imposed after a finding of violation for the
47 time spent in home confinement.

§62-11B-10. Information to be provided law-enforcement agencies.

1 A probation department charged by a circuit court or
2 a supervisor or sheriff charged by a magistrate with
3 supervision of offenders ordered to undergo home
4 confinement shall provide all law-enforcement agencies
5 having jurisdiction in the place where the probation
6 department or the office of the supervisor or sheriff is
7 located with a list of offenders under home confinement
8 supervised by the probation department, supervisor or
9 sheriff. The list must include the following information
10 about each offender:

11 (1) The offender's name, any known aliases, and the
12 location of the offender's home confinement;

13 (2) The crime for which the offender was convicted;

14 (3) The date the offender's home confinement expires;
15 and

16 (4) The name, address and telephone number of the
17 offender's supervising probation officer or supervisor, as
18 the case may be, for home confinement.

§62-11B-11. Provisions of article not exclusive; discretion of the circuit court.

1 The provisions of this article may be applied at the
 2 discretion of the circuit or magistrate court as an
 3 alternate means of confinement but shall not be
 4 considered an exclusive means of alternative sentencing.

§62-11B-12. Supervision of home confinement by circuit court.

1 Notwithstanding any provision of this code to the
 2 contrary, in any case where a person has been ordered
 3 to home confinement where that person is not in the
 4 custody or control of the division of corrections, the
 5 circuit court shall have the authority of the board of
 6 probation and parole regarding the release, early
 7 release, or release on parole of the person.

CHAPTER 90

(S. B. 75—By Senators Blatnik, Holliday and Boley)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article five, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the development of alternative transportation systems to mental health facilities or state hospitals for individuals as required by statute.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-10. Transportation for the mentally ill, mentally retarded or addicted.

1 (a) Whenever transportation of an individual is
 2 required under the provisions of article four or five of
 3 this chapter, it shall be the duty of the sheriff to provide
 4 immediate transportation to or from the appropriate
 5 mental health facility or state hospital: *Provided*, That

6 upon the written request of a person having a proper
7 interest in the individual's hospitalization, the sheriff
8 may permit such person to arrange for the individual's
9 transportation to the mental health facility or state
10 hospital by such means as may be suitable for that
11 person's mental condition.

12 (b) Upon written agreement between the county
13 commission on behalf of the sheriff and the directors of
14 the local community mental health center and emer-
15 gency medical services, an alternative transportation
16 program may be arranged. The agreement shall clearly
17 define the responsibilities of each of the parties, the
18 requirements for program participation and the persons
19 bearing ultimate responsibility for the individual's
20 safety and well-being.

21 (c) Nothing in this section is intended to alter security
22 responsibilities for the patient by the sheriff unless
23 mutually agreed upon as provided in subsection (b)
24 above.

CHAPTER 91

(H. B. 2807—By Delegates Staton, Collins, Reed, Linch,
Tribett, Whitman and Manuel)

[Passed April 10, 1993: in effect from passage. Approved by the Governor.]

AN ACT to amend article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two; to amend and reenact section nineteen, article one-a, chapter twenty-two-a of said code; and to amend and reenact section sixty-three, article two of said chapter, all relating to the powers and authority of the director of the office of miners' health, safety and training; transferring certain review functions of the director to the board of appeals; authorizing the director to promulgate a rule setting forth the procedure for assessing certain civil penalties; the revision of such rule; the director's approval and permit to open or

reopen mine; certificate of approval for operator of mine; fees; revocation of certificate of approval; notice prior to revocation; effect of revocation; printing statutory provisions on permit; and district mine inspector's inspections.

Be it enacted by the Legislature of West Virginia:

That article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section two; that section nineteen, article one-a, chapter twenty-two-a be amended and reenacted; and that section sixty-three, article two of said chapter be amended and reenacted, all to read as follows:

Chapter

22. Environmental Resources.

22A. Mines and Minerals

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 5. BOARD OF APPEALS.

§22-5-2. Powers transferred to the board of appeals.

1 (a) There are hereby transferred to the board of
2 appeals all functions of the director of the office of
3 miners' health, safety and training relating to the
4 review of orders and notices as set forth in section
5 fifteen, article one-a, chapter twenty-two-a.

6 (b) There are hereby transferred to the board of
7 appeals all functions of the director of the office of
8 miners' health, safety and training relating to the
9 review of penalty assessments as set forth in subdivision
10 (3), subsection (a), section nineteen, article one-a,
11 chapter twenty-two-a of this code.

12 (c) Judicial review of decisions by the board of appeals
13 shall be available and conducted in the same fashion as
14 set forth in section seventeen, article one-a, chapter
15 twenty-two-a of this code.

CHAPTER 22A. MINES AND MINERALS.

Article

1A. Administration; Enforcement.

2. Underground Mines.

ARTICLE 1A. ADMINISTRATION; ENFORCEMENT.

§22A-1A-19. Penalties.

1 (a) (1) Any operator of a coal mine in which a violation
2 occurs of any health or safety rule or regulation or who
3 violates any other provisions of this law shall be assessed
4 a civil penalty by the director under subdivision (3) of
5 this subsection, which penalty shall be not more than
6 three thousand dollars, for each such violation. Each
7 such violation shall constitute a separate offense. In
8 determining the amount of the penalty, the director
9 shall consider the operator's history of previous viola-
10 tions, the appropriateness of such penalty to the size of
11 the business of the operator charged, the gravity of the
12 violation and the demonstrated good faith of the
13 operator charged in attempting to achieve rapid
14 compliance after notification of a violation. Not later
15 than the thirtieth day of June, one thousand nine
16 hundred ninety-three, the director shall promulgate as
17 a rule the procedure for assessing such civil penalties
18 in effect as of the fifteenth day of January, one thousand
19 nine hundred ninety-three, without regard to the
20 provisions of chapter twenty-nine-a of this code: *Pro-*
21 *vided*, That any revisions to such rules after this date
22 shall be promulgated as in the case of legislative rules
23 in accordance with the provisions of chapter twenty-
24 nine-a of this code.

25 (2) Any miner who knowingly violates any health or
26 safety provision of this chapter or health or safety rule
27 or regulation promulgated pursuant to this chapter shall
28 be subject to a civil penalty assessed by the director
29 under subdivision (3) of this subsection which penalty
30 shall not be more than two hundred fifty dollars for each
31 occurrence of such violation.

32 (3) A civil penalty shall be assessed by the director
33 only after the person charged with a violation under this
34 chapter or rule or regulation promulgated pursuant to
35 this chapter has been given an opportunity for a public
36 hearing and the director has determined, by a decision
37 incorporating his findings of fact therein, that a
38 violation did occur, and the amount of the penalty which

39 is warranted, and incorporating, when appropriate, an
40 order therein requiring that the penalty be paid. Any
41 hearing under this section shall be of record.

42 (4) If the person against whom a civil penalty is
43 assessed fails to pay the penalty within the time
44 prescribed in such order, the director may file a petition
45 for enforcement of such order in any appropriate circuit
46 court. The petition shall designate the person against
47 whom the order is sought to be enforced as the
48 respondent. A copy of the petition shall forthwith be sent
49 by certified mail, return receipt requested, to the
50 respondent and to the representative of the miners at the
51 affected mine or the operator, as the case may be, and
52 thereupon the director shall certify and file in such
53 court the record upon which such order sought to be
54 enforced was issued. The court shall have jurisdiction to
55 enter a judgment enforcing, modifying, and enforcing as
56 so modified, or setting aside in whole or in part the
57 order and decision of the director or it may remand the
58 proceedings to the director for such further action as it
59 may direct. The court shall consider and determine de
60 novo all relevant issues, except issues of fact which were
61 or could have been litigated in review proceedings
62 before a circuit court under section eighteen of this
63 article, and upon the request of the respondent, such
64 issues of fact which are in dispute shall be submitted
65 to a jury. On the basis of the jury's findings the court
66 shall determine the amount of the penalty to be imposed.
67 Subject to the direction and control of the attorney
68 general, attorneys appointed for the director may
69 appear for and represent him in any action to enforce
70 an order assessing civil penalties under this subdivision.

71 (b) Any operator who knowingly violates a health or
72 safety provision of this chapter or health or safety rule
73 or regulation promulgated pursuant to this chapter, or
74 knowingly violates or fails or refuses to comply with any
75 order issued under section thirteen of this article, or any
76 order incorporated in a final decision issued under this
77 article, except an order incorporated in a decision under
78 subsection (a) of this section or subsection (b), section
79 twenty of this article, shall be assessed a civil penalty

80 by the director under subdivision (3), subsection (a) of
81 this section, of not more than five thousand dollars, and
82 for a second or subsequent violation assessed a civil
83 penalty of not more than ten thousand dollars.

84 (c) Whenever a corporate operator knowingly violates
85 a health or safety provision of this chapter or health or
86 safety rules or regulations promulgated pursuant to this
87 chapter, or knowingly violates or fails or refuses to
88 comply with any order issued under this law or any
89 order incorporated in a final decision issued under this
90 law, except an order incorporated in a decision issued
91 under subsection (a) of this section or subsection (b),
92 section twenty of this article, any director, officer or
93 agent of such corporation who knowingly authorized,
94 ordered or carried out such violation, failure or refusal,
95 shall be subject to the same civil penalties that may be
96 imposed upon a person under subsections (a) and (b) of
97 this section.

98 (d) Whoever knowingly makes any false statement,
99 representation or certification in any application,
100 record, report, plan or other document filed or required
101 to be maintained pursuant to this law or any order or
102 decision issued under this law, shall be guilty of a
103 misdemeanor, and, upon conviction thereof, shall be
104 fined not more than five thousand dollars or imprisoned
105 in the county jail not more than six months, or both
106 fined and imprisoned. The conviction of any person
107 under this subsection shall result in the revocation of
108 any certifications held by him under this chapter which
109 certified him or authorized him to direct other persons
110 in coal mining by operation of law and shall bar him
111 from being issued any such license under this chapter,
112 except a miner's certification, for a period of not less
113 than one year or for such longer period as may be
114 determined by the director.

115 (e) Whoever willfully distributes, sells, offers for sale,
116 introduces or delivers in commerce any equipment for
117 use in a coal mine, including, but not limited to,
118 components and accessories of such equipment, who
119 willfully misrepresents such equipment as complying
120 with the provisions of this law, or with any specification

121 or regulation of the director applicable to such equip-
122 ment, and which does not so comply, shall be guilty of
123 a misdemeanor, and, upon conviction thereof, shall be
124 subject to the same fine and imprisonment that may be
125 imposed upon a person under subsection (d) of this
126 section.

127 (f) There is hereby created under the treasury of the
128 state of West Virginia a special health, safety and
129 training fund. All civil penalty assessments collected
130 under section nineteen of this article shall be collected
131 by the director and deposited with the treasurer of the
132 state of West Virginia to the credit of the special health,
133 safety and training fund. The fund shall be used by the
134 director and he is authorized to expend the moneys in
135 the fund for the administration of this chapter and
136 chapter twenty-two of this code.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-63. No mine to be opened or reopened without prior approval of the director of the office of miners' health, safety and training; certificate of approval; approval fees; extension of certificate of approval; certificates of approval not transferable; section to be printed on certificates of approval.

1 (a) After the first day of July, one thousand nine
2 hundred seventy-one, no mine shall be opened or
3 reopened unless prior approval has been obtained from
4 the director of the division of health, safety and training,
5 which approval shall not be unreasonably withheld. The
6 operator shall pay for such approval a fee of ten dollars,
7 which payment shall be tendered with the application
8 for such approval: *Provided*, That mines producing coal
9 solely for the operator's use shall be issued a permit
10 without charge if coal production will be less than fifty
11 tons a year.

12 Within thirty days after the first day of January of
13 each year, the holder of such permit to open a mine shall
14 apply for the extension of such permit for an additional
15 year. Such permit, evidenced by a document issued by

16 the director, shall be granted as a matter of right and
17 without charge if, at the time such application is made,
18 the permit holder is in compliance with the provisions
19 of section seventy-seven of this article and has paid or
20 otherwise appealed all coal mine assessments issued to
21 the mine if operated by the permit holder and imposed
22 under article one-a, chapter twenty-two-a of this code.
23 Applications for extension of such permits not submitted
24 within the time required shall be processed as an
25 application to open or reopen a mine and shall be
26 accompanied by a fee of ten dollars.

27 (b) Permits issued pursuant to this section shall not
28 be transferable.

29 (c) If the operator of a mine is not the permit holder
30 as defined in subsection (a) above, then such operator
31 must apply for and obtain a certificate of approval to
32 operate the mine on which the permit is held prior to
33 commencing operations. An operator who is not the
34 permit holder operating such mine on the effective date
35 of this section must apply for a certificate of approval
36 on or before the first day of July, one thousand nine
37 hundred ninety-three. The operator shall pay a fee of ten
38 dollars, which payment shall be tendered with the
39 application for approval. Such approval, evidenced by a
40 certificate issued by the director, shall be granted if, at
41 the time such application is made, the applicant is in
42 compliance with the provisions of section seventy-seven
43 of this article and has paid or otherwise appealed all
44 coal mine assessments imposed on such applicant for the
45 certificate of approval under article one-a, chapter
46 twenty-two-a of this code.

47 (d) In addition to the authority to file a petition for
48 enforcement under subdivision (4), subsection (a), sec-
49 tion nineteen, article one-a, chapter twenty-two-a of this
50 code, if an operator holding a certificate of approval
51 issued pursuant to subsection (c) of this section, against
52 whom a civil penalty is assessed in accordance with
53 section nineteen, article one-a, chapter twenty-two-a of
54 this code, and implementing regulations, and which has
55 become final, fails to pay the penalty within the time
56 prescribed in such order, the director or the authorized

57 representative of the director, by certified mail, return
58 receipt requested, shall send a notice to such operator
59 advising the operator of the unpaid penalty. If the
60 penalty is not paid in full within sixty days from the
61 issuance of the notice of delinquency by the director,
62 then the director may revoke such operator's certificate
63 of approval: *Provided*, That such operator to whom the
64 delinquency notice is issued shall have thirty days from
65 receipt thereof to request, by certified mail, return
66 receipt requested, a public hearing held in accordance
67 with the procedures of section fifteen, article one-a,
68 chapter twenty-two-a of this code, and implementing
69 regulations, including application for temporary relief.
70 Once such operator's certificate of approval is revoked
71 pursuant to this subsection, such operator shall be
72 prohibited from obtaining any certificate of approval
73 under the provisions of this section to operate any other
74 mine until such time as that operator pays the delin-
75 quent penalties that have become final.

76 (e) The provisions of this section shall be printed on
77 the reverse side of every permit issued under subsection
78 (a) and certificate of approval issued under subsection
79 (d) herein.

80 (f) The district mine inspector shall be contacted for
81 a pre-inspection of the area proposed for underground
82 mining prior to issuance of any new opening permit
83 approval.

CHAPTER 92

(S. B. 509—By Senators Sharpe, Ross, Helmick, Dalton,
Boley and Minard)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter five-a of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, by
adding thereto a new article, designated article two a,
relating to alternative fuels; regulating alternative r l

technology; providing for conversion to alternative fuels of a certain percentage of state-owned vehicles; reports; standards; exceptions; and related matters.

Be it enacted by the Legislature of West Virginia:

That chapter five-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 two-a, to read as follows:

ARTICLE 2A. USE OF ALTERNATIVE FUELS IN STATE-OWNED VEHICLES.

§5A-2A-1. Definitions.

§5A-2A-2. Purchase or lease of fleet vehicles; use of alternative fuels.

§5A-2A-3. Regulation of compressed natural gas.

§5A-2A-4. Prohibition of subsidies or incentive payments.

§5A-2A-1. Definitions.

1 As used in this article, the following words and
2 phrases shall have the meanings hereinafter ascribed to
3 them:

4 (1) "Alternative fuels" include compressed natural
5 gas, liquefied natural gas, liquefied petroleum gas,
6 methanol, ethanol, fuel mixtures containing eighty-five
7 percent or more by volume of methanol, ethanol and
8 other alcohols with gasoline or other fuels, coal-derived
9 liquid fuels and electricity (including electricity from
10 solar energy).

11 (2) "Alternative fuel vehicle" means a motor vehicle
12 that operates solely on one alternative fuel, a motor
13 vehicle that is capable of operating on one or more
14 alternative fuels, or a motor vehicle that is capable of
15 operating on an alternative fuel and is capable of
16 operating on gasoline or diesel fuel.

17 (3) "Compression and conversion equipment" means
18 all equipment used in the compression, storage, trans-
19 mission and decompression of natural gas for the
20 purpose of powering motor vehicles.

21 (4) "Fleet" means fifteen or more motor vehicles that
22 are centrally fueled or capable of being centrally fueled

23 and are owned, operated, leased or otherwise controlled
24 by or assigned to a state agency.

25 (5) "Secretary" means the secretary of administration.

**§5A-2A-2. Purchase or lease of fleet vehicles; use of
alternative fuels.**

1 (a) After the first day of September, one thousand
2 nine hundred ninety-three, the secretary may purchase
3 or lease alternative fuel vehicles for use by any state
4 agency.

5 (b) The secretary may acquire or be provided with
6 equipment or refueling facilities necessary to operate
7 alternative fuel vehicles by any of the following
8 methods:

9 (1) Purchase or lease as authorized by law;

10 (2) Gift or loan of the equipment or facilities; or

11 (3) Gift or loan of the equipment or facilities or other
12 arrangement pursuant to a service contract for the
13 supply of alternative fuels.

14 (c) If such equipment or facilities are donated, loaned
15 or provided through other arrangement with the
16 supplier of alternative fuels, the supplier shall be
17 entitled to recoup its actual cost of donating, loaning or
18 providing the equipment or facilities through its fuel
19 charges under the fuel supply contract.

20 (d) Of the total number of vehicles acquired or caused
21 to be acquired by the secretary for use by any state
22 agency vehicle fleet:

23 (1) Twenty percent in fiscal year one thousand nine
24 hundred ninety-five;

25 (2) Thirty percent in fiscal year one thousand nine
26 hundred ninety-six;

27 (3) Fifty percent in fiscal year one thousand nine
28 hundred ninety-seven, shall be alternative fuel ve

29 (e) The secretary shall review this alternative fuel use
30 program on or before the thirty-first day of December,
31 one thousand nine hundred ninety-seven, and if the
32 secretary determines that the program is effective in
33 reducing costs to the state, taking into consideration the
34 cost of operating alternative fuel vehicles over the
35 expected useful life of such vehicles, the secretary shall,
36 of the total number of vehicles acquired in each fiscal
37 year, acquire at least seventy-five percent alternative
38 fuel vehicles for state agency fleets beginning the first
39 day of September, one thousand nine hundred ninety-
40 eight, and thereafter.

41 (f) The secretary shall, in the annual fiscal report to
42 the Legislature, show the progress in achieving these
43 percentage requirements by itemizing purchases, leases
44 and conversions of motor vehicles and usage of alterna-
45 tive fuels.

46 (g) The secretary, in the development of the alterna-
47 tive fuel use program, shall consult with state agency
48 fleet operators, vehicle manufacturers and converters,
49 fuel distributors and others to delineate the vehicles to
50 be covered, taking into consideration range, specialty
51 uses, fuel availability, vehicle manufacturing and
52 conversion capability, safety, resale values and other
53 relevant factors. In order to maximize the savings to the
54 state, the secretary shall attempt to the extent possible
55 to convert first those vehicles that are used the most
56 often for the most miles. The secretary may meet the
57 percentage requirements of this section through pur-
58 chase or lease of new vehicles, purchase or lease of used
59 alternative fuel vehicles or the conversion of existing
60 vehicles, in accordance with federal and state require-
61 ments and applicable safety laws and standards, to use
62 alternative fuels.

63 (h) The secretary may reduce any percentage speci-
64 fied or waive the requirements of subsection (d) of this
65 section for any state agency upon a determination by
66 the secretary that either of the following situations
67 apply:

68 (1) The agency's vehicles will be operating primarily
69 in an area in which neither the agency nor a supplier
70 has or can reasonably be expected to establish a central
71 refueling station for alternative fuels.

72 (2) The agency is unable to acquire or be provided
73 equipment or refueling facilities necessary to operate
74 alternative fuel vehicles at a projected cost that is
75 reasonably expected to result in no greater net costs
76 than the continued use of traditional gasoline or diesel
77 fuels measured over the expected useful life of the
78 equipment or facilities supplied.

79 (i) The provisions of this section do not apply to:

80 (1) Vehicles operated by law-enforcement agencies;

81 (2) Emergency vehicles;

82 (3) Vehicles operated by public transit authorities;

83 (4) School buses; or

84 (5) Nonroad vehicles, including farm and construction
85 vehicles.

§5A-2A-3. Regulation of compressed natural gas.

1 The secretary of commerce, labor and environmental
2 resources has the authority to regulate all activities
3 related to the safety of compressed natural gas and shall
4 establish by regulation minimum safety standards, in
5 conformity with federal and industry standards, for
6 compressed natural gas compression and conversion
7 equipment including the installation of such equipment.

§5A-2A-4. Prohibition of subsidies or incentive payments.

1 Except as provided by section three-d, article thir-
2 teen-d, chapter eleven of this code, the state may not
3 enter into any program providing subsidies or incentive
4 payments for the production of compressed natural gas,
5 liquefied natural gas, liquefied petroleum gas, me-
6 thanol, ethanol or coal-derived liquid fuels.

CHAPTER 93

(Com. Sub. for H. B. 2120—By Delegates Warner, Michael, Johnson, Overington, Houvouras, D. Miller and Beane)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article seven, chapter six of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section fourteen, article three, chapter seventeen-a of said code; and to amend and reenact section fourteen, article ten of said chapter, all relating to compensation and allowances for certain appointive state officers; appointment, qualifications, powers and salaries of such officers; increasing the salary for the administrator of the division of motor vehicles; special registration plates and fees; requirements for design of license plates; permitting special plates for certain individuals, officials and judges, national guardsmen, various classes of veterans, nonprofit charitable or educational organizations and emergency personnel; vanity plates; special ten-year registration for exempted persons and antique automobiles; plates for amateur radio station operators; and fees and rules to be promulgated by the commissioner.

Be it enacted by the Legislature of West Virginia:

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

Chapter

6. General Provisions Respecting Officers.

17A. Motor Vehicle Administration, Registration, Certificate of Title, and Anti-theft Provisions.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of such officers.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, each of the following appointive state
3 officers named in this subsection shall be appointed by
4 the governor, by and with the advice and consent of the
5 Senate. Each of the appointive state officers shall serve
6 at the will and pleasure of the governor for the term for
7 which the governor was elected and until the respective
8 state officers' successors have been appointed and
9 qualified. Each of the appointive state officers shall
10 hereafter be subject to the existing qualifications for
11 holding each respective office and each shall have and
12 is hereby granted all of the powers and authority and
13 shall perform all of the functions and services heretofore
14 vested in and performed by virtue of existing law
15 respecting each office.

16 Beginning on the first day of January, one thousand
17 nine hundred ninety, the annual salary of each named
18 appointive state officer shall be as follows:

19 Administrator, division of highways, sixty thousand
20 dollars; administrator, division of health, fifty-seven
21 thousand two hundred dollars; administrator, division of
22 human services, forty-seven thousand eight hundred
23 dollars; administrator, state tax division, forty-nine
24 thousand nine hundred dollars; administrator, division
25 of energy, sixty-five thousand dollars; administrator,
26 division of finance and administration, forty-seven
27 thousand eight hundred dollars; administrator, division
28 of corrections, forty-five thousand dollars; administra-
29 tor, division of community and industrial development,
30 sixty-three thousand six hundred dollars; administrator,
31 division of workers' compensation, forty-five thousand
32 dollars; administrator, division of commerce, sixty-two
33 thousand five hundred dollars; administrator, division of
34 natural resources, forty-seven thousand eight hundred
35 dollars; administrator, division of public safety, forty-
36 four thousand six hundred dollars; administrator,

37 lottery division, sixty thousand dollars; director, public
38 employees insurance agency, fifty-five thousand dollars;
39 administrator, division of employment security, forty-
40 five thousand dollars; administrator, division of bank-
41 ing, thirty-eight thousand three hundred dollars;
42 administrator, division of insurance, thirty-six thousand
43 seven hundred dollars; administrator, division of culture
44 and history, thirty-eight thousand three hundred
45 dollars; chairman, public service commission, fifty
46 thousand dollars; members, public service commission,
47 forty-six thousand two hundred dollars; administrator,
48 alcohol beverage control commission, thirty-eight
49 thousand three hundred dollars; administrator, division
50 of motor vehicles, fifty-five thousand dollars; director,
51 division of personnel, thirty-eight thousand three
52 hundred dollars; adjutant general, thirty-five thousand
53 seven hundred dollars; chairman, health care cost
54 review authority, forty thousand dollars; members,
55 health care cost review authority, thirty-six thousand
56 five hundred dollars; director, human rights commis-
57 sion, forty thousand dollars; administrator, division of
58 labor, thirty-five thousand seven hundred dollars;
59 administrator, division of veterans affairs, thirty-two
60 thousand dollars; administrator, division of emergency
61 services, thirty-two thousand dollars; administrator,
62 nonintoxicating beer commission, thirty-two thousand
63 dollars; members, board of probation and parole,
64 twenty-eight thousand three hundred dollars; members,
65 employment security review board, seventeen thousand
66 dollars; members, workers' compensation appeal board,
67 seventeen thousand eight hundred dollars.

68 Prior to the first day of January, one thousand nine
69 hundred ninety, each of the officers named in subsection
70 (a) of this section shall continue to receive the annual
71 salaries they were receiving as of the last day of March,
72 one thousand nine hundred eighty-nine.

73 (b) Notwithstanding any other provisions of this code
74 to the contrary, each of the state officers named in this
75 subsection shall continue to be appointed in the manner
76 prescribed in this code, and shall be paid an annual
77 salary as follows, except that any increase in salary over

78 and above the salary being received by any of the
79 following state officers as of the last day of March, one
80 thousand nine hundred eighty-nine, shall not become
81 effective until the first day of January, one thousand
82 nine hundred ninety:

83 Chancellor, board of regents, seventy thousand
84 dollars; state superintendent of schools, seventy thou-
85 sand dollars; administrator, division of risk and insu-
86 rance management, forty-two thousand dollars; director,
87 division of rehabilitation services, fifty-five thousand
88 dollars; executive director, educational broadcasting
89 authority, forty-seven thousand five hundred dollars;
90 secretary, library commission, forty-seven thousand five
91 hundred dollars; director, geologic and economic survey,
92 forty-seven thousand five hundred dollars; executive
93 director, water development authority, fifty-four thou-
94 sand two hundred dollars; executive secretary, teacher's
95 retirement system, forty-seven thousand two hundred
96 dollars; executive secretary, public employees retire-
97 ment system, forty thousand one hundred dollars;
98 director, air pollution control commission, forty-four
99 thousand eight hundred dollars; executive director,
100 public legal services council, forty-seven thousand five
101 hundred dollars; director, commission on aging, forty
102 thousand dollars; commissioner, oil and gas conservation
103 commission, forty thousand dollars; director, farm
104 management commission, thirty-two thousand five
105 hundred dollars; state fire administrator, twenty-five
106 thousand two hundred dollars; executive secretary,
107 municipal bond commission, thirty thousand two
108 hundred dollars; director, railroad maintenance author-
109 ity, thirty-two thousand five hundred dollars; executive
110 secretary, women's commission, thirty thousand one
111 hundred dollars; executive director, regional jail
112 authority, forty-two thousand six hundred dollars;
113 director, hospital finance authority, twenty-five thou-
114 sand eight hundred dollars.

115 (c) No increase in the salary of any appointive state
116 officer pursuant to this section shall be paid until and
117 unless the appointive state officer shall have first filed
118 with the state auditor and the legislative auditor a

119 sworn statement, on a form to be prescribed by the
120 attorney general, certifying that the spending unit is in
121 compliance with any general law providing for a salary
122 increase for his or her employees. The attorney general
123 shall prepare and distribute the form to the affected
124 spending units: *Provided*, That no decrease in salary
125 shall be effective for any current appointive state officer
126 appointed prior to the first day of January, one thousand
127 nine hundred eighty-nine: *Provided, however*, That
128 decreases shall take effect at such time as any appointive
129 office is vacated.

CHAPTER 17A.
MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE,
AND ANTI-THEFT PROVISIONS.

Article

3. **Original and Renewal of Registration; Issuance of Certificates of Title.**
10. **Fees for Registration, Licensing, Etc.**

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

- 1 (a) The division upon registering a vehicle shall issue
2 to the owner one registration plate for a motorcycle,
3 trailer, semitrailer or other motor vehicle.
- 4 (b) Registration plates issued by the division shall
5 meet the following requirements:
- 6 (1) Every registration plate shall be of reflectorized
7 material and have displayed upon it the registration
8 number assigned to the vehicle for which it is issued;
9 the name of this state, which may be abbreviated; and
10 the year number for which it is issued or the date of
11 expiration of the plate.
- 12 (2) Every registration plate and the required letters
13 and numerals on the plate shall be of sufficient size to

14 be plainly readable from a distance of one hundred feet
15 during daylight: *Provided*, That the requirements of this
16 subdivision shall not apply to the year number for which
17 the plate is issued or the date of expiration.

18 (3) Registration numbering for registration plates
19 shall begin with number two.

20 (c) The division shall not issue, permit to be issued,
21 or distribute any special registration plates except as
22 follows:

23 (1) The governor shall be issued two registration
24 plates, on one of which shall be imprinted the numeral
25 one and on the other the word one.

26 (2) State officials and judges may be issued special
27 registration plates as follows:

28 (A) Upon appropriate application, there shall be
29 issued to the secretary of state, state superintendent of
30 free schools, auditor, treasurer, commissioner of agricul-
31 ture, and the attorney general, the members of both
32 houses of the Legislature, including the elected officials
33 thereof, the justices of the supreme court of appeals of
34 West Virginia, the representatives and senators of the
35 state in the Congress of the United States, the judges
36 of the United States district courts for the state of West
37 Virginia and the judges of the United States court of
38 appeals for the fourth circuit, if any of the judges are
39 residents of West Virginia, a special registration plate
40 for a Class A motor vehicle owned by the official or his
41 or her spouse: *Provided*, That the division shall not issue
42 more than two plates for each official.

43 (B) Each plate issued pursuant to this subdivision
44 shall bear any combination of letters and numbers not
45 to exceed an amount determined by the commissioner,
46 and a designation of the office. Each plate shall
47 supersede the regular numbered plate assigned to the
48 official or his or her spouse during the official's term
49 of office and while the motor vehicle is owned by the
50 official or his or her spouse.

51 (C) An annual fee of fifteen dollars shall be charged
52 for every registration plate issued pursuant to this

53 subdivision, which is in addition to all other fees
54 required by this chapter.

55 (3) Members of the national guard forces may be
56 issued special registration plates as follows:

57 (A) Upon receipt of an application on a form pres-
58 cribed by the division and receipt of written evidence
59 from the chief executive officer of the army national
60 guard or air national guard, as appropriate, or the
61 commanding officer of any United States Armed Forces
62 Reserve Unit that the applicant is a member thereof, the
63 division shall issue to any member of the national guard
64 of this state or a member of any reserve unit of the
65 United States Armed Forces a special registration plate
66 designed by the commissioner for any number of Class
67 A motor vehicles owned by the member.

68 (B) An initial application fee of ten dollars shall be
69 charged for each special registration plate issued
70 pursuant to this subdivision, which is in addition to all
71 other fees required by this chapter. All initial applica-
72 tion fees collected by the division shall be deposited into
73 a special revolving fund to be used in the administration
74 of this section.

75 (4) Specially arranged registration plates may be
76 issued as follows:

77 (A) Upon appropriate application, any owner of a
78 motor vehicle subject to Class A registration, or a
79 motorcycle subject to Class G registration, as defined by
80 this article, may request that the division issue a
81 registration plate bearing specially arranged letters or
82 numbers with the maximum number of letters or
83 numbers to be determined by the commissioner. The
84 division shall attempt to comply with the request
85 wherever possible.

86 (B) The commissioner shall promulgate rules in
87 accordance with the provisions of chapter twenty-nine-
88 a of this code regarding the orderly distribution of the
89 plates: *Provided*, That for purposes of this subdivision,
90 the registration plates requested and issued shall
91 include all plates bearing the numbers two through two

92 thousand.

93 (C) An annual fee of fifteen dollars shall be charged
94 for each special registration plate issued pursuant to
95 this subdivision, which is in addition to all other fees
96 required by this chapter.

97 (5) Honorably discharged veterans may be issued
98 special registration plates as follows:

99 (A) Upon appropriate application, there shall be
100 issued to any honorably discharged veteran, of any
101 branch of the armed services of the United States, a
102 special registration plate for any number of vehicles
103 titled in the name of the qualified applicant with an
104 insignia designed by the commissioner of the division of
105 motor vehicles.

106 (B) A special initial application fee of ten dollars shall
107 be charged in addition to all other fees required by law.
108 This special fee is to compensate the division of motor
109 vehicles for additional costs and services required in the
110 issuing of the special registration and shall be collected
111 by the division and deposited in a special revolving fund
112 to be used for the administration of this section:
113 *Provided*, That nothing in this section shall be construed
114 to exempt any veteran from any other provision of this
115 chapter.

116 (C) Special registration plates issued pursuant to this
117 subdivision are not transferable to any other person.
118 Any special registration issued under this subdivision
119 terminates upon the death of the registered owner of the
120 special registration plate.

121 (6) Disabled veterans may be issued special registra-
122 tion plates as follows:

123 (A) Upon appropriate application, there shall be
124 issued to any disabled veteran, who is exempt from the
125 payment of registration fees under the provisions of this
126 chapter, a registration plate for a vehicle titled in the
127 name of the qualified applicant which bears the letters
128 "DV" in red, and also the regular identification
129 numerals in red.

130 (B) Special registration plates issued pursuant to this
131 subdivision are not transferrable to any other person.
132 Any special registration issued under this subdivision
133 terminates upon the death of the registered owner of the
134 special registration plate.

135 (7) Recipients of the distinguished purple heart medal
136 may be issued special registration plates as follows:

137 (A) Upon appropriate application, there shall be
138 issued to any armed service person holding the distin-
139 guished purple heart medal for persons wounded in
140 combat a registration plate for a vehicle titled in the
141 name of the qualified applicant bearing letters or
142 numbers. The registration plate shall be designed by the
143 commissioner of motor vehicles and shall denote that
144 those individuals who are granted this special registra-
145 tion plate are recipients of the purple heart. All
146 letterings shall be in purple where practical.

147 (B) Registration plates issued pursuant to this
148 subdivision are exempt from all registration fees
149 otherwise required by the provisions of this chapter.

150 (C) Special registration plates issued pursuant to this
151 subdivision are not transferable to any other person.
152 Any special registration issued under this subdivision
153 terminates upon the death of the registered owner of the
154 special registration plate.

155 (8) Survivors of the attack on Pearl Harbor may be
156 issued special registration plates as follows:

157 (A) Upon appropriate application, the owner of a
158 motor vehicle who was enlisted in any branch of the
159 armed services that participated in and survived the
160 attack on Pearl Harbor on the seventh day of December,
161 one thousand nine hundred forty-one, shall be issued a
162 special registration plate for a vehicle titled in the name
163 of the qualified applicant. The registration plate shall
164 be designed by the commissioner of motor vehicles.

165 (B) Registration plates issued pursuant to this
166 subdivision are exempt from the payment of all regis-
167 tration fees otherwise required by the provisions of this
168 chapter.

169 (C) Special registration plates issued pursuant to this
170 subdivision are not transferable to any other person.
171 Any special registration issued under this subdivision
172 terminates upon the death of the registered owner of the
173 special registration plate.

174 (9) Nonprofit charitable and educational organiza-
175 tions may be issued special registration plates as follows:

176 (A) Nonprofit charitable and educational organiza-
177 tions may design a logo or emblem for inclusion on a
178 special registration plate and submit the logo or emblem
179 to the commissioner for approval and authorization.
180 Upon the approval and authorization, the nonprofit
181 charitable and educational organizations may market
182 the special registration plate to organization members
183 and the general public.

184 (B) Approved nonprofit charitable and educational
185 organizations may accept and collect applications for
186 special registration plates from owners of Class A motor
187 vehicles together with a special annual fee of fifteen
188 dollars, which is in addition to all other fees required
189 by this chapter. The applications and fees shall be
190 submitted to the division of motor vehicles with the
191 request that the division issue a registration plate
192 bearing a combination of letters or numbers with the
193 organizations' logo or emblem, with the maximum
194 number of letters or numbers to be determined by the
195 commissioner.

196 (C) The commissioner shall promulgate rules in
197 accordance with the provisions of chapter twenty-nine-
198 a of this code regarding the procedures for and approval
199 of special registration plates issued pursuant to this
200 subdivision.

201 (D) The commissioner shall set an appropriate fee to
202 defray the administrative costs associated with design-
203 ing and manufacturing special registration plates for a
204 nonprofit charitable or educational organization. The
205 nonprofit charitable or educational organization shall
206 collect this fee and forward it to the division for deposit
207 in a special revolving fund to pay the administrative
208 costs. The nonprofit charitable or educational organiza-

209 tion may also collect a fee for marketing the special
210 registration plates.

211 (10) Specified emergency or volunteer registration
212 plates may be issued as follows:

213 (A) Any owner of a motor vehicle who is a resident
214 of the state of West Virginia, and who is a certified
215 paramedic or emergency medical technician, a member
216 of a volunteer fire company or a paid fire department,
217 a member of the state fire commission, the state fire
218 marshal, the state fire marshal's assistants, the state fire
219 administrator and voluntary rescue squad members
220 may apply for a special license plate for any number of
221 Class A vehicles titled in the name of the qualified
222 applicant which bears the insignia of the profession,
223 group or commission. Any insignia shall be designed by
224 the commissioner. License plates issued pursuant to this
225 subdivision shall bear the requested insignia in addition
226 to the registration number issued to the applicant
227 pursuant to the provisions of this article.

228 (B) Each application submitted pursuant to this
229 subdivision shall be accompanied by an affidavit signed
230 by the fire chief or department head of the applicant,
231 stating that the applicant is justified in having a
232 registration with the requested insignia; proof of
233 compliance with all laws of this state regarding
234 registration and licensure of motor vehicles; and
235 payment of all required fees.

236 (C) Each application submitted pursuant to this
237 subdivision shall be accompanied by payment of a
238 special initial application fee of ten dollars, which is in
239 addition to any other registration or license fee required
240 by this chapter. All special fees shall be collected by the
241 division and deposited into a special revolving fund to
242 be used for the purpose of compensating the division of
243 motor vehicles for additional costs and services required
244 in the issuing of such special registration and for the
245 administration of this section.

246 (d) The commissioner shall promulgate rules in
247 accordance with the provisions of chapter twenty-nine-
248 a of this code regarding the proper forms to be used in

249 making application for the special license plates
250 authorized by this section.

251 (e) Nothing in this section shall be construed to
252 require a charge for a free prisoner of war license plate
253 or a free recipient of the congressional medal of honor
254 license plate for a vehicle titled in the name of the
255 qualified applicant as authorized by other provisions of
256 this code: *Provided*, That the registration plates are not
257 transferable to any person, and the registration plates
258 terminate upon the death of the registered owner of the
259 special registration plate.

260 (f) Special ten-year registration plates may be issued
261 as follows:

262 (1) The commissioner may issue or renew for a period
263 of no more than ten years any registration plate
264 exempted from registration fees pursuant to any
265 provision of this code or any restricted use antique
266 motor vehicle license plate authorized by section three-
267 a, article ten of this chapter: *Provided*, That the
268 provisions of this subsection shall not apply to any
269 person who has had a special registration suspended for
270 failure to maintain motor vehicle liability insurance as
271 required by section three, article two-a, chapter
272 seventeen-d of this code or failure to pay personal
273 property taxes as required by section three-a of this
274 article.

275 (2) An initial nonrefundable fee shall be charged for
276 each special registration plate issued pursuant to this
277 subsection, which is the total amount of fees required
278 by section fifteen, article ten of this chapter, section
279 three, article three of this chapter, or section three-a,
280 article ten of this chapter for the period requested.

281 (3) Special registration plates issued pursuant to this
282 subsection are not transferable to any other person. Any
283 special registration issued under this subsection termi-
284 nates upon the death of the registered owner of the
285 special registration plate.

286 (g) The provisions of this section shall not be
287 construed to exempt any registrant from maintaining

288 motor vehicle liability insurance as required by section
289 three, article two-a, chapter seventeen-d of this code or
290 from paying personal property taxes on any motor
291 vehicle as required by section three-a of this article.

292 (h) The commissioner may, in his or her discretion,
293 issue a registration plate of reflectorized material
294 suitable for permanent use on motor vehicles, trailers
295 and semitrailers, together with appropriate devices to
296 be attached thereto to indicate the year for which the
297 vehicles have been properly registered or the date of
298 expiration of the registration. The design and expiration
299 of the plates shall be determined by the commissioner.

300 (i) Any license plate issued or renewed pursuant to
301 this chapter, which is paid for by a check that is
302 returned for nonsufficient funds, shall be void without
303 further notice to the applicant. The applicant may not
304 reinstate the registration until the returned check is
305 paid by the applicant in cash, money order or certified
306 check and all applicable fees assessed as a result thereof
307 have been paid.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-14. Registration plate for amateur radio station operators; fees; rules and forms.

1 (a) Any owner of a motor vehicle who is a resident
2 of the state of West Virginia, and who holds an
3 unrevoked and unexpired official amateur radio station
4 license and/or amateur class operators' license issued by
5 the federal communications commission, may apply for
6 a special registration plate for a Class A motor vehicle
7 which, in lieu of the registration numbers required by
8 this article, shall be inscribed with the official amateur
9 radio call letters of the applicant as assigned by the
10 federal communications commission.

11 (b) Each application shall be accompanied by proof of
12 ownership of the amateur radio station license; proof of
13 compliance with the motor vehicle laws of the state
14 relative to registration and licensing of motor vehicles;
15 payment of the registration, license and other fees
16 required by law; and payment of a special initial

17 application fee in the amount of ten dollars, which is in
18 addition to all other fees required by law. This special
19 fee shall be collected by the division and deposited into
20 a special revolving fund to be used for the purpose of
21 compensating the division of motor vehicles for addi-
22 tional costs and services required in the issuing of the
23 licenses.

24 (c) The commissioner shall promulgate rules in
25 accordance with the provisions of chapter twenty-nine-
26 a of this code regarding proper forms to be used in
27 making application for the special license plates
28 authorized by this section.

CHAPTER 94

(S. B. 508—By Senators Sharpe, Ross, Helmick, Dalton,
Boley and Minard)

[Passed April 10, 1993; in effect September 1, 1993. Approved by the Governor.]

AN ACT to amend chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto new article, designated article twenty-seven-a, relating to intergovernmental relations alternative fuel vehicles.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 27A. INTERGOVERNMENTAL RELATIONS—ALTERNATIVE FUEL VEHICLES.

§8-27A-1. Definitions.

§8-27A-2. Purchase or lease of fleet vehicles; use of alternative fuels.

§8-27A-3. Prohibition of subsidies or incentive payments.

§8-27A-1. Definitions.

1 The following terms, whenever used or referred to in
2 this article, shall have the following meanings:

3 different meaning clearly appears from the context:

4 (a) "Alternative fuels" include compressed natural
5 gas, liquified natural gas, liquified petroleum gas,
6 methanol, ethanol, fuel mixtures containing eighty-five
7 percent or more by volume of methanol, ethanol and
8 other alcohols with gasoline or other fuels, coal-derived
9 liquid fuels and electricity (including electricity from
10 solar energy).

11 (b) "Alternative fuel vehicle" means a motor vehicle
12 that operates solely on one alternative fuel, a motor
13 vehicle that is capable of operating on one or more
14 alternative fuels or a motor vehicle that is capable of
15 operating on an alternative fuel and is capable of
16 operating on gasoline or diesel fuel.

17 (c) "Fleet" means fifteen or more motor vehicles that
18 are centrally fueled or capable of being centrally fueled
19 and are owned, operated, leased or otherwise controlled
20 by or assigned to an agency of a political subdivision.

21 (d) "Political subdivision" means a county, municipal-
22 ity and any other unit of local government authorized
23 by law to perform governmental functions, but does not
24 include school boards or school districts.

**§8-27A-2. Purchase or lease of fleet vehicles; use of
alternative fuels.**

1 (a) After the first day of September, one thousand
2 nine hundred ninety-three, a political subdivision may
3 purchase or lease alternative fuel vehicles for use by any
4 agency of the political subdivision as follows:

5 (1) Any agency of a political subdivision may acquire
6 or be provided with equipment or refueling facilities
7 necessary to operate alternative fuel vehicles by any of
8 the following methods:

9 (A) Purchase or lease as authorized by law;

10 (B) Gift or loan of the equipment or facilities; or

11 (C) Gift or loan of the equipment or facilities or other
12 arrangement pursuant to a service contract for the
13 supply of alternative fuels.

14 (2) If the equipment or facilities are donated, loaned
15 or provided through other arrangement with the
16 supplier of alternative fuels, the supplier shall be
17 entitled to recoup its actual cost of donating, loaning or
18 providing the equipment or facilities through its fuel
19 charges under the fuel supply contract.

20 (b) Of the total number of fleet vehicles acquired by
21 each political subdivision for use by any agency of each
22 political subdivision:

23 (1) Twenty percent in fiscal year one thousand nine
24 hundred ninety-five;

25 (2) Thirty percent in fiscal year one thousand nine
26 hundred ninety-six; and

27 (3) Fifty percent in fiscal year one thousand nine
28 hundred ninety-seven shall be alternative fuel vehicles.

29 (c) The governing authority of each political subdivi-
30 sion shall review this alternative fuel use program on
31 or before the thirty-first day of December, one thousand
32 nine hundred ninety-seven, and if the governing
33 authority determines that the program is effective in
34 reducing costs to the political subdivision, taking into
35 consideration the cost of operating alternative fuel
36 vehicles over the expected useful life of the vehicles, the
37 governing authority shall, of the total number of
38 vehicles acquired in each fiscal year, acquire at least
39 seventy-five percent alternative fuel vehicles for fleets
40 of the agencies of the political subdivision beginning the
41 first day of September, one thousand nine hundred
42 ninety-eight, and thereafter.

43 (d) The governing authority of each political subdivi-
44 sion, in the development of the alternative fuel use
45 program, shall consult with agency fleet operators,
46 vehicle manufacturers and converters, fuel distributors
47 and others to delineate the vehicles to be covered, taking
48 into consideration range, specialty uses, fuel availability,
49 vehicle manufacturing and conversion capability, safety,
50 resale values and other relevant factors. In order to
51 maximize the savings to the political subdivision, the
52 governing authority of each political subdivision shall

53 attempt to the extent possible to convert first those
54 vehicles that are used the most often for the most miles.
55 The governing authority may meet the percentage
56 requirements of this section through purchase or lease
57 of new vehicles, purchase or lease of used alternative
58 fuel vehicles or the conversion of existing vehicles, in
59 accordance with federal and state requirements and
60 applicable safety laws and standards, to use alternative
61 fuels.

62 (e) The governing authority of each political subdivi-
63 sion may reduce any percentage specified or waive the
64 requirements of subsection (b) of this section for any
65 agency upon a determination by the governing author-
66 ity, in its sole discretion, that either of the following
67 situations apply:

68 (1) The agency's vehicles will be operating primarily
69 in an area in which neither the agency nor a supplier
70 has or can reasonably be expected to establish a central
71 refueling station for alternative fuels; or

72 (2) The agency is unable to acquire or be provided
73 equipment or refueling facilities necessary to operate
74 alternative fuel vehicles at a projected cost that is
75 reasonably expected to result in no greater net costs
76 than the continued use of traditional gasoline or diesel
77 fuels measured over the expected useful life of the
78 equipment or facilities supplies.

79 (f) The provisions of this section shall not apply to:

80 (1) Vehicles operated by law-enforcement agencies;

81 (2) Emergency vehicles;

82 (3) Vehicles operated by public transit authorities;

83 (4) School buses; or

84 (5) Nonroad vehicles, including farm and construc-
85 tion vehicles.

§8-27A-3. Prohibition of subsidies or incentive payments.

1 Except as provided by section three-d, article thir-
2 teen-d, chapter eleven of this code, a political subdivision
3 shall not enter into any program providing subsidies or

- 4 incentive payments for the production of compressed
- 5 natural gas, liquified natural gas, liquified petroleum
- 6 gas, methanol, ethanol or coal-derived liquid fuels.

CHAPTER 95

(Com. Sub. for H. B. 2230—By Delegates Williams, Carper,
Phillips, H. White, Rutledge and Harrison)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to notification of the towing, preservation and storage of an abandoned or junked motor vehicle to the owner or lienholder of such motor vehicle; charges and fees; and exemptions.

Be it enacted by the Legislature of West Virginia:

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

§17-24-8. Abandoned or junked motor vehicles; notification to motor vehicle owner and lienholder; charges and fees; exceptions.

- 1 (a) The enforcement agency which takes into custody
- 2 and possession an abandoned motor vehicle or junked
- 3 motor vehicle shall, within seven days after taking
- 4 custody and possession thereof, notify the last known
- 5 registered owner of such motor vehicle and all lien-
- 6 holders of record that such motor vehicle has been taken
- 7 into custody and possession, such notification to be by
- 8 registered or certified mail, return receipt requested.
- 9 The notice shall:

- 10 (1) Contain a description of such motor vehicle,
- 11 including the year, make, model, manufacturer's serial

12 or identification number or any other number which
13 may have been assigned to such motor vehicle by the
14 commissioner of motor vehicles and any distinguishing
15 marks;

16 (2) Set forth the location of the facility where such
17 motor vehicle is being held and the location where such
18 motor vehicle was taken into custody and possession;

19 (3) Inform the owner and any lienholders of record of
20 their right to reclaim such motor vehicle within ten days
21 after the date notice was received by the owner or
22 lienholders, upon payment of all towing, preservation
23 and storage charges resulting from taking and placing
24 such motor vehicle into custody and possession; and

25 (4) State that the failure of the owner or lienholders
26 of record to exercise their right to reclaim such motor
27 vehicle within such ten-day period shall be deemed a
28 waiver by the owner and all lienholders of record of all
29 right, title and interest in such motor vehicle and of
30 their consent to the sale or disposal of the abandoned
31 motor vehicle or junked motor vehicle at a public
32 auction or to a licensed salvage yard or demolisher.

33 (b) If the identity of the last registered owner of the
34 abandoned motor vehicle or junked motor vehicle cannot
35 be determined, or if the certificate of registration or
36 certificate of title contains no address for the owner, or
37 if it is impossible to determine with reasonable certainty
38 the identity and addresses of all lienholders, notice shall
39 be published as a Class I legal advertisement in
40 compliance with the provisions of article three, chapter
41 fifty-nine of this code, and the publication area for such
42 publication shall be the county wherein such motor
43 vehicle was located at the time such enforcement agency
44 took custody and possession thereof, and such notice
45 shall be sufficient to meet all requirements of notice
46 pursuant to this article. Any notice by publication may
47 contain multiple listings of abandoned motor vehicles
48 and junked motor vehicles. The notice shall be published
49 within seven days after such motor vehicle is taken into

50 custody and possession and shall have the same contents
51 required for a notice pursuant to subsection (a) of this
52 section, except that the ten-day period shall run from
53 the date such notice is published as aforesaid.

54 (c) An enforcement agency which hires any person or
55 entity to take into custody and possession an abandoned
56 or junked motor vehicle pursuant to this section shall
57 notify such person or entity of the name and address of
58 the registered owner of the motor vehicle, if known, and
59 all lienholders of record, if any, within seven days after
60 the vehicle is taken into custody and possession:
61 *Provided*, That the requirements of this subsection shall
62 not apply to motor vehicles for which the registered
63 owner thereof cannot be ascertained by due diligence or
64 investigation.

65 (d) The person or entity hired by an enforcement
66 agency to take into custody or possession an abandoned
67 or junked motor vehicle shall, within fifteen days after
68 such possession, notify the registered owner of such
69 vehicle and all lienholders of record, if any, as identified
70 by the enforcement agency pursuant to subsection (c)
71 herein, by registered mail, return receipt requested, of
72 the location of the facility where the motor vehicle is
73 being stored and of such owner's liability for all towing,
74 preservation and storage charges for such motor vehicle.
75 Upon the issuance of such notice, the identified owner
76 of the motor vehicle shall be liable and responsible for
77 all costs for towing, preservation and storage of the
78 motor vehicle: *Provided*, That failure to issue the notice
79 required by this subsection within fifteen days after
80 possession of the motor vehicle shall relieve the identi-
81 fied owner of the motor vehicle of any liability for
82 charges for towing, preservation and storage in excess
83 of the sum of the first five days of such charges:
84 *Provided, however*, That the requirements of this
85 subsection shall not apply to motor vehicles for which
86 the registered owner thereof cannot be ascertained by
87 due diligence or investigation.

CHAPTER 96

(Com. Sub. for H. B. 2228—By Delegates Williams, Carper,
Phillips, H. White, Rutledge and Harrison)

[Fassed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the perfection of deferred purchase money liens or encumbrances upon motor vehicles; applications for certificates of title reflecting lien; time for filing; effective date of lien; duty of motor vehicle dealer to collect and transmit title registration tax and record lien; and providing fees for services.

Be it enacted by the Legislature of West Virginia:

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

§17A-4A-4. Deferred purchase money lien or encumbrance may be filed within sixty days after purchase; effective date of lien; dealer to record lien; fees.

1 (a) A deferred purchase money lien or encumbrance
2 upon any motor vehicle may be perfected by recording
3 the name and address of the lienholder upon the face
4 of the certificate of title for such motor vehicle. If an
5 application for such a certificate of title is filed with the
6 division of motor vehicles within sixty days after the
7 date of purchase of the motor vehicle, the effective date
8 of the lien or encumbrance shall be the date the lien or
9 encumbrance was created. If an application for such a
10 certificate of title is not filed within such sixty-day
11 period, the lien shall be perfected from the date it was
12 filed with the division of motor vehicles.

13 (b) In all transactions involving a deferred purchase
14 money lien or encumbrance upon a motor vehicle, the
15 motor vehicle dealer shall collect and remit to the

16 division of motor vehicles the title, tax and registration
17 fees required under section four, article three of this
18 chapter and file and record with the division of motor
19 vehicles any lien created as a result of such transaction:
20 *Provided*, That a motor vehicle dealer may remit the
21 title, tax and registration fees through any license
22 service that is licensed by the division of motor vehicles.

23 (c) No fee may be charged by a motor vehicle dealer
24 for its services required under this section except that
25 fee authorized by subdivision (6), subsection (a), section
26 one hundred nine, article three, chapter forty-six-a of
27 this code.

CHAPTER 97

(Com. Sub. for S. B. 112—By Senators Minard, Sharpe, Helmick, Dittmar,
Bailey, Wiedebusch, Craigo, Brackenrich, Anderson and Manchin)

[Passed April 9, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend chapter seventeen-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 automobile auction business; license certificate; application; prohibited acts; reassignment of title; exemption from privilege tax; bonds; insurance; established place of business; license fee; investigation for license; information confidential; refusal of license certificate; licensing period, renewal and expiration; display of license; changes in business; investigation for suspension or revocation of license and notice of same; grounds for suspension or revocation; temporary registration plates and markers; class AA special plates, records and expiration; required records; inspections; violations; penalties; injunctive relief; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That chapter seventeen-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. AUTOMOBILE AUCTION BUSINESSES.

- §17A-6C-1. License certificate required; application form; prohibited acts; reassignment of title; and exemption from privilege tax.
- §17A-6C-2. Bonds and insurance.
- §17A-6C-3. Established place of business requirements.
- §17A-6C-4. Fee required for license certificate.
- §17A-6C-5. Investigation prior to issuance of license certificate; information confidential.
- §17A-6C-6. Refusal of license certificate.
- §17A-6C-7. Licensing period, renewal and expiration.
- §17A-6C-8. Form and display of license certificate; certified copies of license.
- §17A-6C-9. Changes in business; action required.
- §17A-6C-10. Investigation; grounds for suspending or revoking license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate and temporary plates or markers.
- §17A-6C-11. Temporary registration plates or markers.
- §17A-6C-12. Use of special plates; records to be maintained by automobile auction business; operation of vehicles under special plates; expiration of special plate.
- §17A-6C-13. Records must be kept and maintained.
- §17A-6C-14. Notice of refusal, or suspension or revocation of license certificate or of suspension of right to issue temporary registration plates or markers or of suspension of an automobile auction special plate or plates; relinquishing license certificate, dealer special plate or plates and temporary plates or markers.
- §17A-6C-15. Inspections; violations and penalties.
- §17A-6C-16. Injunctive relief.
- §17A-6C-17. Promulgation of rules.

§17A-6C-1. License certificate required; application form; prohibited acts; reassignment of title; and exemption from privilege tax.

- 1 (a) A person, partnership or corporation may not
- 2 engage in, represent or advertise that he, she or it is in
- 3 the business of conducting automobile auctions without
- 4 first obtaining a license certificate from the office of the
- 5 commissioner. The commissioner shall provide an
- 6 application form for applicants seeking a license
- 7 certificate. The applicant shall provide full information
- 8 required by the commissioner on the application form.
- 9 The applicant, if a person, shall verify the information
- 10 on the form by oath or affirmation. If the applicant is

11 a partnership or corporation, the oath or affirmation
12 shall be made by a partner or an officer of the
13 corporation.

14 (b) For the purposes of this article, the term "auto-
15 mobile auction" means an auction or other sale where
16 twenty or more used motor vehicles are offered for sale
17 by auction within a license year, but does not include
18 a sale or auction of surplus vehicles by an agency of this
19 state, a municipality of this state or of the federal
20 government or a sale or auction of repossessed vehicles
21 by a financial institution or a sale or auction by a
22 licensed motor vehicle dealer of vehicles owned by said
23 dealer. For purposes of this definition, a used motor
24 vehicle does not mean a vehicle for which a salvage
25 certificate has been issued.

26 (c) The automobile auction may auction or sell
27 vehicles owned by the auction or may auction vehicles
28 which are owned by others, but the automobile auction
29 may not sell or auction a vehicle for which a salvage
30 certificate has been issued.

31 (d) When the transferee of a vehicle is an automobile
32 auction which holds the same for resale and lawfully
33 operates the same under Class AA plates, such automo-
34 bile auction shall not be required to obtain a new
35 registration of said vehicle or be required to forward the
36 certificate of title to the division, but upon transfer of
37 title or interest to another person the automobile auction
38 shall execute and acknowledge an assignment and
39 warranty of title upon the certificate of title and deliver
40 the same not later than sixty days from date of sale to
41 the person to whom such transfer is made.

42 (e) The tax imposed by section four, article three of
43 this chapter does not apply to the titling of vehicles
44 purchased for resale by an automobile auction.

§17A-6C-2. Bonds and insurance.

1 (a) An application for a license certificate must be
2 accompanied by a bond, issued by a surety corporation
3 authorized to issue bonds in this state, in the penal sum
4 of twenty-five thousand dollars, to ensure that the

5 licensee will not make fraudulent representations to the
6 detriment of any purchaser, seller, financial institution
7 or the state of West Virginia. The bond shall be effective
8 on the date the license certificate is issued. A licensee
9 shall keep the bond in full force and effect at all times.
10 The aggregate liability of the surety in no event shall
11 exceed the principal sum of the bond. The surety of the
12 bond shall have the right to cancel upon giving thirty
13 days' notice to the commissioner and shall be relieved
14 of liability for any breach of condition occurring after
15 the effective date of the cancellation.

16 (b) An application for a license certificate must also
17 be accompanied by a certificate of insurance certifying
18 that the applicant has in force an insurance policy,
19 issued by an insurance company authorized to do
20 business in this state, insuring the applicant and any
21 other person using any vehicle or vehicles owned by, or
22 in the possession of, the applicant with the expressed or
23 implied permission of the applicant, against loss from
24 the liability imposed by law for damages arising out of
25 the ownership, possession, operation, maintenance or use
26 of such vehicles, subject to minimum limits, exclusive
27 of interest and costs, with respect to each vehicle, as
28 follows: Twenty thousand dollars because of bodily
29 injury to or death of one person in any one accident and,
30 subject to said limit for one person, forty thousand
31 dollars because of bodily injury to or death of two or
32 more persons in any one accident and ten thousand
33 dollars because of injury to or destruction of property
34 of others in any one accident.

35 (c) The liability insurance policy shall run concur-
36 rently with the license year and shall remain in full
37 force and effect at all times.

38 (d) All persons conducting business at or through an
39 automobile auction business in this state must obey all
40 division of motor vehicles laws and rules.

41 (e) Automobile auction businesses shall report any
42 violations of law or any scheme designed to deceive or
43 defraud the automobile buying public and assist in
44 prosecuting those involved in such acts.

§17A-6C-3. Established place of business requirements.

- 1 Each automobile auction shall:
- 2 (a) Be located at a permanent site which is owned or
3 leased by the licensee.
- 4 (b) Have no other class of dealership operating from
5 the automobile auction location.
- 6 (c) Have office space of at least one hundred forty-five
7 square feet, with necessary office furniture, heating and
8 lighting facilities, restroom facilities and a telephone
9 listed in the name of the automobile auction.
- 10 (d) Maintain parking space for at least one hundred
11 vehicles.
- 12 (e) Display at least one permanent sign that is clearly
13 visible from the nearest street or highway. The sign
14 shall state that automobile auctions are conducted at
15 that site.

§17A-6C-4. Fee required for license certificate.

- 1 (a) The initial application fee for a certificate to
2 engage in the automobile auction business is two
3 hundred fifty dollars. The renewal fee is one hundred
4 dollars.
- 5 (b) The fee entitles the licensee to one special plate
6 known as the Class AA special plate.
- 7 (c) A licensee is also entitled to additional Class AA
8 special plates for a fee of twenty-five dollars each based
9 on the following formula:

10	ANNUAL	ADDITIONAL
11	VEHICLE SALES	AA PLATES
12	0-239	2
13	240-499	4 (Additional)
14	500-999	4 (Additional)
15	1000 - More	4 Plates per 500
16		vehicles sold.

§17A-6C-5. Investigation prior to issuance of license certificate; information confidential.

1 (a) Upon receipt of a completed application, the
2 required bond, certificate of insurance and the applica-
3 tion fee, the commissioner may investigate to determine
4 the accuracy of the application and any facts relevant
5 to the application. The commissioner may withhold
6 issuance or refusal of a license for up to twenty days
7 after an application is received.

8 (b) An application for a license certificate under the
9 provisions of this article and any information submitted
10 are confidential. No person may divulge any information
11 contained in any application or any information submit-
12 ted except in response to a valid subpoena or subpoena
13 duces tecum.

§17A-6C-6. Refusal of license certificate.

1 The commissioner shall deny an application if he or
2 she finds that the applicant:

3 (a) Has failed to furnish the required bond;

4 (b) Has failed to furnish the required certificate of
5 insurance;

6 (c) Has knowingly made a false statement of a
7 material fact in the application;

8 (d) Has habitually defaulted on financial obligations;

9 (e) Has been convicted of a felony within five years
10 immediately preceding receipt of the application by the
11 commissioner;

12 (f) Has been refused, or has had revoked, an automo-
13 bile auction license in any other state or jurisdiction
14 within five years immediately preceding receipt of the
15 application by the commissioner;

16 (g) So far as can be ascertained, has not complied
17 with and will not comply with the registration and title
18 laws of this state;

19 (h) Has been convicted of any fraudulent act in
20 connection with the business of an automobile auction;
21 or

22 (i) Has committed any act or has failed or refused to

23 perform any duty for which the license certificate, if
24 issued, could be suspended or revoked.

§17A-6C-7. Licensing period, renewal and expiration.

1 (a) A license certificate may not be issued prior to the
2 first day of July, one thousand nine hundred ninety-
3 three. Applicants shall apply at least thirty days in
4 advance. License certificates expire on the thirtieth day
5 of June each year.

6 (b) License certificates are renewable by the payment
7 of fees by a licensee in good standing with the commis-
8 sioner. A license certificate may not be transferred, or
9 used by any person other than the licensee, except as
10 provided in section nine of this article.

**§17A-6C-8. Form and display of license certificate;
certified copies of license.**

1 (a) The commissioner shall prescribe the form of the
2 license certificate for an automobile auction business.
3 Each license certificate shall have the seal of the
4 division, the location of each place of business of the
5 licensee, the year for which the license is issued, the
6 serial number and other information the commissioner
7 may prescribe printed on it. The license certificate shall
8 be delivered or mailed to the licensee.

9 (b) When a licensee conducts business at more than
10 one location, he or she shall obtain from the commis-
11 sioner one certified copy of the license certificate for
12 each place of business for a fee of one dollar each. Each
13 licensee shall keep either his or her license certificate
14 or a certified copy conspicuously posted at each place of
15 business.

16 (c) In the event of the loss or destruction of a license
17 certificate or a certified copy, the licensee shall
18 immediately make application for a certified copy of the
19 lost license certificate. The fee for a replacement copy
20 is three dollars.

§17A-6C-9. Changes in business; action required.

1 Every automobile auction business shall notify the
2 commissioner immediately when any of the f

3 changes in the business occur:

4 (a) A change of the location of any place of business;

5 (b) A change of the name or trade name under which
6 the licensee engages or will engage in the business;

7 (c) The death of the licensee or any partner or
8 partners thereof;

9 (d) A change in any partners, officers or directors;

10 (e) A change in ownership of the business;

11 (f) A change in the type of legal entity by and through
12 which the licensee engages or will engage in the
13 business; or

14 (g) The appointment of any trustee in bankruptcy,
15 trustee under an assignment for the benefit of creditors,
16 master or receiver.

17 When any change specified in subdivision (a), (b), (c),
18 (d), (e) or (f) occurs, an application for a new license
19 certificate shall immediately be filed with the commis-
20 sioner: *Provided*, That when a subdivision (c) change is
21 involved, an application for a new license certificate
22 need not be filed during the balance of the license year
23 if a member of the family of the deceased person
24 succeeds to the interest in the business.

25 Upon receipt and review of the application, a new
26 license certificate shall be issued incorporating the
27 changes. No additional fee for the balance of the license
28 year shall be required for the issuance of any new
29 license certificate issued as a result of any change
30 specified in subdivision (a), (b), (c), (d), (e) or (f).

31 No new license certificate is required for any trustee
32 in bankruptcy, trustee under an assignment for the
33 benefit of creditors, receiver or master, appointed
34 pursuant to law, who takes charge of or operates such
35 business for the purpose of winding up the affairs of
36 such business or protecting the interests of the creditors
37 of such business.

§17A-6C-10. Investigation; grounds for suspending or revoking license certificate; notice of refusal, suspension or revocation of license certificate; relinquishing license certificate and temporary plates or markers.

1 (a) The commissioner may investigate whether any
2 provisions of this article have been violated by a
3 licensee. Any investigation conducted by the commis-
4 sioner shall be confidential and the confidentiality of the
5 investigation shall be maintained by the commissioner,
6 the division, the licensee, any complainant and all other
7 persons until the commissioner suspends or revokes the
8 license certificate of the licensee involved.

9 (b) The commissioner may suspend or revoke a
10 license certificate if the commissioner finds that the
11 licensee:

12 (1) Has failed or refused to comply with the laws of
13 this state relating to the registration and titling of
14 vehicles and requiring notices of transfers; or

15 (2) Has failed or refused to comply with the provi-
16 sions of this article and the rules promulgated
17 hereunder.

18 (c) The commissioner shall suspend or revoke a
19 license certificate if the commissioner finds that the
20 licensee:

21 (1) Has knowingly made a false statement of a
22 material fact in his or her application for the license
23 certificate then issued and outstanding;

24 (2) Has habitually defaulted on financial obligations;

25 (3) Has been guilty of any fraudulent act in connec-
26 tion with the automobile auction business;

27 (4) Has defrauded or is attempting to defraud the
28 state or any political subdivision of the state of any taxes
29 or fees in connection with the sale or transfer of any
30 vehicle;

31 (5) Has committed fraud in the registration of a

32 vehicle;

33 (6) Has knowingly purchased, sold or otherwise dealt
34 in a stolen vehicle or vehicles;

35 (7) Has advertised by any means, with intent to
36 defraud, any material misrepresentation or misleading
37 or deceptive statement of fact, relating to the conduct
38 of the licensed business;

39 (8) Has a license certificate to which he is not
40 lawfully entitled; or

41 (9) Has committed an act for which a certificate could
42 have been refused.

43 (d) If a licensee fails or refuses to keep the bond or
44 liability insurance required by section two of this article
45 in effect, the license certificate of the licensee shall
46 automatically be suspended unless and until the re-
47 quired bond and certificate of insurance is furnished to
48 the commissioner, in which event the suspension shall
49 be vacated.

50 (e) If the commissioner refuses to issue a license
51 certificate, or suspends or revokes a license certificate,
52 or suspends the right of a licensee to issue temporary
53 plates or markers under the provisions of section eleven,
54 article six of this chapter, he or she shall make and enter
55 an order to that effect and shall cause a copy of this
56 order to be served in person or by certified mail, return
57 receipt requested, on the applicant or licensee.

58 (f) Suspensions continue until the cause of suspension
59 is eliminated or corrected. If a license certificate and the
60 right of a licensee to issue temporary registration plates
61 or markers is suspended or revoked, the commissioner
62 shall, in the order of suspension or revocation, direct the
63 licensee to return to the division his or her license
64 certificate and any temporary registration plates or
65 markers in the licensee's possession and issued in
66 conjunction with the issuance of an automobile auction
67 certificate. If a licensee fails or refuses to comply with
68 any order of the commissioner, the commissioner shall
69 proceed as provided in section seven, article nine of this
70 chapter.

71 (g) Any applicant whose request for a license certifi-
72 cate is refused, and any licensee whose license certifi-
73 cate is suspended or revoked, may appeal the suspen-
74 sion or revocation in accordance with the rules promul-
75 gated by the commissioner pursuant to this article.

76 (h) Revocation of a license certificate shall not
77 preclude application for a new license certificate, which
78 shall be processed in the same manner. The license
79 certificate shall be issued or denied on the same grounds
80 as any other application for a license certificate, except
81 that any previous suspension and revocation may be
82 considered in deciding whether to issue or refuse the
83 license certificate.

§17A-6C-11. Temporary registration plates or markers.

1 (a) In order to permit a vehicle which is to be titled
2 and registered to be operated on the streets and
3 highways pending receipt of the annual registration
4 plate, the commissioner may, subject to the following
5 limitations, deliver temporary vehicle registration
6 plates or markers to persons engaged in the automobile
7 auction business for issuance to applicants for title and
8 registration of vehicles.

9 (b) An application by an automobile auction business
10 to the commissioner for temporary registration plates or
11 markers shall be made on the form prescribed and
12 furnished by the commissioner and shall be accompan-
13 ied by a fee of three dollars for each temporary
14 registration plate or marker. No refund or credit of fees
15 paid by automobile auction businesses to the commis-
16 sioner for temporary registration plates or markers is
17 allowed, except in the event the commissioner discon-
18 tinues the issuance of temporary plates or markers.
19 Automobile auction businesses returning temporary
20 registration plates or markers to the commissioner may
21 petition for and be entitled to a refund or a credit.

22 (c) Every automobile auction business applying for
23 and receiving temporary registration plates or markers
24 shall maintain in permanent form a record of all
25 temporary registration plates or markers delivered to
26 the licensee, a record of all temporary registration

27 plates or markers issued and a record of any other
28 information pertaining to the receipt or the issuance of
29 temporary registration plates or markers which the
30 commissioner may require. Each record shall be kept
31 for a period of at least three years from the date issued.
32 Every automobile auction business issuing a temporary
33 registration plate or marker shall send to the division
34 a copy of the temporary registration plate or marker
35 certificate properly executed by the automobile auction
36 business and the purchaser within five working days
37 after the issuance of the plate or marker. No temporary
38 registration plates or markers may be delivered to any
39 automobile auction business until the business has fully
40 accounted to the commissioner for the temporary
41 registration plates or markers last delivered by showing
42 the number issued to purchasers and the number
43 remaining to be issued.

44 (d) An automobile auction business may not issue,
45 assign or deliver a temporary registration plate or
46 marker to anyone other than the bona fide applicant for
47 title and registration of the vehicle to be registered. Not
48 more than one temporary registration plate or marker
49 may be issued to the same bona fide applicant for the
50 same vehicle. An automobile auction business may not
51 issue a temporary registration or marker to anyone
52 possessing an annual registration plate for a vehicle
53 which has been sold or exchanged, except an automobile
54 auction business may issue a temporary registration
55 plate or marker to the bona fide applicant who possesses
56 an annual registration plate of a different class and it
57 may make application to the division to exchange the
58 annual registration plate of a different class in accor-
59 dance with the provisions of section one, article four of
60 this chapter. An automobile auction business may not
61 lend to anyone or use on any vehicle which it may own,
62 a temporary registration plate or marker. It is unlawful
63 for any automobile auction business to issue any
64 temporary registration plate or marker which contains
65 a misstatement of fact or false information.

66 (e) Every automobile auction business issuing tem-
67 porary registration plates or markers shall affix or

68 insert clearly and indelibly on the face of each tempor-
69 ary registration plate or marker the date of issuance, the
70 date of expiration and the make, model and serial
71 number of the vehicle.

72 (f) If the commissioner finds that the provisions of
73 this section or his or her directions are not being
74 complied with by an automobile auction business, the
75 commissioner may suspend the right of the automobile
76 auction business to issue temporary registration plates
77 or markers.

78 (g) A temporary registration plate or marker expires
79 upon the receipt of the annual registration plate from
80 the division, or upon the rescission of the contract to
81 purchase the vehicle in question, or upon the expiration
82 of sixty days from the date of issuance, whichever event
83 occurs first.

**§17A-6C-12. Use of special plates; records to be main-
tained by automobile auction business;
operation of vehicles under special plates;
expiration of special plate.**

1 (a) Class AA special plates may be used by the
2 automobile auction business receiving them only for the
3 purpose of transporting or moving consigned or owned
4 motor vehicles to and from the automobile auction in the
5 normal course of business or for purposes of demonstrat-
6 ing vehicles owned by the auction which are offered for
7 sale: *Provided*, That under no circumstances may a
8 Class AA special plate be used on any work or service
9 vehicle owned by the automobile auction business on any
10 vehicle being operated for personal reasons or on any
11 vehicle sold by or through it to a purchaser.

12 (b) Every automobile auction business entitled to and
13 issued a special plate or plates under the provisions of
14 this article shall keep a written record of the location
15 of each plate. Every record shall be open to inspection
16 by the commissioner, his or her representative or any
17 law-enforcement officer, when acting in an official
18 capacity.

19 (c) An automobile auction business licensee who

20 on consignment a vehicle or vehicles of the type required
21 to be registered under this chapter may operate or move
22 the same upon the streets and highways without
23 registering each vehicle if the vehicle displays a special
24 plate issued as provided in this article.

25 (d) Every special plate or plates shall expire at
26 midnight on the thirtieth day of June. A new plate or
27 plates for the ensuing year may be obtained as specified
28 in section four of this article.

§17A-6C-13. Records must be kept and maintained.

1 In addition to all other records required to be kept
2 and maintained, the licensee shall keep and maintain a
3 record of the following on forms and for the period of
4 time proscribed by the commissioner:

5 (a) Every vehicle which is sold at auction by a
6 licensee or received or accepted by the licensee for sale
7 at auction;

8 (b) The name and address of the person from whom
9 the vehicle was acquired and the date thereof, the name
10 and address of the person to whom the vehicle was sold
11 or auctioned, the date thereof, and a description of each
12 vehicle with name and identifying numbers sufficient to
13 identify it; and

14 (c) Records as the commissioner may require by
15 reasonable rules promulgated pursuant to this article.

16 All records required to be kept and maintained shall
17 be kept for a period of at least three years from the date
18 of the making and shall be open to inspection by the
19 commissioner, his or her representative or any law-
20 enforcement officer while acting in an official capacity.

§17A-6C-14. Notice of refusal, or suspension or revocation of license certificate or of suspension of right to issue temporary registration plates or markers or of suspension of an automobile auction special plate or plates; relinquishing license certificate, dealer special plate or plates and temporary plates or markers.

1 (a) If the commissioner refuses to issue a license
2 certificate, or suspends or revokes a license certificate,
3 or suspends the right of an automobile auction business
4 to issue temporary plates or markers under the provi-
5 sions of section fifteen of this article, or suspends a Class
6 AA special plate or plates, he or she shall make and
7 enter an order to that effect and shall cause a copy of
8 the order to be served in person or by certified mail,
9 return receipt requested, on the applicant or licensee.

10 (b) If a license certificate is suspended or revoked, the
11 commissioner shall, in the order of suspension or
12 revocation, direct the licensee to return to the depart-
13 ment his or her license certificate and any special Class
14 AA plates and temporary registration plates or markers
15 issued in conjunction with the issuance of the license
16 certificate of the business. If the right of an automobile
17 auction business to issue temporary registration plates
18 or markers is suspended or a Class AA special plate or
19 plates are suspended, the commissioner shall in the
20 order of suspension direct the licensee to return to the
21 department all temporary registration plates or
22 markers issued in conjunction with the business. It is the
23 duty of the licensee to comply with an order. If a licensee
24 fails or refuses to comply with any order, the commis-
25 sioner shall proceed as provided in section seven, article
26 nine of this chapter.

§17A-6C-15. Inspections; violations and penalties.

1 (a) The commissioner and law-enforcement officers of
2 the state, acting at the commissioner's request, are
3 hereby authorized to inspect the place of business and
4 pertinent records, documents and papers of any person
5 required to be licensed under the provisions of this
6 article to the extent deemed reasonably necessary to
7 determine compliance with the provisions of this article.
8 For the purpose of making an inspection, the commis-
9 sioner and law-enforcement officers are authorized, at
10 reasonable times, to enter the place of business.

11 (b) Any person who violates any provision of this
12 article or any final order of the commissioner is guilty
13 of a misdemeanor and is subject to the provisions of
14 article eleven of this chapter.

§17A-6C-16. Injunctive relief.

1 (a) If it appears to the commissioner that any person
2 or licensee has violated any provision of this article or
3 any final order of the commissioner, the commissioner
4 may petition, in the name of the state, the circuit court
5 of the county in which the violation or violations
6 occurred, for an injunction against such person or
7 licensee. A violation or violations resulting in prosecu-
8 tion or conviction under the provisions of article eleven
9 of this chapter shall not prohibit injunctive relief.

10 The circuit court may, by mandatory or prohibitory
11 injunction, compel compliance with the provisions of this
12 article and all final orders of the commissioner. The
13 court may also issue temporary injunctions.

14 (b) The judgment by the circuit court is final unless
15 reversed, vacated or modified on appeal to the supreme
16 court of appeals. Any such appeal shall be sought in the
17 manner and within the time provided by law for appeals
18 from circuit courts in other civil cases.

§17A-6C-17. Promulgation of rules.

1 The commissioner shall promulgate rules in accor-
2 dance with chapter twenty-nine-a of this code in order
3 to effect the provisions of this article. Any reference in
4 this article to rules shall be construed to mean rules
5 promulgated in accordance with said chapter.

CHAPTER 98

(Com. Sub. for S. B. 133—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article three, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section twelve, all relating to motor vehicles; mandatory suspension for fraudulent use of driver's license; and procedures.

Be it enacted by the Legislature of West Virginia:

That section six, article three, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto a new section, designated section twelve, all to read as follows:

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.

§17B-3-6. Authority of division to suspend or revoke license; hearing.

§17B-3-12. Mandatory suspension for fraudulent use of driver's license.

§17B-3-6. Authority of division to suspend or revoke license; hearing.

1 (a) The division is hereby authorized to suspend the
2 driver's license of any person without preliminary
3 hearing upon a showing by its records or other sufficient
4 evidence that the licensee:

5 (1) Has committed an offense for which mandatory
6 revocation of a driver's license is required upon
7 conviction;

8 (2) Has by reckless or unlawful operation of a motor
9 vehicle, caused or contributed to an accident resulting
10 in the death or personal injury of another or property
11 damage;

12 (3) Has been convicted with such frequency of serious
13 offenses against traffic regulations governing the
14 movement of vehicles as to indicate a disrespect for
15 traffic laws and a disregard for the safety of other
16 persons on the highways;

17 (4) Is an habitually reckless or negligent driver of a
18 motor vehicle;

19 (5) Is incompetent to drive a motor vehicle;

20 (6) Has committed an offense in another state which
21 if committed in this state would be a ground for
22 suspension or revocation;

23 (7) Has failed to pay or has defaulted on a plan for
24 the payment of all costs, fines, forfeitures or penalties
25 imposed by a magistrate court or municipality;

26 within ninety days, as required by section two-a, article
27 three, chapter fifty or section two-a, article ten, chapter
28 eight of this code;

29 (8) Has failed to appear or otherwise respond before
30 a magistrate court or municipal court when charged
31 with a motor vehicle violation as defined in section
32 three-a of this article; or

33 (9) Is under the age of eighteen and has withdrawn
34 either voluntarily or involuntarily from a secondary
35 school, as provided in section eleven, article eight,
36 chapter eighteen of this code.

37 (b) The driver's license of any person having his or
38 her license suspended shall be reinstated if:

39 (1) The license was suspended under the provisions of
40 subdivision (7), subsection (a) of this section and the
41 payment of costs, fines, forfeitures or penalties imposed
42 by the applicable court has been made; or

43 (2) The license was suspended under the provisions of
44 subdivision (8), subsection (a) of this section, and the
45 person having his or her license suspended has appeared
46 in court and has prevailed against the motor vehicle
47 violations charged.

48 (c) Any reinstatement of a license under subdivision
49 (1) or (2), subsection (b) of this section shall be subject
50 to a reinstatement fee designated in section nine of this
51 article.

52 (d) Upon suspending the driver's license of any
53 person as hereinbefore in this section authorized, the
54 division shall immediately notify the licensee in writing,
55 sent by certified mail, return receipt requested, to the
56 address given by the licensee in applying for license, and
57 upon his request shall afford him an opportunity for a
58 hearing as early as practical within not to exceed twenty
59 days after receipt of such request in the county wherein
60 the licensee resides unless the division and the licensee
61 agree that such hearing may be held in some other
62 county. Upon such hearing the commissioner or his duly
63 authorized agent may administer oaths and may issue
64 subpoenas for the attendance of witnesses and the

65 production of relevant books and papers and may
66 require a reexamination of the licensee. Upon such
67 hearing the division shall either rescind its order of
68 suspension or, good cause appearing therefor, may
69 extend the suspension of such license or revoke such
70 license.

§17B-3-12. Mandatory suspension for fraudulent use of driver's license.

1 (a) The commissioner shall suspend for a period of
2 one year the driver's license of any person upon receipt
3 of a sworn affidavit from any law-enforcement officer
4 or employee of the division of motor vehicles stating that
5 the person committed any one of the following acts:

6 (1) Displayed or caused or permitted to be displayed
7 to any law-enforcement officer or employee of the
8 division of motor vehicles or have in his or her possession
9 any canceled, revoked, suspended, fictitious or fraudu-
10 lently altered driver's license;

11 (2) Loaned or gave his or her driver's license to any
12 other person or knowingly permitted the use thereof by
13 another for an unlawful or fraudulent purpose;

14 (3) Displayed or represented as one's own any driver's
15 license not issued to him or her; or

16 (4) Used a false or fictitious name or birth date on
17 any application for a driver's license or knowingly made
18 a false statement, knowingly concealed a material fact
19 or otherwise committed a fraud in making application
20 for a driver's license.

21 (b) For the purposes of this section, "driver's license"
22 means any permit, camera card, identification card or
23 driver's license issued by this state to a person which
24 authorizes the person to drive a motor vehicle of a
25 specific class or classes subject to any restriction or
26 endorsement contained thereon.

27 (c) No person shall have his or her driver's license
28 suspended under any provision of this section unless he
29 or she shall first be given written notice of such
30 suspension sent by certified mail, return receipt

31 requested, at least twenty days prior to the effective date
32 of the suspension. Within ten days of the receipt of the
33 notice of suspension, the person may submit a written
34 request by certified mail for a hearing and request a
35 stay of the suspension pending the results of the hearing.
36 Upon receipt of the request for a hearing and request
37 for a stay of the suspension, the commissioner shall
38 grant a stay of the suspension pending the results of the
39 hearing. If the commissioner shall after hearing make
40 and enter an order affirming the earlier order of
41 suspension, the person affected shall be entitled to
42 judicial review as set forth in chapter twenty-nine-a of
43 this code and, pending the appeal, the court may grant
44 a stay or supersedeas of such order. If the person does
45 not appeal the suspension or the suspension is affirmed
46 by the court, the person shall surrender his or her
47 driver's license or have the license impounded in the
48 manner set forth and subject to the imposition of fees
49 as provided in section nine of this article.

50 (d) The suspended driver's license shall be reinstated
51 following the period of suspension and upon compliance
52 with the conditions set forth in this chapter.

CHAPTER 99

(H. B. 2680—By Delegates Riggs and Fealy)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section forty-four, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motorcycle passengers; designating the number of passengers to be carried; permitting factory produced sidecars; restrictions; and safety belt requirements.

Be it enacted by the Legislature of West Virginia:

That section forty-four, article fifteen, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as

follows:

ARTICLE 15. EQUIPMENT.

§17C-15-44. Safety equipment and requirements for motorcyclists, motorcycles, motor-driven cycles and mopeds; motorcycle safety standards and specifications board.

1 (a) No person shall operate or be a passenger on any
2 motorcycle or motor-driven cycle unless he is wearing
3 securely fastened on his head by either a neck or chin
4 strap a protective helmet designed to deflect blows,
5 resist penetration and spread impact forces. Any helmet
6 worn by an operator or passenger shall meet the current
7 performance specifications established by the American
8 National Standards Institute Standard, Z 90.1, the
9 United States Department of Transportation Federal
10 Motor Vehicle Safety Standard No. 218 or Snell Safety
11 Standards for Protective Headgear for Vehicle Users.

12 (b) No person shall operate or be a passenger on any
13 motorcycle or motor-driven cycle unless he is wearing
14 safety, shatter-resistant eyeglasses (excluding contact
15 lenses), or eyegoggles or face shield that complies with
16 the performance specifications established by the
17 American National Standards Institute for Head, Eye
18 and Respiratory Protection, Z 2.1. In addition, if any
19 motorcycle, motor-driven cycle or moped be equipped
20 with a windshield or windscreen, the windshield or
21 windscreen shall be constructed of safety, shatter-
22 resistant material that complies with the performance
23 specifications established by Department of Transportation
24 Federal Motor Vehicle Safety Standard No. 205 and
25 American National Standards Institute, Safety Glazing
26 Materials for Glazing Motor Vehicles Operated on Land
27 Highways, Standard Z 26.1.

28 (c) No person shall operate a motorcycle, motor-
29 driven cycle or moped on which the handlebars or grips
30 are more than fifteen inches higher than the uppermost
31 part of the operator's seat when the seat is not depressed
32 in any manner.

33 (d) A person operating a motorcycle, motor-driven

34 cycle or moped shall ride in a seated position facing
35 forward and only upon a permanent operator's seat
36 attached to the vehicle. No operator shall carry any
37 other person nor shall any other person ride on such a
38 vehicle unless the vehicle is designed to carry more than
39 one person, in which event a passenger may ride behind
40 the operator upon the permanent operator's seat if it is
41 designed for two persons, or upon another seat firmly
42 attached to the vehicle to the rear of the operator's seat
43 and equipped with footrests designed and located for use
44 by the passenger or in a sidecar firmly attached to the
45 vehicle. No person shall ride side saddle on a seat. An
46 operator may carry as many passengers as there are
47 seats and footrests to accommodate those passengers.
48 Additional passengers may be carried in a factory
49 produced sidecar provided that there is one passenger
50 per seat. Passengers riding in a sidecar shall be
51 restrained by safety belts.

52 (e) Every motorcycle, motor-driven cycle and moped
53 shall be equipped with a rearview mirror affixed to the
54 handlebars and adjusted so that the operator shall have
55 a clear view of the road and condition of traffic behind
56 him for a distance of at least two hundred feet.

57 (f) The superintendent of public safety is hereby
58 authorized to approve or disapprove types and makes of
59 protective helmets, eye protection devices and equip-
60 ment offered for sale, purchased or used by any person.

CHAPTER 100

(Com. Sub. for H. B. 2098—By Mr. Speaker, Mr. Chambers,
and Delegates Burk and Kessel)

[Passed March 16, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, 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 forty-nine, relating to the mandatory

use of safety belts in the front seat of passenger vehicles; mandating the use of safety belts for all passengers in the back seat of passenger vehicles who are under the age of eighteen years; defining the term "passenger vehicle" for purposes of said section; creating exceptions for certain disabled persons and United States rural postal service carriers; providing a penalty for a violation of said section; limiting the enforcement of such violation to a secondary action when the driver of a motor vehicle has been detained for probable cause of violating another section of this code; providing that evidence of a violation of this section is not admissible to prove negligence, contributory negligence or comparative negligence or to mitigate damages; exception; when certain damages may be mitigated; establishing procedure for reducing certain damages; prohibiting the entry of points on a driver's record for a violation of this section; mandating the governor's highway safety program, in cooperation with other governmental agencies, to initiate and conduct safety courses and educational programs encouraging compliance with safety belt usage laws; and clarifying the effect of this section on existing provisions governing the use of child passenger safety devices.

Be it enacted by the Legislature of West Virginia:

That article fifteen, 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 forty-nine, to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-49. Operation of vehicles with safety belts; exception; penalty; civil actions; educational program by division of public safety.

- 1 (a) Effective the first day of September, one thousand
- 2 nine hundred ninety-three, a person may not operate a
- 3 passenger vehicle on a public street or highway of this
- 4 state unless the person, any passenger in the back seat

5 under eighteen years of age, and any passenger in the
6 front seat of such passenger vehicle is restrained by a
7 safety belt meeting applicable federal motor vehicle
8 safety standards. For the purposes of this section, the
9 term "passenger vehicle" means a motor vehicle which
10 is designed for transporting ten passengers or less,
11 including the driver, except that such term does not
12 include a motorcycle, a trailer, or any motor vehicle
13 which is not required on the date of the enactment of
14 this section under a federal motor vehicle safety
15 standard to be equipped with a belt system. The
16 provisions of this section shall apply to all passenger
17 vehicles manufactured after the first day of January,
18 one thousand nine hundred sixty-seven, and being 1968
19 models and newer.

20 (b) The required use of safety belts as provided herein
21 does not apply to a duly appointed or contracted rural
22 mail carrier of the United States postal service who is
23 actually making mail deliveries or to a passenger or
24 operator with a physically disabling condition whose
25 physical disability would prevent appropriate restraint
26 in such safety belt if the condition is duly certified by
27 a physician who shall state the nature of the disability
28 as well as the reason such restraint is inappropriate. The
29 division of motor vehicles shall adopt rules, in accor-
30 dance with the provisions of chapter twenty-nine-a of
31 this code, to establish a method to certify the physical
32 disability and to require use of an alternative restraint
33 system where feasible or to waive the requirement for
34 the use of any restraint system.

35 (c) Any person who violates the provisions of this
36 section shall be fined not more than twenty-five dollars.
37 No court costs or other fees shall be assessed for a
38 violation of this section. Enforcement of this section
39 shall be accomplished only as a secondary action when
40 a driver of a passenger vehicle has been detained for
41 probable cause of violating another section of this code.

42 (d) A violation of this section is not admissible as
43 evidence of negligence or contributory negligence or
44 comparative negligence in any civil action or proceeding

45 for damages, and shall not be admissible in mitigation
46 of damages: *Provided*, That the court may, upon motion
47 of the defendant, conduct an in camera hearing to
48 determine whether an injured party's failure to wear a
49 safety belt was a proximate cause of the injuries
50 complained of. Upon such a finding by the court, the
51 court may then, in a jury trial, by special interrogatory
52 to the jury, determine (1) that the injured party failed
53 to wear a safety belt and (2) that the failure to wear the
54 safety belt constituted a failure to mitigate damages.
55 The trier of fact may reduce the injured party's recovery
56 for medical damages by an amount not to exceed five
57 percent thereof. In the event the plaintiff stipulates to
58 the reduction of five percent of medical damages, the
59 court shall make the calculations and the issue of
60 mitigation of damages for failure to wear a safety belt
61 shall not be presented to the jury. In all cases, the actual
62 computation of the dollar amount reduction shall be
63 determined by the court.

64 (e) Notwithstanding any other provision of this code
65 to the contrary, no points may be entered on any driver's
66 record maintained by the division of motor vehicles as
67 a result of a violation of this section.

68 (f) Commencing the first day of July, one thousand
69 nine hundred ninety-three, the governor's highway
70 safety program, in cooperation with the division of
71 public safety and any other state departments or
72 agencies and with county and municipal law-enforce-
73 ment agencies, shall initiate and conduct an educational
74 program designed to encourage compliance with safety
75 belt usage laws. This program shall be focused on the
76 effectiveness of safety belts, the monetary savings and
77 the other benefits to the public from usage of safety belts
78 and the requirements and penalties specified in this law.

79 (g) Nothing contained in this section shall be
80 construed to abrogate or alter the provisions of section
81 forty-six of this article relating to the mandatory use of
82 child passenger safety devices.

CHAPTER 101

(H. B. 2591—By Delegates Martin and Rutledge)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article six-a, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating to the registration and identification of motor vehicles operating in West Virginia under authority of the interstate commerce commission; implementing a single state registration system; providing for the promulgation of rules; and authorizing the public service commission to employ additional persons.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6A. REGISTRATION OF INTERSTATE COMMERCE COMMISSION AUTHORITY AND IDENTIFICATION OF VEHICLES TO BE OPERATED THEREUNDER.

§24A-6A-14. Participation in the single state registration system.

1 (a) Notwithstanding any other provision of this
2 article to the contrary, on or before the thirty-first day
3 of December, one thousand nine hundred ninety-three,
4 the commission shall promulgate rules implementing a
5 single state registration system, in lieu of the identifi-
6 cation stamp and cab card system provided in this
7 article, for motor carriers operating within the borders
8 of this state pursuant to authority granted, or exempt
9 status conferred, by the interstate commerce commis-
10 sion. The single state registration system shall be
11 instituted pursuant to the Intermodal Surface Transpor-
12 tation Efficiency Act of 1991, as implemented by the
13 interstate commerce commission.

- 14 (b) The commission is further authorized to employ
15 ten persons, who shall be in the classified exempt
16 service, to facilitate enforcement of duties imposed upon
17 the commission in this chapter.

CHAPTER 102

(H. B. 2685—By Delegates Kiss, S. Cook, Farris,
Rutledge and P. White)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for a separate classification of business activity for aerospace services' purposes of determining municipal business and occupation privilege tax liability.

Be it enacted by the Legislature of West Virginia:

That section five, article thirteen, 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 13. TAXATION AND FINANCE.

§8-13-5. **Business and occupation or privilege tax; limitation on rates; effective date of tax; exemptions; activity in two or more municipalities; administrative provisions.**

- 1 (a) *Authorization to impose tax.* — (1) Whenever any
2 business activity or occupation, for which the state
3 imposed its annual business and occupation or privilege
4 tax under article thirteen, chapter eleven of this code,
5 prior to July one, one thousand nine hundred eighty-
6 seven, is engaged in or carried on within the corporate
7 limits of any municipality, the governing body thereof
8 shall have plenary power and authority, unless prohi-
9 bited by general law, to impose a similar business and
10 occupation tax thereon for the use of the municipality.

11 (2) Municipalities may impose a business and occupa-
12 tion or privilege tax upon every person engaging or
13 continuing within the municipality in the business of
14 aircraft repair, remodeling, maintenance, modification
15 and refurbishing services to any aircraft or to an engine
16 or other component part of any aircraft as a separate
17 business activity.

18 (b) *Maximum tax rates.* — In no case shall the rate
19 of such municipal business and occupation or privilege
20 tax on a particular activity exceed the maximum rate
21 imposed by the state, exclusive of surtaxes, upon any
22 business activities or privileges taxed under sections
23 two-a, two-b, two-c, two-d, two-e, two-g, two-h, two-i and
24 two-j, article thirteen of said chapter eleven, as such
25 rates were in effect under said article thirteen, on
26 January one, one thousand nine hundred fifty-nine, or
27 in excess of one percent of gross income under section
28 two-k of said article thirteen, or in excess of three tenths
29 of one percent of gross value or gross proceeds of sale
30 under section two-m of said article thirteen. The rate of
31 municipal business and occupation or privilege tax on
32 the activity described in subdivision (2), subsection (a)
33 of this section shall be ten one-hundredths of one
34 percent.

35 (c) *Effective date of local tax.* — Any taxes levied
36 pursuant to the authority of this section may be made
37 operative as of the first day of the then current fiscal
38 year or any date thereafter: *Provided,* That any new
39 imposition of tax or any increase in the rate of tax upon
40 any business, occupation or privilege taxed under
41 section two-e of said article thirteen shall apply only to
42 gross income derived from contracts entered into after
43 the effective date of such imposition of tax or rate
44 increase, and which effective date shall not be retroac-
45 tive in any respect: *Provided, however,* That no tax
46 imposed or revised under this section upon public utility
47 services may be effective unless and until the munici-
48 pality provides written notice of the same by certified
49 mail to said public utility at least sixty days prior to the
50 effective date of said tax or revision thereof.

51 (d) *Exemptions.* — A municipality shall not impose its

52 business and occupation or privilege tax on any activity
53 that was exempt from the state's business and occupa-
54 tion tax under the provisions of section three, article
55 thirteen of said chapter eleven, prior to July one, one
56 thousand nine hundred eighty-seven, and determined
57 without regard to any annual or monthly monetary
58 exemption also specified therein.

59 (e) *Activity in two or more municipalities.* — When-
60 ever the business activity or occupation of the taxpayer
61 is engaged in or carried on in two or more municipal-
62 ities of this state, the amount of gross income, or gross
63 proceeds of sales, taxable by each municipality shall be
64 determined in accordance with such legislative regula-
65 tions as the tax commissioner may prescribe. It being
66 the intent of the Legislature that multiple taxation of
67 the same gross income, or gross proceeds of sale, under
68 the same classification by two or more municipalities
69 shall not be allowed, and that gross income, or gross
70 proceeds of sales, derived from activity engaged in or
71 carried on within this state, that is presently subject to
72 state tax under section two-c or two-h, article thirteen,
73 chapter eleven of this code, which is not taxed or taxable
74 by any other municipality of this state, may be included
75 in the measure of tax for any municipality in this state,
76 from which the activity was directed, or in the absence
77 thereof, the municipality in this state in which the
78 principal office of the taxpayer is located. Nothing in
79 this subsection (e) shall be construed as permitting any
80 municipality to tax gross income or gross proceeds of
81 sales in violation of the constitution and laws of this state
82 or the United States, or as permitting a municipality to
83 tax any activity that has a definite situs outside its
84 taxing jurisdiction.

85 (f) Where the governing body of a municipality
86 imposes a tax authorized by this section, such governing
87 body shall have the authority to offer tax credits from
88 such tax as incentives for new and expanding businesses
89 located within the corporate limits of the municipality.

90 (g) *Administrative provisions.* — The ordinance of a
91 municipality imposing a business and occupation or
92 privilege tax shall provide procedures for the assess-

93 ment and collection of such tax, which shall be similar
 94 to those procedures in article thirteen, chapter eleven of
 95 this code, as in existence on June thirtieth, one thousand
 96 nine hundred seventy-eight, or to those procedures in
 97 article ten, chapter eleven of this code, and shall
 98 conform with such provisions as they relate to waiver
 99 of penalties and additions to tax.

CHAPTER 103

(S. B. 96—By Senators Claypole, Humphreys, Wagner and Wiedebusch)

[Passed March 22, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-four, article fifteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing members of fire departments to participate in political activities; setting forth exceptions thereto; establishing the misdemeanor offense of discriminating against employees lawfully engaged in political activities; and providing penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-24. Political activities of members prohibited; exceptions.

1 (a) No member of any paid fire department may:

2 (1) Solicit or receive any assessment, subscription or
 3 contribution, or perform any service for any political
 4 party, committee or candidate for compensation, other
 5 than for expenses actually incurred;

6 (2) Use any official authority or influence, including,
 7 but not limited to, the wearing by a member of a paid

8 fire department of his or her uniform, for the purpose
9 of interfering with or affecting the nomination, election
10 or defeat of any candidate or the passage or defeat of
11 any ballot issue: *Provided*, That this subdivision shall
12 not be construed to prohibit any member of a paid fire
13 department from casting his or her vote at any election
14 while wearing his or her uniform;

15 (3) Coerce or command anyone to pay, lend or
16 contribute anything of value to a party, committee,
17 organization, agency or person for the nomination,
18 election or defeat of a ballot issue;

19 (4) Be a candidate for or hold any other public office;
20 or

21 (5) Be a candidate or delegate to any state or national
22 political party convention or a member of any national,
23 state or local committee of a political party, or serve as
24 a financial agent or treasurer within the meaning of
25 sections three, four or five-e, article eight, chapter three
26 of this code.

27 (b) Other types of partisan or nonpartisan political
28 activities not inconsistent with the provisions of subsection
29 (a) of this section are permissible political activities
30 for members of paid fire departments.

31 (c) Any member of a paid fire department who
32 violates the provisions of this section shall have his or
33 her appointment vacated and shall be removed, in
34 accordance with the provisions of section twenty-five of
35 this article.

36 (d) No person shall be appointed or promoted to or
37 demoted or dismissed from any position in a paid fire
38 department or in any way favored or discriminated
39 against because of his or her engagement in any political
40 activities authorized by the provisions of this section.
41 Any elected or appointed official who violates the
42 provisions of this subsection shall be guilty of a
43 misdemeanor and, upon conviction thereof, shall be
44 punished by the penalties contained in section twenty-
45 six, article fifteen, chapter eight of this code.

CHAPTER 104

(H. B. 2266—By Delegates Nicol, Evans and Love)

[Passed March 26, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting the killing of deer or other wildlife causing damage to cultivated crops, trees, commercial nurseries, homeowners' shrubbery and vegetable gardens; weapon restrictions.

Be it enacted by the Legislature of West Virginia:

That section fifteen, 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.

§20-2-15. Permit to kill deer or other wildlife causing damage to cultivated crops, trees, commercial nurseries, homeowners' shrubbery and vegetable gardens; weapon restrictions.

1 (a) Whenever it shall be found that deer or other
2 wildlife are causing damage to cultivated crops, fruit
3 trees, commercial nurseries, homeowners' trees,
4 shrubbery or vegetable gardens, the owner or lessee of
5 the lands on which such damage is done may report such
6 finding to the conservation officer or biologist of the
7 county in which such lands are located or to the director.
8 The director shall then investigate the reported damage
9 and if found substantial, shall issue a permit to the
10 owner or lessee to kill one or more deer or other wildlife
11 in the manner prescribed by the director.

12 (b) In addition to the foregoing, the director shall
13 establish procedures for the issuance of permits or other
14 authorization necessary to control deer or other wildlife
15 causing property damage.

16 (c) All persons attempting to kill deer or other

17 wildlife pursuant to this section are subject to the same
18 minimum caliber restrictions and other firearm restric-
19 tions and the same minimum bow poundage and other
20 bow and arrow restrictions that apply when hunting the
21 same animal species during the regular hunting seasons.

CHAPTER 105

(Com. Sub. for H. B. 2116—By Delegate Love)

[Passed April 6, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-d, relating to natural resources; authorizing the awarding of his or her service revolver to a conservation officer upon his or her retirement under specified conditions; and requiring the division of natural resources to furnish upon request uniforms for burial of certain deceased conservation officers.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1d. Awarding service revolver upon retirement; furnishing uniform for burial.

1 (a) Upon the retirement of any full-time salaried
2 conservation officer, the chief conservation officer shall
3 award to the retiring conservation officer his or her
4 service revolver, without charge, upon determining:

5 (1) That the conservation officer is retiring honorably
6 with at least twenty-five years of recognized law-
7 enforcement service as determined by the chief conser-
8 vation officer; or

9 (2) That such conservation officer is retiring with less

10 than twenty-five years of service based upon a determi-
11 nation that he or she is totally physically disabled as a
12 result of service with the division.

13 (b) Notwithstanding the provisions of subsection (a) of
14 this section, the chief conservation officer shall not
15 award a service revolver to any conservation officer who
16 has been declared mentally incompetent by a licensed
17 physician or any court of law, or who, in the opinion of
18 the chief conservation officer, constitutes a danger to
19 any person or the community.

20 (c) Upon the death of any current or honorably
21 retired conservation officer, the chief conservation
22 officer shall, upon request of the deceased officer's
23 family, furnish a full uniform for burial of the deceased
24 officer.

CHAPTER 106

(H. B. 2661—By Delegates D. Miller and Collins)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article three, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of natural resources to amend legislative rules previously filed in the code of state regulations relating to revising the fee schedule for water pollution control permits for facilities that discharge stormwater and for aquaculture facilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF COMMERCE, LABOR AND ENVIRONMENTAL RESOURCES TO PROMULGATE LEGISLATIVE RULES.

§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 And,

11 Page 3-5, §3E.02, subsection (b), by adding after the
12 first sentence — "Those persons who have been approved
13 to date need not make said demonstration."

14 (b) The legislative rules filed in the state register on
15 the twentieth day of January, one thousand nine
16 hundred eighty-four, relating to the department of
17 natural resources (solid waste management), are
18 authorized with the amendments set forth below:

19 Page 9, section 4.04, line five, add the following
20 paragraph:

21 "Upon request of any applicant, the division shall
22 meet with the applicant for prefiling review of the
23 application. The division, with the cooperation of the
24 solid waste authority, shall assist the applicant in
25 preparing a complete and proper application which
26 would not be rejected as incomplete."

27 On page 15, section 6.03(c)(1) in the first full sentence,
28 after the word "cease", strike the remainder of the
29 sentence and insert in lieu thereof the words "within
30 fifteen (15) days of receipt of an order of suspension" and
31 in the second sentence strike the word "recommence"
32 and insert the words "continue beyond fifteen (15) days";
33 (c)(2) in the first full sentence, after the word "cease"
34 by striking out the remainder of the sentence and insert
35 in lieu thereof the words "immediately upon receipt of
36 an order of revocation."

37 (c) The legislative rules filed in the state register on
38 the twenty-sixth day of September, one thousand nine

39 hundred eighty-four, relating to the department of
40 natural resources (public use of state parks, forests,
41 hunting and fishing areas), are authorized.

42 (d) The legislative rules filed in the state register on
43 the seventh day of November, one thousand nine
44 hundred eighty-four, relating to the department of
45 natural resources (surface mining reclamation), are
46 authorized.

47 (e) The legislative rules filed in the state register on
48 the seventh day of November, one thousand nine
49 hundred eighty-four, relating to the department of
50 natural resources (coal refuse disposal), are authorized.

51 (f) The legislative rules filed in the state register on
52 the ninth day of November, one thousand nine hundred
53 eighty-four, relating to the department of natural
54 resources (transfer of the state national pollutant
55 discharge elimination system program), are authorized
56 with the amendment set forth below:

57 Page 10-5, by striking §10B.19 and inserting in lieu
58 thereof a new §10B.19, to read as follows: "‘Effluent
59 limitations guidelines’ means a regulation published by
60 the Administrator under Section 304(b) or Section
61 301(b)(1)(B) of the CWA to adopt or revise effluent
62 limitations or levels of effluent quality attainable
63 through the application of secondary or equivalent
64 treatment. For the coal industry these regulations are
65 published at 40 C.F.R. Parts 434 and 133. (See:
66 Appendix G and H)."

67 (g) The legislative rules filed in the state register on
68 the twenty-eighth day of August, one thousand nine
69 hundred eighty-four, relating to the department of
70 natural resources (small arms hunting), are authorized.

71 (h) The legislative rules filed in the state register on
72 the sixth day of January, one thousand nine hundred
73 eighty-four, relating to the department of natural
74 resources (hazardous waste management), are
75 authorized.

76 (i) The legislative rules filed in the state register on
77 the third day of December, one thousand nine hundred

78 eighty-four, modified by the department of natural
79 resources to meet the objections of the legislative rule-
80 making review committee and refiled in the state
81 register on the thirteenth day of February, one thousand
82 nine hundred eighty-five, relating to the department of
83 natural resources (hazardous waste management), are
84 authorized.

85 (j) The legislative rules filed in the state register on
86 the tenth day of October, one thousand nine hundred
87 eighty-five, relating to the department of natural
88 resources (hazardous waste management: Small quan-
89 tity generators and waste minimization certification),
90 are authorized with the amendment set forth below:

91 On page 1, §3.1.4b, delete the word “or” in the
92 reference to “paragraph (g) or (j)” and insert in lieu
93 thereof the words “and, if applicable.”

94 (k) The legislative rules filed in the state register on
95 the ninth day of September, one thousand nine hundred
96 eighty-five, relating to the department of natural
97 resources (WV/NPDES regulations for the coal mining
98 point source category and related sewage facilities), are
99 authorized.

100 (l) The legislative rules filed in the state register on
101 the eleventh day of December, one thousand nine
102 hundred eighty-five, modified by the department of
103 natural resources to meet the objections of the legislative
104 rule-making review committee and refiled in the state
105 register on the twentieth day of February, one thousand
106 nine hundred eighty-six, relating to the department of
107 natural resources (hazardous waste management), are
108 authorized.

109 (m) The legislative rules filed in the state register on
110 the twenty-sixth day of September, one thousand nine
111 hundred eighty-six, modified by the department of
112 natural resources to meet the objections of the legislative
113 rule-making review committee and refiled in the state
114 register on the ninth day of December, one thousand
115 nine hundred eighty-six, relating to the department of
116 natural resources (hazardous waste management regu-
117 lations), are authorized.

118 (n) The legislative rules filed in the state register on
119 the seventh day of August, one thousand nine hundred
120 eighty-six, relating to the director of the department of
121 natural resources (procedures for transporting and
122 dealing in furbearing animals), are authorized.

123 (o) The legislative rules filed in the state register on
124 the thirtieth day of December, one thousand nine
125 hundred eighty-six, relating to the department of
126 natural resources (WV/NPDES program for coal mines
127 and preparation plants, and the refuse and waste
128 therefrom), are authorized with the amendments set
129 forth below:

130 On page four, §1.9.1.a by inserting the words “five
131 thousand dollars or” after the words “‘significant
132 portion of income’ means.”

133 And,

134 On page four, §1.9.1.a by inserting the words “which-
135 ever is less,” after the words “ten percent or more of
136 gross personal income for a calendar year.”

137 (p) The legislative rules filed in the state register on
138 the fifth day of March, one thousand nine hundred
139 eighty-six, relating to the department of natural
140 resources (hazardous waste management), are
141 authorized.

142 (q) The legislative rules filed in the state register on
143 the twelfth day of August, one thousand nine hundred
144 eighty-seven, relating to the department of natural
145 resources (WV/NPDES regulations for coal mining
146 facilities), are authorized.

147 (r) The legislative rules filed in the state register on
148 the tenth day of June, one thousand nine hundred
149 eighty-seven, relating to the director of the department
150 of natural resources (outfitters and guides), are
151 authorized.

152 (s) The legislative rules filed in the state register on
153 the ninth day of January, one thousand nine hundred
154 eighty-seven, relating to the department of natural
155 resources (hazardous waste management regulations),

156 are authorized.

157 (t) The legislative rules filed in the state register on
158 the fifth day of March, one thousand nine hundred
159 eighty-seven, relating to the department of natural
160 resources (hazardous waste management regulations,
161 series 35), are authorized.

162 (u) The legislative rules filed in the state register on
163 the seventh day of December, one thousand nine
164 hundred eighty-seven, relating to the department of
165 natural resources (hazardous waste management regu-
166 lations, series 35), are authorized.

167 (v) The legislative rules filed in the state register on
168 the sixteenth day of December, one thousand nine
169 hundred eighty-seven, modified by the department of
170 natural resources to meet the objections of the legislative
171 rule-making review committee and refiled in the state
172 register on the fourteenth day of January, one thousand
173 nine hundred eighty-eight, relating to the department of
174 natural resources (solid waste management), are
175 authorized.

176 (w) The legislative rules filed in the state register on
177 the twenty-eighth day of July, one thousand nine
178 hundred eighty-seven, modified by the director of the
179 department of natural resources to meet the objections
180 of the legislative rule-making review committee and
181 refiled in the state register on the seventh day of
182 August, one thousand nine hundred eighty-seven,
183 relating to the director of the department of natural
184 resources (boating regulations), are authorized with the
185 amendment set forth below:

186 On page 16, section 6.2, line 3 by inserting following
187 the period "This regulation does not apply to licensed
188 outfitters and guides." These rules were proposed by the
189 director of the department of natural resources pursu-
190 ant to section seven, article one and section twenty-two,
191 article seven, chapter twenty of this code.

192 (x) The legislative rules filed in the state register on
193 the second day of September, one thousand nine
194 hundred eighty-eight, modified by the department ,

195 natural resources to meet the objections of the legislative
196 rule-making review committee and refiled in the state
197 register on the seventeenth day of October, one thousand
198 nine hundred eighty-eight, relating to the department of
199 natural resources (hazardous waste management), are
200 authorized.

201 (y) The legislative rules filed in the state register on
202 the thirty-first day of August, one thousand nine
203 hundred eighty-eight, relating to the director of the
204 department of natural resources (boating), are
205 authorized.

206 (z) The legislative rules filed in the state register on
207 the eighth day of March, one thousand nine hundred
208 eighty-eight, modified by the director of the department
209 of natural resources to meet the objections of the
210 legislative rule-making review committee and refiled in
211 the state register on the thirtieth day of August, one
212 thousand nine hundred eighty-eight, relating to the
213 director of the department of natural resources (com-
214 mercial sale of wildlife), are authorized.

215 (aa) The legislative rules filed in the state register on
216 the twenty-seventh day of January, one thousand nine
217 hundred eighty-eight, relating to the director of the
218 department of natural resources (catching and selling
219 bait fish), are authorized.

220 (bb) The legislative rules filed in the state register on
221 the twenty-fifth day of March, one thousand nine
222 hundred eighty-eight, relating to the director of the
223 department of natural resources (West Virginia public
224 hunting and fishing areas), are authorized with the
225 following amendment:

226 On page three, section 3.8.4, by inserting after the
227 word "vehicle" the following: ", all terrain vehicle
228 (ATV)."

229 (cc) The legislative rules filed in the state register on
230 the seventeenth day of March, one thousand nine
231 hundred eighty-nine, modified by the division of natural
232 resources to meet the objections of the legislative rule-
233 making review committee and refiled in the state

234 register on the sixteenth day of January, one thousand
235 nine hundred ninety, relating to the division of natural
236 resources (solid waste management), are authorized
237 with the amendments set forth below:

238 On page 13, Section 3.2.6, by deleting the current
239 language and inserting in lieu thereof the following:

240 "3.2.6. Within two hundred (200) feet of faults that
241 have had displacement in Holocene time (i.e., during the
242 last eleven thousand years);"

243 On page 64, Section 3.14.25, by deleting the current
244 language and inserting in lieu thereof the following
245 language:

246 "3.14.25. **Environmental Compliance History.** The
247 chief or the director may refuse to grant any permit if
248 he has reasonable cause to believe, as indicated by
249 documented evidence, that the applicant, or any officer,
250 director or manager, thereof, or shareholder owning
251 twenty percent (20%) or more of its capital stock,
252 beneficial or otherwise, or other person conducting or
253 managing the affairs of the applicant or of the proposed
254 permitted premises, in whole or part, has exhibited a
255 pattern of violation of the environmental statutes or
256 regulations of this State, any other state, or the federal
257 government."

258 On page 104, section 4.5.4.a, by inserting after the
259 words "at that landfill" the following:

260 "Nothing within these regulations shall be construed
261 to allow the installations of any liner or system on areas
262 not lined as of November 30, 1989, that is not in
263 conformance with section 4.5.4.a.E or 4.5.4.a.G of these
264 regulations. Landfills that do have an article 5f permit
265 and a liner installed as of November 30, 1989, may
266 install a liner as approved by the chief."

267 And,

268 On pages 147 through 151, sections 4.11.5 and 4.11.6,
269 by deleting the current language and inserting in lieu
270 thereof the following:

271 "4.11.5. **Corrective Action Program.**

272 Whenever a statistically significant increase is found
273 in a Phase II or Phase III monitoring parameter, or
274 when groundwater contamination is otherwise identified
275 by the Chief at sites without monitoring programs,
276 which is determined by the Chief to have resulted in a
277 significant adverse effect on an aquifer, and which is
278 attributable to a solid waste facility, the Chief may
279 require appropriate corrective or remedial action
280 pursuant to W. Va. Code Chapter 20, article 5A, and
281 Chapter 20, article 5F to abate, remediate or correct
282 such pollution. Any such corrective or remedial action
283 order shall take into account any applicable ground-
284 water quality protection standards, the existing use of
285 such waters, the reasonable uses of such waters,
286 background water quality, and the protection of human
287 health and the environment.”

288 (dd) The legislative rules filed in the state register on
289 the seventeenth day of February, one thousand nine
290 hundred eighty-nine, relating to the director of the
291 department of natural resources (underground storage
292 tanks), are authorized.

293 (ee) The legislative rules filed in the state register on
294 the twenty-seventh day of January, one thousand nine
295 hundred eighty-nine, relating to the director of the
296 department of natural resources (transporting and
297 selling wildlife pelts), are authorized.

298 (ff) The legislative rules filed in the state register on
299 the seventeenth day of February, one thousand nine
300 hundred eighty-nine, modified by the director of the
301 department of natural resources to meet the objections
302 of the legislative rule-making review committee and
303 refiled in the state register on the ninth day of August,
304 one thousand nine hundred eighty-nine, relating to the
305 director of the department of natural resources (under-
306 ground storage tank fee assessments), are authorized.

307 (gg) The legislative rules filed in the state register on
308 the twenty-fourth day of April, one thousand nine
309 hundred eighty-nine, modified by the director of the
310 department of natural resources to meet the objections
311 of the legislative rule-making review committee and

312 refiled in the state register on the twenty-second day of
313 May, one thousand nine hundred eighty-nine, relating to
314 the director of the department of natural resources
315 (public hunting and fishing areas), are authorized.

316 (hh) The legislative rules filed in the state register on
317 the first day of December, one thousand nine hundred
318 eighty-nine, relating to the department of natural
319 resources (water pollution control permit fee schedules),
320 are authorized with the amendments set forth below:

321 On page five, section 3.3, by deleting the following:
322 "Submitted fees are not refundable."

323 On page two, after section 2.6, by inserting the
324 following:

325 "Customer" means any person that purchases waste
326 disposal services from a facility permitted under article
327 five-a, chapter twenty of the code of West Virginia, one
328 thousand nine hundred thirty-one, as amended. For the
329 purposes of these regulations, commercial and other
330 non-single family dwelling customers shall be translated
331 into customer equivalents by dividing the total daily
332 estimated volume of waste water by three hundred and
333 fifty gallons per day." and renumbering the remaining
334 subsections.

335 On page nine, section 7.2, by striking out the words
336 "seven hundred fifty dollars (\$750)." and inserting in
337 lieu thereof the following:

338 "Determined using Table D, but in no case shall be
339 less than two hundred fifty dollars (\$250)."

340 And,

341 On page thirteen, by striking out all of Table D,
342 Schedule of Annual Permit Fees, and inserting in lieu
343 thereof a new Table D, designated "Schedule of Annual
344 Permit Fees", to read as follows:

345 "TABLE D

346 SCHEDULE OF ANNUAL PERMIT FEES

347 SEWAGE FACILITIES

348	Number of Customers	Annual Permit Fee
349	less than 1000	\$ 250
350	1000 to 1499	\$ 500
351	1500 to 1999	\$ 750
352	2000 to 2499	\$ 1000
353	2500 to 2999	\$ 1250
354	3000 to 3499	\$ 1500
355	3500 to 3999	\$ 1750
356	4000 to 4499	\$ 2000
357	4500 to 4999	\$ 2250
358	greater than 5000.....	\$ 2500

359 INDUSTRIAL OR OTHER WASTE FACILITIES

360	Average Discharge Volume	Annual Permit Fee
361	(gallons per day)	
362	less than 1,000.....	\$ 50
363	1,001 to 10,000.....	\$ 500
364	10,001 to 50,000	\$ 1000
365	greater than 50,000	\$ 2500"

366 (ii) The legislative rules filed in the state register on
 367 the twenty-fifth day of July, one thousand nine hundred
 368 eighty-nine, modified by the director of the department
 369 of natural resources to meet the objections of the
 370 legislative rule-making review committee and refiled in
 371 the state register on the fifteenth day of September, one
 372 thousand nine hundred eighty-nine, relating to the
 373 director of the department of natural resources (revoca-
 374 tion of hunting and fishing licenses), are authorized.

375 (jj) The legislative rules filed in the state register on
 376 the twentieth day of December, one thousand nine
 377 hundred eighty-nine, modified by the division of natural
 378 resources to meet the objections of the legislative rule-
 379 making review committee and refiled in the state
 380 register on the twenty-fourth day of January, one
 381 thousand nine hundred ninety, relating to the division
 382 of natural resources (state water pollution control
 383 revolving fund program), are authorized.

384 (kk) The legislative rules filed in the state register on
 385 the twenty-ninth day of March, one thousand nine
 386 hundred ninety, modified by the division of natural

387 resources to meet the objections of the legislative rule-
388 making review committee and refiled in the state
389 register on the thirtieth day of August, one thousand
390 nine hundred ninety, relating to the division of natural
391 resources (assessment of civil administrative penalties),
392 are authorized.

393 (ll) The legislative rules filed in the state register on
394 the sixth day of August, one thousand nine hundred
395 ninety, relating to the division of natural resources
396 (water pollution control permit fee schedules), are
397 authorized.

398 (mm) The legislative rules filed in the state register
399 on the fifteenth day of June, one thousand nine hundred
400 ninety, modified by the division of natural resources to
401 meet the objections of the legislative rule-making review
402 committee and refiled in the state register on the
403 twenty-second day of August, one thousand nine
404 hundred ninety, relating to the division of natural
405 resources (underground storage tank insurance trust
406 fund), are authorized with the amendment set forth
407 below:

408 On page four, after subsection 5.1, by inserting a new
409 subdivision 5.1.1 to read as follows:

410 "5.1.1 The fee shall be one hundred dollars per tank
411 per year (\$100/tank/year) for a period of not less than
412 one (1) year and not more than three (3) years. Second
413 and third year capitalization fees may be levied if there
414 is an inadequate surplus of funds, as determined by the
415 Board of Risk and Insurance Management, the Division
416 of Natural Resources and the Underground Storage
417 Tank Advisory Committee pursuant to W. Va. Code,
418 §20-5H-7."

419 (nn) The legislative rules filed in the state register on
420 the thirteenth day of August, one thousand nine hundred
421 ninety, modified by the division of natural resources to
422 meet the objections of the legislative rule-making review
423 committee and refiled in the state register on the second
424 day of October, one thousand nine hundred ninety,
425 relating to the division of natural resources (under-
426 ground storage tanks), are authorized with the amend-

427 ment set forth below:

428 On page four, section five, subsection 5.1, after the
429 word "requirements" by striking out the remainder of
430 the subsection and inserting in lieu thereof, the
431 following:

432 "of Title 47, Series 37 (Underground Storage Tank
433 Fee Assessments); Title 47, Series 36, Section 4 (Noti-
434 fication Requirements); and Title 47, Series 37A, Section
435 5 (Capitalization Fees) of the Code of State Regulations
436 and the owner or operator presents proof of the
437 certification to the carrier."

438 (oo) The legislative rules filed in the state register on
439 the thirteenth day of August, one thousand nine hundred
440 ninety, relating to the division of natural resources (dam
441 safety), are authorized.

442 (pp) The legislative rules filed in the state register on
443 the thirteenth day of August, one thousand nine hundred
444 ninety, modified by the division of natural resources to
445 meet the objections of the legislative rule-making review
446 committee and refiled in the state register on the
447 twenty-eighth day of November, one thousand nine
448 hundred ninety, relating to the division of natural
449 resources (hazardous waste management), are
450 authorized.

451 (qq) The legislative rules filed in the state register on
452 the first day of July, one thousand nine hundred ninety-
453 one, modified by the division of natural resources to
454 meet the objections of the legislative rule-making review
455 committee and refiled in the state register on the
456 nineteenth day of September, one thousand nine
457 hundred ninety-one, relating to the division of natural
458 resources (special motorboating regulations), are
459 authorized.

460 (rr) The legislative rules filed in the state register on
461 the first day of May, one thousand nine hundred ninety-
462 one, modified by the division of natural resources to
463 meet the objections of the legislative rule-making review
464 committee and refiled in the state register on the
465 twenty-second day of July, one thousand nine hundred

466 ninety-one, relating to the division of natural resources
467 (special fishing regulations), are authorized with the
468 amendment set forth below:

469 On page one, by striking out subsection 2.1 and
470 inserting in lieu thereof, a new subsection 2.1, to read
471 as follows:

472 "2.1 "Daylight hours" means the time period between
473 sixty minutes before sunrise and sixty minutes after
474 sunset."

475 (ss) The legislative rules filed in the state register on
476 the first day of July, one thousand nine hundred ninety-
477 one, modified by the division of natural resources to
478 meet the objections of the legislative rule-making review
479 committee and refiled in the state register on the
480 twenty-first day of November, one thousand nine
481 hundred ninety-one, relating to the division of natural
482 resources (boating regulations), are authorized.

483 (tt) The Legislature hereby authorizes and directs the
484 division of natural resources to promulgate the legisla-
485 tive rule relating to water pollution control permit fee
486 schedules, 47 CSR 26, effective the twenty-second day
487 of April, one thousand nine hundred ninety-one, with the
488 amendment set forth below:

489 On page eight, subdivision 7.4.1, at the end of the
490 subdivision by striking the period and adding the
491 following:

492 "": *Provided*, That if the chief determines that a facility
493 is in substantial compliance with its existing permit, the
494 fee is one thousand two hundred fifty dollars
495 (\$1,250.00)."

496 (uu) The Legislature hereby authorizes and directs
497 the division of natural resources to amend its rules
498 relating to water pollution control permit fee schedules
499 which were filed in the code of state regulations (47 CSR
500 26) on the thirteenth day of April, one thousand nine
501 hundred ninety-two, with the following amendments set
502 forth below:

503 On page nine, after section 7.5, by inser

504 following:

505 "7.6. Facilities Discharging Stormwater. The annual
506 permit fee for a facility that discharges stormwater only
507 shall be determined through the use of Table F of these
508 regulations.

509 7.7. Aquaculture facilities. The annual permit fees for
510 aquaculture facilities that are subject to the provisions
511 of the water pollution control regulations shall be
512 determined by Table G of these regulations."

513 And after Table E, on page ten, by inserting Table
514 F, designated "Schedule of Annual Permit Fees For
515 Facilities Discharging Stormwater," and inserting
516 Table G, designated "Schedule of Annual Permit Fees
517 For Aquaculture Facilities" to read as follows:

518 "TABLE F

519 SCHEDULE OF ANNUAL PERMIT FEES FOR
520 FACILITIES DISCHARGING
521 STORMWATER

522 Average Discharge Volume

523 (gallons per day)	Annual Permit Fee
524 less than 5,001.....	\$ 50
525 5,001 to 15,000.....	\$ 125
526 15,001 to 50,000	\$ 250
527 50,001 to 100,000	\$ 500
528 greater than 100,000.....	\$ 750"

529 and

530 "TABLE G

531 SCHEDULE OF ANNUAL PERMIT FEES FOR
532 AQUACULTURE FACILITIES

533 #Feed/Month	Annual	Application
534	Fee	Fee
535 (Initial and Reissuance)		
536 5,000 to 9,999	\$ 250	\$ 250
537 10,000 to 14,999	\$ 500	\$ 250
538 15,000 to 19,999	\$ 750	\$ 250

539	20,000 to 24,999	\$1,000	\$ 250
540	25,000 to 29,999	\$1,250	\$ 250
541	greater than 30,000	\$1,750	\$ 250"

CHAPTER 107

(H. B. 2248—By Delegates P. White, Brown, S. Cook,
Huntwork, Douglas and Phillips)

[Passed April 10, 1993; 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 assistant-midwives.

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; annual report; licensure; temporary license; relicensure; job description required; revocation or suspension of licensure; 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, and
5 attained a baccalaureate or master's degree, h s

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) "Physician assistant-midwife" means a physician
10 assistant who meets all qualifications set forth under
11 subdivision (1) above and fulfills the requirements set
12 forth in subsection (d); is subject to all provisions of this
13 section; and assists in the management and care of a
14 woman and her infant during the prenatal, delivery and
15 postnatal periods;

16 (3) "Supervising physician" means a doctor or doctors
17 of medicine or podiatry permanently licensed in this
18 state who assume legal and supervisory responsibility
19 for the work or training of any physician assistant under
20 his or her supervision;

21 (4) "Approved program" means an educational
22 program for physician assistants approved and accred-
23 ited by the committee on allied health education and
24 accreditation on behalf of the American Medical
25 Association; and

26 (5) "Health care facility" means any licensed hospital,
27 nursing home, extended care facility, state health or
28 mental institution, clinic or physician's office.

29 (b) The board shall promulgate rules governing the
30 extent to which physician assistants may function in this
31 state. Such rules shall provide that the physician
32 assistant is limited to the performance of those services
33 for which he or she is trained and that he or she
34 performs only under the supervision and control of a
35 physician permanently licensed in this state, but such
36 supervision and control does not require the personal
37 presence of the supervising physician at the place or
38 places where services are rendered if the physician
39 assistant's normal place of employment is on the
40 premises of the supervising physician. The supervising
41 physician may send the physician assistant off the
42 premises to perform duties under his or her direction,
43 but a separate place of work for the physician assistant
44 shall not be established. In promulgating such rules, the

45 board shall allow the physician assistant to perform
46 those procedures and examinations and in the case of
47 certain authorized physician assistants to prescribe at
48 the direction of his or her supervising physician in
49 accordance with subsection (l) of this section those
50 categories of drugs submitted to it in the job description
51 required by subsection (g) of this section. The board
52 shall compile and publish a biennial report that includes
53 a list of currently licensed physician assistants and their
54 employers and location in the state; a list of approved
55 programs; the number of graduates of such approved
56 programs each year; and the number of physician
57 assistants from other states practicing in this state.

58 (c) The board shall license as a physician assistant any
59 person who files an application and furnishes satisfac-
60 tory evidence to it that he or she has met the following
61 standards:

62 (1) He or she is a graduate of an approved program
63 of instruction in primary health care or surgery;

64 (2) He or she has passed the examination for a
65 primary care physician assistant administered by the
66 National Board of Medical Examiners on behalf of the
67 National Commission on Certification of Physician
68 Assistants and has maintained certification by said
69 commission so as to be currently certified;

70 (3) He or she is of good moral character; and

71 (4) He or she has attained a baccalaureate or master's
72 degree.

73 (d) The board shall license as a physician assistant-
74 midwife any person who meets the standards set forth
75 under subsection (c) of this section and, in addition
76 thereto, the following standards:

77 (1) He or she is a graduate of a school of midwifery
78 accredited by the American college of nurse-midwives;

79 (2) He or she has passed an examination approved by
80 the board;

81 (3) He or she practices midwifery under the supervi-

82 sion of a board certified obstetrician, gynecologist or a
83 board certified family practice physician who routinely
84 practices obstetrics.

85 (e) The board may license as a physician assistant any
86 person who files an application and furnishes satisfac-
87 tory evidence that he or she is of good moral character
88 and meets either of the following standards:

89 (1) He or she is a graduate of an approved program
90 of instruction in primary health care or surgery prior
91 to the first day of July, one thousand nine hundred
92 ninety-four, and has passed the examination for a
93 primary care physician assistant administered by the
94 National Board of Medical Examiners on behalf of the
95 National Commission on Certification of Physician
96 Assistants; or

97 (2) He or she had been certified by the board as a
98 physician assistant then classified as "Type B," prior to
99 the first day of July, one thousand nine hundred eighty-
100 three.

101 Licensure of an assistant to a physician practicing the
102 specialty of ophthalmology is permitted under this
103 section: *Provided*, That a physician assistant may not
104 dispense a prescription for a refraction.

105 (f) When any graduate of an approved program,
106 within two years of graduation, submits an application
107 to the board, accompanied by a job description in
108 conformity with subsection (g) of this section, for a
109 physician assistant license, the board shall issue to such
110 applicant a temporary license allowing such applicant
111 to function as a physician assistant for the period of one
112 year. Said temporary certificate may be renewed for one
113 additional year upon the request of the supervising
114 physician. A physician assistant who has not been
115 certified as such by the National Board of Medical
116 Examiners on behalf of the National Commission on
117 Certification of Physician Assistants will be restricted
118 to work under the direct supervision of the supervising
119 physician.

120 (g) Any physician applying to the board to supervise
121 a physician assistant shall provide a job description that
122 sets forth the range of medical services to be provided
123 by such assistant. Before a physician assistant can be
124 employed or otherwise use his or her skills, the
125 supervising physician must obtain approval of the job
126 description from the board. The board may revoke or
127 suspend any license of an assistant to a physician for
128 cause, after giving such person an opportunity to be
129 heard in the manner provided by article five of chapter
130 twenty-nine-a of this code and as set forth in rules duly
131 adopted by the board.

132 (h) The supervising physician is responsible for
133 observing, directing and evaluating the work, records
134 and practices of each physician assistant performing
135 under his or her supervision. He or she shall notify the
136 board in writing of any termination of his or her
137 supervisory relationship with a physician assistant
138 within ten days of the termination. The legal responsi-
139 bility for any physician assistant remains with the
140 supervising physician at all times, including occasions
141 when the assistant under his or her direction and
142 supervision, aids in the care and treatment of a patient
143 in a health care facility. In his or her absence, a
144 supervising physician must designate an alternate
145 supervising physician, however, the legal responsibility
146 remains with the supervising physician at all times. A
147 health care facility is not legally responsible for the
148 actions or omissions of the physician assistant unless the
149 physician assistant is an employee of the facility.

150 (i) The acts or omissions of a physician assistant
151 employed by health care facilities providing inpatient or
152 outpatient services shall be the legal responsibility of
153 said facilities. Physician assistants employed by such
154 facilities in staff positions shall be supervised by a
155 permanently licensed physician.

156 (j) A health care facility shall report in writing to the
157 board within sixty days after the completion of the
158 facility's formal disciplinary procedure, and also after
159 the commencement, and again after the conclusion, of

160 any resulting legal action, the name of any physician
161 assistant practicing in the facility whose privileges at
162 the facility have been revoked, restricted, reduced or
163 terminated for any cause including resignation, together
164 with all pertinent information relating to such action.
165 The health care facility shall also report any other
166 formal disciplinary action taken against any physician
167 assistant by the facility relating to professional ethics,
168 medical incompetence, medical malpractice, moral
169 turpitude or drug or alcohol abuse. Temporary suspen-
170 sion for failure to maintain records on a timely basis or
171 failure to attend staff or section meetings need not be
172 reported.

173 (k) When functioning as a physician assistant, the
174 physician assistant shall wear a name tag that identifies
175 him or her as a physician assistant. A two and one-half
176 by three and one-half inch card of identification shall
177 be furnished by the board upon licensure of the
178 physician assistant.

179 (l) A physician assistant may write or sign prescrip-
180 tions or transmit prescriptions by word of mouth,
181 telephone or other means of communication at the
182 direction of his or her supervising physician. The board
183 shall promulgate rules governing the eligibility and
184 extent to which such a physician assistant may prescribe
185 at the direction of the supervising physician. The rules
186 shall provide for a state formulary classifying pharma-
187 cologic categories of drugs which may be prescribed by
188 such a physician assistant. In classifying such pharma-
189 cologic categories, those categories of drugs which shall
190 be excluded shall include, but not be limited to,
191 Schedules I and II of the Uniform Controlled Substances
192 Act, anticoagulants, antineoplastics, radiopharmaceuti-
193 cals, general anesthetics, and radiographic contrast
194 materials. Drugs listed under Schedule III shall be
195 limited to a seventy-two hour supply without refill. The
196 regulations shall provide that all pharmacological
197 categories of drugs to be prescribed by a physician
198 assistant shall be listed in each job description submit-
199 ted to the board as required in subsection (g) of this

200 section. The rules shall provide the maximum dosage a
201 physician assistant may prescribe. The rule shall also
202 provide that to be eligible for such prescription
203 privileges, a physician assistant shall have performed
204 patient care services for a minimum of two years
205 immediately preceding the submission to the board of
206 the job description containing prescription privileges
207 and shall have successfully completed an accredited
208 course of instruction in clinical pharmacology approved
209 by the board. The regulations shall also provide that to
210 maintain prescription privileges, a physician assistant
211 shall continue to maintain national certification as a
212 physician assistant, and in meeting such national
213 certification requirements shall complete a minimum of
214 ten hours of continuing education in rational drug
215 therapy in each certification period. Nothing in this
216 subsection shall be construed to permit a physician
217 assistant to independently prescribe or dispense drugs.

218 (m) A supervising physician shall not supervise at any
219 one time more than two physician assistants, except that
220 a physician may supervise up to four hospital-employed
221 physician assistants.

222 A physician assistant shall not sign any prescription,
223 except in the case of an authorized physician assistant
224 at the direction of his or her supervising physician in
225 accordance with the provisions of subsection (l) of this
226 section. A physician assistant shall not perform any
227 service that his or her supervising physician is not
228 qualified to perform. A physician assistant shall not
229 perform any service that is not included in his or her
230 job description and approved by the board as provided
231 for in this section.

232 The provisions of this section do not authorize any
233 physician assistant to perform any specific function or
234 duty delegated by this code to those persons licensed as
235 chiropractors, dentists, dental hygienists, optometrists
236 or pharmacists or certified as nurse anesthetists.

237 (n) Each application for licensure submitted by a
238 licensed supervising physician under this section shall

239 be accompanied by a fee of one hundred dollars. A fee
240 of fifty dollars shall be charged for the biennial renewal
241 of the license. A fee of twenty-five dollars shall be
242 charged for any change of supervising physician.

243 (o) Beginning with the biennial renewal forms
244 completed by physician assistants and submitted to the
245 board in one thousand nine hundred ninety-three, as a
246 condition of renewal of physician assistant license, each
247 physician assistant shall provide written documentation
248 pursuant to rules promulgated by the board in accor-
249 dance with chapter twenty-nine-a of this code of
250 participation in and successful completion during the
251 preceding two-year period of a minimum of forty hours
252 of continuing education designated as Category I by the
253 American Medical Association, American Academy of
254 Physician Assistants or the Academy of Family Physi-
255 cians, and sixty hours of continuing education desig-
256 nated as Category II by such association or either
257 academy. Notwithstanding any provision of this chapter
258 to the contrary, failure to timely submit such required
259 written documentation shall result in the automatic
260 suspension of any license as a physician assistant until
261 such time as the written documentation is submitted to
262 and approved by the board.

263 (p) It is unlawful for any person who is not licensed
264 by the board as a physician assistant to use the title of
265 "physician assistant" or to represent to any other person
266 that he or she is a physician assistant. Any person who
267 violates the provisions of this subsection is guilty of a
268 misdemeanor, and, upon conviction thereof, shall be
269 fined not more than two thousand dollars.

270 (q) It is unlawful for any physician assistant to
271 represent to any person that he or she is a physician,
272 surgeon or podiatrist. Any person who violates the
273 provisions of this subsection is guilty of a felony, and,
274 upon conviction thereof, shall be imprisoned in the
275 penitentiary for not less than one nor more than two
276 years, or be fined not more than two thousand dollars,
277 or both fined and imprisoned.

278 (r) All physician assistants holding valid certificates
279 issued by the board prior to the first day of July, one
280 thousand nine hundred ninety-two, shall be considered
281 to be licensed under this section.

CHAPTER 108

(S. B. 416—By Senator Lucht)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, three, four, five and twelve, article thirty, 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 eight-a, all relating to social workers; providing for the licensure of independent clinical social workers; defining clinical social work practice; adding an independent clinical social worker to the board of social work examiners; reducing the number of certified social workers on the board from two to one; changing compensation of the board; clarifying certain fee schedules of the board; requiring the board to establish standards and requirements for the practice of social work; requirements for issuance of a license for independent clinical social work; including independent clinical social workers in provisions related to privileged communication; and requiring reporting of certain actions and behavior of licensees.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five and twelve, article thirty, 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 eight-a, all to read as follows:

ARTICLE 30. SOCIAL WORKERS.

§30-30-2. Definitions.

§30-30-3. Board of social work examiners.

§30-30-4. License required; penalties; exception.

§30-30-5. License classification; qualification.

§30-30-8a. Reporting unethical conduct and unlicensed practice.

§30-30-12. Privileged communications.

§30-30-2. Definitions.

1 (a) "Board" means the state board of social work
2 examiners established by this article.

3 (b) "Social work" means the profession that provides
4 the formal knowledge base, theoretical concepts, specific
5 functional skills and essential social values which are
6 used to implement society's mandate to provide safe,
7 effective and constructive social services through the
8 professional activities of helping individuals, groups or
9 communities enhance or restore their capacity for social
10 functioning, and preventing or controlling social
11 problems and altering societal conditions as a means
12 towards enabling people to attain their maximum
13 potential.

14 (c) "Social worker" means a person who represents
15 himself or herself to the public by the title "social
16 worker", and under this title offers to render or renders
17 services involving the application of principles, methods
18 and procedures of the profession of social work to
19 individuals, families, corporations or the public for
20 financial compensation: *Provided*, That social workers
21 as defined by this article does not mean any person who
22 may voluntarily serve in an advisory capacity in
23 situations dealing with social and family matters while
24 not holding himself or herself out to the public as a
25 social worker.

26 (d) "Social work practice" means the professional
27 application of social work values, principles and
28 techniques to one or more of the following ends:
29 Enhancing the developmental, problem-solving and
30 coping capacities of people; promoting the effective and
31 humane operations of systems that provide resources
32 and services to people; linking people with systems that
33 provide them with resources, services and opportunities;
34 contributing to the development and improvement of
35 social policy; engaging in research related to these ends

36 and principles; and organizations or agencies engaged
37 in such practice. Such social work interventions are
38 provided to individuals, families, small groups, organ-
39 izations, neighborhoods and communities. The practice
40 of social work is guided by knowledge of social resour-
41 ces, social systems, human behavior and social, economic
42 and cultural institutions and the interaction of all such
43 factors.

44 (e) "Clinical social work practice" means the profes-
45 sional application of social work theory and methods to
46 the diagnosis, treatment and prevention of psychological
47 dysfunction, disability or impairment, including emo-
48 tional and mental disorders and developmental disabili-
49 ties. Clinical social work practice is based on knowledge
50 of one or more theories of biological, psychological and
51 social development, normal human behavior, psychopa-
52 thology, the causes and effects of physical illness and
53 disability, unconscious motivation, interpersonal rela-
54 tionships, family dynamics, environmental stress, social
55 systems and cultural diversity with particular attention
56 to the person existing as a combination of biological,
57 psychological and social elements in his or her environ-
58 ment. Clinical social work includes interventions
59 directed to interpersonal interactions, intrapsychic
60 dynamics and life-support and management issues.
61 Clinical social work services consist of assessment,
62 diagnosis, treatment, including psychotherapy and
63 counseling, client-centered advocacy, consultation and
64 evaluation. The process of clinical social work is
65 undertaken within the objectives of the social work
66 profession and the principles and values of its code of
67 ethics.

§30-30-3. Board of social work examiners.

1 (a) For the purpose of carrying out the provisions of
2 this article, there is hereby created a West Virginia
3 board of social work examiners, consisting of seven
4 members who shall be appointed by the governor,
5 subject to the following requirements:

6 (1) No person may be excluded from serving on the
7 board by reason of race, sex or national origin;

8 (2) One member shall be an independent clinical
9 social worker, two members shall be certified social
10 workers, one member shall be a graduate social worker
11 and two members shall be social workers. All such
12 members must be licensed under the provisions of this
13 article in accordance with their respective titles. In
14 addition, there shall be one member of the board chosen
15 from the general public: *Provided*, That those members
16 who are appointed by the governor to serve as the first
17 board after the effective date of this article shall be
18 persons eligible for the licensing required under this
19 article: *Provided, however*, That the member from the
20 general public shall never be required to be eligible for
21 licensing;

22 (3) The members of the first board to serve after the
23 effective date of this article shall be appointed within
24 ninety days thereof;

25 (4) The term of office for each member of the board
26 shall be three years: *Provided*, That one of the members
27 of the first board to serve after the effective date of this
28 article shall serve a term of two years, three of them
29 shall serve a term of three years and the remaining
30 three shall serve a term of four years; and

31 (5) The governor shall, whenever there is a vacancy
32 on the board due to circumstances other than the
33 expiration of the term of a member, appoint another
34 member with the same qualifications as the member
35 who has vacated to serve the duration of the unexpired
36 term.

37 For the purpose of accepting nominations for the
38 replacement of a member, the governor shall cause a
39 notice of the vacancy to be published at least thirty days
40 prior to an announcement of the replacement member,
41 as a Class I-0 legal advertisement, in accordance with
42 the provisions of section two, article three, chapter fifty-
43 nine of this code. The publication area shall be
44 statewide.

45 If the governor fails to make appointment in ninety
46 days after expiration of any term, the board shall make

47 the necessary appointment. Each member shall hold
48 office until the expiration of the term for which such
49 member is appointed and until a successor shall have
50 been duly appointed and qualified.

51 (b) Any members of the board may be removed from
52 office for cause, in accordance with procedures set forth
53 in this code for the removal of public officials from
54 office.

55 (c) The board shall pay each member the same
56 compensation as is paid to members of the Legislature
57 for their interim duties as recommended by the citizens
58 legislative compensation commission and authorized by
59 law for each day or portion thereof engaged in the
60 discharge of official duties and shall reimburse each
61 member for actual and necessary expenses incurred in
62 the discharge of official duties: *Provided*, That such
63 compensation and such expenses shall not exceed the
64 amount received by the board from licensing fees and
65 penalties imposed under subdivision (4), subsection (e)
66 of this section.

67 (d) The board shall hold an annual election for the
68 purpose of electing a chairman, vice chairman and
69 secretary. The requirements for meetings and manage-
70 ment of the board shall be established in regulations
71 promulgated by the board as required by this article.

72 (e) In addition to the duties set forth in other
73 provisions of this article, the board shall:

74 (1) Recommend to the Legislature any proposed
75 modifications to this article;

76 (2) Report to county prosecutors any suspected
77 violations of this article: *Provided*, That no report shall
78 be made until the board has given the suspected violator
79 ninety days written notice of the suspected violation and
80 the violator has, within such ninety-day period, been
81 afforded an opportunity to respond to the board with
82 respect to the allegation;

83 (3) Publish an annual report and a roster listing the
84 names and addresses of all persons who have been

85 licensed in accordance with the provisions of this article
86 as an independent clinical social worker, certified social
87 worker, graduate social worker or social worker;

88 (4) Establish a fee schedule for the initial examina-
89 tion, license fee, the annual license renewal, license
90 replacement, reciprocal license, license classification
91 change, continuing education provider approval and
92 monitoring, mailing lists and requests for information
93 and reports; fees for requests for information and
94 reports shall not be greater than the cost of personnel,
95 time and supplies incurred by the board and shall not
96 be applied to the annual report;

97 (5) Establish standards and requirements for contin-
98 uing education. In establishing these requirements the
99 board shall consult with professional groups and
100 organizations representing all levels of practice pro-
101 vided for in this article and the board shall consider
102 recognized staff development programs, continuing
103 education programs offered by colleges and universities
104 having social work programs approved or accredited by
105 the council on social work education, and continuing
106 education programs offered by recognized state and
107 national social work bodies: *Provided*, That such
108 standards and requirements for continuing education
109 shall not be construed to alter or affect in any way the
110 standards and requirements for licensing as set forth
111 elsewhere in this article;

112 (6) Establish standards and requirements for the
113 practice of social work and the differentiation of
114 qualifications, education, training, experience, supervi-
115 sion, responsibilities, rights, duties and privileges at the
116 independent clinical social worker, certified social
117 worker, graduate social worker and social worker
118 license levels. In establishing these standards and
119 requirements the board shall consult with professional
120 groups and organizations representing all levels of
121 practice provided for in this article. Standards and
122 requirements may include, but are not limited to,
123 practice standards, practice parameters, quality indica-
124 tors, minimal standards of acceptance, advanced

125 training and certification and continuing education:
126 *Provided*, That such standards and requirements for
127 practice may not be construed to alter or affect in any
128 way the standards and requirements for licensing as set
129 forth elsewhere in this article;

130 (7) Conduct its proceedings in accordance with
131 provisions of article nine-a, chapter six of this code; and

132 (8) Employ, direct and define the duties of an
133 administrative clerical support staff person.

134 After having conducted a performance and fiscal
135 audit through its joint committee on government
136 operations, pursuant to section nine, article ten, chapter
137 four of this code, the Legislature hereby finds and
138 declares that the board of social work examiners be
139 continued and reestablished. Accordingly, notwithstanding
140 the provisions of section four of said article, the
141 social work board of examiners shall continue to exist
142 until the first day of July, one thousand nine hundred
143 ninety-five.

§30-30-4. License required; penalties; exceptions.

1 (a) After twenty-four months have passed from the
2 effective date of this article, no person may represent
3 that he or she is a social worker by using such titles as
4 independent clinical social worker, certified social
5 worker, graduate social worker, social worker or any
6 other title that includes a facsimile of such words unless
7 he or she is duly licensed under the provisions of this
8 article or specifically exempted hereunder; nor may any
9 person represent himself or herself to be a certified
10 social worker, graduate social worker or other type of
11 social worker by adding the letters ICSW, CSW, GSW,
12 SW or any other letters, words or insignia which induce
13 or tend to induce the belief that the person is qualified
14 to engage in the practice of social work unless the person
15 is licensed in accordance with the provisions of this
16 article.

17 (b) After twenty-four months have passed from the
18 effective date of this article, no person may er. c n

19 the private, independent practice of social work unless
20 he or she is already licensed under this article.

21 (c) Any person violating the provisions of subsection
22 (a) or (b) of this section is guilty of a misdemeanor, and,
23 upon conviction thereof, shall be fined not more than
24 five hundred dollars, or imprisoned in the county jail for
25 a term not to exceed one year, or both fined and
26 imprisoned.

27 (d) Nothing in this article shall be construed to
28 prevent duly licensed physicians, surgeons, psycholo-
29 gists, attorneys, members of the clergy or any other
30 professional from working within the standards and
31 ethics of their respective professions and fulfilling their
32 professional responsibilities: *Provided*, That no such
33 professional may represent to the public, either by title
34 or training, that he or she is engaged in the practice of
35 social work: *Provided, however*, That any student
36 enrolled in a recognized program of study leading to a
37 social work degree may practice only under the super-
38 vision of a social worker duly licensed in accordance
39 with the provisions of this article. Nothing in this article
40 shall be construed to prevent any person from volunteer-
41 ing his or her services in a manner as defined in
42 subsection (c), section two of this article.

§30-30-5. License classification; qualification.

1 The board shall issue a license as an independent
2 clinical social worker, certified social worker, graduate
3 social worker or social worker.

4 (a) The board shall issue a license as an independent
5 clinical social worker to an applicant who:

6 (1) Has a doctorate or master's degree from a school
7 of social work accredited by the council on social work
8 education that included a concentration of clinically
9 oriented course work as defined by the board; and

10 (2) Has completed a supervised clinical field place-
11 ment at the graduate level, or post-master's clinical
12 training that is found by the board to be equivalent;

13 (3) Has practiced clinical social work for at least two
14 years in full-time employment, or three thousand hours
15 under the supervision of an independent clinical social
16 worker, or clinical supervision that is found by the
17 board to be equivalent; and

18 (4) Has passed an examination approved by the board
19 for certification purposes; or

20 (5) Has received certification as a "diplomat in clinical
21 social work" by the national association of social
22 workers, or as a "board certified diplomat in clinical
23 social work" by the American board of examiners in
24 clinical social work; and

25 (6) Has satisfied the board that he or she merits the
26 public trust by providing the board with three letters
27 of recommendation from persons not related to the
28 applicant and a sworn statement from the applicant
29 indicating he or she has never been convicted of a felony
30 involving moral turpitude.

31 (b) The board shall issue a license as a certified social
32 worker to an applicant who:

33 (1) Has a doctorate or master's degree from a school
34 of social work accredited by the council on social work
35 education;

36 (2) Has completed a minimum of two years experience
37 in the practice of social work after having received a
38 master's degree in social work;

39 (3) Has received certification by the academy of
40 certified social workers or has passed an examination
41 approved by the board for certification purposes;

42 (4) Has satisfied the board that he or she merits the
43 public trust by providing the board with three letters
44 of recommendation from persons not related to the
45 applicant and a sworn statement from the applicant
46 indicating he or she has never been convicted of a felony
47 involving moral turpitude; and

48 (5) In lieu of the foregoing requirements, any person

49 who has been continuously employed for seven years as
50 a social worker under the supervision of any certified
51 social worker; has satisfactorily completed fifty-six
52 hours of graduate social work study as accredited by the
53 council on social work education; has passed an exam-
54 ination approved by the board for certification purposes;
55 and has satisfied the board that he or she merits the
56 public trust by providing the board with three letters
57 of recommendation from persons not related to the
58 applicant and a sworn statement from the applicant
59 indicating that he or she has never been convicted of a
60 felony involving moral turpitude, may be licensed by the
61 board as a certified social worker: *Provided*, That the
62 board may exempt any applicant for licensing from
63 specific hours of social work curriculum where the
64 applicant has demonstrated to the satisfaction of the
65 board a proficient knowledge of the subject matter
66 contained in the particular course of social work
67 curriculum to be exempted.

68 (c) The board shall issue a license as a graduate social
69 worker to an applicant who:

70 (1) Has a master's degree in social work from a school
71 of social work accredited by the council on social work
72 education;

73 (2) Has passed an examination approved by the board;

74 (3) Has satisfied the board that he or she merits the
75 public trust by providing the board with three letters
76 of recommendation from persons not related to the
77 applicant and a sworn statement from the applicant
78 indicating he or she has never been convicted of a felony
79 involving moral turpitude; and

80 (4) In lieu of the foregoing requirements, any person
81 who has been continuously employed for five years as
82 an apprentice social worker under the supervision of any
83 certified social worker; has satisfactorily completed
84 forty-five graduate hours of social work study as
85 accredited by the council on social work education; has
86 passed an examination approved by the board; and has
87 satisfied the board that he or she merits the public trust

88 by providing the board with three letters of recommen-
89 dation from persons not related to the applicant and a
90 sworn statement from the applicant indicating he or she
91 has never been convicted of a felony involving moral
92 turpitude, may be licensed by the board as a graduate
93 social worker: *Provided*, That the board may exempt
94 any applicant for licensing from specific hours of social
95 work curriculum where the applicant has demonstrated
96 to the satisfaction of the board a proficient knowledge
97 of the subject matter contained in the particular course
98 of social work curriculum to be exempted.

99 (d) The board shall issue a license as a social worker
100 to an applicant who:

101 (1) Has a baccalaureate degree in social work from
102 a program accredited by the council on social work
103 education;

104 (2) Has passed an examination approved by the board;

105 (3) Has satisfied the board that he or she merits the
106 public trust by providing the board with three letters
107 of recommendation by persons not related to the
108 applicant and a sworn statement from the applicant
109 indicating he or she has never been convicted of a felony
110 involving moral turpitude; and

111 (4) In lieu of the foregoing requirements, any person
112 who has been continuously employed for four years as
113 a social worker under the supervision of any certified
114 social worker; has satisfactorily completed thirty-six
115 hours of social work study as accredited by the council
116 on social work education; has passed an examination
117 approved by the board; and has satisfied the board that
118 he or she merits the public trust by providing the board
119 with three letters of recommendation from persons not
120 related to the applicant and a sworn statement from the
121 applicant indicating he or she has never been convicted
122 of a felony involving moral turpitude, may be licensed
123 by the board as a social worker: *Provided*, That the
124 board may exempt any applicant for licensing from
125 specific hours of social work curriculum where the
126 applicant has demonstrated to the satisfaction of the

127 board a proficient knowledge of the subject matter
128 contained in the particular course of social work
129 curriculum to be exempted.

§30-30-8a. Reporting unethical conduct and unlicensed practice.

1 A person who has knowledge of any conduct consti-
2 tuting grounds for disciplinary action relating to
3 licensure or the unlicensed practice of the profession of
4 social work under this article may report the violation
5 to the board.

6 Institutions, professional societies, licensed profession-
7 als, insurers authorized to sell insurance within this
8 state, and courts in this state shall report to the board
9 any of the following actions taken by the agency,
10 institution, organization, professional society, insurer,
11 court administrator, judge or other court of competent
12 jurisdiction:

13 (a) Revocation, suspension, restriction or other
14 condition a licensee's privilege to practice or treat
15 patients or clients, or as part of the organization, or any
16 other disciplinary action for conduct that might consti-
17 tute grounds for disciplinary action;

18 (b) Termination, revocation or suspension of member-
19 ship or any other disciplinary action taken against a
20 licensee;

21 (c) Conduct that the licensed health professional
22 reasonably believes constitutes grounds for disciplinary
23 action under this chapter by any licensee, including
24 conduct that the licensee may be medically incompetent,
25 or may be medically or physically unable to engage
26 safely in the provision of services;

27 (d) Malpractice settlements or awards made by an
28 insurer to a plaintiff where the settlement or award
29 involved a licensee or unlicensed practitioner claiming
30 to be a social worker; and

31 (e) Judgments or other determinations of the court
32 that adjudges or includes a finding that a licensee is

33 mentally ill, mentally incompetent, guilty of a felony,
34 guilty of a violation of federal or state narcotics laws or
35 controlled substances acts, or guilty of an abuse or fraud
36 under medicare or medicaid, or that appoints a
37 guardian of the licensee, or commits a licensee to
38 involuntary treatment, probation or prison.

39 Any person, official, society, licensed professional,
40 insurer or institution participating in good faith in any
41 act permitted or required by this section is immune
42 from any civil or criminal liability that otherwise might
43 result by reason of the action or actions.

§30-30-12. Privileged communications.

1 (a) No person licensed under this statute or an
2 employee of the licensee may disclose any confidential
3 information he or she may have acquired from persons
4 consulting him or her in his or her professional capacity
5 except:

6 (1) With the written consent of the person or persons,
7 or in the case of death or disability, of his or her
8 personal representative, other person authorized to sue
9 or the beneficiary of an insurance policy on his or her
10 life, health or physical condition;

11 (2) When a communication reveals the contemplation
12 of a crime or harmful act;

13 (3) When the person waives the privilege by initiating
14 formal charges against the independent clinical social
15 worker, certified social worker, graduate social worker
16 or social worker;

17 (4) When the person is a minor under the laws of this
18 state and the information acquired by the independent
19 clinical social worker, certified social worker, graduate
20 social worker or social worker indicates that the minor
21 has been the victim or subject of a crime, and the
22 independent clinical social worker, certified social
23 worker, graduate social worker or social worker may be
24 required to testify fully in any examination, trial or
25 other proceeding in which the commission of a crime is
26 the subject of inquiry; or

27 (5) Where otherwise required by law.

28 (b) Nothing in this section shall be construed,
 29 however, to prohibit any board licensee from testifying
 30 in juvenile proceedings concerning matters of adoption,
 31 child abuse, child neglect or other matters pertaining to
 32 the welfare of children.

CHAPTER 109

(Com. Sub. for H. B. 2565—By Delegates Ryan, Mezzatesta and Nicol)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirty-three, relating to regulating the tattoo studio business; definitions; outlining standards for sanitation, facilities, operation, procedures and equipment; requiring informed consent of patrons; requiring consent of parent or guardian for tattooing of minors; disposing of waste; requiring registration and inspection of tattoo studios by local or regional boards of health; requiring operating permits; authorizing fees; providing for disposition of fees; and establishing criminal penalties for certain violations.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 33. TATTOO STUDIO BUSINESS.

§30-33-1. Definitions.

§30-33-2. Studio sanitation.

§30-33-3. Operation standards.

§30-33-4. Facilities and equipment.

§30-33-5. Disposal of waste.

§30-33-6. Registration requirements; inspections by local or regional boards of health; permit fees.

§30-33-7. Violations and penalties.

§30-33-1. Definitions.

- 1 (a) "Adequate ventilation" means a free and unres-
2 tricted circulation of fresh air throughout the tattoo
3 studio and the expulsion of foul or stagnant air.
- 4 (b) "Minor" means any person under the age of
5 eighteen years.
- 6 (c) "Tattoo" means to mark or color the skin by
7 pricking in coloring matter so as to form indelible
8 marks or figures or by the production of scars.
- 9 (d) "Tattoo studio" means any room or space where
10 tattooing is practiced or where the business of tattooing
11 or any part thereof is conducted.
- 12 (e) "Antibacterial solution" means any solution used to
13 retard the growth of bacteria approved for application
14 to human skin and includes all products so labeled.
- 15 (f) "Germicidal solution" means any solution which
16 destroys germs, and is so labeled.
- 17 (g) "Sterilization" means holding in an autoclave for
18 twenty-five minutes at fifteen pounds pressure at a
19 temperature of two hundred fifty degrees Fahrenheit or
20 one hundred twenty-one degrees Celsius.

§30-33-2. Studio sanitation.

- 1 (a) The tattoo artist's hands shall be washed and then
2 air blown or dried by single use towel prior to beginning
3 work on each person or when interrupted in the process
4 of working on a person. In addition, disposable latex
5 examination gloves shall be worn by the tattoo artist
6 during the tattooing process. The gloves shall be
7 changed and properly disposed of each time there is an
8 interruption in the application of the tattoo, each time
9 the gloves become torn or punctured, or whenever the
10 ability of the gloves to function as a barrier is
11 compromised.
- 12 (b) Cabinets for the storage of instruments, dyes,
13 pigments, single use articles, carbon, stencils and other
14 utensils shall be provided for each operator and shall be
15 maintained in a sanitary manner.

16 (c) Bulk single use articles shall be commercially
17 packaged and handled in such a way as to protect them
18 from contamination. Storage of single use articles shall
19 not be in toilet rooms or in vestibules of toilet rooms nor
20 under nonpotable water lines or exposed sewer lines.

21 (d) Work tables and chairs or benches shall be
22 provided for each tattoo artist. The surface of all work
23 tables and chairs or benches shall be constructed of
24 material which is smooth, light colored, nonabsorbent,
25 corrosive-resistant, and easily sanitized. The work tables
26 and chairs or benches shall be sanitized with a germicidal
27 solution after each tattoo application. All existing
28 tattoo studios on the effective date of the administrative
29 regulation shall be exempt from the required color of
30 the work table.

31 (e) All materials applied to human skin shall be from
32 single use articles or transferred from bulk containers
33 to single use containers and shall be disposed of after
34 each use.

35 (f) No pets, including working dogs, guide dogs or
36 security dogs from a certified trainer, may be permitted
37 in a tattoo studio workroom as defined in subsection (b)
38 of section four of this article.

§30-33-3. Operation standards.

1 (a) Records.

2 (1) Proper records of tattoos administered shall be
3 maintained for each patron by the holder of the studio
4 registration.

5 (2) A record shall be prepared for each patron prior
6 to any procedure being performed and shall include the
7 patron's name and signature, address, age, date tat-
8 tooed, design of the tattoo, location of the tattoo on the
9 patron's body, and the name of the tattoo artist who
10 performed the work.

11 (3) Record entries shall be in ink or indelible pencil
12 and shall be available for examination by the inspecting
13 authorities provided in section six of this article.

14 (4) Before tattoo administration, the owner or tattoo

15 artist shall discuss with the patron the risks involved in
16 the tattoo requested and the possible complications,
17 which shall be entered in the record.

18 (5) All records required by this section shall be kept
19 on file for five years by the holder of the studio
20 registration for the studio in which the tattoo was
21 performed.

22 (b) Consent.

23 (1) Prior written consent for tattooing of minors shall
24 be obtained from one parent or guardian.

25 (2) All written consents shall be kept on file for five
26 years by the holder of the studio registration for the
27 tattoo studio in which the tattoo was performed.

28 (3) The person receiving the tattoo shall attest to the
29 fact that he or she is not intoxicated or under the
30 influence of drugs or alcohol.

31 (c) Tattooing procedures.

32 (1) Printed instructions on the care of the skin after
33 tattooing shall be given to each patron as a precaution
34 to prevent infection.

35 (2) A copy of the printed instructions shall be posted
36 in a conspicuous place, clearly visible to the person
37 being tattooed.

38 (3) Each tattoo artist shall wear a clean outer
39 garment, i.e., apron, smock, T-shirt, etc.

40 (4) Tattoo artists who are experiencing diarrhea,
41 vomiting, fever, rash, productive cough, jaundice,
42 draining or open skin infections such as boils which
43 could be indicative of more serious conditions such as,
44 but not limited to, impetigo, scabies, hepatitis-b, HIV or
45 AIDS shall refrain from tattooing activities until such
46 time as they are no longer experiencing or exhibiting
47 the aforementioned symptoms.

48 (5) Before working on each patron, the fingernails and
49 hands of the tattoo artist shall be thoroughly washed and
50 scrubbed with hot running water, antibacterial soap,
51 and an individual hand brush that is clean and in good

52 repair.

53 (6) The tattoo artist's hands shall be air blown dried
54 or dried by a single use towel. In addition, disposable
55 latex examination gloves shall be worn during the tattoo
56 process. The gloves shall be changed each time there is
57 an interruption in the tattoo application, the gloves
58 become torn or punctured, or whenever their ability to
59 function as a barrier is compromised.

60 (7) Only sterilized or single use, disposable razors
61 shall be used to shave the area to be tattooed.

62 (8) Immediately prior to beginning the tattoo proce-
63 dure the affected skin area shall be treated with an
64 antibacterial solution.

65 (9) If an acetate stencil is used by a tattoo artist for
66 transferring the design to the skin, the acetate stencil
67 shall be thoroughly cleaned and rinsed in a germicidal
68 solution for at least twenty minutes and then dried with
69 sterile gauze or dried in the air on a sanitized surface
70 after each use.

71 (10) If a paper stencil is used by a tattoo artist for
72 transferring the design to the skin, the paper stencil
73 shall be single use and disposable.

74 (11) If the design is drawn directly onto the skin, the
75 design shall be applied with a single use article only.

76 (d) Dyes or pigments.

77 (1) Only nontoxic sterile dyes or pigments shall be
78 used and shall be prepared in sterilized or disposable
79 single use containers for each patron.

80 (2) After tattooing, the unused dye or pigment in the
81 single use containers shall be discarded along with the
82 container.

83 (3) All dyes or pigments used in tattooing shall be
84 from professional suppliers specifically providing dyes
85 or pigments for the tattooing of human skin.

86 (e) Sterilization of needles.

87 (1) A set of individual, sterilized needles shall be used

88 for each patron.

89 (2) No less than twenty-four sets of sterilized needles
90 and tubes shall be on hand for the entire day or night
91 operation. Unused sterilized instruments shall be
92 resterilized at intervals of no more than six months from
93 the date of the last sterilization.

94 (3) Used, nondisposable instruments shall be kept in
95 a separate, puncture resistant container until brush
96 scrubbed in hot water and soap, and then sterilized by
97 autoclaving.

98 (4) If used instruments are ultrasoniced prior to being
99 placed in the used instrument container, they shall be
100 ultrasoniced and then rinsed under running hot water
101 prior to being placed in the used instrument container.

102 (5) The ultrasonic unit shall be sanitized daily with
103 a germicidal solution.

104 (6) If used instruments are not ultrasoniced prior to
105 being placed in the used instrument container, they
106 shall be kept in a germicidal or soap solution until brush
107 scrubbed in hot water and soap, and then sterilized by
108 autoclaving.

109 (7) All nondisposable instruments including the
110 needle tubes shall be sterilized and shall be handled and
111 stored in such a manner as to prevent contamination.
112 Instruments to be sterilized shall be sealed in bags made
113 specifically for the purpose of autoclave sterilization,
114 and shall include the date of sterilization. If nontrans-
115 parent sterilization bags are utilized, the bag shall also
116 list the contents.

117 (8) Autoclave sterilization bags, with a color code
118 indicator which changes color upon proper steam
119 sterilization, shall be utilized during the autoclave
120 sterilization process.

121 (9) Instruments shall be placed in the autoclave in
122 such a manner as to allow live steam to circulate around
123 them.

124 (10) No rusty, defective or faulty instruments shall be
125 kept in the studio.

126 (f) After care of tattoo.

127 The completed tattoo shall be washed with a single
128 use towel saturated with an antibacterial solution.

§30-33-4. Facilities and equipment.

1 (a) General physical environment.

2 (1) Tattoo studios shall have at least fifty footcandles
3 of light and adequate ventilation. Walls and ceilings
4 shall be painted a light color.

5 (2) The floor of the tattoo workroom shall be
6 constructed of impervious material. The floor shall be
7 swept and wet mopped daily. Floors, walls, or ceilings
8 shall not be swept or cleaned while tattooing is in
9 operation.

10 (3) Convenient, clean, and sanitary toilet and hand-
11 washing facilities shall be made accessible to customers.

12 (4) The building and equipment shall be maintained
13 in a state of good repair at all times. The studio premises
14 shall be kept clean, neat and free of litter and rubbish.

15 (b) Workroom.

16 (1) Each tattoo studio shall have a workroom separate
17 from a waiting room or any room or rooms used for any
18 other purpose. The workroom shall not be used as a
19 corridor for access to other rooms. Patrons or customers
20 shall be tattooed only in the workroom.

21 (2) The workroom shall be equipped with hot and cold
22 running water, with one sink or basin per artist
23 operating at the same time.

24 (3) The sinks and basins shall be for the exclusive use
25 of the tattoo artists for washing their hands and
26 preparing customers for tattooing. They shall be
27 equipped with foot, wrist or single lever action controls,
28 soap, a germicidal solution, single use towels and
29 individual hand brushes clean and in good repair for
30 each tattoo artist. All plumbing shall be in compliance
31 with industry standards.

32 (4) Persons may not consume any food or drink nor

33 smoke in the workroom.

§30-33-5. Disposal of waste.

1 The tattoo studio operator shall comply with rules
2 promulgated by the commissioner of the bureau of
3 public health regarding the disposal of medical wastes.

§30-33-6. Registration requirements; inspections by local or regional boards of health; permit fees.

1 (a) Tattoo studios in West Virginia shall obtain a West
2 Virginia business registration certificate and shall
3 register with their local or regional board of health.

4 (b) Each local or regional board of health shall
5 conduct annual inspections of each tattoo studio to
6 determine compliance with this article. Every person,
7 firm or corporation operating a tattoo studio in West
8 Virginia shall apply to their local or regional board of
9 health for such inspection. The local or regional boards
10 of health shall attempt to conduct such inspections
11 within ten days of the receipt of the request for
12 inspection: *Provided*, That if it is impracticable for the
13 local or regional board of health to conduct the inves-
14 tigation within ten days after receiving such application,
15 the boards may issue to such applicant a temporary
16 operating permit which shall be valid for thirty days or
17 until a regular inspection is made, whichever occurs
18 first.

19 (c) Upon a determination by the inspecting authority
20 that any tattoo studio is not in compliance with the
21 provisions of this article, the inspection authority shall
22 have the power to order the tattoo studio to cease
23 operations until such time as the inspecting authority
24 determines that said studio is in compliance.

25 (d) Upon a determination by the inspecting authority
26 that the tattoo studio is in compliance with the provi-
27 sions of this article, there shall be issued to said studio
28 an operating permit that shall be posted in a conspic-
29 uous place, clearly visible to the general public.

30 (e) The fee for the issuance of an operating permit
31 issued pursuant to this article shall be two hundred

32 dollars, and shall be paid by the tattoo studio receiving
33 such permit. The fee shall be collected by and paid to
34 the local or regional boards of health.

§30-33-7. Violations and penalties.

1 Any owner of a tattoo studio who does not obtain a
2 West Virginia business registration certificate, who does
3 not register with their local or regional board of health,
4 or who fails to request an inspection pursuant to section
5 six of this article shall be guilty of a misdemeanor, and,
6 upon conviction thereof, for a first offense, the owner
7 may have all of the tattoo equipment and paraphernalia
8 confiscated and shall be fined one hundred dollars. For
9 a second offense, which is a misdemeanor, the owner
10 may have all of the tattoo equipment and paraphernalia
11 confiscated and shall be fined not less than five hundred
12 dollars nor more than one thousand dollars or be jailed
13 for not less than ten days nor more than one year, or
14 in the discretion of the court, by both such fine and
15 imprisonment. For a third offense, which is a misdemea-
16 nor, the owner shall have all the tattoo equipment and
17 paraphernalia confiscated, shall be fined not less than
18 one thousand dollars nor more than five thousand
19 dollars, or be jailed not less than thirty days nor more
20 than one year, or, in the discretion of the court, by both
21 such fine and imprisonment.

CHAPTER 110

(Com. Sub. for S. B. 54—By Senator Woolton)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, seven-a, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, eighteen and twenty-three, article twelve, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the real estate brokers licensing; changing compensation of commission members; changing secretary to director; requiring

continuing legal education to be real estate related; changing fees; adding violations; amending purchase agreements; and requiring education to have been completed during preceding five years.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, seven-a, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, seventeen, eighteen and twenty-three, 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.

- §47-12-1. Title of article; broker's or salesperson's license required.
- §47-12-2. Definitions and exceptions.
- §47-12-3. Commission created; powers generally; membership; appointment and removal of members; qualifications; terms; organization; salaries and expenses; executive director and assistants; seal; admissibility of and inspection of records; termination of commission.
- §47-12-4. Qualifications for licenses.
- §47-12-5. Applications for licenses.
- §47-12-6. Licensing nonresidents; reciprocity; consent to service of process, etc.; manner of service; judgment by default; bond.
- §47-12-7. Written examinations required; exceptions; requirements for reissuance of revoked license; reexamination after failure; examination where applicant a partnership, etc.; issuance of license.
- §47-12-7a. Continuing education; license renewal.
- §47-12-8. Place of business; display of certificates of registration; notice of change of address; branch offices; change of employer or employment by real estate salespersons.
- §47-12-9. License fees, annual registration; fee for additional offices, charge for change of location and for duplicate or transfer of license.
- §47-12-10. Disposition of fees; real estate license fund; expenditures by commission.
- §47-12-11. Procedure and grounds for refusal, suspension or revocation of license.
- §47-12-12. Notice of hearing on complaint; conduct of hearing.
- §47-12-13. Appeals.
- §47-12-14. Real estate courses for licensee; assisting studies, surveys, etc.
- §47-12-15. Executive director's bond.
- §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.
- §47-12-18. Trust fund accounts; records.
- §47-12-23. Duration of existing licenses.

§47-12-1. Title of article; broker's or salesperson's license required.

1 This article shall be known, and may be cited, as the
2 real estate brokers license act of one thousand nine
3 hundred fifty-nine, and from and after the effective date
4 of this article it shall be unlawful for any person,
5 partnership, association or corporation to engage in or
6 carry on, directly or indirectly, or to advertise or hold
7 himself, herself, itself or themselves out as engaging in
8 or carrying on the business or act in the capacity of a
9 real estate broker or a real estate salesperson within this
10 state without first obtaining a license as a real estate
11 broker or real estate salesperson as provided for in this
12 article.

§47-12-2. Definitions and exceptions.

1 (a) The term "real estate broker" within the meaning
2 of this article includes all persons, partnerships,
3 associations and corporations, foreign and domestic, who
4 for a fee, commission or other valuable consideration or
5 who with the intention or expectation of receiving or
6 collecting the same, lists, sells, purchases, exchanges,
7 rents, manages, leases or auctions any real estate or the
8 improvements thereon, including options, or who
9 negotiates or attempts to negotiate any such activity; or
10 who advertises or holds himself, herself, itself or
11 themselves out as engaged in such activities; or who
12 directs or assists in the procuring of a purchaser or
13 prospect calculated or intended to result in a real estate
14 transaction. The term "real estate broker" shall also
15 include any person, partnership, association or corpora-
16 tion employed by or on behalf of the owner or owners
17 of lots, or other parcels of real estate, at a stated salary
18 or upon a fee, commission or otherwise to sell such real
19 estate, or any parts thereof, in lots or other parcels, and
20 who shall sell, manage, exchange, lease, offer, attempt
21 or agree to negotiate the sale, exchange or lease of any
22 such lot or parcel of real estate.

23 (b) The term "real estate" as used in this article
24 includes leaseholds as well as any and every interest or
25 estate in land, whether corporeal or incorporeal,

26 freehold or nonfreehold, and whether said property is
27 situated in this state or elsewhere.

28 (c) The term "associate broker" means any person who
29 for compensation or other valuable consideration is
30 employed by a broker to perform all the functions
31 authorized by a broker's license only for and on behalf
32 of such employing broker including, but not limited to,
33 authority to supervise other salespersons employed by a
34 broker and manage an office on behalf of a broker.

35 (d) The term "real estate salesperson" means and
36 includes any person employed or engaged by or on
37 behalf of a licensed real estate broker to do or deal in
38 any activity as included in this section, for compensation
39 or otherwise.

40 (e) One act in consideration of or with the expectation
41 or intention of or upon the promise of receiving
42 compensation by fee, commission or otherwise, in the
43 performance of any act or activity contained in this
44 section, constitutes such persons, partnerships, associa-
45 tion or corporation, a real estate broker and make him
46 or her, them or it subject to the provisions and
47 requirements of this article.

48 (f) The term "real estate broker" or "real estate
49 salesperson" shall not include any person, partnership,
50 association or corporation, who, as a bona fide owner or
51 lessor, performs any aforesaid act:

52 (1) With reference to property owned or leased by him
53 or her to the regular employees thereof, where such acts
54 are performed in the regular course of or as an incident
55 to the management of, such property and the investment
56 therein;

57 (2) Nor shall this article be construed to include
58 attorneys-at-law, except that attorneys-at-law shall be
59 required to submit to the written examination required
60 under section seven of this article in order to qualify for
61 a broker's license: *Provided*, That an attorney-at-law
62 who is licensed as a real estate broker prior to the
63 effective date of this section is exempt from the written
64 examination required under section seven of this article;

65 (3) Nor any person holding in good faith a duly
66 executed power of attorney from the owner authorizing
67 the final consummation and execution for the sale,
68 purchase, lease or exchange of real estate;

69 (4) Nor to the acts of any person while acting as a
70 receiver, trustee, administrator, executor, guardian, or
71 under the order of any court or while acting under
72 authority of a deed of trust or will;

73 (5) Nor shall this article apply to public officers while
74 performing their duties as such;

75 (6) Nor shall this article apply to the acquisition or
76 disposition of coal, oil or gas leasehold or coal, oil or gas
77 interests.

§47-12-3. Commission created; powers generally; membership; appointment and removal of members; qualifications; terms; organization; salaries and expenses; executive director and assistants; seal; admissibility of and inspection of records; termination of commission.

1 There shall be a commission known as the "West
2 Virginia Real Estate Commission", which commission
3 shall be a corporation and as such may sue and be sued,
4 may contract and be contracted with and shall have a
5 common seal. The commission shall consist of three
6 persons to be appointed by the governor by and with the
7 advice and consent of the Senate. Two of such appointees
8 each shall have been a resident and a citizen of this state
9 for at least six years prior to his or her appointment and
10 whose vocation for at least ten years shall have been that
11 of a real estate broker or real estate salesperson and the
12 third shall be a representative of the public generally.
13 Members in office on the date this section becomes
14 effective shall continue in office until their respective
15 terms expire. The term of the members of said commis-
16 sion shall be for four years and until their successors are
17 appointed and qualify. No more than two members of
18 such commission shall belong to the same political party.
19 No member shall be a candidate for or hold any other
20 public office or be a member of any political committee

21 while acting as such commissioner. In case any commis-
22 sioner be a candidate for or hold any other public office
23 or be a member of any political committee, his or her
24 office as such commissioner shall ipso facto be vacated.
25 Members to fill vacancies shall be appointed by the
26 governor for the unexpired term. No member may be
27 removed from office by the governor except for official
28 misconduct, incompetency, neglect of duty, gross
29 immorality or other good cause shown and then only in
30 the manner prescribed by law for the removal by the
31 governor of state elective officers. The governor shall
32 designate one member of the commission as the chair-
33 man thereof and the members shall choose one of the
34 members thereof as secretary. Two members of the
35 commission shall constitute a quorum for the conduct of
36 official business.

37 (a) The commission shall do all things necessary and
38 convenient for carrying into effect the provisions of this
39 article and may from time to time promulgate reasona-
40 ble, fair and impartial rules and regulations in accor-
41 dance with the provisions of article three, chapter
42 twenty-nine-a of this code. The board shall pay each
43 member the same compensation as is paid to members
44 of the Legislature for their interim duties as recom-
45 mended by the citizens legislative compensation com-
46 mission and authorized by law for each day or portion
47 thereof engaged in the discharge of official duties and
48 shall reimburse each member for actual and necessary
49 expenses incurred in the discharge of official duties.

50 (b) The commission shall employ an executive director
51 and such clerks, investigators and assistants as it shall
52 deem necessary to discharge the duties imposed by the
53 provisions of this article and to effect its purposes, and
54 the commission shall determine the duties and fix the
55 compensation of such executive director, clerks, inves-
56 tigators and assistants, subject to the general laws of the
57 state.

58 (c) The commission shall adopt a seal by which it shall
59 authenticate its proceedings. Copies of all records and
60 papers in the office of the commission, duly certified and
61 authenticated by the seal of said commission, shall be

62 received in evidence in all courts equally and with like
63 effect as the original. All records kept in the office of
64 the commission under authority of this article shall be
65 open to public inspection under reasonable rules and
66 regulations as shall be prescribed by the commission.

67 (d) After having conducted a performance and fiscal
68 audit through its joint committee on government
69 operations, pursuant to section nine, article ten, chapter
70 four of this code, the Legislature hereby finds and
71 declares that the West Virginia real estate commission
72 should be continued and reestablished. Accordingly,
73 notwithstanding the provisions of section four of said
74 article, the West Virginia real estate commission shall
75 continue to exist until the first day of July, one thousand
76 nine hundred ninety-four.

§47-12-4. Qualifications for licenses.

1 (1) Licenses shall be granted only to persons who are
2 trustworthy, of good character and competent to
3 transact the business of a real estate broker or real
4 estate salesperson in such manner as to safeguard the
5 interests of the public. Every applicant for a license as
6 a real estate broker shall be of the age of eighteen years
7 or over, a citizen of the United States and shall have
8 served a bona fide apprenticeship as a licensed real
9 estate salesperson for two years or shall produce to the
10 real estate commission satisfactory evidence of real
11 estate experience. No broker's license shall be issued to
12 a partnership, association or corporation unless each
13 member or officer thereof who will actively engage in
14 the real estate business be licensed as a real estate
15 salesperson or associate broker, when and after said
16 broker shall have been granted a broker's license.

17 (2) A broker's or salesperson's license may be issued
18 to any person who is either a high school graduate or
19 the holder of a certificate of high school equivalency.

20 (3) Applicants for a broker's license shall show
21 evidence satisfactory to the commission that they have
22 completed at least one hundred eighty clock-hours
23 (twelve credit hours) of formal instruction in a real
24 estate course or courses approved by the commission.

25 Such courses must cover real estate principles, real
26 estate law, real estate appraising and real estate finance
27 and such other topics approved by the commission. Any
28 applicant for a broker's license who is licensed as a
29 salesperson at the time a broker's application is
30 submitted to the commission shall only be required to
31 show evidence satisfactory to the commission that they
32 have completed the additional ninety clock-hours (six
33 credit hours) of formal instruction in a real estate course
34 or courses approved by the commission. The applicant
35 shall satisfactorily pass an examination or examinations
36 covering the material taught in each such course.

37 (4) Applicants for a salesperson's license shall show
38 evidence satisfactory to the commission that they have
39 completed at least ninety clock-hours (six credit hours)
40 of formal instruction in a real estate course or courses
41 approved by the commission. Such courses must cover
42 real estate principles, real estate law, real estate
43 appraising and real estate finance, and such other topics
44 approved by the commission. The applicant shall
45 satisfactorily pass an examination covering the material
46 taught in each such course.

47 (5) Effective the first day of July, one thousand nine
48 hundred ninety-four, any applicant for either a broker's
49 or salesperson's license must have completed the
50 required education course or courses during the five-
51 year period preceding the date of application.

52 (6) Subsections (3) and (4) of this section do not apply
53 to any applicant who holds a valid broker's or salesper-
54 son's license issued prior to the first day of July, one
55 thousand nine hundred eighty. Each such applicant
56 shall complete at least ninety clock-hours (six credit
57 hours) of instruction as specified in subsection (3) of this
58 section if he or she has not completed the broker's
59 examination required under section seven of this article
60 by the first day of July, one thousand nine hundred
61 eighty-two.

62 (7) The commission, pursuant to this section, shall
63 publish a list of real estate courses which are approved
64 and shall update such list yearly. Additionally, the

65 commission shall, on request of any person, evaluate a
66 specific course or courses which are not on the approved
67 list and approve or disapprove such course or courses
68 promptly and in writing.

§47-12-5. Applications for licenses.

1 Every applicant for a real estate broker's license shall
2 apply therefor in writing upon blanks prepared by the
3 commission which shall contain such data and informa-
4 tion as the commission shall require.

5 (a) Such application for broker's license shall be
6 accompanied by the recommendation of at least two
7 citizens who are property owners at the time of signing
8 said application and have been property owners for at
9 least twelve months preceding such application, who
10 have known the applicant for two years and are not
11 related to the applicant, certifying that the applicant
12 bears a good reputation for honesty and trustworthiness,
13 and recommending that a license be granted to the
14 applicant.

15 (b) Every applicant for a salesperson's license shall
16 apply therefor in writing upon blanks prepared by the
17 commission which shall contain such data and informa-
18 tion as the commission may require. The application
19 shall be accompanied by a sworn statement by the
20 broker in whose employ the applicant desires to enter,
21 certifying that, in his or her opinion, the applicant is
22 honest and trustworthy, and recommending the license
23 be granted to the applicant.

**§47-12-6. Licensing nonresidents; reciprocity; consent to
service of process, etc.; manner of service;
judgment by default; bond.**

1 A nonresident of this state may become a real estate
2 broker by conforming to all the provisions of this article,
3 except that such nonresident broker regularly engaged
4 in the real estate business as a vocation and who
5 maintains a definite place of business and is licensed in
6 some other state, which offers the same privileges to the
7 licensed brokers of this state, shall not be required to
8 maintain a place of business in this state. The commis-

9 sion shall recognize the license issued to a real estate
10 broker or salesperson by another state as satisfactorily
11 qualifying him or her for license as a broker or
12 salesperson: *Provided*, That said nonresident broker or
13 salesperson has qualified for license in his or her own
14 state by written examination and also that said other
15 state permits license to be issued to licensed brokers or
16 salespersons in this state without examination. Every
17 nonresident applicant shall file an irrevocable written
18 consent that suits and actions may be commenced
19 against such applicant in the proper court of any county
20 of the state in which a cause of action growing out of
21 a real estate transaction may arise, in which the
22 plaintiff may reside, by the service of any process or
23 pleading authorized by the laws of this state, on any
24 member of the commission, or the executive director,
25 said consent stipulating and agreeing that such service
26 of such process or pleading shall be taken and held in
27 all courts to be as valid and binding as if due service
28 had been made upon said applicant in this state. Said
29 consent shall be duly acknowledged and if made by a
30 corporation shall be authenticated by the seal of such
31 corporation. Any service of process or pleading shall be
32 by duplicate copies, one of which shall be filed in the
33 office of the commission and the other immediately
34 forwarded by registered mail to the last-known main
35 office of the applicant against whom said process or
36 pleading is directed; and no default in any such
37 proceeding or action shall be taken except upon
38 certification of the commission or the executive director
39 that a copy of said process or pleading was mailed to
40 the defendant as herein required; and no judgment by
41 default shall be taken in any such action or proceeding
42 until after twenty days from the date of mailing of such
43 process or pleading to the nonresident defendant.

44 (a) Before a license as a real estate broker shall be
45 issued to any person who does not have his or her
46 principal place of business in the state of West Virginia,
47 he or she shall file with the commission a bond in the
48 penalty of two thousand dollars, in form and with
49 security to be approved by the commission and condi-
50 tioned so as to be for the benefit of and to indemnify

51 any person in the state who may have any cause of action
52 against the principal.

53 (b) Before a license as a real estate salesperson shall
54 be issued to any person who is not a bona fide resident
55 of this state, whether he or she be an employee of a
56 resident or a nonresident real estate broker, such
57 applicant shall file with the commission a bond such as
58 is herein required to be filed by a nonresident broker.

**§47-12-7. Written examinations required; exceptions;
requirements for reissuance of revoked
license; reexamination after failure; exam-
ination where applicant a partnership, etc.;
issuance of license.**

1 In addition to proof of honesty, trustworthiness, good
2 character and good reputation of any applicant for a
3 license, the applicant shall submit to a written exam-
4 ination to be conducted by the commission which shall
5 include reading, writing, spelling, elementary arith-
6 metic, a general knowledge of the statutes of this state
7 relating to real property, deeds, mortgages, agreements
8 of sale, agency contract, leases, ethics, appraisals and
9 the provisions of this article: *Provided*, That any person
10 who has been actively engaged in the real estate
11 business as a real estate broker or real estate salesper-
12 son within the year preceding the effective date of this
13 article and is thus engaged in this state at the time this
14 article goes into effect, may secure a license as a real
15 estate broker or a salesperson without an examination:
16 *Provided, however*, That such person shall make appli-
17 cation to the commission for registration within ninety
18 days after the effective date of this article. The
19 examination for a broker's license shall differ from the
20 examination for a salesperson's license in that it shall
21 be of a more exacting nature and require higher
22 standards of knowledge of real estate. The commission
23 shall conduct examinations at such times and places as
24 it shall determine.

25 (a) In event the license of any real estate broker or
26 salesperson shall be revoked by the commission, subse-
27 quent to the enactment of this article, no new license

28 shall be issued to such person unless he or she complies
29 with the provisions of this article.

30 (b) No person shall be permitted or authorized to act
31 as a real estate broker until he or she has qualified by
32 examination, except as hereinbefore provided. Any
33 individual who fails to pass the examination upon two
34 occasions shall be ineligible for a similar examination
35 until after the expiration of three months from the time
36 such individual took the last examination and then only
37 upon making application as in the first instance.

38 (c) If the applicant is a partnership, association or
39 corporation, said examination shall be submitted to on
40 behalf of said partnership, association or corporation by
41 the member or officer thereof who is designated in the
42 application as the person to receive a license by virtue
43 of the issuing of a license to the partnership, association
44 or corporation.

45 (d) Upon satisfactorily passing such examination and
46 upon complying with all other provisions of law and
47 conditions of this article, a license shall thereupon be
48 issued to the successful applicant and upon receiving
49 such license is authorized to conduct the business of a
50 real estate broker or real estate salesperson in this state.
51 A person who has qualified for a real estate license as
52 provided above is considered to be a professional in his
53 or her trade.

§47-12-7a. Continuing education; license renewal.

1 In addition to other provisions of this article, begin-
2 ning the first day of July, one thousand nine hundred
3 ninety, and every year thereafter, every real estate
4 broker and salesperson shall complete seven actual
5 hours of continuing education, with each hour equaling
6 fifty minutes of instructions. The commission shall
7 establish the continuing education program by rules and
8 shall approve all courses, seminars and lectures:
9 *Provided*, That real estate related continuing legal
10 education courses approved by the West Virginia state
11 bar shall be approved by the commission. If approved
12 in advance by the real estate commission, correspon-
13 dence courses and audio or video tapes may be used to

14 satisfy the continuing education requirement.

15 Upon application for renewal of a real estate license
16 in each year following one thousand nine hundred
17 ninety, such real estate broker or salesperson must
18 furnish satisfactory evidence, as established by the
19 commission, that he or she has completed the required
20 number of continuing education hours: *Provided*, That
21 a real estate broker or salesperson holding a license on
22 the first day of July, one thousand nine hundred sixty-
23 nine, and continuously thereafter, shall be exempt from
24 continuing education requirements. When a real estate
25 broker or salesperson in an inactive status reverts to an
26 active status, he or she will obtain seven hours contin-
27 uing education each year without being required to
28 complete additional hours of education resulting from
29 his or her inactive status.

**§47-12-8. Place of business; display of certificates of
registration; notice of change of address;
branch offices; change of employer or em-
ployment by real estate salespersons.**

1 Every person, partnership, association or corporation
2 licensed as a real estate broker shall be required to have
3 and maintain a definite place of business within this
4 state, which shall be a room or rooms used for the
5 transaction of the real estate business, or such business
6 and any allied business. The certificate of registration
7 as broker and the certificate of each real estate
8 salesperson employed by such broker shall be promi-
9 nently displayed in said office. The said place of business
10 shall be designated in the license and no license issued
11 under the authority of this article shall authorize the
12 licensee to transact business at any other address. In
13 case of removal from the designated address, the
14 licensee shall make application to the commission before
15 said removal or within ten days after said removal,
16 designating the new location of such office, whereupon
17 the commission shall forthwith issue a new license for
18 the new location for the unexpired period, if said new
19 location is satisfactory, upon return to the commission
20 of the license previously issued.

21 (a) Each and every branch office owned or operated
22 by a duly licensed broker shall be supervised and
23 operated by a licensed broker or licensed salesperson.

24 (b) All licenses issued to a real estate salesperson shall
25 designate the employer of such salesperson. Prompt
26 notice in writing, within ten days, shall be given to the
27 commission by any real estate salesperson of a change
28 of employer, and of the licensed broker into whose
29 employ the salesperson is about to enter, and a new
30 license shall thereupon be issued by the commission to
31 such salesperson for the unexpired term of the original
32 license, upon return to the commission of the license
33 previously issued. The change of employer or employ-
34 ment by any licensed real estate salesperson, without
35 notice to the commission, as aforesaid, shall automati-
36 cally cancel the license to him or her theretofore issued.
37 Upon termination of salesperson's employment, the
38 broker's employer shall forthwith return the salesper-
39 son's license to the commission for cancellation. It shall
40 be unlawful for any real estate salesperson to perform
41 any of the acts contemplated by this article either
42 directly or indirectly after his or her employment has
43 been terminated and license as a salesperson has been
44 returned for cancellation until said license has been
45 reissued by the commission.

**§47-12-9. License fees, annual registration; fee for
additional offices, charge for change of
location and for duplicate or transfer of
license.**

1 To pay for the maintenance and operation of the office
2 of the commission and the enforcement of this article,
3 the commission shall charge the following fees:

4 (a) Examination fee — twenty-five dollars, with no
5 additional fee for second examination.

6 (b) Investigation fee — ten dollars.

7 (c) Broker's license — eighty dollars.

8 (d) Salesperson's license — forty dollars.

9 (e) Broker's renewal fee — eighty dollars, p

- 10 the thirtieth day of June of each year.
- 11 (f) Salesperson's renewal fee — forty dollars, payable
12 by the thirtieth day of June of each year.
- 13 (g) Branch office fee — eighty dollars.
- 14 (h) Renewal of branch office license — eighty dollars.
- 15 (i) Transfer of salesperson's license — ten dollars.
- 16 (j) Duplicate license or certification — ten dollars.
- 17 (k) Change of name — ten dollars.
- 18 (l) Change of office — ten dollars.
- 19 Willful failure to pay any of the fees is just cause for
20 revocation of or refusal to issue or renew a license.

§47-12-10. Disposition of fees; real estate license fund; expenditures by commission.

1 All fees charged and collected under this article shall
2 be paid by the executive director at least once a month
3 into the treasury of the state to credit of a fund to be
4 known as the "real estate license fund", which is hereby
5 created. All moneys which shall be paid into the state
6 treasury and credited to the "real estate license fund"
7 are hereby appropriated to the use of the commission in
8 carrying out the provisions of this article, including the
9 payment of salaries and expenses and the printing of an
10 annual directory of licensees and for educational
11 purposes.

12 The amount paid to or expended by the commission
13 shall not exceed the revenues derived under the
14 provisions of this article as hereinbefore provided.

§47-12-11. Procedure and grounds for refusal, suspension or revocation of license.

1 The commission may upon its own motion and shall,
2 upon the verified complaint in writing of any person
3 setting forth a cause of action under this section,
4 ascertain the facts and if warranted hold a hearing for
5 the suspension or revocation of a license. The commis-
6 sion shall have full power to refuse a license for
7 reasonable cause or to revoke or suspend a license if the

8 licensee:

9 (1) Obtains, renews or attempts to obtain or renew a
10 license through the submission of any application or
11 other writing that contains false or fraudulent
12 information;

13 (2) Makes any substantial misrepresentation;

14 (3) Makes any false promises or representations of
15 character likely to influence, persuade or induce a
16 person involved in a real estate transaction;

17 (4) Pursues a continued or flagrant course of misre-
18 presentation or makes false promises or representations
19 through agents or salespersons or any medium of
20 advertising or otherwise;

21 (5) Uses misleading or false advertising or uses any
22 trade name or insignia of membership in any real estate
23 organization, in which the licensee is not a member;

24 (6) Acts for more than one party in a transaction
25 without the knowledge of all parties for whom he or she
26 acts;

27 (7) Fails, within a reasonable time, to account for or
28 to remit any moneys coming into his or her possession
29 belonging to others, or commingles moneys belonging to
30 others with his or her own funds;

31 (8) Displays a "for sale" or "for rent" sign on any
32 property without an agency therefor or without the
33 owner's consent;

34 (9) Fails to disclose in writing to all parties to a real
35 estate transaction, on the form promulgated by the
36 commission, whether the licensee is representing the
37 seller, the buyer or both;

38 (10) Fails to voluntarily furnish copies of a notice of
39 agency disclosure, and all listing agreements, sales
40 contracts, and lease agreements to all parties executing
41 the same;

42 (11) Pays or receives any rebate, profit, compensation
43 or commission as a result of a real estate transaction
44 from any person other than his or her principal;

45 (12) Induces any party to a contract, sale or lease to
46 enter into another contract, in lieu thereof, for the
47 personal gain of the licensee;

48 (13) Accepts a commission or other valuable consid-
49 eration as a real estate salesperson for the performance
50 of any of the acts specified in this article, from any
51 person, other than his or her employer, who must be a
52 licensed real estate broker;

53 (14) Pays a commission or other valuable considera-
54 tion to any person for acts or services performed either
55 in violation of this article or the real estate licensure
56 laws of any other state;

57 (15) Engages in the unlawful or unauthorized practice
58 of law as defined by the supreme court of appeals of
59 West Virginia;

60 (16) Procures an attorney for any customer or solicits
61 legal business for any attorney-at-law;

62 (17) Engages in any act or conduct which constitutes
63 or demonstrates bad faith, incompetency or untrust-
64 worthiness, or dishonest, fraudulent or improper
65 dealing;

66 (18) Has been convicted in a court of competent
67 jurisdiction in this or in any other state of forgery,
68 embezzlement, obtaining money under false pretense,
69 extortion, conspiracy to defraud or of any other like
70 offense; or

71 (19) Has been convicted in a court of competent
72 jurisdiction in this or any other state of a felony.

73 As used in this section:

74 (1) The words "convicted in a court of competent
75 jurisdiction" mean a plea of guilty or nolo contendere
76 entered by a person or a verdict of guilt returned
77 against a person at the conclusion of a trial;

78 (2) A certified copy of a guilty verdict or plea entered
79 in such court is sufficient evidence to demonstrate a
80 person has been convicted in a court of competent
81 jurisdiction.

§47-12-12. Notice of hearing on complaint; conduct of hearing.

1 Upon complaint initiated by the commission or filed
2 with it, the licensee shall be given ten days' written
3 notice of hearing upon the charges filed, together with
4 a copy of the complaint. The applicant or licensee shall
5 have an opportunity to be heard thereon in person, to
6 offer testimony in his or her behalf and to examine the
7 witnesses, appearing in connection with the complaint.
8 The hearing shall be conducted in accordance with the
9 provisions of article five, chapter twenty-nine-a of this
10 code, and all rights, procedures and duties contained
11 therein shall be observed.

§47-12-13. Appeals.

1 Any applicant or licensee, or person aggrieved, shall
2 have the right of appeal from any adverse ruling, order
3 or decision of the commission to the circuit court of the
4 county where the hearing was held within thirty days
5 from the service of notice of the action of the commission
6 upon the parties in interest.

7 (a) Notice of appeal shall be filed in the office of the
8 clerk of the circuit court wherein the hearing was held,
9 who shall issue a writ of certiorari directed to the
10 commission, commanding it, within ten days after
11 service thereof, to certify to such court, its entire record
12 in the matter in which the appeal has been taken. The
13 appeal shall thereupon be heard, in due course, by said
14 court, which shall review the record and make its
15 determination of the cause between the parties.

16 (b) In the event an appeal is taken by a licensee or
17 applicant, such an appeal shall not stay enforcement of
18 the commission's order or decision or act as a superse-
19 deas thereof unless otherwise ordered by the circuit
20 court.

21 (c) Any person taking an appeal shall post a satisfac-
22 tory bond in the amount of two hundred dollars for the
23 payment of any costs which may be adjudged against
24 him or her.

25 (d) Appeal may be taken from the circuit court to

26 supreme court of appeals by manner prescribed by law.

§47-12-14. Real estate courses for licensees; assisting studies, surveys, etc.

1 (a) The commission is authorized to conduct or hold
2 or to assist in conducting or holding real estate courses
3 or institutes. The commission may incur and pay the
4 necessary expenses in connection therewith. Such
5 courses or institutes are open to any licensee.

6 (b) The commission is authorized to assist libraries,
7 real estate institutes and foundations with financial aid
8 or otherwise, in providing texts, sponsoring studies,
9 surveys and programs for the benefit of real estate and
10 the elevation of the real estate business.

11 (c) The commission may provide correspondence
12 courses for applicants for brokers' and salespersons'
13 licenses sufficient to meet the educational requirements
14 contained in subsections (3) and (4), section four of this
15 article as an alternative means of meeting said educa-
16 tional requirements.

§47-12-15. Executive director's bond.

1 The executive director appointed by the commission
2 shall give bond in such sum with surety as the commis-
3 sion may direct and approve.

§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 as
13 a real estate salesperson, but any such action shall be
14 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 salesperson's license granted to any
22 person by virtue of his or her employment by the broker
23 whose license has been revoked, pending a change of
24 employer and the issuance of a new license. Such new
25 license shall be issued without charge if granted during
26 the same year in which the original license was granted.

27 (c) A broker or salesperson who obtains a listing shall,
28 at the time of securing such listing, give the person or
29 persons signing such listing a true, legible copy thereof.
30 Every listing agreement, exclusive or nonexclusive,
31 shall have set forth in its terms a definite expiration
32 date; it shall contain no provision requiring the party
33 signing such listing to notify the broker of his or her
34 intention to cancel such listing after such definite
35 expiration date: *Provided*, That an exclusive listing
36 agreement may provide that upon the expiration of the
37 exclusive feature the listing shall continue to a definite
38 expiration date as a nonexclusive listing only. No
39 provision shall be inserted in any listing agreement
40 which would obligate the person, partnership, associa-
41 tion or corporation signing such listing to pay a
42 commission or other valuable consideration to the
43 broker after such expiration date if the property is then
44 listed by a different broker: *Provided, however*, That if
45 there is a currently enforceable offer to purchase
46 pending on the listed property at the time of the listing's
47 expiration, the first broker may still be entitled to a
48 commission or other valuable consideration.

49 (d) A broker or salesperson shall promptly, or at least
50 prior to any purchaser signing a written offer to
51 purchase, disclose in writing to all parties to a r

52 estate transaction, on a form promulgated by the
53 commission, whether the broker or salesperson repres-
54 ents the seller, the buyer, or both.

55 (e) A broker or salesperson shall promptly tender to
56 the seller every written offer to purchase obtained on the
57 property involved and, upon obtaining a proper accep-
58 tance of the offer to purchase, shall promptly deliver
59 true executed copies of same, signed by the seller and
60 purchaser, to both purchaser and seller; all brokers and
61 salespersons shall make certain that all of the terms and
62 conditions of the real estate transaction are included in
63 such offer to purchase.

§47-12-18. Trust fund accounts; records.

1 Every person, partnership or corporation holding a
2 broker's license under provisions of the real estate
3 license law who does not immediately place all funds
4 entrusted to him or her by his or her principal or others
5 in a neutral escrow depository or in the hands of
6 principals, shall maintain a trust fund account with
7 some bank or recognized depository and place all such
8 entrusted funds therein upon receipt.

9 Said trust fund account shall designate him or her as
10 trustee and all such trust fund accounts must provide
11 for withdrawal of the funds without previous notice.

12 Every broker required to maintain such trust fund
13 account shall keep records of all funds deposited therein,
14 which records shall clearly indicate the date and from
15 whom he or she received the money, date deposited, date
16 of withdrawals and other pertinent information concern-
17 ing the transaction, and shall clearly show for whose
18 account the money is deposited and to whom the money
19 belongs.

20 All such records and funds shall be subject to
21 inspection by the commission.

§47-12-23. Duration of existing licenses.

1 All licenses issued either to a real estate broker or
2 real estate salesperson preceding the effective date of
3 this article, shall be valid until the thirtieth day of June,

4 one thousand nine hundred fifty-nine, in absence of any
5 reason appearing to the commission to cancel and
6 withdraw any license issued by it, for violation of any
7 provisions of this article.

CHAPTER 111

(H. B. 2568—By Delegates Browning, Prezioso, Campbell,
Lindsey, Smith, Ashley and Wallace)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections twenty-two-b and twenty-two-d, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, providing for payment of supplemental benefits from the public employees retirement fund.

Be it enacted by the Legislature of West Virginia:

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

§5-10-22b. Supplemental benefits for certain annuitants.

§5-10-22d. Supplemental benefits for certain annuitants.

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-22b. Supplemental benefits for certain annuitants.

1 Any annuitant who is receiving a retirement annuity
2 of less than seven thousand five hundred dollars
3 annually shall receive, upon application, a supplemental
4 benefit, prospectively, under this section from the public
5 employees retirement fund: *Provided*, That the effective
6 date of retirement for such annuitant was prior to the
7 first day of July, one thousand nine hundred seventy-
8 nine, and he had ten years or more of credited service
9 at the time of such retirement. For the purposes of this
10 section, "effective date of retirement" means the last day
11 of actual employment, or the last day carried on the
12 payroll of the employer, whichever is later, together
13 with a meeting fully of all eligibility requirements for

14 retirement prior to the aforesaid effective date. Any
15 annuitant retired pursuant to the disability provisions
16 of this article shall be considered to have had ten years
17 or more credited service at the time of such retirement.

18 Each such annuitant shall receive as his supplemental
19 benefit an increased annual amount which is the
20 product of the sum of eighteen dollars multiplied by his
21 years of credited service: *Provided*, That the total
22 annuity of any annuitant affected by the provisions of
23 this section, together with any of the other provisions of
24 this article, shall not exceed seven thousand five
25 hundred dollars annually.

26 Any annuitant receiving the supplemental benefit
27 provided for herein for the annuity payment period just
28 prior to the first day of July, one thousand nine hundred
29 eighty-five, or any annuitant made newly eligible for
30 receipt of such supplemental benefit on such date, shall
31 receive a nineteen percent increase in the amount of
32 such supplemental benefit prior received or newly
33 calculated, effective on and after the first day of July,
34 one thousand nine hundred eighty-five, and irrespective
35 of the maximum total annuity proviso and limitation of
36 seven thousand five hundred dollars annually. In any
37 fiscal year in which pay increases are granted by the
38 Legislature to active public employees, there may also
39 be given an increase in retirement benefits for retired
40 public employees, if funding is available for this
41 purpose.

42 For the purpose of calculating the supplemental
43 benefit provided in this section, fractional parts of a
44 service credit year are to be disregarded unless in excess
45 of one half of a credited service year, in which event the
46 same shall constitute a full year of service credit.

47 For the purpose of computation for determination of
48 eligibility and for the amount of any supplemental
49 benefit hereunder, separate computation shall be made
50 of a retirant's own benefit and that which may be
51 receivable as beneficiary of another, under the provis-
52 ions of this article, with each such benefit being eligible
53 for the supplemental benefit herein provided.

§5-10-22d. Supplemental benefits for certain annuitants.

1 Beginning on the first day of January, one thousand
2 nine hundred ninety-one, as an additional supplement to
3 other retirement allowances provided, any annuitant
4 who is receiving a retirement annuity on the effective
5 date of this section shall receive a supplemental benefit,
6 prospectively, if the effective date of retirement for such
7 annuitant was prior to the first day of January, one
8 thousand nine hundred eighty-one. Each such annuitant
9 shall receive as his or her supplemental benefit an
10 increased annual amount which is the product of the
11 sum of six dollars multiplied by his or her years of
12 credited service. Nothing in this or any other section of
13 this code shall be construed to require any appropriation
14 of state general revenue funds for the payment of any
15 benefit provided for in this section.

CHAPTER 112

(S. B. 471—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed April 9, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to division of public safety; and creating a grievance procedure recommendation board and its duties.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

§15-2-6. Division appeals boards; appeal procedures.

1 (a) On or before the first day of July, one thousand
2 nine hundred ninety-three, the superintendent shall

3 establish a grievance procedure recommendation board
4 which shall be composed of seven members of the
5 division of public safety. Two members of the board
6 shall be selected by the superintendent. Three members
7 of the board shall be elected at large by all the
8 membership of the division of public safety, and two
9 members of the board shall be chosen by the trade or
10 professional organization which has the largest number
11 of members of the division within its membership. The
12 grievance procedure recommendation board shall meet
13 as directed by the superintendent for the purpose of
14 recommending proposed changes or amendments, if
15 any, to existing procedures and other guidelines for the
16 administration of grievances brought by members of the
17 division of public safety as set forth in subsection (b) of
18 this section. Any changes or amendments recommended
19 by the grievance procedure recommendation board shall
20 be reviewed by the superintendent and, after the
21 superintendent's approval, shall be promulgated as
22 legislative rules in accordance with the provisions of
23 article one, chapter twenty-nine-a of this code. After the
24 effective date of said legislative rules, the procedures
25 outlined in subsection (b) of this section shall cease to
26 be of any force or effect and shall be void: *Provided,*
27 That following promulgation of the rules as contem-
28 plated in this section, the board will continue to exist
29 for one full year and shall meet at the direction of the
30 superintendent to assess or make recommendations
31 regarding the division's grievance procedure.

32 (b) Appeals of transfers, suspensions, demotions in
33 rank and discharges shall be heard by boards of appeals
34 convened pursuant to the provisions of this section. The
35 boards shall each consist of seven members and five
36 members shall constitute a quorum. A new board shall
37 be convened to hear and determine each new appeal
38 filed by a member of the department. There may be
39 more than one board in existence at the same time
40 meeting on different appeals. A member of the retire-
41 ment board is eligible to serve on an appeals board.

42 The members of a board shall be one member of the

43 department who is of the rank of trooper and six
44 members of the department who are of one of each of
45 the six consecutive ranks above trooper, all of whom
46 shall be chosen by lot by the superintendent with each
47 member to be so chosen from among all members of
48 each of the seven ranks. No department member may
49 serve on an appeals board if he is a member of the same
50 detachment as the member making the appeal. Within
51 ten days after he has been notified of his selection and
52 assignment to serve on a board, a member may for cause
53 request to be relieved of such assignment. The superin-
54 tendent shall determine whether the reasons alleged by
55 the member are sufficient cause to relieve the member
56 of such assignment. If such request is granted by the
57 superintendent, a new board member shall be selected
58 by lot from the same rank to replace the member who
59 has been relieved of such assignment.

60 A chairman shall be selected by the members of the
61 board. Each member of a board shall be reimbursed for
62 all reasonable and necessary expenses actually incurred
63 in attending meetings of a board. All expenses of a
64 board shall be paid from appropriations to the
65 department.

66 Within fifteen days after a member of the department
67 has received a notice of transfer or a statement of
68 charges and an order of suspension, demotion in rank
69 or discharge by the superintendent, he may appeal the
70 transfer or order to an appeals board by filing a written
71 notice of appeal with the superintendent. The superin-
72 tendent shall promptly record and file each appeal,
73 select a board, notify each new board member of his
74 selection, and furnish to each board member a copy of
75 the notice or order appealed from and the notice of
76 appeal. A hearing by a board of appeals shall be held
77 within thirty days after the superintendent has received
78 a member's notice of appeal. At least fifteen days prior
79 to the hearing date, the board shall notify the superin-
80 tendent and the member making the appeal of the date,
81 time and place of the hearing.

82 Any member of the department who makes a

83 appeal, as aforesaid, may be represented by an attorney
84 or by any member of the department or retired member
85 who is receiving benefits from the death, disability and
86 retirement fund. The superintendent may be repres-
87 ented by counsel of his choice. In the appeal of a
88 transfer, the superintendent has the burden of proof that
89 the transfer is for the purpose of the operational needs
90 of the department. In any other appeal the superintend-
91 ent has the burden of proof as to the charges alleged.
92 The procedure in any hearing before the board shall be
93 informal and without adherence to the technical rules
94 of evidence required in proceedings in courts of record.
95 All evidence submitted to the board shall be submitted
96 under oath. The chairman, or any member of the board,
97 shall have authority to administer oaths to witnesses,
98 subpoena witnesses and compel the production of books
99 and papers pertinent to any appeal or hearing autho-
100 rized by this section.

101 If any person subpoenaed to appear at any appeal or
102 hearing shall refuse to appear, or shall refuse to answer
103 inquiries propounded at the appeal or hearing or shall
104 fail or refuse to produce books and papers which have
105 been subpoenaed which are pertinent to any appeal or
106 hearing authorized by this section, the board shall
107 report the facts to the circuit court of Kanawha county
108 or the circuit court of any county in which the hearing
109 is being conducted and such court may compel obe-
110 dience to the subpoena as though such subpoena had
111 been issued by such court in the first instance. A person
112 giving testimony at an appeal or hearing authorized by
113 this section shall not be liable for such testimony given
114 in good faith and without malicious intent.

115 The board shall designate a reporter for any such
116 hearing who shall record and transcribe all of the
117 proceedings. Upon his demand, the member making the
118 appeal shall have a public hearing on the charges and
119 in the absence of such demand, the board may deter-
120 mine whether or not the hearing should be public. Any
121 hearing may be continued, recessed or adjourned by the
122 board.

123 The superintendent shall provide reasonable space for
124 the conduct of hearings. The charges of the reporter
125 shall be paid by the superintendent from available
126 appropriations. At the conclusion of the hearing, the
127 board shall determine whether or not the superintend-
128 ent's order shall be sustained. The board's decision shall
129 be issued in writing, with copies thereof being sent by
130 the board to the superintendent and to the appealing
131 member by certified mail, return receipt requested. A
132 hearing shall be conducted by at least five members of
133 the board and the decision of the board shall be made
134 by a majority vote of all the members of the board.

135 Either party aggrieved by a decision of a board of
136 appeals may appeal the decision to the circuit court of
137 Kanawha county within sixty days of receipt of a copy
138 of the board's decision.

139 The court shall hear the appeal upon the record and
140 determine all questions submitted to it on appeal.

141 In the event any decision sustaining the superintend-
142 ent's order or notice is reversed upon judicial review,
143 which reversal is final, the superintendent shall return
144 the member to his status prior to the superintendent's
145 order or notice without any acts or action of reprisal or
146 reprimand, with full payment of any compensation
147 withheld and with full credit for service between the
148 date the superintendent issued his order or notice and
149 the date of the final judicial decision reversing the
150 decision of the board.

CHAPTER 113

(H. B. 2234—By Mr. Speaker, Mr. Chambers, and Delegate Rowe)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to age qualifications for members of the division of public safety.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DIVISION OF PUBLIC SAFETY.

§15-2-7. Cadet selection board; qualifications for and appointment to membership in division; civilian employees.

1 (a) The superintendent shall establish within the
2 division of public safety a cadet selection board which
3 shall be representative of commissioned and noncommis-
4 sioned officers within the division.

5 (b) The superintendent shall appoint a member to the
6 position of trooper from among the top three names on
7 the current list of eligible applicants established by the
8 cadet selection board.

9 (c) Preference in making appointments shall be given
10 whenever possible to honorably discharged members of
11 the armed forces of the United States and to residents
12 of West Virginia. Each applicant for appointment shall
13 be a person not less than twenty-one years of age, of
14 sound constitution and good moral character; shall be
15 required to pass any mental and physical examination
16 and meet other requirements as may be provided for in
17 rules promulgated by the cadet selection board: *Pro-*
18 *vided*, That a former member may, at the discretion of
19 the superintendent, be reenlisted.

20 (d) No person may be barred from becoming a
21 member of the division because of his religious or
22 political convictions.

23 (e) The superintendent shall adhere to the principles
24 of equal employment opportunity set forth in article
25 eleven, chapter five of this code, and shall take positive
26 steps to encourage applications for division membership
27 from females and minority groups within the state.

28 (f) Except for the superintendent, no person may be
29 appointed or enlisted to membership in the division at
30 a grade or rank above the grade of trooper.

31 (g) The superintendent shall appoint such civilian
32 employees as may be necessary, and all such employees
33 may be included in the classified service of the civil
34 service system except those in positions exempt under
35 the provisions of article six, chapter twenty-nine of this
36 code.

CHAPTER 114

(H. B. 2293—By Mr. Speaker, Mr. Chambers, and
Delegates Martin and Mezzatesta)

[Passed April 10, 1993; in effect ninety days from passage. 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, relating to the powers of the superintendent of the division of public safety; and authorizing the sale of surplus real property.

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 to read as follows:

ARTICLE 2. DEPARTMENT 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
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 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 munic-
79 ipality 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 propos-
96 als for a comprehensive county or multicounty plan on
97 the 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.

137 (k) The superintendent may at his discretion and upon
138 the written request of the West Virginia alcohol
139 beverage control commissioner assist the commissioner
140 in the coordination and enforcement of the alcohol
141 beverage control act and the general law concerning
142 nonintoxicating beer and wine.

143 (l) Notwithstanding the provisions of article one-a,
144 chapter twenty of this code, the superintendent of the
145 division of public safety may sell any surplus property
146 to which the division of public safety or its predecessors
147 retain title, and deposit the net proceeds into a special
148 revenue account to be utilized for the purchase of
149 additional real property and for repairs to or construc-
150 tion of detachment offices or other facilities required by
151 the division of public safety. There is hereby created a
152 special revolving fund in the state treasury which shall
153 be designated as the "surplus real property proceeds
154 fund." The fund shall consist of all money received from
155 the sale of surplus real property owned by the division
156 of public safety. Moneys deposited in the fund shall only
157 be available for expenditure upon appropriation by the
158 Legislature: *Provided*, That amounts collected which are
159 found from time to time to exceed the funds needed for
160 the purposes set forth in this subsection may be
161 transferred to other accounts or funds and redesignated
162 for other purposes by appropriation of the Legislature.

CHAPTER 115

(Com. Sub. for S. B. 53—By Senator Wooton)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article ten, relating to law enforcement; cooperation between federal, state, municipal and county law-enforce-

ment agencies; providing for mutual assistance in law enforcement among certain law-enforcement agencies; providing for the integration of law-enforcement agency to function on a multijurisdictional basis; term of agreements; withdrawal; and filing requirement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-1. Short title.

§15-10-2. Legislative findings.

§15-10-3. Definitions.

§15-10-4. Cooperation between law-enforcement agencies.

§15-10-1. Short title.

1 This article shall be known as the "West Virginia
2 Law-Enforcement Mutual Assistance Act".

§15-10-2. Legislative findings.

1 The Legislature hereby finds and declares that the
2 commission of various crimes against the peace and
3 dignity of the state of West Virginia quite often crosses
4 county and municipal boundaries, affecting the citizenry
5 of this state and making difficult the tasks of detecting
6 and preventing crime by law-enforcement agencies due
7 to restrictions imposed by municipal and county
8 boundaries; that many county and municipal law-
9 enforcement agencies do not, by themselves, have
10 sufficient resources in personnel, equipment and
11 particular areas of expertise to adequately prevent or
12 detect those crimes or criminal activities which cross
13 such county and municipal boundaries; that it is in the
14 best interest of the citizens of this state for law-
15 enforcement agencies to share resources and to provide
16 mutual assistance to each other; and that, therefore, the
17 Legislature finds and declares that the various law-
18 enforcement agencies within the state should be permit-
19 ted and empowered to share resources and provide
20 mutual assistance for the prevention and detection of
21 crime.

§15-10-3. Definitions.

1 In this article, unless a different meaning plainly is
2 required:

3 (1) "Criminal justice enforcement personnel" means
4 those persons within the state criminal justice system
5 who are actually employed as members of the division
6 of public safety, state conservation officers, chiefs of
7 police and police of incorporated municipalities, and
8 county sheriffs and their deputies, and whose primary
9 duties are the investigation of crime and the apprehen-
10 sion of criminals.

11 (2) "Head of a law-enforcement agency" means the
12 superintendent of the division of public safety, the chief
13 conservation officer of the division of natural resources,
14 a chief of police of an incorporated municipality or a
15 county sheriff.

§15-10-4. Cooperation between law-enforcement agencies.

1 (a) The head of any law-enforcement agency as
2 defined in section three of this article may temporarily
3 provide assistance and cooperation to another agency of
4 the state criminal justice system or to a federal law-
5 enforcement agency in investigating crimes or possible
6 criminal activity if requested to do so in writing by the
7 head of another law-enforcement agency or federal law-
8 enforcement agency. Such assistance may also be
9 provided upon the request of the head of the law-
10 enforcement agency or federal law-enforcement agency
11 without first being reduced to writing in emergency
12 situations involving the imminent risk of loss of life or
13 serious bodily injury. The assistance may include, but
14 is not limited to, entering into a multijurisdictional task
15 force agreement to integrate federal, state, county and
16 municipal law-enforcement agencies or any combination
17 thereof, for the purpose of enhancing interagency
18 coordination, intelligence gathering, facilitating multi-
19 jurisdictional investigations, providing criminal justice
20 enforcement personnel of the law-enforcement agency to

21 work temporarily with personnel of another agency,
22 including in an undercover capacity, and making
23 available equipment, training, technical assistance and
24 information systems for the more efficient investigation,
25 apprehension and adjudication of persons who violate
26 the criminal laws of this state or the United States, and
27 to assist the victims of such crimes. When providing the
28 assistance under the provisions of this article, a head of
29 a law-enforcement agency shall comply with all appli-
30 cable statutes, ordinances, rules, policies or guidelines
31 officially adopted by the state or the governing body of
32 the city or county by which he is employed, and any
33 conditions or restrictions included therein.

34 (b) While temporarily assigned to work with another
35 law-enforcement agency or agencies, criminal justice
36 enforcement personnel shall have the same jurisdiction,
37 powers, privileges and immunities, including those
38 relating to the defense of civil actions, as such criminal
39 justice enforcement personnel would enjoy if actually
40 employed by the agency to which they are assigned, in
41 addition to any corresponding or varying jurisdiction,
42 powers, privileges and immunities conferred by virtue
43 of their continued employment with the assisting
44 agency.

45 (c) While assigned to another agency or to a multiju-
46 risdictional task force, criminal justice enforcement
47 personnel shall be subject to the lawful operational
48 commands of the superior officers of the agency or task
49 force to which they are assigned, but for personnel and
50 administrative purposes, including compensation, they
51 shall remain under the control of the assisting agency.
52 These assigned personnel shall continue to be covered by
53 all employee rights and benefits provided by the
54 assisting agency, including workers' compensation, to
55 the same extent as though such personnel were function-
56 ing within the normal scope of their duties.

57 (d) No request or agreement between the heads of
58 law-enforcement agencies made or entered into pursu-
59 ant to the provisions of this article shall remain in force
60 and effect for a period of more than twelve months
61 unless renewed in writing by the parties thereto nor

62 shall any request or agreement made or entered into
63 pursuant to the provisions of this article have force or
64 effect until a copy of said request or agreement is filed
65 with the office of the circuit clerk of the county or
66 counties in which the law-enforcement agencies involved
67 operate. Upon filing, the requests or agreements may be
68 sealed, subject to disclosure pursuant to an order of a
69 circuit court directing disclosure for good cause.
70 Nothing in this article shall be construed to limit the
71 authority of the head of a law-enforcement agency to
72 withdraw from any agreement at any time.

73 (e) Nothing contained in this article shall be construed
74 so as to grant, increase, decrease or in any manner affect
75 the civil service protection or the applicability of civil
76 service laws as to any criminal justice enforcement
77 personnel or agency operating under the authority of
78 this article, nor shall this article in any way reduce or
79 increase the jurisdiction or authority of any criminal
80 justice enforcement personnel or agency, except as
81 specifically provided herein.

CHAPTER 116

(Com. Sub. for H. B. 2206—By Mr. Speaker, Mr. Chambers, and
Delegates Houvouras, Schoonover and Tribett)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend article three, chapter twenty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-b, relating to locomotive power units; requiring railroad crew-controlled units to be operated by at least two persons; exceptions; requiring an engineer to be part of the crew; restricting selection of the crew; definitions; and promulgation of rules.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES
SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-1b. Locomotive power units; helper units; one person crew prohibited; engineer requirement; restrictions on selection of crew; definitions; promulgation of rules.

1 (a) Except for operation in its yards or terminals, and
2 except where a train is being moved as an actual
3 movement into or from another state not having a
4 requirement of at least two persons controlling a
5 locomotive as is required in this state pursuant to this
6 section, no railroad may permit or require any crew-
7 controlled locomotive power unit, including helper units,
8 that is not attached to a train to be operated by a crew
9 of fewer than two persons. At least one crew member
10 shall be a federal railroad administration certified and
11 licensed locomotive engineer within the meaning of
12 applicable federal statutes and regulations. The second
13 crew member shall be selected from either train service
14 or engine service personnel: *Provided*, That the selection
15 does not violate federal statutes or regulations or local
16 collective bargaining agreements.

17 (b) As used in this section:

18 (1) "Crew-controlled locomotive" means a locomotive
19 power unit, single or in multiple, which is operated by
20 on-board personnel, but does not include units controlled
21 by radio or other remote control by a crew on another
22 locomotive power unit.

23 (2) "Helper unit" means a locomotive power unit
24 placed at some point in a train for the purpose of
25 supplementing the power available from the locomotive
26 power unit controlling a train.

27 (c) It is unlawful to institute any disciplinary action
28 or other adverse administrative action against any
29 person who reports a violation of or acts to enforce the
30 provisions of this section or this article. The person's
31 remedies under this section are in addition to any other
32 remedies that may be otherwise available.

33 (d) The public service commission shall, on or before
34 the first day of July, one thousand nine hundred ninety-
35 three, promulgate rules to implement the provisions of
36 this section.

CHAPTER 117

(S. B. 576—By Senators Wooton, Felton, Plymale,
Minard, Anderson, Dittmar and Yoder)

[Passed April 8, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three, five and six, article twenty-five, 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 seven, all relating to limiting the liability of landowners; permitting landowners to collect money for the annual use of land without incurring liability for other than willful or malicious failure to guard or warn against a dangerous or hazardous condition, use, structure or activity; defining terms; limiting the liability of landowners who allow their property to be used for military training purposes; and providing for certain insurance policy requirements.

Be it enacted by the Legislature of West Virginia:

That sections one, three, five and six, article twenty-five, 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 seven, all to read as follows:

ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.

§19-25-1. Purpose.

§19-25-3. Limiting duty of landowner who leases land to state, counties, municipalities or agencies.

§19-25-5. Definitions.

§19-25-6. Limiting duty of landowner for use of land for military purposes.

§19-25-7. Insurance policies.

§19-25-1. Purpose.

- 1 The purpose of this article is to encourage owners of
- 2 land to make available to the public land and water
- 3 areas for military training or recreational or wildlife
- 4 propagation purposes by limiting their liability toward

5 persons entering thereon and toward persons who may
6 be injured or otherwise damaged by the acts or
7 omissions of persons entering thereon.

§19-25-3. Limiting duty of landowner who leases land to state, counties, municipalities or agencies.

1 Unless otherwise agreed in writing, an owner of land
2 leased to the state or any agency thereof, or any county
3 or municipality or agency thereof, for military training
4 or recreational or wildlife propagation purposes owes no
5 duty of care to keep that land safe for entry or use by
6 others or to give warning to persons entering or going
7 upon the land of any dangerous or hazardous conditions,
8 uses, structures or activities thereon. An owner who
9 leases land to the state or any agency thereof, or any
10 county or municipality or agency thereof, for military
11 training or recreational or wildlife propagation pur-
12 poses shall not by giving a lease: (a) Extend any
13 assurance to any person using the land that the premises
14 are safe for any purpose; or (b) confer upon those
15 persons the legal status of an invitee or licensee to whom
16 a duty of care is owed; or (c) assume responsibility for
17 or incur liability for any injury to person or property
18 caused by an act or omission of a person who enters upon
19 the leased land. The provisions of this section apply
20 whether the person entering upon the leased land is an
21 invitee, licensee, trespasser or otherwise.

§19-25-5. Definitions.

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

3 (1) "Charge" means:

4 (A) For purposes of limiting liability for recreational
5 or wildlife propagation purposes set forth in section two
6 of this article, the amount of money asked in return for
7 an invitation to enter or go upon the land, including a
8 one-time fee for a particular event, amusement, occur-
9 rence, adventure, incident, experience or occasion but
10 not including an amount of money not to exceed fifty
11 dollars a year for an individual for the annual use of
12 land;

13 (B) For purposes of limiting liability for military
14 training set forth in section six of this article, the
15 amount of money asked in return for an invitation to
16 enter or go upon the land;

17 (2) "Land" includes, but shall not be limited to, roads,
18 water, watercourses, private ways and buildings,
19 structures and machinery or equipment thereon when
20 attached to the realty;

21 (3) "Owner" includes, but shall not be limited to,
22 tenant, lessee, occupant or person in control of the
23 premises;

24 (4) "Recreational purposes" includes, but shall not be
25 limited to, any one or any combination of the following
26 noncommercial recreational purposes: Hunting, fishing,
27 swimming, boating, camping, picnicking, hiking,
28 pleasure driving, motorcycle or all-terrain vehicle
29 riding, nature study, water skiing, winter sports and
30 visiting, viewing or enjoying historical, archaeological,
31 scenic or scientific sites, or otherwise using land for
32 purposes of the user;

33 (5) "Wildlife propagation purposes" applies to and
34 includes all ponds, sediment control structures, perman-
35 ent water impoundments or any other similar or like
36 structure created or constructed as a result of or in
37 connection with surface mining activities, as governed
38 by article three, chapter twenty-two-a of this code, or
39 from the use of surface in the conduct of underground
40 coal mining as governed by articles one, two and three
41 of said chapter, and rules promulgated thereunder,
42 which ponds, structures or impoundments are hereafter
43 designated and certified in writing by the director of the
44 division of natural resources and the owner to be
45 necessary and vital to the growth and propagation of
46 wildlife, animals, birds and fish or other forms of
47 aquatic life, and finds and determines that the premises
48 has the potential of being actually used by the wildlife
49 for those purposes and that the premises are no longer
50 used or necessary for mining reclamation purposes. The
51 certification shall be in form satisfactory to the director
52 and shall provide that the designated ponds, structures

53 or impoundments shall not be removed without the joint
54 consent of the director and the owner; and

55 (6) "Military training" includes, but is not limited to,
56 training, encampments, instruction, overflight by
57 military aircraft, parachute drops of personnel or
58 equipment or other use of land by a member of the army
59 national guard or air national guard, a member of a
60 reserve unit of the armed forces of the United States or
61 a person on active duty in the armed forces of the United
62 States, acting in that capacity.

**§19-25-6. Limiting duty of landowner for use of land for
military purposes.**

1 Notwithstanding the provisions of section four of this
2 article to the contrary, an owner of land owes no duty
3 of care to keep the premises safe for entry or use by
4 others for military training purposes, regardless of
5 whether any charge is made therefor, or to give any
6 warning of a dangerous or hazardous condition, use,
7 structure or activity on the premises to persons entering
8 for those purposes.

9 Notwithstanding the provisions of section four of this
10 article to the contrary, an owner of land who either
11 directly or indirectly invites or permits, either with or
12 without charge, any person to use the property for
13 military training purposes does not thereby: (a) Extend
14 any assurance that the premises are safe for any
15 purpose; or (b) confer upon those persons the legal status
16 of an invitee or licensee to whom a duty of care is owed;
17 or (c) assume responsibility for or incur liability for any
18 injury to person or property caused by an act or
19 omission of those persons.

§19-25-7. Insurance policies.

1 Any policy or contract of liability insurance providing
2 coverage for liability sold, issued or delivered in this
3 state to any owner of lands covered under the provisions
4 of this article shall be read so as to contain a provision
5 or endorsement whereby the company issuing such
6 policy waives or agrees not to assert as a defense on
7 behalf of the policyholder or any beneficiary thereof, to

8 any claim covered by the terms of such policy within the
9 policy limits, the immunity from liability of the insured
10 by reason of the use of such insured's land for recrea-
11 tional, wildlife propagation or military purposes, unless
12 such provision or endorsement is rejected in writing by
13 the named insured.

CHAPTER 118

(Com. Sub. for H. B. 2483—By Delegates Gallagher, Rowe and L. White)

[Passed March 25, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter thirty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article fifteen, relating to factory-built home site rentals generally; defining terms; requiring written agreements; limiting liability of secured parties; prohibiting certain acts and conduct; providing procedures for terminating tenancy; limiting effect on taxation.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. HOUSE TRAILERS, MOBILE HOMES, MANUFACTURED HOMES AND MODULAR HOMES.

- §37-15-1. Purpose and applicability.
- §37-15-2. Definitions.
- §37-15-3. Written agreement required.
- §37-15-4. Liability of secured party taking possession of an abandoned factory-built home.
- §37-15-5. Demands and charges prohibited; access by tenant's invitee; purchases by factory-built home owner not restricted; exception; conditions of occupancy.
- §37-15-6. Termination of tenancy.
- §37-15-7. Retaliatory conduct prohibited.
- §37-15-8. Effect on taxation.

§37-15-1. Purpose and applicability.

1 The purpose of this article is to recognize the
2 distinction between a house trailer, a mobile home, a
3 manufactured home and a modular home. While it is the
4 intent of this article to include the different classifica-
5 tions of factory-built homes into a single category for the
6 purposes of this article, it is also the intent of this article
7 to acknowledge the differences between the various
8 types of factory-built homes for other purposes.

9 In addition, it is the purpose of this article to clarify
10 the ambiguity and confusion related to the classification
11 of factory-built homes as real or personal property,
12 particularly relating to security interests. The provi-
13 sions of this article apply to factory-built homes, as
14 defined herein, which are held as personal property
15 situated on real property owned by another in conjunc-
16 tion with a landlord/tenant relationship.

§37-15-2. Definitions.

1 For the purposes of this article, unless expressly
2 stated otherwise:

3 (a) "Abandoned factory-built home" means a factory-
4 built home occupying a factory-built home site, pursuant
5 to a written agreement under which the tenant has
6 defaulted in rent or the landlord has exercised any right
7 to terminate the rental agreement;

8 (b) "Factory-built home" includes modular homes,
9 mobile homes, house trailers and manufactured homes;

10 (c) "Factory-built home rental community" means a
11 parcel of land under single or common ownership upon
12 which two or more factory-built homes are located on
13 a continual, nonrecreational basis together with any
14 structure, equipment, road or facility intended for use
15 incidental to the occupancy of the factory-built homes,
16 but does not include premises used solely for storage or
17 display of uninhabited factory-built homes, or premises
18 occupied solely by a landowner and members of his
19 family;

20 (d) "Factory-built home site" means a parcel of land
21 within the boundaries of a factory-built home rental
22 community provided for the placement of a single

23 factory-built home and the exclusive use of its
24 occupants;

25 (e) "House trailers" means all trailers designed or
26 intended for human occupancy and commonly referred
27 to as mobile homes or house trailers, and shall include
28 fold down camping and travel trailers as these terms are
29 defined in section one, article six, chapter seventeen-a
30 of this code, but only when such camping and travel
31 trailers are located in a factory-built home rental
32 community, as defined in this section, on a continual,
33 nonrecreational basis;

34 (f) "Landlord" means the factory-built home rental
35 community owner, lessor or sublessor of the factory-
36 built home rental community, or an agent or represen-
37 tative authorized to act on his or her behalf in connec-
38 tion with matters relating to tenancy in the community;

39 (g) "Manufactured home" has the same meaning as
40 the term is defined in section two, article nine, chapter
41 twenty-one of this code which meets the National
42 Manufactured Housing Construction and Safety Stand-
43 ards Act of 1974 (42 U.S.C. §§5401 et seq.), effective on
44 the fifteenth day of June, one thousand nine hundred
45 seventy-six, and the federal manufactured home con-
46 struction and safety standards and regulations promul-
47 gated by the secretary of the United States department
48 of housing and urban development;

49 (h) "Mobile home" means a transportable structure
50 that is wholly, or in substantial part, made, fabricated,
51 formed or assembled in manufacturing facilities for
52 installation or assembly and installation on a building
53 site and designed for long-term residential use and built
54 prior to enactment of the Federal Manufactured
55 Housing Construction and Safety Standards Act of 1974
56 (42 U.S.C. §§5401 et seq.), effective on the fifteenth day
57 of June, one thousand nine hundred seventy-six, and
58 usually built to the voluntary industry standard of the
59 American National Standards Institute (ANSI)-A119.1
60 Standards for Mobile Homes;

61 (i) "Modular home" means any structure that is
62 wholly, or in substantial part, made, fabricated, formed

63 or assembled in manufacturing facilities for installation
64 or assembly and installation on a building site and
65 designed for long-term residential use and is certified
66 as meeting the standards contained in the state fire code
67 encompassed in the legislative rules promulgated by the
68 state fire commission pursuant to section five-b, article
69 three, chapter twenty-nine of this code;

70 (j) "Owner" means one or more persons, jointly or
71 severally, in whom is vested (i) all or part of the legal
72 title to the factory-built home rental community, or (ii)
73 all or part of the beneficial ownership and right to
74 present use and enjoyment of the factory-built homesite
75 or other areas specified in the rental agreement, and the
76 term includes a mortgagee in possession;

77 (k) "Rent" means payments made by the tenant to the
78 landlord for use of a factory-built home site and as
79 payment for other facilities or services provided by the
80 landlord; and

81 (l) "Tenant" means a person entitled pursuant to a
82 rental agreement to occupy a factory-built home site to
83 the exclusion of others.

§37-15-3. Written agreement required.

1 (a) The rental and occupancy of a factory-built home
2 site shall be governed by a written agreement which
3 shall be dated and signed by all parties thereto prior to
4 commencement of tenancy. A copy of the signed and
5 dated written agreement and a copy of this article shall
6 be given by the landlord to the tenant within seven days
7 after the tenant signs the written agreement.

8 (b) The written agreement, in addition to the provi-
9 sions otherwise required by law to be included, shall
10 contain:

11 (1) The terms of the tenancy and the rent therefor;

12 (2) The rules and regulations of the factory-built home
13 rental community. A copy of the text of the rules and
14 regulations attached as an exhibit satisfies this
15 requirement;

16 (3) The language of the provisions of this article. A

17 copy of the text of this article attached as an exhibit
18 satisfies this requirement;

19 (4) A description of the physical improvements and
20 maintenance to be provided by the tenant and the
21 landlord during the tenancy; and

22 (5) A provision listing those services which will be
23 provided at the time the rental agreement is executed
24 and will continue to be offered for the term of tenancy
25 and the fees, if any, to be charged for those services.

26 (c) The written agreement may not contain:

27 (1) Any provisions contrary to the provisions of this
28 article and shall not contain a provision prohibiting the
29 tenant who owns his or her factory-built home from
30 selling his or her factory-built home;

31 (2) Any provision that requires the tenant to pay any
32 recurring charges except fixed rent, utility charges or
33 reasonable incidental charges for services or facilities
34 supplied by the landlord; or

35 (3) Any provision by which the tenant waives his or
36 her rights under the provisions of this article.

37 (d) When any person possesses a security interest in
38 the factory-built home, the written agreement or rental
39 application shall contain the name and address of any
40 secured parties. The written agreement shall require
41 the tenant to notify the landlord within ten days of any
42 new security interest, change of existing security
43 interest, or settlement or release of the security interest.

44 (e) When a factory-built home owner sells a factory-
45 built home, the new owner shall enter into a written
46 agreement if the factory-built home continues to occupy
47 the site: *Provided*, That the new owner meets the
48 standards and restrictions contained in the prior rental
49 agreement.

**§37-15-4. Liability of secured party taking possession of
an abandoned factory-built home.**

1 (a) A secured party is not liable for rent to a landlord
2 except as provided below:

3 (1) When a factory-built home subject to a security
4 interest becomes an abandoned factory-built home, the
5 landlord shall mail a notice of abandonment to the
6 owner of the factory-built home and the secured party
7 by certified mail, at the addresses shown in the rental
8 agreement or rental application. The notice shall include
9 any rental agreement previously signed by the tenant
10 and the landlord, and shall also provide the landlord's
11 current mailing address;

12 (2) A secured party who has a security interest in an
13 abandoned factory-built home, and who has taken title
14 to the factory-built home under court order or under the
15 applicable security agreement, is liable to the landlord
16 under the same rental agreement terms as agreed on by
17 the tenant and the landlord prior to the accrual of a
18 right of possession by the secured party;

19 (3) Subject to any defenses the tenant may have, when
20 the tenant has failed to comply with the terms of the
21 written rental agreement regarding rent and payment
22 of fees, the tenant remains liable to the landlord for all
23 rent and services provided during the period while the
24 secured party is attempting to gain title or exercise a
25 right of possession to the factory-built home: *Provided,*
26 That when the landlord has terminated the rental
27 agreement, the tenant shall not be liable for further rent
28 or payment of fees to the landlord. The secured party
29 is not liable to the landlord or tenant for rent or services
30 until the secured party completes foreclosure proceed-
31 ings under the terms of the security agreement or
32 otherwise takes title or exercises a right of possession
33 to the factory-built home; or

34 (4) Upon completion of foreclosure proceedings,
35 acquiring title to or the exercise of a right of possession
36 to the secured party, the secured party shall imme-
37 diately notify the landlord of the completion of such
38 proceedings by certified mail at the address provided in
39 the landlord's notice of default. After the conveyance of
40 title to or the exercise of a right of possession to the
41 secured party, the secured party shall have ten business
42 days to remove the factory-built home. If a secured
43 party who has a security interest in an abandoned

44 factory-built home takes title to or possession of the
45 factory-built home and the factory-built home remains
46 in the factory-built home rental community for a period
47 longer than ten business days, the relationship between
48 the secured party and the landlord shall be governed by
49 the rental agreement previously signed by the tenant
50 and the landlord, except that the term of the rental
51 agreement shall convert to a month-to-month tenancy.
52 No waiver is required to convert the rental agreement
53 to a month-to-month tenancy. Either the landlord or the
54 secured party may terminate the month-to-month
55 tenancy upon giving written notice of a desire to
56 terminate to the other party thirty days or more in
57 advance of the proposed date of termination. The
58 secured party and the landlord may enter into a
59 subsequent agreement but are not required to execute
60 a new rental agreement.

61 (b) Nothing in this section may be construed to be a
62 waiver of any rights by the tenant.

**§37-15-5. Demands and charges prohibited; access by
tenant's invitee; purchases by factory-built
home owner not restricted; exception; condi-
tions of occupancy.**

1 (a) A landlord may not demand or collect:

2 (1) Any fee which is not listed in the rental agreement;

3 (2) An entrance fee for the privilege of renting or
4 occupying a factory-built home site;

5 (3) A commission on the sale of a factory-built home
6 located in the factory-built home rental community
7 unless the tenant expressly employs the landlord to
8 perform a service in connection with the sale, but
9 employment of the landlord by the tenant may not be
10 a condition or term of the initial sale or rental; or

11 (4) A fee for improvements or installations on the
12 interior of a factory-built home, unless the tenant
13 expressly employs the landlord to perform a service in
14 connection with such installation, improvement or sale.

15 (b) An invitee of the tenant has free access to the

16 tenant's factory-built home site without charge unless a
17 court of competent jurisdiction has ordered otherwise.

18 (c) A factory-built home owner may not be restricted
19 in his or her choice of vendors from whom he or she may
20 purchase his or her (i) factory-built home, except in
21 connection with the initial renting of a newly con-
22 structed factory-built home site not previously rented to
23 any other person, or (ii) goods and services. However,
24 nothing in this article prohibits a landlord from
25 prescribing reasonable requirements governing, as a
26 condition of occupancy, the style, size or quality of the
27 factory-built home, or other structures placed on the
28 factory-built home site.

§37-15-6. Termination of tenancy.

1 (a) Either party may terminate a rental agreement
2 which is for a term of thirty days or more by giving
3 written notice to the other party at least thirty days
4 prior to the termination date: *Provided*, That the rental
5 agreement may specify a period of notice in excess of
6 thirty days. A landlord may not cause the eviction of a
7 tenant by willfully interrupting gas, electricity, water
8 or any other essential service, or by removal of the
9 factory-built home from the factory-built home site, or
10 by any other willful self-help measure.

11 (b) A rental agreement may be terminated by the
12 landlord for the following reasons:

13 (1) Failure to comply with the terms of the rental
14 agreement;

15 (2) Condemnation of the community; or

16 (3) Change of use of the community: *Provided*, That
17 all requirements imposed by this chapter are complied
18 with.

19 (c) The landlord shall set forth in a notice of termi-
20 nation the reason relied upon for the termination with
21 specific facts to permit determination of the date, place,
22 witnesses and circumstances concerning that reason.

§37-15-7. Retaliatory conduct prohibited.

1 (a) Except as provided in this section, or as otherwise
2 provided by law, a landlord may not retaliate by
3 selectively increasing rent or decreasing services or by
4 bringing or threatening to bring an action for possession
5 after the landlord has knowledge that: (1) The tenant
6 has complained to a governmental agency charged with
7 responsibility for enforcement of a building or housing
8 code of a violation applicable to the premises materially
9 affecting health or safety; (2) the tenant has made a
10 complaint to or filed a suit against the landlord for a
11 violation of any provision of this article; (3) the tenant
12 has organized or become a member of a tenant's
13 organization; or (4) the tenant has testified in a court
14 proceeding against the landlord.

15 (b) Notwithstanding the provisions of subsection (a) of
16 this section, a landlord may terminate the rental
17 agreement pursuant to subsection (b), section six of this
18 article unless the magistrate or circuit court finds that
19 the reason for the termination was retaliation.

§37-15-8. Effect on taxation.

1 Nothing in this article shall be construed to affect the
2 taxation of factory-built homes.

CHAPTER 119

(Com. Sub. for S. B. 265—By Senator Claypole)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article fifteen, chapter thirty-seven 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 factory-built home site rentals; and requiring extended notice to tenants in cases of mass eviction.

Be it enacted by the Legislature of West Virginia:

That article fifteen, chapter thirty-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 six-a, to read as follows:

ARTICLE 15. HOUSE TRAILERS, MOBILE HOMES, MANUFACTURED HOMES AND MODULAR HOMES.**§37-15-6a. Termination of tenancy of more than twenty-five tenants.**

1 (a) A landlord of a factory-built home rental commu-
2 nity may not terminate a rental agreement nor otherwise
3 evict more than twenty-five tenants of any factory-built
4 home rental community within a single eighteen-month
5 period unless:

6 (1) The landlord obtains written agreement to volun-
7 tarily vacate the premises by every tenant prior to the
8 expiration of the eighteen-month period;

9 (2) The landlord provides not less than six months'
10 notice to terminate the rental agreement to each tenant;
11 or

12 (3) The tenant has breached a provision of the rental
13 agreement and the termination complies with the
14 requirements of this article.

15 (b) If a landlord violates the provisions of this section,
16 the tenant has a cause of action to recover actual
17 damages, the costs required to relocate the aggrieved
18 tenant and, in addition, a right to recover treble
19 damages or the equivalent of the aggrieved tenant's rent
20 for one year, whichever is greater, and reasonable
21 attorney fees.

CHAPTER 120

(H. B. 2628—By Delegates Burk and Beane)

[Passed April 8, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend article one, chapter thirty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section two-b, relating to the recordation of certified copies of instruments previously recorded or filed in an office of the clerk of the county commission of any other county within the state.

Be it enacted by the Legislature of West Virginia:

That article one, chapter thirty-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 two-b, to read as follows:

ARTICLE 1. AUTHENTICATION AND RECORD OF WRITINGS.

§39-1-2b. Recordation of certified copies of certain instruments.

1 Except as provided in this section, the clerk of the
2 county commission of any county shall admit to record
3 in the office of such clerk a copy of any contract, deed
4 of trust, mortgage, lease, memorandum of lease, release,
5 assignment, power of attorney or any other instrument
6 or writing which has been certified by the clerk of the
7 county commission of any other county of this state as
8 being a true and correct copy and transcript from the
9 records of said county. Any such recordations prior to
10 the effective date of this section shall constitute notice
11 with like effect as if such original instrument had been
12 recorded therein. This section does not apply to deeds,
13 wills or to any instrument filed in accordance with
14 chapter forty-six of this code.

CHAPTER 121

(Com. Sub. for S. B. 108—By Senators Humphreys, Yoder, Grubb, Walker,
Holliday, Wehrle, Chernenko, Blatnik and Macnaughtan)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new chapter, designated chapter forty-six-b; and to amend and reenact section thirty-two, article three, chapter sixty-one of said code, all relating to regulating the rental of consumer goods under rent-to-own agreements; creating the West Virginia consumer goods rental protection act; setting forth the short title of the act; stating the scope or application of the act; providing

for the applicability of the law of this state with respect to goods rented to a resident of this state; setting forth legislative purpose and intent; defining certain terms used throughout the act; establishing a statute of frauds applicable to rental agreements; limiting the enforcement of unconscionable agreements; providing for the creation of express warranties; establishing implied warranties of merchantability and fitness for particular purpose; prescribing the effect of any manufacturer's or supplier's warranties and requiring the transfer of such warranties under certain circumstances; prohibiting the disclaimer of warranties and remedies; extending warranties to third-party beneficiaries; allocating the risk of loss of consumer goods; describing the effect of default under a rental agreement and procedure to be followed upon default; providing for notice after default; providing for the termination of rent-to-own agreements; prescribing the terms for reinstatement of written rental agreement; providing for a consumer's right to ownership of the goods upon satisfying certain conditions; requiring maintenance of goods; setting forth disclosure requirements for rent-to-own transactions; prohibiting certain acts by rent-to-own dealers; establishing limitations on charges and fees; authorizing the attorney general to promulgate legislative rules governing rent-to-own transactions; prohibiting extortionate conduct in rent-to-own transactions; prohibiting rebates or discounts under certain conditions; prohibiting practice of law by debt collectors; prohibiting collections through threats or coercion; prohibiting oppression and abuse; prohibiting unreasonable publication; prohibiting fraudulent, deceptive or misleading representations; prohibiting the use of unfair or unconscionable means by debt collectors; prohibiting postal violations; requiring notice of assignment; requiring receipts for payments; providing for statements of account and evidence of payment in full; requiring filing of notification with state tax department; limiting the assignment of earnings; prohibiting confession of judgment; prohibiting garnishment before judgment; limiting garnishment; prohibiting discharge or reprisal because of garnishment; establishing personal property exemp-

tions; authorizing service of process on certain nonresidents; providing for enforcement of the act; providing for injunctions against unconscionable agreements and fraudulent or unconscionable conduct; authorizing civil actions by the attorney general; defining certain criminal offenses for the removal out of the county of property securing a claim, the fraudulent sale or disposition of personal property in possession by virtue of a lease or secreting or converting property subject to a lease; and making such proscribed conduct larceny of such property and thus subject to the applicable criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

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

Chapter

46B. Regulation of the Rental of Consumer Goods Under Rent-to-Own Agreements.

61. Crimes and Their Punishment.

CHAPTER 46B. REGULATION OF THE RENTAL OF CONSUMER GOODS UNDER RENT-TO-OWN AGREEMENTS.

Article

- 1. General Provisions; Purpose and Intent; Definitions.**
- 2. Formation and Construction of Agreements for the Rental of Consumer Goods.**
- 3. Default.**
- 4. Prohibited Conduct.**
- 5. Assignment and Receipt of Payment.**
- 6. Limitations on Collections and Related Provisions.**
- 7. Nonresident Defendants.**
- 8. Enforcement and Remedies.**

ARTICLE 1. GENERAL PROVISIONS; PURPOSE AND INTENT; DEFINITIONS.

- §46B-1-1. Short title.
- §46B-1-2. Scope.
- §46B-1-3. Applicability of the law of this state.
- §46B-1-4. Legislative purpose and intent.
- §46B-1-5. General definitions.

§46B-1-1. Short title.

1 This chapter shall be known and may be cited as the
2 “West Virginia Consumer Goods Rental Protection Act”.

§46B-1-2. Scope.

1 This chapter applies to any transaction, regardless of
2 form, which creates a rental agreement for the rental
3 of consumer goods, unless such transaction is specifi-
4 cally exempted from the application of this chapter by
5 an express provision contained herein.

§46B-1-3. Applicability of the law of this state.

1 With respect to consumer goods rented to a resident
2 of this state under a rent-to-own agreement, compliance
3 and the effect of compliance or noncompliance with the
4 provisions of this chapter are governed by the law of this
5 state.

§46B-1-4. Legislative purpose and intent.

1 The underlying purposes and intent of this chapter
2 are as follows:

3 (1) To simplify and clarify the law governing con-
4 tracts for the rental of consumer goods;

5 (2) To assure an adequate means for consumers to
6 enter into contracts for the rental of consumer goods at
7 an affordable price, so that consumers are financially
8 able to comply with the terms of such contracts;

9 (3) To further consumer understanding of the terms
10 of agreements which involve the purchase or rental of
11 consumer goods;

12 (4) To foster competition among dealers or rent-to-own
13 dealers who supply consumer goods under rental
14 agreements, so that consumers may rent such consumer
15 goods at a reasonable cost;

16 (5) To protect consumers against unfair practices by
17 some dealers, while having due regard for the interests
18 of legitimate and scrupulous dealers; and

19 (6) To permit and encourage the development and use
20 of fair and economically sound business practices on the

21 part of dealers, as well as promoting the practice of
22 thrift and the exercise of good judgment by consumers
23 prior to their entering into agreements for the purchase
24 or rental of consumer goods.

§46B-1-5. General definitions.

1 The following words and phrases, when used in this
2 chapter, shall have the meanings respectively ascribed
3 to them in this section, unless the context in which such
4 words or phrases are used elsewhere in this chapter
5 clearly requires a different meaning:

6 (1) "Agricultural purpose" means a purpose related to
7 the production, harvest, exhibition, marketing, trans-
8 portation, processing or manufacture of agricultural
9 products by a natural person who cultivates, plants,
10 propagates or nurtures the agricultural products.
11 "Agricultural products" include agricultural, horticultu-
12 ral, viticultural and dairy products, livestock, wildlife,
13 poultry, bees, forest products, fish and shellfish and any
14 products thereof, including processed and manufactured
15 products, and any and all products raised or produced
16 on farms and any processed or manufactured products
17 thereof.

18 (2) "Consumer" means a natural person who acquires,
19 or seeks to acquire, the right to possession and use of
20 consumer goods by entering into a rent-to-own agree-
21 ment with a dealer.

22 (3) "Consumer goods" or "goods" means goods in-
23 tended to be used primarily for personal, family or
24 household purposes.

25 (4) "Damage waiver" means the voiding or disregard
26 by the dealer of any obligation on the part of the
27 consumer to pay the value of the consumer goods or to
28 make payments pursuant to a rent-to-own agreement in
29 the event of loss or damage to the consumer goods in
30 excess of normal wear and tear or the insurance of the
31 value of the consumer goods or of payments pursuant
32 to the rent-to-own agreement in the event of loss or
33 damage to the consumer goods in excess of normal wear
34 and tear.

35 (5) "Dealer" or "rent-to-own dealer" means a person
36 who, in the ordinary course of business, transfers or
37 offers to transfer the right to possession and use of
38 consumer goods to a consumer or acts as an agent to
39 transfer or offer to transfer the right to possession and
40 use of consumer goods to a consumer, pursuant to a
41 rental agreement.

42 (6) "Debt collection" means any action, conduct or
43 practice of soliciting claims for collection or the
44 collection of a claim or claims owed or due or alleged
45 to be owed or due to a dealer by a consumer under a
46 rent-to-own agreement.

47 (7) "Debt collector" means any person or organization
48 engaging directly or indirectly in debt collection. The
49 term includes any person or organization who sells or
50 offers to sell forms which are, or are represented to be,
51 a collection system, device or scheme and are intended
52 or calculated to be used to collect claims.

53 (8) "Financial organization" means a corporation,
54 partnership, cooperative or association which:

55 (A) Is organized, chartered or holding an authoriza-
56 tion certificate under the laws of this state or of the
57 United States which authorizes the organization to
58 make consumer loans; and

59 (B) Is subject to supervision and examination with
60 respect to such loans by an official or agency of this state
61 or of the United States.

62 (9) "Ownership" means the right to enjoy, possess and
63 use consumer goods to the exclusion of other persons,
64 including the right to transfer legal title to such
65 consumer goods or to otherwise control, handle or
66 dispose of such consumer goods, whether or not indicia
67 of such ownership is established by, or otherwise
68 required to be evidenced by, a title-paper, letter, receipt
69 or other document or instrument.

70 (10) "Period" or "rental period" means a week, a
71 month or another specific length of time set forth in a
72 rent-to-own agreement, during which such period the
73 consumer has a right to continue possessing and using

74 consumer goods, after having made the periodic rental
75 payment for such period.

76 (11) "Periodic payment" means a payment required to
77 be made by a consumer to have the right to possession
78 and use of consumer goods during a specified time
79 period. The periodic payment does not include any
80 applicable sales, use, privilege, excise or documentary
81 stamp taxes otherwise payable upon a transfer of
82 consumer goods from a dealer to a consumer, except as
83 provided for by the disclosure requirements or other
84 applicable requirements set forth in this chapter.

85 (12) "Person" or "party" includes a natural person or
86 an individual, an organization, partnerships and
87 corporations.

88 (13) "Person related to" with respect to an individual
89 means: (A) The spouse of the individual; (B) a brother,
90 brother-in-law, sister or sister-in-law of the individual;
91 (C) an ancestor or lineal descendant of the individual or
92 his spouse; and (D) any other relative, by blood or
93 marriage, of the individual or his spouse who shares the
94 same home with the individual. "Person related to" with
95 respect to an organization, partnership or corporation
96 means: (A) A person directly or indirectly controlling,
97 controlled by or under common control with the
98 organization, partnership or corporation; (B) an officer
99 or director of the organization, partnership or corpora-
100 tion or a person performing similar functions with
101 respect to the organization or to a person related to the
102 organization, partnership or corporation; (C) the spouse
103 of a person related to the organization, partnership or
104 corporation; and (D) a relative by blood or marriage of
105 a person related to the organization, partnership or
106 corporation shares the same home with him or her.

107 (14) "Premises" means a particular physical place of
108 business opened to the public by a dealer.

109 (15) "Rental agreement" means the bargain, with
110 respect to the rental of consumer goods under a rent-
111 to-own agreement, of the dealer and the consumer as
112 found in their language or by implication from other
113 circumstances including course of dealing or usage of

114 trade or course of performance as provided in this
115 chapter.

116 (16) "Rental contract" means the total legal obligation
117 that results from the rental agreement as affected by
118 this chapter and any other applicable rules of law.

119 (17) (A) "Rent-to-own agreement" means a rental
120 agreement which:

121 (i) Transfers the right to possession and use of the
122 rental property from the dealer to the consumer;

123 (ii) Obligates the consumer to pay successive periodic
124 rental payments as each shall become due, in order to
125 continue his or her right to possession and use of the
126 rented consumer goods;

127 (iii) Is subject to termination by the consumer as
128 permitted by this chapter, whereupon the consumer is
129 not obligated to make payments for any period of time
130 other than a period during which he or she chose to
131 maintain possession and use of the rented consumer
132 goods;

133 (iv) Provides that upon compliance with the terms of
134 the agreement the consumer shall become or has the
135 option to become the owner of the property for no
136 additional fee, except as permitted by this chapter.

137 (B) The term "rent-to-own agreement" does not
138 include a rental agreement in which:

139 (i) A financial organization is a party, if the rental
140 agreement is subject to the federal Truth in Lending
141 Act or the federal Consumer Leasing Act and the
142 regulations promulgated pursuant thereto;

143 (ii) Any of the consumer goods which are the subject
144 matter of the rental agreement are vehicles as defined
145 in section one, article one, chapter seventeen-a of this
146 code;

147 (iii) All of the consumer goods which are the subject
148 of the rental agreement are either two-way telecommu-
149 nications equipment, medical equipment or musical
150 instruments, and the rental agreement is subject to the

151 federal Truth in Lending Act or the federal Consumer
152 Leasing Act and the regulations promulgated pursuant
153 thereto; or

154 (iv) All of the goods which are the subject matter of
155 the rental agreement are primarily intended to be used
156 for agricultural purposes.

157 (18) "Retail value" or "fair market value" of particular
158 consumer goods means the price at which goods of like
159 type, quality and quantity would change hands between
160 a willing seller and a willing buyer, at retail, for cash,
161 in the particular market area at the time of the rent-
162 to-own rental agreement, which price does not include
163 any applicable sales, use, privilege, excise or documen-
164 tary stamp taxes payable upon the transfer of such
165 goods.

166 (19) "Rent-to-own charge", in connection with any
167 rent-to-own agreement, means the sum of all charges in
168 excess of the retail value which must be paid directly
169 or indirectly by the consumer in order for the consumer
170 to acquire ownership of the consumer goods without
171 payment of further consideration.

172 (20) "Termination" means the cancellation of a rental
173 agreement when the consumer determines that he or she
174 no longer desires to pay periodic payments and retain
175 the right to possession and use of the consumer goods
176 or either party puts an end to the rental agreement for
177 default by the other party in accordance with the
178 provisions of this chapter.

179 (21) "Total of payments" means the total of all periodic
180 payments specified in the written agreement which the
181 consumer must pay in order to acquire ownership of the
182 consumer goods without the payment of additional
183 consideration to the dealer.

184 (22) "Willing buyer" means a person who:

185 (A) Buys consumer goods at retail for his or her
186 personal use or for the use of his or her family or
187 household;

188 (B) Has a reasonable knowledge of the relevant facts

189 to be considered in ascertaining the fair market price
 190 of consumer goods which are offered to be sold at retail;
 191 and

192 (C) Is under no compulsion to buy or to buy from a
 193 particular seller.

194 (23) "Willing seller" means a person other than a rent-
 195 to-own dealer who:

196 (A) In the ordinary course of business regularly sells
 197 or offers for sale consumer goods at retail;

198 (B) Has no direct or indirect ownership connection
 199 with any dealer;

200 (C) Has a reasonable knowledge of the relevant facts
 201 to be considered in fixing the fair market price of
 202 consumer goods which are offered to be sold at retail;
 203 and

204 (D) Is under no compulsion to sell or to sell to a
 205 particular buyer.

206 (24) "Written agreement" means a written document
 207 containing or evidencing the terms of a rent-to-own
 208 transaction, reduced to a tangible and legible form by
 209 printing, typewriting, computer print-out or any other
 210 intentional reduction.

ARTICLE 2. FORMATION AND CONSTRUCTION OF AGREEMENTS FOR THE RENTAL OF CONSUMER GOODS.

§46B-2-1. Statute of frauds.

§46B-2-2. Unconscionability.

§46B-2-3. Express warranties.

§46B-2-4. Implied warranty of merchantability.

§46B-2-5. Implied warranty of fitness for particular purpose.

§46B-2-6. Manufacturers' warranties; transfer of warranties.

§46B-2-7. Disclaimer of warranties and remedies prohibited.

§46B-2-8. Third-party beneficiaries of express and implied warranties.

§46B-2-9. Risk of loss.

§46B-2-1. Statute of frauds.

1 (a) A rental agreement is not enforceable by a dealer
 2 by way of action or defense unless there is a writing,
 3 signed by both the dealer or his agent or employee and
 4 the consumer, sufficient to indicate that a rent-to-own

5 agreement has been made between the parties, reason-
6 ably identifying and describing the consumer goods to
7 be rented. Any purported rent-to-own agreement
8 entered into without a written agreement may be voided
9 by the consumer, who may return the consumer goods
10 and be refunded all amounts previously paid to the
11 dealer under the purported rental agreement.

12 (b) A rental agreement is not enforceable by a dealer
13 against a consumer unless the written agreement
14 contains all disclosures required by the provisions of this
15 chapter, and unless a copy of the written agreement is
16 delivered to the consumer contemporaneously with the
17 execution of the written agreement. Any written
18 agreement executed by a consumer which does not
19 comply with the requirements of this subsection may be
20 voided by the consumer.

21 (c) The fair market value for any single item which
22 is the subject of a rent-to-own agreement may not be
23 more than ten thousand dollars.

§46B-2-2. Unconscionability.

1 (a) If the court as a matter of law finds a rental
2 agreement or any clause of a rental agreement to have
3 been unconscionable at the time it was made, the court
4 may refuse to enforce the rental agreement, or it may
5 enforce the remainder of the rental agreement without
6 the unconscionable clause, or it may so limit the
7 application of any unconscionable clause as to avoid any
8 unconscionable result.

9 (b) With respect to a consumer rental agreement, if
10 the court as a matter of law finds that a rental
11 agreement or any clause of a rental agreement has been
12 induced by unconscionable conduct or that unconscion-
13 able conduct has occurred in the collection of a claim
14 arising from a rental agreement, the court may grant
15 appropriate relief.

16 (c) Before making a finding of unconscionability
17 under subsection (a) or (b) of this section, the court, on
18 its own motion or that of a party, shall afford the parties
19 a reasonable opportunity to present evidence as to the

20 setting, purpose and effect of the rental agreement or
21 clause thereof, or of the conduct.

22 (d) In an action in which the consumer claims
23 unconscionability with respect to a rental agreement:

24 (1) If the court finds unconscionability under subsection
25 (a) or (b) of this section, the court shall award
26 reasonable attorney's fees to the consumer.

27 (2) If the court does not find unconscionability and the
28 consumer claiming unconscionability has brought or
29 maintained an action he or she knew to be groundless,
30 the court shall award reasonable attorney's fees to the
31 dealer against whom the claim is made.

32 (3) In determining attorney's fees, the amount of the
33 recovery on behalf of the claimant under subsections (a)
34 and (b) of this section is not controlling.

§46B-2-3. Express warranties.

1 (a) Express warranties by the dealer are created as
2 follows:

3 (1) Any affirmation of fact or promise made by the
4 dealer to the consumer which relates to the consumer
5 goods is part of the basis of the bargain and creates an
6 express warranty that the consumer goods will conform
7 to the affirmation or promise;

8 (2) Any description of the consumer goods is part of
9 the basis of the bargain and creates an express warranty
10 that the consumer goods will conform to the description;

11 (3) Any sample or model exhibited to the consumer
12 by the dealer is part of the basis of the bargain and
13 creates an express warranty that the consumer goods
14 actually delivered to the consumer will conform to the
15 sample or model.

16 (b) It is not necessary to the creation of an express
17 warranty that the dealer use formal words, such as
18 "warrant" or "guarantee", or that the dealer have a
19 specific intention to make a warranty, but an affirma-
20 tion merely of the value of the consumer goods or a
21 statement purporting to be merely the dealer's opinion

22 or commendation of the consumer goods does not create
23 a warranty.

§46B-2.4. Implied warranty of merchantability.

1 (a) A warranty that the consumer goods will be
2 merchantable is implied in every contract for the rental
3 of consumer goods if the dealer is a merchant with
4 respect to consumer goods of that kind.

5 (b) Consumer goods to be merchantable must be at
6 least such as:

7 (1) Pass without objection in the trade under the
8 description in the rental agreement;

9 (2) Are fit for the ordinary purposes for which
10 consumer goods of that type are used; and

11 (3) Conform to any promises or affirmations of fact
12 made on the container or label.

13 (c) Other implied warranties may arise from course
14 of dealing or usage of trade.

§46B-2.5. Implied warranty of fitness for particular purpose.

1 If the dealer, at the time the rental contract is made,
2 has reason to know of any particular purpose for which
3 the consumer goods are required and that the consumer
4 is relying on the dealer's skill or judgment to select or
5 furnish suitable consumer goods, there is in the rental
6 contract an implied warranty that the consumer goods
7 will be fit for that purpose.

§46B-2.6. Manufacturers' warranties; transfer of warranties.

1 When consumer goods that are subjects of a rent-to-
2 own transaction are warranted by a manufacturer's or
3 supplier's warranty or other warranty that may either
4 be retained by the dealer or transferred to the consu-
5 mer, the warranty shall be retained by the dealer so
6 long as the dealer is responsible for maintaining the
7 consumer goods. At such time as maintenance of the
8 goods becomes the responsibility of the consumer
9 through a transfer of ownership or otherwise, such

10 warranty shall be transferred to the consumer. The
11 dealer shall advise, orally and in writing, the consumer
12 of any manufacturer's or supplier's warranty that may
13 apply to the consumer goods and any details regarding
14 the warranty and the transfer of the warranty.

§46B-2-7. Disclaimer of warranties and remedies prohibited.

1 (a) Notwithstanding any other provision of law to the
2 contrary with respect to consumer goods which are the
3 subject of or are intended to become the subject of a
4 rental contract subject to the provisions of this chapter,
5 all warranties available to the consumer, express or
6 implied, are cumulative and not exclusive, and the
7 consumer shall have the benefit of any or all such
8 warranties. No dealer, manufacturer, supplier or other
9 merchant shall:

10 (1) Exclude, modify or otherwise attempt to limit any
11 warranty, express or implied, including the warranties
12 of merchantability and fitness for a particular purpose;
13 or

14 (2) Exclude, modify or attempt to limit any remedy
15 provided by law, including the measure of damages
16 available, for a breach of warranty, express or implied.

17 (b) Any exclusion, modification or attempted limita-
18 tion of a warranty, express or implied, shall be void.
19 Words or conduct relevant to the creation of an express
20 warranty and words or conduct tending to negate or
21 limit a warranty must be construed as inconsistent with
22 each other.

23 (c) It is unlawful in a rental contract subject to the
24 provisions of this chapter to attempt to exclude, modify
25 or otherwise attempt to limit any implied warranty of
26 merchantability or any part of it, or to attempt to
27 exclude, modify or otherwise attempt to limit any
28 implied warranty of fitness.

§46B-2-8. Third-party beneficiaries of express and implied warranties.

1 A warranty to or for the benefit of a consumer under

2 this chapter, whether express or implied, extends to any
3 natural person who is in the family or household of the
4 consumer or who is a guest in the consumer's home if
5 it is reasonable to expect that such person may use or
6 be affected by the consumer goods and who is injured
7 in person by breach of the warranty. This section does
8 not displace principles of law and equity that extend a
9 warranty to or for the benefit of a consumer to other
10 persons. The operation of this section may not be
11 excluded, modified or limited.

§46B-2-9. Risk of loss.

1 Risk of loss is retained by the dealer and does not pass
2 to the consumer until such time as the consumer
3 receives the goods.

ARTICLE 3. DEFAULT.

- §46B-3-1. Default; procedure.
- §46B-3-2. Notice after default.
- §46B-3-3. Termination of rent-to-own agreements.
- §46B-3-4. Reinstatement of written rental agreement.
- §46B-3-5. Consumer's right to ownership of the goods.
- §46B-3-6. Maintenance of goods.
- §46B-3-7. Disclosure requirements.
- §46B-3-8. Prohibitions for rent-to-own transactions.
- §46B-3-9. Limitations on charges and fees.
- §46B-3-10. Attorney general; promulgation of rules.

§46B-3-1. Default; procedure.

- 1 (a) Whether the dealer or the consumer is in default
2 under a rental contract is determined by the rental
3 agreement and this chapter.
- 4 (b) If the dealer or the consumer is in default under
5 the rental contract, the party seeking enforcement has
6 rights and remedies as provided in this chapter and,
7 except as limited by this chapter, as provided in the
8 rental agreement.
- 9 (c) If the dealer or the consumer is in default under
10 the rental contract, the party seeking enforcement may
11 reduce the party's claim to judgment or otherwise
12 enforce the rental contract by self-help or any available
13 judicial procedure or nonjudicial procedure: *Provided*,
14 That consumer goods may only be repossessed by a

15 dealer without judicial process when such repossession
16 can be effected without a breach of the peace.

17 (d) Except as otherwise provided in this chapter or
18 the rental agreement, the rights and remedies referred
19 to in subsections (b) and (c) are cumulative.

§46B-3-2. Notice after default.

1 Except as otherwise provided in this chapter, the
2 dealer or consumer in default under the rental contract
3 is not entitled to notice of default or notice of enforce-
4 ment from the other party to the rental agreement.

§46B-3-3. Termination of rent-to-own agreements.

1 (a) Upon the termination of a rent-to-own agreement
2 by a consumer, all obligations that are still executory
3 by both parties are discharged, but any right based on
4 a failure of the dealer to maintain the consumer goods
5 in accordance with the provisions of section six of this
6 article, or any other right based on prior default or
7 performance of the dealer survives, and the consumer
8 retains any remedy or defense for such default. Rights
9 and remedies available to the consumer for material
10 misrepresentation or fraud by a dealer are not affected
11 by a termination of the rental agreement by a consumer.
12 Termination of the rental agreement by a consumer
13 shall not bar or be deemed inconsistent with a claim for
14 damages or other right or remedy.

15 (b) A consumer may terminate a rent-to-own agree-
16 ment at any time.

17 (c) When a consumer terminates a rent-to-own
18 transaction, the dealer may not require any further
19 action or payment by the consumer except:

20 (1) Payment of any unpaid periodic payments and
21 charges accrued before the consumer notified the dealer
22 of the termination of the transaction and made the
23 consumer goods available to be received by the dealer;
24 and

25 (2) Payment of any pickup charge provided for in the
26 rental agreement.

27 (d) A dealer may terminate a rent-to-own agreement
28 when the consumer fails to make a periodic payment as
29 it becomes due: *Provided*, That seven days prior to
30 terminating the rent-to-own agreement, the dealer shall
31 provide a written notice to the consumer informing him
32 or her:

33 (1) Of the amount of any periodic payment or
34 payments that the consumer has failed to make;

35 (2) That the consumer may voluntarily surrender
36 possession of the goods to the dealer at the location
37 where the goods are located;

38 (3) Of any late payment which has been or may be
39 assessed;

40 (4) Of the right to reinstate which shall include:

41 (A) The consumer's right to reinstate the agreement
42 by payment of amounts due when the goods are in the
43 possession of the consumer;

44 (B) The amount of time when the consumer has to
45 reinstate the agreement;

46 (C) That reinstatement will result in continuation of
47 the original agreement, including the provisions relat-
48 ing to ownership of the goods; and

49 (D) The amount of fees to be paid for reinstatement.

50 (e) The dealer may request that the goods be surren-
51 dered at any time after a consumer has failed to timely
52 make a periodic payment required under the agree-
53 ment. When the consumer surrenders the goods, the
54 transaction is terminated. The dealer shall provide the
55 consumer the notice required by this section.

§46B-3-4. Reinstatement of written rental agreement.

1 (a) The consumer may reinstate the transaction at any
2 time until the consumer is served, in a manner pursuant
3 to rule four of the rules of civil procedure, with a civil
4 complaint arising out of the transaction.

5 (b) When a consumer fails to timely make one or more
6 periodic payments, he or she may reinstate the original

7 rent-to-own transaction, without losing any right or
8 option of the consumer under the rental-purchase
9 agreement, within sixty days after the expiration of the
10 last period for which the consumer made a timely
11 payment: *Provided*, That if a consumer has made more
12 than forty percent of the regular payments required to
13 obtain ownership of the goods, pursuant to the rent-to-
14 own transaction, the consumer shall have ninety days to
15 reinstate a rent-to-own transaction: *Provided, however*,
16 That when a dealer seeks to repossess the goods and has
17 lawfully repossessed the goods two previous times
18 during the same transaction, the consumer may not
19 reinstate the transaction.

20 (c) If reinstatement occurs pursuant to this section,
21 the dealer shall provide the consumer with the same
22 goods leased by the consumer prior to the reinstatement
23 or if those goods are not available to the dealer,
24 substitute property that is of no less quality and
25 condition. When substitute property is provided, the
26 dealer shall make all disclosures required by this
27 chapter. When consumer goods have been repossessed or
28 returned to the possession of the dealer prior to
29 reinstatement, the dealer may charge a nominal
30 reinstatement fee, not to exceed five dollars.

§46B-3-5. Consumer's right to ownership of the goods.

1 When the consumer has paid all periodic payments
2 required by a rent-to-own transaction together with any
3 other charges authorized by law which have been
4 lawfully imposed in the transaction, he or she shall have
5 exclusive ownership of the goods: *Provided*, That the
6 consumer, after the initial payment, may obtain owner-
7 ship before the scheduled end of the rent-to-own
8 transaction by paying:

9 (1) A portion of the periodic payments, which have not
10 yet become payable, subject to any limitation provided
11 by this chapter;

12 (2) All periodic payments and other charges autho-
13 rized by law which have already become due and which
14 may be lawfully imposed in the transaction; and

15 (3) The amount of any documentary or other fee
16 charged by a governmental entity to transfer ownership
17 or proof of ownership.

§46B-3-6. Maintenance of goods.

1 A dealer shall maintain the goods that are the subject
2 of any rent-to-own transaction in working order and
3 usable condition until such time as the consumer obtains
4 ownership of the goods.

§46B-3-7. Disclosure requirements.

1 (a) The dealer shall make all disclosures required by
2 this section.

3 (b) In all circumstances listed in subsection (c) of this
4 section, the dealer shall disclose the following informa-
5 tion with respect to the goods that are the subject of the
6 rental agreement in a clear, conspicuous and easily
7 understood manner:

8 (1) Retail value;

9 (2) Rent-to-own charge;

10 (3) Rental period;

11 (4) Number of periodic payments required for
12 ownership;

13 (5) Amount of each periodic payment;

14 (6) Total of all payments; and

15 (7) Whether the goods are new or have been pre-
16 viously rented or are otherwise used.

17 (c) The dealer shall make the disclosures required in
18 this section:

19 (1) On a label attached or posted on top of the goods
20 displayed to any potential consumer;

21 (2) In any rent-to-own agreement as defined in section
22 five, article one of this chapter;

23 (3) In any telephone communication with a potential
24 consumer; and

25 (4) In any radio, television or printed advertisement

26 for the goods when the price for the item is included in
27 the advertisement.

28 Any oral communications concerning the terms and
29 conditions of the transaction shall be incorporated into
30 a written agreement which shall govern the transaction.

31 (d) In any transaction involving more than one dealer,
32 only one dealer may make the disclosures required by
33 this article: *Provided*, That when the name of the dealer
34 is required to be disclosed, all dealers shall be disclosed.

35 (e) A dealer may disclose information that is not
36 required by this section only when the additional
37 information is not stated, used or placed in a manner
38 that may contradict, obscure or distract attention from
39 the information required by this section.

§46B-3-8. Prohibitions for rent-to-own transactions.

1 No dealer may:

2 (1) Require any initial payment in any transaction
3 except the payment for the first rental period, taxes,
4 insurance or delivery fees and other disclosed fees or
5 fees authorized by this chapter;

6 (2) Charge any fee at the time ownership of the
7 consumer goods passes to the consumer, other than an
8 applicable fee, if any, which actually is or will be paid
9 to public officials for perfecting title or ownership in the
10 consumer;

11 (3) Raise the amount of any payment or charge after
12 the execution of the written agreement without both
13 parties voluntarily entering into a second written
14 agreement;

15 (4) Take any action to collect a payment which is
16 prohibited by this chapter;

17 (5) Accept any cosigner other than a person who is in
18 the household of the consumer and who is expected to
19 use the consumer goods;

20 (6) Take any security interest in any property owned
21 by the consumer;

- 22 (7) Require a damage waiver, insurance or form of
23 insurance, insuring the consumer goods against loss or
24 damage, unless the dealer requires such insurance for
25 all goods of comparable type and value in every rent-
26 to-own agreement;
- 27 (8) Require damage waiver from a particular insurer;
- 28 (9) Seek to collect any charge not authorized by this
29 chapter and disclosed in a written agreement; or
- 30 (10) Have an initial period which is more than one
31 rental period longer than any other rental period.

§46B-3-9. Limitations on charges and fees.

- 1 (a) Any consumer seeking to fulfill obligations
2 pursuant to section five of this article may be charged
3 a fee no greater than the retail value divided by the total
4 of payments multiplied by the amount of the periodic
5 payments which have not yet become due.
- 6 (b) A dealer may not charge a fee for delivery or
7 pickup unless the charge is provided for in the written
8 agreement, the parties agree that the dealer shall
9 deliver or pick up the goods; and the charge is reason-
10 ably related to the costs of delivery: *Provided*, That no
11 delivery or pick up charge may be assessed in any
12 transaction when the transaction took place in any place
13 other than the premises of the dealer.
- 14 (c) Any late fee imposed by a dealer may not exceed
15 five percent of the periodic payment or fifteen dollars,
16 whichever is less. Only one late charge may be imposed
17 for any payment for which a late charge may be
18 charged. Under a rental agreement in which periodic
19 payments are due weekly, a late charge may not be
20 imposed until the payment is three days late. Otherwise,
21 a late charge may not be imposed until the payment is
22 five days late.
- 23 (d) The total of payments in a rent-to-own transaction
24 shall not be greater than two hundred forty percent of
25 the retail value.

§46B-3-10. Attorney general; promulgation of rules.

1 The attorney general may adopt, amend and repeal
 2 such reasonable rules and regulations, in accordance
 3 with the provisions of chapter twenty-nine-a of this code,
 4 as are necessary and proper to effectuate the purposes
 5 of this chapter and to prevent circumvention or evasion
 6 thereof. In addition, the attorney general shall adopt,
 7 amend and repeal such reasonable rules and regula-
 8 tions, in accordance with the provisions of said chapter,
 9 as are necessary and proper to determine formula or
 10 method of ascertaining retail value as defined in this
 11 article and as are necessary and proper to detail the
 12 requirements for disclosure set forth in this article.

ARTICLE 4. PROHIBITED CONDUCT.

§46B-4-1. Extortionate conduct in rent-to-own transaction.

§46B-4-2. Referral sales or leases.

§46B-4-3. Practice of law by debt collectors.

§46B-4-4. Threats or coercion.

§46B-4-5. Oppression and abuse.

§46B-4-6. Unreasonable publication.

§46B-4-7. Fraudulent, deceptive or misleading representations.

§46B-4-8. Unfair or unconscionable means.

§46B-4-9. Postal violations.

§46B-4-1. Extortionate conduct in rent-to-own transaction.

1 If the court finds as a matter of fact that it was the
 2 understanding of the dealer and the consumer at the
 3 time a rental agreement for a rent-to-own transaction
 4 was made that delay in making a payment could result
 5 in the use of violence or other criminal means to cause
 6 harm to the person, reputation or property of any
 7 person, the agreement of the extension of credit is
 8 unenforceable through civil judicial process against the
 9 dealer, and the consumer, at his or her option, may
 10 rescind the agreement and retain the goods without any
 11 obligation to pay for them.

§46B-4-2. Referral sales or leases.

1 With respect to a rent-to-own transaction, the dealer
 2 may not give or offer to give a rebate or discount or
 3 otherwise pay or offer to pay value to the consumer as
 4 an inducement for a sale or lease in consideration of his
 5 giving to the dealer the names of prospective purchasers

6 or consumers, or otherwise aiding the dealer in making
7 a lease to another person, if the earning of the rebate,
8 discount or other value is contingent upon the occur-
9 rence of an event subsequent to the time the consumer
10 agrees to lease. If a consumer is induced by a violation
11 of this section to enter into a rent-to-own transaction, the
12 agreement is unenforceable against the consumer, who
13 at his or her option, may rescind the agreement and
14 retain the goods without any obligation to pay for them.

§46B-4-3. Practice of law by debt collectors.

1 Unless a licensed attorney in this state, no debt
2 collector shall engage in conduct deemed the practice of
3 law. Without limiting the general application of the
4 foregoing, the following conduct is deemed the practice
5 of law:

6 (1) The performance of legal services, furnishing of
7 legal advice or false representation, direct or by
8 implication, that any person is an attorney;

9 (2) Any communication with consumers in the name
10 of an attorney or upon stationery or other written matter
11 bearing an attorney's name; and

12 (3) Any demand for or payment of money constituting
13 a share of compensation for services performed or to be
14 performed by an attorney in collecting a claim.

§46B-4-4. Threats or coercion.

1 No debt collector shall collect or attempt to collect any
2 money alleged to be due and owing by means of any
3 threat, coercion or attempt to coerce. Without limiting
4 the general application of the foregoing, the following
5 conduct is deemed to violate this section:

6 (1) The use, or express or implicit threat of use, of
7 violence or other criminal means to cause harm to the
8 person, reputation or property of any person;

9 (2) The accusation or threat to accuse any person of
10 fraud, any crime or any conduct which, if true, would
11 tend to disgrace such other person or in any way subject
12 him to ridicule or any conduct which, if true, would tend
13 to disgrace such other person or in any way subject him

14 to ridicule or contempt of society;

15 (3) False accusations made to another person, includ-
16 ing any credit reporting agency, that a consumer is
17 willfully refusing to pay a just debt or the threat to so
18 make false accusations;

19 (4) The threat to sell or assign to another the
20 obligation of the consumer with an attending represen-
21 tation or implication that the result of such sale or
22 assignment would be that the consumer would lose any
23 defense to the claim or would be subjected to harsh,
24 vindictive or abusive collection attempts;

25 (5) The threat that nonpayment of an alleged claim
26 will result in the:

27 (A) Arrest of any person; or

28 (B) Garnishment of any wages of any person or the
29 taking of other action requiring judicial sanction,
30 without informing the consumer that there must be in
31 effect a judicial order permitting such garnishment or
32 such other action before it can be taken; and

33 (6) The threat to take any action prohibited by this
34 chapter or other law regulating the debt collector's
conduct.

§46B-4-5. Oppression and abuse.

1 No debt collector shall unreasonably oppress or abuse
2 any person in connection with the collection of or
3 attempt to collect any claim alleged to be due and owing
4 by that person or another. Without limiting the general
5 application of the foregoing, the following conduct is
6 deemed to violate this section:

7 (1) The use of profane or obscene language or
8 language that is intended to unreasonably abuse the
9 hearer or reader;

10 (2) The placement of telephone calls without disclo-
11 sure of the caller's identity and with the intent to annoy,
12 harass or threaten any person at the called number;

13 (3) Causing expense to any person in the form of long
14 distance telephone tolls, telegram fees or other charges

15 incurred by a medium of communication, by conceal-
16 ment of the true purpose of the communication; and

17 (4) Causing a telephone to ring or engaging any
18 person in telephone conversation repeatedly or continu-
19 ously, or at unusual times or at times known to be
20 inconvenient, with intent to annoy, abuse, oppress or
21 threaten any person at the called number.

§46B-4-6. Unreasonable publication.

1 No debt collector shall unreasonably publicize infor-
2 mation relating to any alleged indebtedness of consu-
3 mer. Without limiting the general application of the
4 foregoing, the following conduct is deemed to violate this
5 section:

6 (1) The communication to any employer or his agent
7 before judgment has been rendered of any information
8 relating to an employee's indebtedness other than
9 through proper legal action, process or proceeding;

10 (2) The disclosure, publication or communication of
11 information relating to a consumer's indebtedness to any
12 relative or family member of the consumer if such
13 person is not residing with the consumer, except
14 through proper legal action or process or at the express
15 and unsolicited request of the relative or family
16 member;

17 (3) The disclosure, publication or communication of
18 any information relating to a consumer's indebtedness
19 to any other person other than a credit reporting agency,
20 by publishing or posting any list of consumers, com-
21 monly known as "deadbeat lists"; and

22 (4) The use of any form of communication to the
23 consumer, which ordinarily may be seen by any other
24 persons, that displays or conveys any information about
25 the alleged claim other than the name, address and
26 phone number of the debt collector.

§46B-4-7. Fraudulent, deceptive or misleading representations.

1 No debt collector shall use any fraudulent, deceptive
2 or misleading representation or means to collect or

3 attempt to collect claims or to obtain information
4 concerning consumers. Without limiting the general
5 application of the foregoing, the following conduct is
6 deemed to violate this section:

7 (1) The use of any business, company or organization
8 name while engaged in the collection of claims, other
9 than the true name of the debt collector's business,
10 company or organization;

11 (2) The failure to clearly disclose in all communica-
12 tions made to collect or attempt to collect a claim or to
13 obtain or attempt to obtain information about a consu-
14 mer, that the debt collector is attempting to collect a
15 claim and that any information obtained will be used for
16 that purpose;

17 (3) Any false representation that the debt collector has
18 in his possession information or something of value for
19 the consumer that is made to solicit or discover
20 information about the consumer;

21 (4) The failure to clearly disclose the name and full
22 business address of the person to whom the claim has
23 been assigned for collection, or to whom the claim is
24 owed, at the time of making any demand for money;

25 (5) Any false representation or implication of the
26 character, extent or amount of a claim against a
27 consumer or of its status in any legal proceeding;

28 (6) Any false representation or false implication that
29 any debt collector is vouched for, bonded by, affiliated
30 with or an instrumentality, agent or official of this state
31 or any agency of the federal, state or local government;

32 (7) The use or distribution or sale of any written
33 communication which simulates or is falsely represented
34 to be a document authorized, issued or approved by a
35 court, an official or any other legally constituted or
36 authorized authority, or which creates a false impres-
37 sion about its source, authorization or approval;

38 (8) Any representation that an existing obligation of
39 the consumer may be increased by the addition of
40 attorney's fees, investigation fees, service fees or any

41 other fees or charges when in fact such fees or charges
42 may not legally be added to the existing obligation; and

43 (9) Any false representation or false impression about
44 the status or true nature of or the services rendered by
45 the debt collector or his business.

§46B-4-8. Unfair or unconscionable means.

1 No debt collector shall use unfair or unconscionable
2 means to collect or attempt to collect any claim. Without
3 limiting the general application of the foregoing, the
4 following conduct is deemed to violate this section:

5 (1) The seeking or obtaining of any written statement
6 or acknowledgment in any form that specifies that a
7 consumer's obligation is one incurred for necessities of
8 life where the original obligation was not in fact
9 incurred for such necessities;

10 (2) The seeking or obtaining of any written statement
11 or acknowledgment in any form containing an affirma-
12 tion of any obligation by a consumer who has been
13 declared bankrupt without clearly disclosing the nature
14 and consequences of such affirmation and the fact that
15 the consumer is not legally obligated to make such
16 affirmation;

17 (3) The collection or the attempt to collect from the
18 consumer all or any part of the debt collector's fee or
19 charge for services rendered;

20 (4) The collection of or the attempt to collect any
21 interest or other charge, fee or expense incidental to the
22 principal obligation unless such interest or incidental
23 fee, charge or expense is expressly authorized by the
24 written rental agreement and by statute; and

25 (5) Any communication with a consumer whenever it
26 appears that the consumer is represented by an attorney
27 and the attorney's name and address are known, or
28 could be easily ascertained, unless the attorney fails to
29 answer correspondence, return phone calls or discuss
30 the obligation in question or unless the attorney consents
31 to direct communication.

§46B-4-9. Postal violations.

1 No debt collector shall use, distribute, sell or prepare
2 for use any written communication which violates or
3 fails to conform to United States postal laws and
regulations.

ARTICLE 5. ASSIGNMENT AND RECEIPT OF PAYMENT.

§46B-5-1. Notice of assignment.

§46B-5-2. Receipts; statements of account; evidence of payment.

§46B-5-3. Notificaion.

§46B-5-1. Notice of assignment.

1 A consumer is authorized to pay the original dealer
2 until he receives notification of assignment of rights to
3 payment pursuant to a rent-to-own transaction and that
4 payment is to be made to the assignee. A notification
5 which does not reasonably identify the rights assigned
6 is ineffective. If requested by the consumer, the assignee
7 must seasonably furnish reasonable proof that the
8 assignment has been made and unless he does so the
9 consumer may pay the original dealer.

§46B-5-2. Receipts; statements of account; evidence of payment.

1 (a) The dealer shall deliver or mail to the consumer,
2 without request, a written receipt for each payment by
3 coin or currency on an obligation pursuant to a written
4 rental agreement. A periodic statement showing a
5 payment received complies with this subsection.

6 (b) Upon written request of a consumer, the dealer
7 shall provide a written statement of the dates and
8 amounts of payments made within the past twelve
9 months and the total amount unpaid. The requested
10 statement shall be provided without charge once during
11 each year of the term of the agreement. If additional
12 statements are requested, the creditor may charge not
13 in excess of three dollars for each additional statement.

14 (c) After a consumer has fulfilled all obligations with
15 respect to a rent-to-own transaction, the dealer shall,
16 upon the request of the consumer, deliver or mail to the
17 consumer written evidence acknowledging payment in
18 full of all obligations with respect to the transaction.

§46B-5-3. Notification.

1 (a) Every person engaged in this state in making rent-
2 to-own transactions and every person having an office
3 or place of business in this state who takes assignments
4 of and undertakes direct collection of payments from or
5 enforcement of rights against debtors arising from such
6 transactions shall file notification with the state tax
7 department within thirty days after commencing
8 business in this state, and, thereafter, on or before the
9 thirty-first day of January of each year. A notification
10 shall be deemed to be in compliance with this section
11 if the information hereinafter required is given in an
12 application for a business registration certificate
13 provided for in section four, article twelve, chapter
14 eleven of this code. The state tax commissioner shall
15 make any information required by this section available
16 to the attorney general or commissioner upon request.
17 The notification shall state:

18 (1) Name of the person;

19 (2) Name in which business is transacted if different
20 from subdivision (1) of this subsection;

21 (3) Address of principal office, which may be outside
22 this state;

23 (4) Address of all offices or retail stores, if any, in this
24 state at which rent-to-own transactions are made or, in
25 the case of a person taking assignments of obligations,
26 the offices or places of business within this state at
27 which business is transacted; and

28 (5) Address of designated agent upon whom service
29 of process may be made in this state.

30 (b) If information in a notification becomes inaccurate
31 after filing, accurate information must be filed within
32 thirty days.

ARTICLE 6. LIMITATIONS ON COLLECTIONS AND RELATED PROVISIONS.

§46B-6-1. Assignment of earnings.

§46B-6-2. Authorization to confess judgment prohibited.

§46B-6-3. No garnishment before judgment.

§46B-6-4. Limitation on granishment.

§46B-6-5. No discharge or reprisal because of garnishment.

§46B-6-6. Personal property exemptions.

§46B-6-1. Assignment of earnings.

1 (a) The maximum part of the aggregate disposable
2 earnings of an individual for any workweek which may
3 be subjected to any one or more assignments of earnings
4 for the payment of a debt or debts arising from one or
5 more rent-to-own transactions may not exceed twenty-
6 five percent of his disposable earnings for that week.

7 (b) As used in this section:

8 (1) "Disposable earnings" means that part of the
9 earnings of an individual remaining after the deduction
10 from those earnings of amounts required by law to be
11 withheld; and

12 (2) "Assignment of earnings" includes all forms of
13 assignments, deductions, transfers or sales of earnings
14 to another, either as payment or as security and whether
15 stated to be revocable or nonrevocable and includes any
16 deductions authorized under the provisions of section
17 three, article five, chapter twenty-one of this code,
18 except deductions for union or club dues, pension plans,
19 payroll savings plans, charities, stock purchase plans
20 and hospitalization and medical insurance.

21 (c) Any assignment of earnings and any deduction
22 under section three, article five, chapter twenty-one of
23 this code shall be revocable by the employee at will at
24 any time, notwithstanding any provision to the contrary.

25 (d) The priority of multiple assignments of earnings
26 shall be according to the date and time of each such
assignment.

§46B-6-2. Authorization to confess judgment prohibited.

1 A consumer may not authorize any person to confess
2 judgment on a claim arising out of a rent-to-own
3 transaction. An authorization in violation of this section
4 is void. The provisions of this section shall not be
5 construed as in any way impliedly authorizing a
6 confession of judgment in any other type of transaction.

§46B-6-3. No garnishment before judgment.

1 Prior to entry of judgment in an action against the
2 consumer for debt arising from a rent-to-own transac-
3 tion, the dealer may not attach unpaid earnings of the
4 consumer by garnishment or like proceedings. The
5 provisions of this section shall not be construed as in any
6 way impliedly authorizing garnishment before judg-
7 ment in any other type of transaction.

§46B-6-4. Limitation on garnishment.

1 (a) For the purposes of the provisions in this chapter
2 relating to garnishment:

3 (1) "Disposable earnings" means that part of the
4 earnings of an individual remaining after the deduction
5 from those earnings of amounts required by law to be
6 withheld; and

7 (2) "Garnishment" means any legal or equitable
8 procedure through which the earnings of an individual
9 are required to be withheld for payment of a debt.

10 (b) The maximum part of the aggregate disposable
11 earnings of an individual for any workweek which is
12 subjected to garnishment to enforce payment of a
13 judgment arising from a rent-to-own transaction may
14 not exceed the lesser of:

15 (1) Twenty percent of his disposable earnings for that
16 week;

17 (2) The amount by which his disposable earnings for
18 that week exceed thirty times the federal minimum
19 hourly wage prescribed by Section 6(a)(1) of the "Fair
20 Labor Standards Act of 1938", U.S.C. Title 19, Section
21 206(a)(1), in effect at the time the earnings are payable;
22 or

23 (3) In the case of earnings for a pay period other than
24 a week, the commissioner shall prescribe by rule a
25 multiple of the federal minimum hourly wage equival-
26 ent in effect to that set forth in subdivision (2) of this
27 subsection.

28 (c) No court may make, execute or enforce an order
29 or process in violation of this section. Any time after a
30 consumer's earnings have been executed upon pursuant

31 to article five-a or five-b, chapter thirty-eight of this
32 code by a creditor resulting from a rent-to-own transac-
33 tion, such consumer may petition any court having
34 jurisdiction of such matter or the circuit court of the
35 county wherein he resides to reduce or temporarily or
36 permanently remove such execution upon his earnings
37 on the grounds that such execution causes or will cause
38 undue hardship to him or his family. When such fact
39 is proved to the satisfaction of such court, it may reduce
40 or temporarily or permanently remove such execution.

41 (d) No garnishment governed by the provisions of this
42 section will be given priority over a voluntary assign-
43 ment of wages to fulfill a support obligation, a garnish-
44 ment to collect arrearages in support payments or a
45 notice of withholding from wages of amounts payable as
46 support, notwithstanding the fact that the garnishment
47 in question or the judgment upon which it is based may
48 have preceded the support-related assignment, garnish-
49 ment or notice of withholding in point of time or filing.

§46B-6-5. No discharge or reprisal because of garnishment.

1 No employer shall discharge or take any other form
2 of reprisal against an employee for the reason that a
3 creditor of the employee has subjected or attempted to
4 subject unpaid earnings of the employee to garnishment
5 or like proceedings directed to the employer for the
6 purpose of paying a judgment arising from a rent-to-
7 own transaction.

§46B-6-6. Personal property exemptions.

1 Any consumer residing in this state may set apart and
2 hold personal property to be exempt from execution or
3 other judicial process resulting from rent-to-own
4 transactions, except for the purchase money due on such
5 property, in such amounts as follows: Clothing and other
6 wearing apparel of the consumer, his spouse and any
7 dependents of such consumer, not to exceed the fair
8 market value of two hundred dollars; furniture, applian-
9 ces, furnishings and fixtures regularly used for family
10 purposes in the consumer's residence, to the extent of the
11 fair market value of one thousand dollars; children's

12 books, pictures, toys and other such personal property
13 of children; all medical health equipment used for
14 health purposes by the consumer, his or her spouse and
15 any dependent of such consumer; tools of trade, includ-
16 ing any income-producing property used in the consu-
17 mer's principal occupation, to the extent of the fair
18 market value of one thousand dollars; and any policy of
19 life or endowment insurance which is payable to the
20 spouse or children of the insured consumer or to a
21 trustee for their benefit, except the cash value of any
22 accrued dividends thereon. When a consumer claims
23 personal property as exempt under the provisions of this
24 section, he shall deliver a list containing all the personal
25 property owned or claimed by him and all items of such
26 property he claims as exempt hereunder, with the value
27 of each separate item listed according to his best
28 knowledge, to the officer holding the execution or other
29 such process. Such list shall be sworn to by affidavit.
30 If the value of the property named in such list exceeds
31 the amounts specified in this section, the consumer shall
32 state at the foot thereof what part of such property he
33 claims as exempt. If such value does not exceed the
34 amounts specified in this section, the claim of exemption
35 shall be held to extend to the whole thereof without
36 stating more and, if no appraisal is demanded, the
37 property so claimed shall be set aside as exempt. Where
38 the consumer owning exempt property is absent or
39 incapable of acting or neglects or declines to act
40 hereunder, the claim of exemption may be made, the list
41 delivered and the affidavit made by his spouse with the
42 same effect as if the consumer had done so. Upon receipt
43 of such a list, the officer to whom it is given shall
44 immediately exhibit such list to the dealer or his agent
45 or attorney. The rights granted and procedures provided
46 for in article eight, chapter thirty-eight of this code shall
47 apply to any proceeding under this section, except that
48 the provisions of sections one and three of such article
49 shall not apply.

ARTICLE 7. NONRESIDENT DEFENDANTS.

§46B-7-1. Service of process on certain nonresidents.

1 Any nonresident person, except a nonresident corpo-

2 ration authorized to do business in this state pursuant
3 to the provisions of chapter thirty-one of this code, who
4 takes or holds any negotiable instrument, nonnegotiable
5 instrument, or contract or other writing, arising from
6 a rent-to-own lease which is subject to the provisions of
7 this chapter, shall be conclusively presumed to have
8 appointed the secretary of state as his attorney-in-fact
9 with authority to accept service of notice and process in
10 any action or proceeding brought against him arising
11 out of such rent-to-own transaction. A person shall be
12 considered a nonresident hereunder if he is a nonresi-
13 dent at the time such service of notice and process is
14 sought. No act of such person appointing the secretary
15 of state shall be necessary. Immediately after being
16 served with or accepting any such process or notice, of
17 which process or notice two copies for each defendant
18 shall be furnished the secretary of state with the
19 original notice or process, together with a fee of two
20 dollars, the secretary of state shall file in his office a
21 copy of such process or notice, with a note thereon
22 endorsed of the time of service or acceptance, as the case
23 may be, and transmit one copy of such process or notice
24 by registered or certified mail, return receipt requested,
25 to such person at his address, which address shall be
26 stated in such process or notice: *Provided*, That such
27 return receipt shall be signed by such person or an
28 agent or employee of such person if a corporation, or the
29 registered or certified mail so sent by said secretary of
30 state is refused by the addressee and the registered or
31 certified mail is returned to said secretary of state, or
32 to his office, showing thereon the stamp of the U.S.
33 postal service that delivery thereof has been refused,
34 and such return receipt or registered or certified mail
35 is appended to the original process or notice and filed
36 therewith in the clerk's office of the court from which
37 such process or notice was issued. But no process or
38 notice shall be served on the secretary of state or
39 accepted fewer than ten days before the return date
40 thereof. The court may order such continuances as may
41 be reasonable to afford each defendant opportunity to
42 defend the action or proceeding.

43 The provisions for service of process or notice herein

44 are cumulative and nothing herein contained shall be
45 construed as a bar to the plaintiff in any action from
46 having process or notice in such action served in any
47 other mode and manner provided by law.

ARTICLE 8. ENFORCEMENT AND REMEDIES.

§46B-8-1. Enforcement.

§46B-8-2. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

§46B-8-3. Civil actions by attorney general.

§46B-8-1. Enforcement.

1 For a violation of or a failure to comply with the
2 provisions of this article by a dealer, a consumer is
3 entitled to recover from the dealer the consumer's actual
4 damages, reasonable attorney's fees and court costs and
5 a civil penalty in an amount not less than one hundred
6 dollars nor more than one thousand dollars for each
violation.

§46B-8-2. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

1 (a) The attorney general may bring a civil action to
2 restrain a dealer or a person acting in his behalf from
3 engaging in a course of:

4 (1) Making or enforcing unconscionable terms or
5 provisions of rent-to-own transactions;

6 (2) Fraudulent or unconscionable conduct in inducing
7 consumers to enter into rent-to-own transactions; or

8 (3) Fraudulent or unconscionable conduct in the
9 collection of payments arising from rent-to-own
10 transactions.

11 (b) In an action brought pursuant to this section the
12 court may grant relief only if it finds:

13 (1) That the respondent has made unconscionable
14 agreements or has engaged or is likely to engage in a
15 course of fraudulent or unconscionable conduct;

16 (2) That the agreements or conduct of the respondent
17 have caused or are likely to cause injury to consumers;

18 and

19 (3) That the respondent has been able to cause or will
20 be able to cause the injury primarily because the
21 transactions involved are rent-to-own transactions.

22 (c) In applying this section, consideration shall be
23 given to each of the following factors, among others:

24 (1) Belief by the dealer at the time rent-to-own
25 transactions are made that there was no reasonable
26 probability of payment in full of the obligation by the
27 consumer;

28 (2) Knowledge by the dealer at the time of the sale
29 of the inability of the consumer to receive substantial
30 benefits from the transaction;

31 (3) Gross disparity between the price of the property
32 or services sold that are the subject of the transaction
33 and the value of the property measured by the price at
34 which similar property are readily obtainable in rent-
35 to-own transactions by like consumers;

36 (4) The fact that the dealer contracted for or received
37 separate charges for insurance with respect to the goods
38 with the effect of making the sales or loans, considered
39 as a whole, unconscionable; and

40 (5) The fact that the respondent has knowingly taken
41 advantage of the inability of the consumer reasonably
42 to protect his interests by reason of physical or mental
43 infirmities, ignorance, illiteracy or inability to under-
44 stand the language of the agreement or similar factors.

45 (d) In an action brought pursuant to this chapter, a
46 charge or practice expressly permitted by this chapter
47 is not unconscionable.

§46B-8-3. Civil actions by attorney general.

1 (a) After demand, the attorney general may bring a
2 civil action against a dealer for making or collecting
3 charges in excess of those permitted by this chapter. If
4 the court finds that an excess charge has been made, the
5 court shall order the respondent to refund to the
6 consumer the amount of the excess charge. If a dealer

7 has made an excess charge in a deliberate violation of
8 or in reckless disregard for this chapter or if a dealer
9 has refused to refund an excess charge within a
10 reasonable time after demand by the consumer or the
11 attorney general, the court may also order the respond-
12 ent to pay to the consumer a civil penalty in an amount
13 determined by the court not in excess of ten times the
14 amount of the excess charge. Refunds and penalties to
15 which the consumer is entitled pursuant to this subsec-
16 tion may be set off against the consumer's obligation. If
17 a consumer brings an action against a dealer to recover
18 an excess charge or civil penalty, an action by the
19 attorney general to recover for the same excess charge
20 shall be stayed while the consumer's action is pending
21 and shall be dismissed if the consumer's action is
22 dismissed with prejudice or results in a final judgment
23 granting or denying the consumer's claim. No action
24 pursuant to this subsection may be brought more than
25 one year after the time the excess charge was made. If
26 the dealer establishes by a preponderance of evidence
27 that a violation is unintentional or the result of a bona
28 fide error, no liability to pay a penalty shall be imposed
29 under this subsection.

30 (b) The attorney general may bring a civil action
31 against a dealer to recover a civil penalty for willfully
32 violating this chapter and if the court finds that the
33 defendant has engaged in a course of repeated and
34 willful violations of this chapter, it may assess a civil
35 penalty of no more than five thousand dollars. No civil
36 penalty pursuant to this subsection may be imposed for
37 violations of this chapter occurring more than four years
38 before the action is brought.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-32. Removal out of county of property securing claim; penalties; fraudulent disposition of personal property in possession by virtue of lease; notice to return; failure to return; penalty; right to immediate possession.

1 (a) Any debtor under any security instrument convey-
2 ing personal property, who retains possession of such
3 personal property, and who, without the consent of the
4 owner of the claim secured by such security instrument,
5 and with intent to defraud, removes or causes to be
6 removed any of the property securing such claim out of
7 the county where it is situated at the time it became
8 security for such claim or out of a county to which it
9 was removed by virtue of a former consent of the owner
10 of the claim under this section, or, with intent to
11 defraud, secretes or sells the same, or converts the same
12 to his own use, shall be guilty of a misdemeanor, and,
13 upon conviction thereof, be fined not more than five
14 hundred dollars, or imprisoned not more than six
15 months, or both, in the discretion of the court.

16 (b) Any person in possession or control of any personal
17 property by virtue of or subject to a written lease who,
18 with intent to defraud and without written consent of
19 the owner, disposes of such property by sale or transfer,
20 or, after receiving a written notice to return the
21 property or otherwise make the property available to the
22 lessor, secretes or converts such property to his own use
23 and in so doing places the property in a location other
24 than the locations described in the written lease, or
25 removes or causes to be removed such property from the
26 state shall be deemed guilty of the larceny of such
27 property.

28 In any prosecution under the provisions of this
29 subsection, written notice may be mailed by certified
30 mail, addressed to the consumer at the address of the
31 consumer stated in the lease, and served on the
32 consumer within ten days of the expiration of the lease,
33 which notice shall state that the lease has expired and
34 that consumer has ten days from receipt of such notice
35 to return the leased property. Proof that the consumer
36 failed to return the property within ten days of receiving
37 such notice shall in any prosecution under this subsec-
38 tion constitute prima facie evidence that the consumer
39 intended to defraud the owner.

40 Whenever the consumer is a resident of the county in
41 which the lease was contracted, the dealer, after written

42 notice to the consumer within ten days after the
43 expiration of the lease, has the right to immediate
44 possession of the leased property, without formal process
45 to secure return and possession of the leased property,
46 if this can be done without breach of the peace. The
47 dealer is not liable to the consumer for any damages for
48 any action taken that is reasonable, necessary and
49 incidental to the reclaiming or taking possession of the
50 leased property.

CHAPTER 122

(Com. Sub. for H. B. 2513—By Delegates Browning, Gallagher,
Smith, Staton and Manuel)

[Passed April 9, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen-b, article four, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the relocation of public utility lines to accommodate a federal-aid interstate or Appalachian highway project; defining terms; and including public utility relocation costs and relocation costs of any pipeline company subject to the jurisdiction of the federal energy regulatory commission as a cost of construction or upgrading of highways under the Federal Intermodal Surface Transportation Efficiency Act of 1991.

Be it enacted by the Legislature of West Virginia:

That section seventeen-b, article four, 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 4. STATE ROAD SYSTEM.

§17-4-17b. Relocation of public utility lines to accommodate federal-aid highway projects.

- 1 (a) Whenever the commissioner of highways deter-
- 2 mines that any public utility line or facility located
- 3 upon, across or under any portion of a state highway
- 4 needs to be relocated in order to accommodate a federal-

5 aid interstate or Appalachian highway project, he or she
6 shall notify the public utility owning or operating the
7 facility which shall relocate the same in accordance with
8 the order of the commissioner. The cost of the relocation
9 shall be paid out of the state road fund in all cases
10 involving the interstate or the Appalachian system
11 where proportionate reimbursement of the cost shall be
12 obtained by the commissioner of highways from the
13 United States pursuant to the "Federal Aid Highway
14 Act of 1956" or the "Appalachian Regional Development
15 Act of 1965," as amended, and all acts amendatory or
16 supplementary thereto: *Provided*, That the cost of any
17 relocation of municipally owned utility facilities and
18 water or sanitary districts or authorities shall be paid
19 out of state road funds in any case involving any federal-
20 aid system where proportionate reimbursement of such
21 cost shall be obtained by the commissioner of highways
22 from the United States.

23 (b) For the purposes of this section, the term, "cost of
24 relocation," includes the entire amount paid by the
25 utility, exclusive of any right-of-way costs incurred by
26 the utility, properly attributable to the relocation after
27 deducting therefrom any increase in the value of the
28 new facility and salvage value derived from the old
29 facility.

30 The cost of relocating utility facilities, as defined in
31 this section, in connection with any federal-aid interstate
32 or Appalachian highway project is hereby declared to
33 be a cost of highway construction.

34 (c) The commissioner of highways is hereby autho-
35 rized to include within the cost of highway construction
36 the cost of relocation necessarily incurred by any public
37 utility, and any pipeline company subject to the
38 jurisdiction of the federal energy regulatory commis-
39 sion, in relocating any public utility line, pipeline or
40 facility as a result of the construction of any fully or
41 partially controlled access highway as a part of the
42 national highway system as authorized by the "Federal
43 Intermodal Surface Transportation Efficiency Act of
44 1991", and all acts amendatory and supplementary
45 thereto as of the twentieth day of March, one thousand

- 46 nine hundred ninety-three. The provisions of article five-
47 a, chapter twenty-one of this code apply to all work
48 performed pursuant to the provisions of this subsection.

CHAPTER 123

(Com. Sub. for H. B. 2304—By Mr. Speaker, Mr. Chambers, and
Delegate Burk, By Request of the Executive)

[Passed April 10, 1993; in effect July 1, 1993. Approved by the Governor.]

AN ACT to amend and reenact section two hundred two, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section three hundred five, article three of said chapter; and to amend and reenact sections four hundred six and four hundred thirteen, article four of said chapter, all relating to the registration procedure for broker-dealers, agents and investment advisers; increasing and adding fees, registration of securities; setting up a special operating fund to operate the securities division; specifying uses of the fund; and requiring that the special fund be appropriated by line item by the Legislature.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Registration of Broker-dealers, Agent; and Investment Advisers.
3. Registration of Securities.
4. General Provisions.

ARTICLE 2. REGISTRATION OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISERS.

§32-2-202. Registration procedure.

1 (a) A broker-dealer, agent or investment adviser may
2 obtain an initial or renewal registration by filing with
3 the commissioner an application together with a consent
4 to service of process pursuant to subsection (g), section
5 four hundred fourteen, article four of this chapter. The
6 application shall contain whatever information the
7 commissioner by rule requires concerning matters such
8 as: (1) The applicant's firm and place of organization;
9 (2) the applicant's proposed method of doing business;
10 (3) the qualifications and business history of the
11 applicant and in the case of a broker-dealer or invest-
12 ment adviser, the qualifications and business history of
13 any partner, officer or director, any person occupying
14 a similar status or performing similar functions, or any
15 person directly or indirectly controlling the broker-
16 dealer or investment adviser and, in the case of an
17 investment adviser, the qualifications and business
18 history of any employee; (4) any injunction or adminis-
19 trative order or conviction of a misdemeanor involving
20 a security or any aspect of the securities business and
21 any conviction of a felony; and (5) the applicant's
22 financial condition and history. The commissioner may
23 by rule or order require an applicant for initial
24 registration to publish an announcement of the applica-
25 tion as a Class I legal advertisement in compliance with
26 the provisions of article three, chapter fifty-nine of this
27 code, and the publication area or areas for the publica-
28 tion shall be specified by the commissioner. If no denial
29 order is in effect and no proceeding is pending under
30 section two hundred four of this article, registration
31 becomes effective at noon of the thirtieth day after an
32 application is filed. The commissioner may by rule or
33 order specify an earlier effective date, and he or she may
34 by order defer the effective date until noon of the
35 thirtieth day after the filing of any amendment to an
36 application. Registration of a broker-dealer automati-
37 cally constitutes registration of any agent who is a
38 partner, officer or director, or a person occupying a
39 similar status or performing similar functions, as
40 designated by the broker-dealer in writing to the
41 commissioner and approved in writing by the
42 commissioner.

43 (b) Every applicant for initial or renewal registration
44 shall pay a filing fee of two hundred fifty dollars in the
45 case of a broker-dealer and the agent of an issuer, fifty-
46 five dollars in the case of an agent, one hundred seventy
47 dollars in the case of an investment adviser, and fifty
48 dollars for each investment advisor representative.
49 When an application is denied or withdrawn, the
50 commissioner shall retain all of the fee.

51 (c) A registered broker-dealer or investment adviser
52 may file an application for registration of a successor,
53 whether or not the successor is then in existence, for the
54 unexpired portion of the year. A filing fee of twenty
55 dollars shall be paid.

56 (d) The commissioner may by rule require a minimum
57 capital for registered broker-dealers and investment
58 advisers.

59 (e) The commissioner may by rule require registered
60 broker-dealers, agents and investment advisers to post
61 surety bonds in amounts up to ten thousand dollars, and
62 may determine their conditions. Any appropriate
63 deposit of cash or securities shall be accepted in lieu of
64 any bond required. No bond may be required of any
65 registrant whose net capital, which may be defined by
66 rule, exceeds twenty-five thousand dollars. Every bond
67 shall provide for suit thereon by any person who has a
68 cause of action under section four hundred ten, article
69 four of this chapter and, if the commissioner by rule or
70 order requires, by any person who has a cause of action
71 not arising under this chapter. Every bond shall provide
72 that no suit may be maintained to enforce any liability
73 on the bond unless brought within two years after the
74 sale or other act upon which it is based.

75 (f) Every applicant, whether registered under this
76 chapter or not, shall pay a fifty dollar fee for each name
77 or address change.

78 (g) Every broker-dealer and investment advisor
79 registered under this chapter shall pay an annual fifty
80 dollar fee for each branch office located in West
81 Virginia.

ARTICLE 3. REGISTRATION OF SECURITIES.**§32-3-305. Provisions applicable to registration generally.**

1 (a) A registration statement may be filed by the
2 issuer, any other person on whose behalf the offering is
3 to be made, or a registered broker-dealer. A registration
4 statement filed under this chapter registering invest-
5 ment company shares shall cover only one class, series
6 or portfolio of investment company shares.

7 (b) Every person filing a registration statement shall
8 pay a filing fee of one twentieth of one percent of the
9 maximum aggregate offering price at which the
10 registered securities are to be offered in this state, but
11 the fee shall in no case be less than fifty dollars or more
12 than fifteen hundred dollars. When a registration
13 statement is withdrawn before the effective date or a
14 preeffective stop order is entered under section 306, the
15 commissioner shall retain all of the fee.

16 (c) Every registration statement shall specify (1) the
17 amount of securities to be offered in this state; (2) the
18 states in which a registration statement or similar
19 document in connection with the offering has been or is
20 to be filed; and (3) any adverse order, judgment or
21 decree entered in connection with the offering by the
22 regulatory authorities in each state or by any court or
23 the securities and exchange commission.

24 (d) Any document filed under this chapter or a
25 predecessor act within five years preceding the filing of
26 a registration statement may be incorporated by
27 reference in the registration statement to the extent that
28 the document is currently accurate.

29 (e) The commissioner may by rule or otherwise permit
30 the omission of any item of information or document
31 from any registration statement.

32 (f) In the case of a nonissuer distribution, information
33 may not be required under section 304 of this article or
34 subsection (j) of this section unless it is known to the
35 person filing the registration statement or to the persons
36 on whose behalf the distribution is to be made, or can

37 be furnished by them without unreasonable effort or
38 expense.

39 (g) The commissioner may by rule or order require
40 as a condition of registration by qualification or
41 coordination (1) that any security issued within the past
42 three years or to be issued to a promoter for a consid-
43 eration substantially different from the public offering
44 price, or to any person for a consideration other than
45 cash, be deposited in escrow; and (2) that the proceeds
46 from the sale of the registered security in this state be
47 impounded until the issuer receives a specified amount
48 from the sale of the security either in this state or
49 elsewhere. The commissioner may by rule or order
50 determine the conditions of any escrow or impounding
51 required under this subsection, but he or she may not
52 reject a depository solely because of location in another
53 state.

54 (h) The commissioner may by rule or order require
55 as a condition of registration that any security regis-
56 tered by qualification or coordination be sold only on a
57 specified form of subscription or sale contract, and that
58 a signed or conformed copy of each contract be filed
59 with the commissioner or preserved for any period up
60 to three years specified in the rule or order.

61 (i) Every registration statement is effective for one
62 year from its effective date, or any longer period during
63 which the security is being offered or distributed in a
64 nonexempted transaction by or for the account of the
65 issuer or other person on whose behalf the offering is
66 being made or by any underwriter or broker-dealer who
67 is still offering part of an unsold allotment or subscrip-
68 tion taken by him as a participant in the distribution,
69 except during the time a stop order is in effect under
70 section 306 of this article. All outstanding securities of
71 the same class as a registered security are considered
72 to be registered for the purpose of any nonissuer
73 transaction (1) so long as the registration statement is
74 effective and (2) between the thirtieth day after the
75 entry of any stop order suspending or revoking the
76 effectiveness of the registration statement under section
77 306 of this article (if the registration statement did not

78 relate in whole or in part to a nonissuer distribution)
79 and one year from the effective date of the registration
80 statement. A registration statement may not be with-
81 drawn for one year from its effective date if any
82 securities of the same class are outstanding. A registra-
83 tion statement may be withdrawn otherwise only in the
84 discretion of the commissioner.

85 (j) So long as a registration statement is effective, the
86 commissioner may by rule or order require the person
87 who filed the registration statement to file reports, not
88 more often than quarterly, to keep reasonably current
89 the information contained in the registration statement
90 and to disclose the progress of the offering.

91 (k) A registration statement relating to a security
92 issued by a face amount certificate company or a
93 redeemable security issued by an open-end management
94 company or unit investment trust, as those terms are
95 defined in the investment company act of 1940, may be
96 amended after its effective date so as to increase the
97 securities specified as proposed to be offered. The
98 amendment becomes effective when the commissioner so
99 orders. Every person filing an amendment shall pay a
100 filing fee, calculated in the manner specified in
101 subsection (b) of this section, with respect to the
102 additional securities proposed to be offered.

103 (l) Every person changing the name or address of a
104 securities registration shall pay a fifty dollar fee for
105 change.

106 (m) Every person amending a registration statement
107 or offering a document without increasing the dollar
108 amount registered shall pay a twenty-five dollar fee for
109 each amended statement or document.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-406. Administration of chapter; operating fund for securities department.

§32-4-413. Administrative files and opinions.

§32-4-406. Administration of chapter; operating fund for securities department.

1 (a) This chapter shall be administered by the auditor

2 of this state, and he or she is hereby designated, and
3 shall be, the commissioner of securities of this state. He
4 or she has the power and authority to appoint or employ
5 such assistants as are necessary for the administration
6 of this chapter.

7 (b) The auditor shall set up a special operating fund
8 for the securities division in his or her office. The
9 auditor shall pay into the fund twenty percent of all fees
10 collected as provided for in this chapter, not to exceed
11 four hundred thousand dollars. If, at the end of any
12 fiscal year, the balance in the operating fund exceeds
13 one hundred fifty thousand dollars, the excess shall be
14 withdrawn from the special fund and deposited in the
15 general revenue fund.

16 The special operating fund shall be used by the
17 auditor to fund the operation of the securities division
18 located in his or her office. The special operating fund
19 shall be appropriated by line item by the Legislature.

20 (c) It is unlawful for the commissioner or any of his
21 or her officers or employees to use for personal benefit
22 any information which is filed with or obtained by the
23 commissioner and which is not made public. No
24 provision of this chapter authorizes the commissioner or
25 any of his or her officers or employees to disclose any
26 information except among themselves or when neces-
27 sary or appropriate in a proceeding or investigation
28 under this chapter. No provision of the chapter either
29 creates or derogates from any privilege which exists at
30 common law or otherwise when documentary or other
31 evidence is sought under a subpoena directed to the
32 commissioner or any of his or her officers or employees.

§32-4-413. Administrative files and opinions.

1 (a) A document is filed when it is received by the
2 commissioner.

3 (b) The commissioner shall keep a register of all
4 applications for registration and registration statements
5 which are or have ever been effective under this chapter
6 and all denial, suspension or revocation orders which
7 have been entered under this chapter. The register shall

8 be open for public inspection.

9 (c) The information contained in or filed with any
10 registration statement, application or report may be
11 made available to the public under rules prescribed by
12 the commissioner.

13 (d) Upon request and at such reasonable charges as
14 he or she prescribes, the commissioner shall furnish to
15 any person photostatic or other copies (certified under
16 his or her seal of office if requested) of any entry in the
17 register or any document which is a matter of public
18 record. In any proceeding or prosecution under this
19 chapter, any copy so certified is prima facie evidence of
20 the contents of the entry or document certified.

21 (e) The commissioner in his or her discretion may
22 honor requests from interested persons for interpreta-
23 tive opinions. Copies of the opinions shall be filed in a
24 special file maintained for that purpose and shall be
25 public records available for public inspection. The
26 commissioner shall charge a one hundred dollar fee for
27 each interpretative opinion.

CHAPTER 124

(Com. Sub. for S. B. 288—By Senators Burdette, Mr. President, and Boley,
By Request of the Executive)

[Passed April 10, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section two-b; to amend and reenact section twelve-b, article nine of said chapter; and to amend and reenact section twelve, article eleven of said chapter, all relating to definitions; sewage sludge management; siting approval for solid waste facilities; effect on facilities with prior approval; and recycling facilities exemption.

Be it enacted by the Legislature of West Virginia:

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

Article

5F. **Solid Waste Management Act.**

9. **County and Regional Solid Waste Authorities.**

11. **West Virginia Recycling Program.**

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

§20-5F-2. Definitions.

§20-5F-2b. Sewage sludge management.

§20-5F-2. Definitions.

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

3 (a) "Approved solid waste facility" means a solid
4 waste facility or practice which has a valid permit
5 under this article.

6 (b) "Backhauling" means the practice of using the
7 same container to transport solid waste and to transport
8 any substance or material used as food by humans,
9 animals raised for human consumption or reusable item
10 which may be refilled with any substance or material
11 used as food by humans.

12 (c) "Chief" means the chief of the office of waste
13 management of the division of environmental protection.

14 (d) "Commercial recycler" means any person, corpo-
15 ration or business entity whose operation involves the
16 mechanical separation of materials for the purpose of
17 reselling or recycling at least seventy percent by weight
18 of the materials coming into the commercial recycling
19 facility.

20 (e) "Municipal solid waste incineration" means the
21 burning of any solid waste collected by any municipal

22 or residential solid waste disposal company.

23 (f) "Commercial solid waste facility" means any solid
24 waste facility which accepts solid waste generated by
25 sources other than the owner or operator of the facility
26 and shall not include an approved solid waste facility
27 owned and operated by a person for the sole purpose of
28 disposing of solid wastes created by that person or such
29 person and other persons on a cost-sharing or nonprofit
30 basis and shall not include land upon which reused or
31 recycled materials are legitimately applied for structu-
32 ral fill, road base, mine reclamation and similar
33 applications.

34 (g) "Division" means the division of environmental
35 protection.

36 (h) "Director" means the director of the division of
37 environmental protection.

38 (i) "Open dump" means any solid waste disposal which
39 does not have a permit under this article, or is in
40 violation of state law, or where solid waste is disposed
41 in a manner that does not protect the environment.

42 (j) "Person" or "persons" mean any industrial user,
43 public or private corporation, institution, association,
44 firm or company organized or existing under the laws
45 of this or any other state or country; state of West
46 Virginia; governmental agency, including federal
47 facilities; political subdivision; county commission;
48 municipal corporation; industry; sanitary district;
49 public service district; drainage district; soil conserva-
50 tion district; watershed improvement district; partner-
51 ship; trust; estate; person or individual; group of persons
52 or individuals acting individually or as a group; or any
53 legal entity whatever.

54 (k) "Sludge" means any solid, semisolid, residue or
55 precipitate, separated from or created by a municipal,
56 commercial or industrial waste treatment plant, water
57 supply treatment plant or air pollution control facility
58 or any other such waste having similar origin.

59 (l) "Solid waste" means any garbage, paper, litter,
60 refuse, cans, bottles, waste processed for the express

61 purpose of incineration; sludge from a waste treatment
62 plant; water supply treatment plant or air pollution
63 control facility; and other discarded materials, including
64 offensive or unsightly matter, solid, liquid, semisolid or
65 contained liquid or gaseous material resulting from
66 industrial, commercial, mining or community activities
67 but does not include solid or dissolved material in
68 sewage or solid or dissolved materials in irrigation
69 return flows or industrial discharges which are point
70 sources and have permits under article five-a of this
71 chapter, or source, special nuclear or byproduct mate-
72 rial as defined by the Atomic Energy Act of 1954, as
73 amended, including any nuclear or byproduct material
74 considered by federal standards to be below regulatory
75 concern, or a hazardous waste either identified or listed
76 under article five-e of this chapter or refuse, slurry,
77 overburden or other wastes or material resulting from
78 coal-fired electric power or steam generation, the
79 exploration, development, production, storage and
80 recovery of coal, oil and gas and other mineral resources
81 placed or disposed of at a facility which is regulated
82 under chapter twenty-two, twenty-two-a or twenty-two-
83 b of this code, so long as such placement or disposal is
84 in conformance with a permit issued pursuant to such
85 chapters.

86 (m) "Solid waste disposal" means the practice of
87 disposing of solid waste including placing, depositing,
88 dumping or throwing or causing to be placed, deposited,
89 dumped or thrown any solid waste.

90 (n) "Solid waste disposal shed" means the geographi-
91 cal area which the solid waste management board
92 designates and files in the state register pursuant to
93 section eight, article twenty-six, chapter sixteen of this
94 code.

95 (o) "Solid waste facility" means any system, facility,
96 land, contiguous land, improvements on the land,
97 structures or other appurtenances or methods used for
98 processing, recycling or disposing of solid waste,
99 including landfills, transfer stations, materials recovery
100 facilities, mixed waste processing facilities, sewage
101 sludge processing facilities, composting facilities and

102 other such facilities not herein specified, but not
103 including land upon which sewage sludge is applied in
104 accordance with subsection (b), section two-b of this
105 article. Such facility shall be deemed to be situated, for
106 purposes of this article, in the county where the majority
107 of the spatial area of such facility is located: *Provided,*
108 That a salvage yard, licensed and regulated pursuant to
109 the terms of article twenty-three, chapter seventeen of
110 this code, is not a solid waste facility.

111 (p) "Class A facility" means a commercial solid waste
112 facility which handles an aggregate of between ten
113 thousand and thirty thousand tons of solid waste per
114 month. Class A facility shall include two or more Class
115 B solid waste landfills owned or operated by the same
116 person in the same county, if the aggregate tons of solid
117 waste handled per month by such landfills exceeds nine
118 thousand nine hundred ninety-nine tons of solid waste
119 per month.

120 (q) "Applicant" means the person applying for a
121 commercial solid waste facility permit or similar
122 renewal permit and any person related to such person
123 by virtue of common ownership, common management,
124 or family relationships as the director of the division of
125 environmental protection may specify, including the
126 following: Spouses, parents and children and siblings.

127 (r) "Energy recovery incinerator" means any solid
128 waste facility at which solid wastes are incinerated with
129 the intention of using the resulting energy for the
130 generation of steam, electricity or any other use not
131 specified herein.

132 (s) "Incineration technologies" means any technology
133 that uses controlled flame combustion to thermally
134 break down solid waste, including refuse-derived fuel,
135 to an ash residue that contains little or no combustible
136 materials, regardless of whether the purpose is process-
137 ing, disposal, electric or steam generation or any other
138 method by which solid waste is incinerated.

139 (t) "Incinerator" means an enclosed device using
140 controlled flame combustion to thermally break down
141 solid waste, including refuse-derived fuel, to an ash

142 residue that contains little or no combustible materials.

143 (u) "Materials recovery facility" means any solid
144 waste facility at which source-separated materials or
145 materials recovered through a mixed waste processing
146 facility are manually or mechanically shredded or
147 separated for purposes of reuse and recycling, but does
148 not include a composting facility.

149 (v) "Source-separated materials" means materials
150 separated from general solid waste at the point of origin
151 for the purpose of reuse and recycling but does not mean
152 sewage sludge.

153 (w) "Mixed waste processing facility" means any solid
154 waste facility at which materials are recovered from
155 mixed solid waste through manual or mechanical means
156 for purposes of reuse, recycling or composting.

157 (x) "Mixed solid waste" means solid waste from which
158 materials sought to be reused or recycled have not been
159 source-separated from general solid waste.

160 (y) "Composting facility" means any solid waste
161 facility processing solid waste by composting, including
162 sludge composting, organic waste or yard waste com-
163 posting, but does not include a facility for composting
164 solid waste that is located at the site where the waste
165 was generated.

166 (z) "Recycling facility" means any solid waste facility
167 for the purpose of recycling at which neither land
168 disposal nor biological, chemical or thermal transforma-
169 tion of solid waste occurs: *Provided*, That mixed waste
170 recovery facilities, sludge processing facilities and
171 composting facilities are not considered recycling
172 facilities nor considered to be reusing or recycling solid
173 waste within the meaning of this article and articles
174 nine and eleven of this chapter.

175 (aa) "Landfill" means any solid waste facility for the
176 disposal of solid waste on land. Such facility is situated,
177 for purposes of this article, in the county where the
178 majority of the spatial area of such facility is located.

179 (bb) "Sewage sludge processing facility" is a solid

180 waste facility that processes sewage sludge for land
181 application, incineration or disposal at an approved
182 landfill. Such processes include, but are not limited to,
183 composting, lime stabilization, thermophilic digestion
184 and anaerobic digestion.

185 (cc) "Bulking agent" means any material mixed and
186 composted with sewage sludge.

187 (dd) "Sewage sludge" means solid, semisolid or liquid
188 residue generated during the treatment of domestic
189 sewage in a treatment works. Sewage sludge includes,
190 but is not limited to, domestic septage, scum or solids
191 removed in primary, secondary or advanced wastewater
192 treatment processes and a material derived from sewage
193 sludge. "Sewage sludge" does not include ash generated
194 during the firing of sewage sludge in a sewage sludge
195 incinerator.

196 (ee) "Composting" means the aerobic, thermophilic
197 decomposition of natural constituents of solid waste to
198 produce a stable, humus-like material.

199 (ff) "Agronomic rate" means the whole sewage sludge
200 application rate, by dry weight, designed:

201 (1) To provide the amount of nitrogen needed by the
202 food crop, feed crop, fiber crop, cover crop or vegetation
203 on the land; and

204 (2) To minimize the amount of nitrogen in the sewage
205 sludge that passes below the root zone of the crop or
206 vegetation grown on the land to the ground water.

§20-5F-2b. Sewage sludge management.

1 (a) The division shall develop and implement a
2 comprehensive program for the regulation and manage-
3 ment of sewage sludge. The division is authorized to
4 require permits for all facilities and activities which
5 generate, process or dispose of sewage sludge by
6 whatever means, including, but not limited to, land
7 application, composting, mixed waste composting,
8 incineration or any other method of handling sewage
9 sludge within the state.

10 (b) The director shall promulgate rules necessary for

11 the efficient and orderly regulation of sewage sludge no
12 later than ninety days after the effective date of this
13 article. The Legislature finds and declares that condi-
14 tions warranting a rule to be promulgated as an
15 emergency rule do exist and that the promulgation of
16 the initial rule required by this section should be
17 accorded emergency status. All rules, whether emer-
18 gency or not, promulgated pursuant to this section shall
19 assure, at a minimum, the following:

20 (1) That entities either producing sewage sludge
21 within the state or importing sewage sludge into the
22 state are required to report to the division the following:

23 (i) The specific source of the sewage sludge;

24 (ii) The amount of sewage sludge actually generated
25 or imported;

26 (iii) The content of heavy metals, pathogens, toxins or
27 vectors present in the sewage sludge; and

28 (iv) Each location that the sewage sludge is stored,
29 land applied or otherwise disposed of; the amount so
30 stored, land applied or otherwise disposed of; and the
31 capacity of that location to accept sewage sludge;

32 (2) That the division engage in reasonable and
33 periodic monitoring of all sewage sludge related
34 activities and to monitor data supplied by sewage sludge
35 producers or importers to ensure compliance with state
36 and federal regulations;

37 (3) That representatives of the division have the
38 ability to enter onto any land application site for the
39 purposes of inspecting and analyzing the effects of
40 sewage sludge application on that site;

41 (4) That no permit for the processing or disposal of
42 sewage sludge will be issued until there is an accurate
43 finding that it has been adequately tested and shown not
44 to contain heavy metals, pathogens, toxins or vectors in
45 excess of regulatory standards;

46 (5) That the director may require a surety bond,
47 deposit or similar instrument in an amount sufficient to
48 cover the costs of future environmental remediation

49 from producers and importers of sewage sludge;

50 (6) That no person or entity be allowed to apply
51 sewage sludge to land in a manner that will result in
52 exceeding the maximum soil concentration for all
53 pollutants, including, but not limited to, arsenic,
54 cadmium, chromium, copper, lead, mercury, molybde-
55 num, nickel, selenium and zinc;

56 (7) That no land, except a solid waste facility, be
57 allowed to accept or store so much sewage sludge as to
58 exceed the agronomic rate or a rate of fifteen dry tons
59 per acre per year, whichever is less: *Provided*, That up
60 to twenty-five dry tons per acre per year may be applied
61 in the reclamation of surface mine land;

62 (8) That information relating to the disposal of sewage
63 sludge is available to affected communities;

64 (9) That all sewage sludge processing facilities contain
65 sufficient design specifications to protect ground and
66 surface waters;

67 (10) That regulation of composting facilities varies
68 according to types and quantities of materials handled;

69 (11) That only living or dead plant tissues are used
70 as bulking agents in sewage sludge processing facilities;
71 and

72 (12) That a fee, to be paid by the producer or
73 importer, be levied and imposed on the land application
74 of sewage sludge, to be collected at a per ton rate,
75 sufficient to cover the costs of the sewage sludge
76 management program. Fees collected pursuant to the
77 terms of this subsection shall be deposited in the special
78 revenue fund designated the "water quality manage-
79 ment fund" established under the provisions of section
80 six-a, article five-a of this chapter. The fee schedule
81 shall vary according to the volume of materials handled
82 and the contaminant level of the sewage sludge and shall
83 be subject to the provisions of article three, chapter
84 twenty-nine-a of this code.

85 (c) For those publicly owned treatment works (POTW)
86 which produce sewage sludge and are regulated by the

87 division pursuant to an NPDES permit required under
88 article five-a of this chapter, a sewage sludge processing
89 permit shall be a part of the existing water pollution
90 control permit and shall include a sewage sludge
91 management plan approved by the chief.

92 (d) On and after the effective date of this section, any
93 facility seeking to land apply, compost, incinerate or
94 recycle sewage sludge shall first apply for and obtain
95 a permit from the division. No such permit may be
96 issued until the regulation provided for in subsection (b)
97 of this section is effective.

98 (e) All sewage sludge placed in, or upon, or used by
99 a solid waste facility or processed or handled, pursuant
100 to a permit issued by the division of environmental
101 protection, shall be subject to the same tipping and other
102 fees levied by this chapter on the disposal of solid waste
103 and shall be included in said facility's total tonnage,
104 subject to the limitations established in this article and
105 the provisions of article nine of this chapter: *Provided,*
106 That no land within a solid waste facility, but outside
107 a landfill disposal cell, be allowed to accept the
108 permanent application of so much sewage sludge as to
109 exceed the agronomic rate or a rate of fifteen dry tons
110 per acre per year, whichever is less: *Provided, however,*
111 That no such fees, excepting assessment fees provided
112 for in subdivision (12), subsection (b) of this section shall
113 be levied upon the application of sewage sludge to land
114 outside a solid waste facility in accordance with this
115 section.

ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§20-9-12b. Siting approval for solid waste facilities; effect on facilities with prior approval.

1 (a) It is the intent of the Legislature that all commer-
2 cial solid waste facilities operating in this state must
3 receive site approval at the local level, except for
4 recycling facilities, as defined in section two, article
5 five-f of this chapter, that are specifically exempted by
6 section twelve, article eleven of this chapter. Notwith-
7 standing said intent, facilities which obtained such

8 approval from either a county or regional solid waste
9 authority, or from a county commission, under any prior
10 enactment in this code, and facilities which were
11 otherwise exempted from local site approval under any
12 prior enactment in this code, shall be deemed to have
13 satisfied such requirement. All other facilities, includ-
14 ing facilities which received such local approval but
15 which seek to expand spatial area or to convert from a
16 Class B facility to a Class A facility, shall obtain such
17 approval only in the manner specified in sections twelve-
18 c, twelve-d and twelve-e of this article.

19 (b) In considering whether to issue or deny the
20 certificate of site approval as specified in sections
21 twelve-c, twelve-d and twelve-e of this article, the county
22 or regional solid waste authority or county commission
23 shall base its determination upon the following criteria:
24 The efficient disposal of solid waste generated within
25 the county or region, economic development, transpor-
26 tation facilities, property values, groundwater and
27 surface waters, geological and hydrological conditions,
28 aesthetic and environmental quality, historic or cultural
29 resources, the present or potential land uses for
30 residential, commercial, recreational, industrial or
31 environmental conservation purposes and the public
32 health, welfare and convenience.

33 (c) The county or regional solid waste authority, or
34 county commission, as appropriate, shall complete
35 findings of fact and conclusions relating to the criteria
36 authorized in subsection (b) hereof which support its
37 decision to issue or deny a certificate of site approval.

38 (d) The siting approval requirements for composting
39 facilities, materials recovery facilities and mixed waste
40 processing facilities shall be the same as those for other
41 solid waste facilities.

ARTICLE 11. WEST VIRGINIA RECYCLING PROGRAM.

§20-11-12. Recycling facilities exemption.

1 Recycling facilities, as defined in section two, article
2 five-f of this chapter, whose only function is to accept
3 free of charge, buy or transfer source separated ma-

4 terial or recycled material for resale or transfer for
5 further processing shall be exempt from the provisions
6 of said article and article nine of this chapter and
7 sections one-c and one-f, article two, chapter twenty-four
8 of this code.

CHAPTER 125

(Com. Sub. for S. B. 289—By Senators Brackenrich, Dalton, Chafin, Blatnik, Humphreys, Walker, Craigo, Dittmar, Helmick, Plymale, Manchin, Jones, Ross, Chernenko, Wiedebusch, Burdette, Mr. President, Bailey, Tomblin, Wagner, Whitlow, Boley, Macnaughtan, Felton, Sharpe, Wehrle, Claypole and Yoder)

[Passed March 31, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five and eight, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article two, chapter twenty-four of said code by adding thereto a new section, designated section one-i, all relating to solid waste facilities generally; providing for local solid waste to apply to director of the division of environmental protection for modification of permits; providing for extensions of the solid waste facility closure deadline; providing that appeal from decision of director of the division of environmental protection shall be made to circuit court of the county in which the solid waste facility is located; and providing for issuance of emergency certificate of need by public service commission to increase maximum monthly solid waste disposal tonnage.

Be it enacted by the Legislature of West Virginia:

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

Chapter**20. Natural Resources.****24. Public Service Commission.****CHAPTER 20. NATURAL RESOURCES.****ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.**

§20-5F-5. Prohibitions; permits required; priority of disposal.

§20-5F-8. Limited extension of solid waste facility closure deadline.

§20-5F-5. Prohibitions; permits required; priority of disposal.

1 (a) Open dumps are prohibited and it shall be
2 unlawful for any person to create, contribute to or
3 operate an open dump or for any landowner to allow an
4 open dump to exist on his property unless that open
5 dump is under a compliance schedule approved by the
6 chief. Such compliance schedule shall contain an
7 enforceable sequence of actions leading to compliance
8 and shall not exceed two years. Open dumps operated
9 prior to the first day of April, one thousand nine
10 hundred eighty-eight, by a landowner or tenant for the
11 disposal of solid waste generated by the landowner or
12 tenant at his or her residence or farm shall not be
13 deemed to constitute a violation of this section if such
14 open dump did not constitute a violation of law on the
15 first day of January, one thousand nine hundred eighty-
16 eight, and unauthorized dumps which were created by
17 unknown persons shall not constitute a violation of this
18 section: *Provided*, That no person shall contribute
19 additional solid waste to any such dump after the first
20 day of April, one thousand nine hundred eighty-eight,
21 except that the owners of the land on which unautho-
22 rized dumps have been or are being made shall not be
23 liable for such unauthorized dumping unless such
24 landowners refuse to cooperate with the division of
25 natural resources in stopping such unauthorized
26 dumping.

27 (b) It shall be unlawful for any person, unless he holds
28 a valid permit from the division to install, establish,
29 construct, modify, operate or abandon any solid waste
30 facility. All approved solid waste facilities shall be
31 installed, established, constructed, modified, operated or

32 abandoned in accordance with this article, plans,
33 specifications, orders, instructions and rules in effect.

34 (c) Any permit issued under this article shall be
35 issued in compliance with the requirements of this
36 article, its rules and article five-a and the rules
37 promulgated thereunder, so that only a single permit
38 shall be required of a solid waste facility under these
39 two articles. Each permit issued under this article shall
40 have a fixed term not to exceed five years: *Provided,*
41 That the chief may administratively extend a permit
42 beyond its five-year term if the approved solid waste
43 facility is in compliance with this article, its rules and
44 article five-a of this chapter and the rules promulgated
45 thereunder: *Provided, however,* That such administra-
46 tive extension may not be for more than one year. Upon
47 expiration of a permit, renewal permits may be issued
48 in compliance with rules and regulations promulgated
49 by the director of the division of natural resources.

50 (d) All existing permits of the division of health for
51 solid waste facilities under section nine, article one,
52 chapter sixteen of this code shall continue in full force
53 and effect until a permit is issued for that approved
54 solid waste facility under this article: *Provided,* That all
55 such existing permits of the division of health shall
56 expire within five years of the tenth day of June, one
57 thousand nine hundred eighty-three. Within four years
58 of the tenth day of June, one thousand nine hundred
59 eighty-three, all persons holding such division of health
60 permits shall apply to the chief for a permit under this
61 article: *Provided, however,* That the chief may require
62 persons holding such existing health division permits to
63 reapply under this section prior to four years from the
64 tenth day of June, one thousand nine hundred eighty-
65 three, if persistent violations of this article, any permit
66 term or condition, orders or rules promulgated under
67 this article, exist at that facility. Notwithstanding any
68 other provision contained in this subsection, the division
69 of natural resources may enter an extension order for
70 a period of two years while an application for a permit
71 pursuant to this article is pending.

72 (e) No person may dispose in the state of any solid

73 waste, whether such waste originates in state or out of
74 state, in a manner which endangers the environment or
75 the public health, safety or welfare as determined by the
76 director of the division of natural resources: *Provided,*
77 That the carcasses of dead animals may be disposed of
78 in any solid waste facility or in any other manner as
79 provided for in this code. Upon request by the director
80 of the division of natural resources, the director of the
81 division of health shall provide technical advice concern-
82 ing the disposal of solid waste or carcasses of dead
83 animals within the state.

84 (f) A commercial solid waste facility shall first ensure
85 that the disposal needs of the wasteshed in which it is
86 located are met. If one or more local solid waste
87 authorities in the wasteshed in which the facility is
88 located determine that the present or future disposal
89 needs of the wasteshed are not being, or will not be, met
90 by the commercial solid waste facility, such authorities
91 may apply to the director of the division of environmen-
92 tal protection to modify the applicable permit. The
93 director of the division of environmental protection, in
94 consultation with the solid waste management board,
95 may then modify the applicable permit in order to
96 reduce the total monthly tonnage of out of wasteshed
97 waste the facility is permitted to accept by an amount
98 that shall not exceed the total monthly tonnage neces-
99 sary to ensure the disposal needs of the wasteshed in
100 which the facility is located.

101 (g) In addition to all the requirements of this article
102 and the rules promulgated hereunder, a permit to
103 construct a new commercial solid waste facility or to
104 expand the spatial area of an existing facility, not
105 otherwise allowed by an existing permit, may not be
106 issued unless the public service commission has granted
107 a certificate of need, as provided in section one-c, article
108 two, chapter twenty-four of this code. If the director
109 approves a permit or permit modification, the certificate
110 of need shall become a part of the permit and all
111 conditions contained in the certificate of need shall be
112 conditions of the permit and may be enforced by the

113 division of natural resources in accordance with the
114 provisions of this article.

115 (h) The director of the division of natural resources
116 shall promulgate legislative rules pursuant to chapter
117 twenty-nine-a of this code which reflect the purposes as
118 set forth in this article.

**§20-5F-8. Limited extension of solid waste facility closure
deadline.**

1 (a) The director of the division of environmental
2 protection shall grant an extension of the closure
3 deadline up to the thirtieth day of June, one thousand
4 nine hundred ninety-three, to a solid waste facility,
5 required by solid waste management regulations to close
6 by the thirty-first day of March, one thousand nine
7 hundred ninety-three, requesting such extension pursu-
8 ant to the terms of subsection (b) of this section. The
9 director may also grant an extension of the closure
10 deadline up to the thirtieth day of September, one
11 thousand nine hundred ninety-four, to a solid waste
12 facility required under the terms of an extension
13 granted pursuant to this subsection to close by the
14 thirtieth day of June, one thousand nine hundred ninety-
15 three, or required by solid waste management regula-
16 tions to close by the thirtieth day of September, one
17 thousand nine hundred ninety-three, provided that the
18 solid waste facility:

19 (1) Has a solid waste facility permit, or by the first
20 day of March, one thousand nine hundred ninety-three,
21 had an application to obtain a permit pending before the
22 division of environmental protection for the construction
23 of a landfill in accordance with title forty-seven, series
24 thirty-eight, solid waste management regulations; and

25 (2) Has a certificate of need or had an application
26 pending therefor, from the public service commission;
27 and

28 (3) Has been determined by the director to pose no
29 significant hazard to public health, safety or the
30 environment; and

31 (4) Has entered into a compliance schedule with the

32 division of environmental protection to be in full
33 compliance, no later than the thirtieth day of Sep-
34 tember, one thousand nine hundred ninety-four, with
35 title forty-seven, series thirty-eight, solid waste manage-
36 ment regulations or to be in full compliance, no later
37 than the thirtieth day of September, one thousand nine
38 hundred ninety-four, with preclosure provisions of title
39 forty-seven, series thirty-eight, solid waste management
40 regulations: *Provided*, That no such extension of closure
41 deadline shall extend beyond the thirty-first day of
42 March, one thousand nine hundred ninety-four, for any
43 landfill in a county in which there is also located a
44 commercial solid waste landfill which has installed a
45 composite liner system in accordance with the require-
46 ments of the solid waste management regulations.

47 (b) Any commercial solid waste facility seeking to
48 extend its closure deadline until the thirtieth day of
49 June, one thousand nine hundred ninety-three, shall
50 submit a request for an extension with the director,
51 postmarked no later than the tenth day after this section
52 becomes law. Any solid waste facility seeking to extend
53 its closure deadline until the thirtieth day of September,
54 one thousand nine hundred ninety-four, shall submit to
55 the director, no later than the thirtieth day of April, one
56 thousand nine hundred ninety-three, an application
57 sufficient to demonstrate compliance with the require-
58 ments of subsection (a) of this section. The director shall
59 grant or deny any application within thirty days of
60 receipt thereof: *Provided*, That as a condition precedent
61 for granting such closure extension, a solid waste
62 facility must enter into an agreement with the director
63 that the solid waste facility shall, no later than the
64 thirtieth day of September, one thousand nine hundred
65 ninety-three, complete and submit to the director an
66 analysis of the facility's specific requirements and cost
67 to comply with the applicable design criteria, ground-
68 water monitoring provisions of title forty-seven, series
69 thirty-eight, solid waste management regulations and
70 the corrective action, financial assurance and closure
71 and post-closure care provisions of Subtitle (d) of the
72 federal Resource Conservation and Recovery Act, 42
73 U.S.C. 6941-6949.

74 (c) Any party who is aggrieved by an order of the
75 director regarding the grant or denial of an extension
76 of the closure deadline for a solid waste facility pursuant
77 to this section may obtain judicial review thereof in the
78 same manner as provided in section four, article five,
79 chapter twenty-nine-a of this code, which provisions
80 shall apply to and govern such review with like effect
81 as if the provisions of said section were set forth in
82 extenso in this section, except that the petition shall be
83 filed, within the time specified in section four, article
84 five, chapter twenty-nine-a of this code, in the circuit
85 court of the county where such facility exists: *Provided,*
86 That the court shall not in any manner permit the con-
87 tinued acceptance of solid waste at the facility pending
88 review of the decision of the director of the division.

89 (d) The judgment of the circuit court shall be final
90 unless reversed, vacated or modified on appeal to the
91 supreme court of appeals, in accordance with the
92 provisions of section one, article six, chapter twenty-
93 nine-a of this code, except that notwithstanding the
94 provisions of said section, the petition seeking such
95 review must be filed with said supreme court of appeals
96 within thirty days from the date of entry of the
97 judgment of the circuit court.

98 (e) The director of the division of natural resources
99 shall grant an extension of the closure deadline not to
100 exceed the thirtieth day of September, one thousand
101 nine hundred ninety-three, to a solid waste facility
102 required by solid waste management regulations to close
103 by the thirtieth day of November, one thousand nine
104 hundred ninety-two.

105 (f) Notwithstanding any other provision of this article,
106 the director, upon receipt of a request for an extension,
107 shall grant an extension of the closure deadline up to
108 the thirtieth day of September, one thousand nine
109 hundred ninety-four, to any solid waste facility required
110 to close on the thirty-first day of March, one thousand
111 nine hundred ninety-three, or the thirtieth day of
112 September, one thousand nine hundred ninety-three,
113 which is owned by a solid waste authority or owned by
114 a municipality and which accepts at least thirty percent

115 of its waste from within the county in which it is located
116 and which has not been determined by the director to
117 pose a significant risk to human health and safety or
118 cause substantial harm to the environment and which
119 could not be granted an extension up to the thirtieth day
120 of September, one thousand nine hundred ninety-four,
121 pursuant to the terms of subsections (a) and (b) of this
122 section if:

123 (1) The cost of transporting the waste is prohibitive;
124 or

125 (2) The cost of disposing of waste in other solid waste
126 facilities within the watershed would increase.

127 (g) Notwithstanding any other provision of this
128 article, the director shall grant an extension of the
129 closure deadline up to the thirtieth day of September,
130 one thousand nine hundred ninety-four, to any solid
131 waste landfill which, on or before the first day of March,
132 one thousand nine hundred ninety-three, has entered
133 into a compliance schedule with the director for the
134 construction of a transfer station or to any solid waste
135 landfill which on the first day of March, one thousand
136 nine hundred ninety-three, is already in the process of
137 constructing a solid waste transfer station and applies
138 by the first day of April, one thousand nine hundred
139 ninety-three, to enter into with the director, a com-
140 pliance schedule for the completion of the transfer
141 station: *Provided*, That upon the completion of the
142 transfer station and commencement of operations of the
143 transfer station, such landfill shall cease accepting solid
144 waste for disposal.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1i. Commission authorized to issue emergency certificate of need to certain commercial solid waste facilities; division of environmental protection to modify facility permit; criteria for emergency certificates.

1 (a) Notwithstanding any provision of this article, or

2 any provision of article five-f or article nine, chapter
3 twenty, or any other provision of this code, upon the
4 application of any commercial solid waste facility, the
5 commission may grant to a commercial solid waste
6 facility an emergency certificate of need to increase the
7 maximum monthly solid waste disposal tonnage, for a
8 period not to exceed one year, to the extent deemed
9 necessary to prevent any disruption of solid waste
10 disposal services in any county or wasteshed of the state
11 resulting from the closure of an existing landfill in said
12 county or wasteshed. The authority granted to the
13 commission under this section shall expire after the
14 thirtieth day of September, one thousand nine hundred
15 ninety-three. No temporary certificate issued pursuant
16 to this section shall extend beyond the thirtieth day of
17 September, one thousand nine hundred ninety-four. The
18 director of the division of environmental protection shall
19 modify any commercial solid waste facility permit, issued
20 under article five-f, chapter twenty of this code, to
21 conform with the maximum monthly solid waste disposal
22 tonnage and any other terms and conditions set forth in
23 a temporary certificate issued under this section.

24 (b) If the net tonnage increase under a temporary
25 certificate application made pursuant to subsection (a)
26 of this section would cause the gross monthly solid waste
27 disposal tonnage of such facility to exceed ten thousand
28 tons, a temporary certificate shall be issued only if the
29 solid waste facility has: (1) Obtained from the county or
30 regional solid waste authority for the county or counties
31 in which the facility is located a certificate of site
32 approval or approval for conversion from a Class B
33 facility to a Class A facility; and (2) obtained from the
34 county or regional solid waste authority for the county
35 or counties in which the facility is located approval to
36 increase the maximum monthly tonnage disposed at the
37 facility; and (3) obtained from the county commission for
38 the county or counties in which the landfill is located
39 approval to operate as a Class A facility; and (4) has a
40 certificate of need application pending before the public
41 service commission; and (5) has installed a composite
42 liner system in compliance with the requirements set
43 forth in the solid waste management regulations

44 promulgated by the division of environmental protection
45 or its predecessor. Such emergency certificate shall not
46 authorize an increase in the maximum monthly solid
47 waste disposal tonnage in an amount greater than that
48 approved by the county or regional solid waste authority
49 for the county or counties in which the landfill is located.

CHAPTER 126

(Com. Sub. for H. B. 2445—By Mr. Speaker, Mr. Chambers, and
Delegates P. White, Douglas, Manuel, Huntwork and Compton)

[Passed April 10, 1993; in effect ninety days from passage. Approved by the Governor.]

AN ACT to repeal section twelve, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, five-a, five-b and ten of said article; and to amend and reenact section four, article five-n of said chapter, all relating to the management and disposal of solid waste; adding legislative findings which provide that solid waste incineration presents potentially significant health and environmental problems; that efforts should continue to evaluate the viability of future incineration technologies that are both environmentally sound and economically feasible; solid waste assessment fees; penalties; performance bonds; amount and method of bonding; bonding requirements; period of bonding liability; prohibiting new municipal and commercial solid waste facilities utilizing incineration technologies for the purpose of solid waste incineration; county assessment for Class A facilities; amount of county assessment fees and purposes for which they may be expended; solid waste disposal facility assessment fees; and penalties.

Be it enacted by the Legislature of West Virginia:

That section twelve, article five-f, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, five-a, five-b and ten of said article be amended and reenacted; and that section

four, article five-n of said chapter be amended and reenacted, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.

Article

5F. Solid Waste Management Act.

5N. Solid Waste Landfill Closure Assistance Program.

ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

- §20-5F-1. Purpose and legislative findings.
- §20-5F-5a. Solid waste assessment fee; penalties.
- §20-5F-5b. Performance bonds; amount and method of bonding; bonding requirements; period of bond liability.
- §20-5F-10. Municipal and commercial solid waste incineration and backhauling prohibited; exceptions.

§20-5F-1. Purpose and legislative findings.

- 1 (a) The purpose of this article is to transfer jurisdic-
2 tion over the management of solid waste under section
3 nine, article one, chapter sixteen of the code from the
4 division of health to the division of environmental
5 protection and to establish a comprehensive program of
6 controlling solid waste disposal.
- 7 (b) The Legislature finds that uncontrolled, inade-
8 quately controlled and improper collection, transporta-
9 tion, processing and disposal of solid waste (1) is a public
10 nuisance and a clear and present danger to people; (2)
11 provides harborages and breeding places for disease-
12 carrying, injurious insects, rodents and other pests
13 harmful to the public health, safety and welfare; (3)
14 constitutes a danger to livestock and domestic animals;
15 (4) decreases the value of private and public property,
16 causes pollution, blight and deterioration of the natural
17 beauty and resources of the state and has adverse
18 economic and social effects on the state and its citizens;
19 (5) results in the squandering of valuable nonrenewable
20 and nonreplenishable resources contained in solid waste;
21 (6) that resource recovery and recycling reduces the
22 need for landfills and extends their life; and that (7)
23 proper disposal, resource recovery or recycling of solid
24 waste is for the general welfare of the citizens of this
25 state.

26 (c) The Legislature further finds that disposal in West
27 Virginia of solid waste from unknown origins threatens
28 the environment and the public health, safety and
29 welfare, and therefore, it is in the interest of the public
30 to identify the type, amount and origin of solid waste
31 accepted for disposal at West Virginia solid waste
32 facilities.

33 (d) The Legislature further finds that other states of
34 these United States of America have imposed stringent
35 standards for the proper collection and disposal of solid
36 waste and that the relative lack of such standards and
37 enforcement for such activities in West Virginia has
38 resulted in the importation and disposal in the state of
39 increasingly large amounts of infectious, dangerous and
40 undesirable solid wastes and hazardous waste from
41 other states by persons and firms who wish to avoid the
42 costs and requirements for proper, effective and safe
43 disposal of such wastes in the states of origin.

44 (e) The Legislature further finds that Class A landfills
45 often have capacities far exceeding the needs of the state
46 or the areas of the state which they serve and that such
47 landfills create special environmental problems that
48 require statewide coordination of the management of
49 such landfills.

50 (f) The Legislature further finds that incineration
51 technologies present potentially significant health and
52 environmental problems.

53 (g) The Legislature further finds that there is a need
54 for efforts to continue to evaluate the viability of future
55 incineration technologies that are both environmentally
56 sound and economically feasible.

§20-5F-5a. Solid waste assessment fee; penalties.

1 (a) *Imposition.* — A solid waste assessment fee is
2 hereby imposed upon the disposal of solid waste at any
3 solid waste disposal facility in this state in the amount
4 of one dollar and seventy-five cents per ton or part
5 thereof of solid waste. The fee imposed by this section
6 is in addition to all other fees and taxes levied by law

7 and shall be added to and constitute part of any other
8 fee charged by the operator or owner of the solid waste
9 disposal facility.

10 (b) *Collection, return, payment and records.* — The
11 person disposing of solid waste at the solid waste
12 disposal facility shall pay the fee imposed by this
13 section, whether or not such person owns the solid waste,
14 and the fee shall be collected by the operator of the solid
15 waste facility who shall remit it to the tax commissioner.

16 (1) The fee imposed by this section accrues at the time
17 the solid waste is delivered to the solid waste disposal
18 facility.

19 (2) The operator shall remit the fee imposed by this
20 section to the tax commissioner on or before the fifteenth
21 day of the month next succeeding the month in which
22 the fee accrued. Upon remittance of the fee, the operator
23 is required to file returns on forms and in the manner
24 as prescribed by the tax commissioner.

25 (3) The operator shall account to the state for all fees
26 collected under this section and shall hold them in trust
27 for the state until remitted to the tax commissioner.

28 (4) If any operator fails to collect the fee imposed by
29 this section, he or she is personally liable for such
30 amount as he or she failed to collect, plus applicable
31 additions to tax, penalties and interest imposed by
32 article ten, chapter eleven of this code.

33 (5) Whenever any operator fails to collect, truthfully
34 account for, remit the fee or file returns with the fee
35 as required in this section, the tax commissioner may
36 serve written notice requiring such operator to collect
37 the fees which become collectible after service of such
38 notice, to deposit such fees in a bank approved by the
39 tax commissioner, in a separate account, in trust for and
40 payable to the tax commissioner, and to keep the amount
41 of such fees in such account until remitted to the tax
42 commissioner. Such notice remains in effect until a
43 notice of cancellation is served on the operator or owner
44 by the tax commissioner.

45 (6) Whenever the owner of a solid waste disposal

46 facility leases the solid waste facility to an operator, the
47 operator is primarily liable for collection and remittance
48 of the fee imposed by this section and the owner is
49 secondarily liable for remittance of the fee imposed by
50 this section. However, if the operator fails, in whole or
51 in part, to discharge his or her obligations under this
52 section, the owner and the operator of the solid waste
53 facility are jointly and severally responsible and liable
54 for compliance with the provisions of this section.

55 (7) If the operator or owner responsible for collecting
56 the fee imposed by this section is an association or
57 corporation, the officers thereof are liable, jointly and
58 severally, for any default on the part of the association
59 or corporation, and payment of the fee and any additions
60 to tax, penalties and interest imposed by article ten,
61 chapter eleven of this code may be enforced against
62 them as against the association or corporation which
63 they represent.

64 (8) Each person disposing of solid waste at a solid
65 waste disposal facility and each person required to
66 collect the fee imposed by this section shall keep
67 complete and accurate records in such form as the tax
68 commissioner may require in accordance with the rules
69 of the tax commissioner.

70 (c) *Regulated motor carriers.* — The fee imposed by
71 this section and section twenty-two, article five, chapter
72 seven of this code is considered a necessary and
73 reasonable cost for motor carriers of solid waste subject
74 to the jurisdiction of the public service commission
75 under chapter twenty-four-a of this code. Notwithstand-
76 ing any provision of law to the contrary, upon the filing
77 of a petition by an affected motor carrier, the public
78 service commission shall, within fourteen days, reflect
79 the cost of said fee in said motor carrier's rates for solid
80 waste removal service. In calculating the amount of said
81 fee to said motor carrier, the commission shall use the
82 national average of pounds of waste generated per
83 person per day as determined by the United States
84 Environmental Protection Agency.

85 (d) *Definition of solid waste disposal facility.* — For

86 purposes of this section, the term "solid waste disposal
87 facility" means any approved solid waste facility or open
88 dump in this state, and includes a transfer station when
89 the solid waste collected at the transfer station is not
90 finally disposed of at a solid waste disposal facility
91 within this state that collects the fee imposed by this
92 section. Nothing herein authorizes in any way the
93 creation or operation of or contribution to an open dump.

94 (e) *Exemptions.* — The following transactions are
95 exempt from the fee imposed by this section:

96 (1) Disposal of solid waste at a solid waste disposal
97 facility by the person who owns, operates or leases the
98 solid waste disposal facility if the facility is used
99 exclusively to dispose of waste originally produced by
100 such person in such person's regular business or
101 personal activities or by persons utilizing the facility on
102 a cost-sharing or nonprofit basis;

103 (2) Reuse or recycling of any solid waste;

104 (3) Disposal of residential solid waste by an individual
105 not in the business of hauling or disposing of solid waste
106 on such days and times as designated by the director is
107 exempt from the solid waste assessment fee; and

108 (4) Disposal of solid waste at a solid waste disposal
109 facility by a commercial recycler which disposes of thirty
110 percent or less of the total waste it processes for recycling.
111 In order to qualify for this exemption each commercial
112 recycler must keep accurate records of incoming and
113 outgoing waste by weight. Such records must be made
114 available to the appropriate inspectors from the division
115 of environmental protection, upon request.

116 (f) *Procedure and administration.* — Notwithstanding
117 section three, article ten, chapter eleven of this code,
118 each and every provision of the "West Virginia Tax
119 Procedure and Administration Act" set forth in article
120 ten, chapter eleven of this code shall apply to the fee
121 imposed by this section with like effect as if said act
122 were applicable only to the fee imposed by this section
123 and were set forth in extenso herein.

124 (g) *Criminal penalties.* — Notwithstanding section

125 two, article nine, chapter eleven of this code, sections
126 three through seventeen, article nine, chapter eleven of
127 this code shall apply to the fee imposed by this section
128 with like effect as if said sections were applicable only
129 to the fee imposed by this section and were set forth in
130 extenso herein.

131 (h) *Dedication of proceeds.* — The net proceeds of the
132 fee collected by the tax commissioner pursuant to this
133 section shall be deposited at least monthly in an account
134 designated by the director. The director shall allocate
135 twenty-five cents for each ton of solid waste disposed of
136 in this state upon which the fee imposed by this section
137 is collected and shall deposit the total amount so
138 allocated into the “Solid Waste Reclamation and
139 Environmental Response Fund” to be expended for the
140 purposes hereinafter specified. The first one million
141 dollars of the net proceeds of the fee imposed by this
142 section collected in each fiscal year shall be deposited
143 in the “Solid Waste Enforcement Fund” and expended
144 for the purposes hereinafter specified. The next two
145 hundred fifty thousand dollars of the net proceeds of the
146 fee imposed by this section collected in each fiscal year
147 shall be deposited in the “Solid Waste Management
148 Board Reserve Fund”, and expended for the purposes
149 hereinafter specified: *Provided*, That in any year in
150 which the water development authority determines that
151 the solid waste management board reserve fund is
152 adequate to defer any contingent liability of the fund,
153 the water development authority shall so certify to the
154 director and the director shall then cause no less than
155 fifty thousand dollars nor more than two hundred fifty
156 thousand dollars to be deposited to the fund: *Provided*,
157 *however*, That in any year in which the water develop-
158 ment authority determines that the solid waste manage-
159 ment board reserve fund is inadequate to defer any
160 contingent liability of the fund, the water development
161 authority shall so certify to the director and the director
162 shall then cause not less than two hundred fifty
163 thousand dollars nor more than five hundred thousand
164 dollars to be deposited in the fund: *Provided further*,
165 That if a facility owned or operated by the state of West
166 Virginia is denied site approval by a county or regional

167 solid waste authority, and if such denial contributes, in
168 whole or in part, to a default, or drawing upon a reserve
169 fund, on any indebtedness issued or approved by the
170 solid waste management board, then in that event the
171 solid waste management board or its fiscal agent may
172 withhold all or any part of any funds which would
173 otherwise be directed to such county or regional
174 authority and shall deposit such withheld funds in the
175 appropriate reserve fund. The director shall allocate the
176 remainder, if any, of said net proceeds among the
177 following three special revenue accounts for the purpose
178 of maintaining a reasonable balance in each special
179 revenue account, which are hereby continued in the
180 state treasury:

181 (1) The "Solid Waste Enforcement Fund" which shall
182 be expended by the director for administration, inspec-
183 tion, enforcement and permitting activities established
184 pursuant to this article;

185 (2) The "Solid Waste Management Board Reserve
186 Fund" which shall be exclusively dedicated to providing
187 a reserve fund for the issuance and security of solid
188 waste disposal revenue bonds issued by the solid waste
189 management board pursuant to article three, chapter
190 twenty-two-c of this code;

191 (3) The "Solid Waste Reclamation and Environmental
192 Response Fund" which may be expended by the director
193 for the purposes of reclamation, cleanup and remedial
194 actions intended to minimize or mitigate damage to the
195 environment, natural resources, public water supplies,
196 water resources and the public health, safety and
197 welfare which may result from open dumps or solid
198 waste not disposed of in a proper or lawful manner.

199 (i) *Findings.* — In addition to the purposes and
200 legislative findings set forth in section one of this article,
201 the Legislature finds as follows:

202 (1) In-state and out-of-state locations producing solid
203 waste should bear the responsibility of disposing of said
204 solid waste or compensate other localities for costs
205 associated with accepting such solid waste;

206 (2) The costs of maintaining and policing the streets
207 and highways of the state and its communities are
208 increased by long distance transportation of large
209 volumes of solid waste; and

210 (3) Local approved solid waste facilities are being
211 prematurely depleted by solid waste originating from
212 other locations.

**§20-5F-5b. Performance bonds; amount and method of
bonding; bonding requirements; period of
bond liability.**

1 (a) After a solid waste permit application has been
2 approved pursuant to this article, or once operations
3 have commenced pursuant to a compliance order, but
4 before a permit has been issued, each operator of a
5 commercial solid waste facility shall furnish bond, on a
6 form to be prescribed and furnished by the director,
7 payable to the state of West Virginia and conditioned
8 upon the operator faithfully performing all of the
9 requirements of this article, rules promulgated here-
10 under and the permit: *Provided*, That the director has
11 the discretion to waive the requirement of a bond from
12 the operator of a commercial solid waste facility, other
13 than a Class A facility, which is operating under a
14 compliance order. The amount of the bond required is
15 one thousand dollars per acre and may include an
16 additional amount determined by the director based
17 upon the total estimated cost to the state of completing
18 final closure according to the permit granted to such
19 facility and such measures as are necessary to prevent
20 adverse effects upon the environment; such measures
21 include, but are not limited to, satisfactory monitoring,
22 post-closure care and remedial measures: *Provided*,
23 *however*, That the amount of the bond shall not exceed
24 eight thousand dollars per acre. All permits shall be
25 bonded for at least ten thousand dollars. The bond shall
26 cover either (1) the entire area to be used for the disposal
27 of solid waste, or (2) that increment of land within the
28 permit area upon which the operator will initiate and
29 conduct commercial solid waste facility operations
30 within the initial term of the permit pursuant to
31 legislative rules promulgated by the director pursuant

32 to chapter twenty-nine-a of this code. If the operator
33 chooses to use incremental bonding, as succeeding
34 increments of commercial solid waste facility operations
35 are to be initiated and conducted within the permit area,
36 the operator shall file with the director an additional
37 bond or bonds to cover such increments in accordance
38 with this section: *Provided further*, That once the
39 operator has chosen to proceed with bonding either the
40 entire area to be used for the disposal of solid waste or
41 with incremental bonding, the operator shall continue
42 bonding in that manner for the term of the permit.

43 (b) The period of liability for performance bond
44 coverage shall commence with issuance of a permit and
45 continue for the full term of the permit and for a period
46 of up to thirty full years after final closure of the permit
47 site: *Provided*, That any further time period necessary
48 to achieve compliance with the requirements in the
49 closure plan of the permit is considered an additional
50 liability period.

51 (c) The form of the performance bond shall be
52 approved by the director and may include, at the option
53 of the director, surety bonding, collateral bonding
54 (including cash and securities), establishment of an
55 escrow account, letters of credit, performance bonding
56 fund participation (as established by the director), self-
57 bonding or a combination of these methods.

58 If collateral bonding is used, the operator may elect
59 to deposit cash, or collateral securities or certificates as
60 follows: Bonds of the United States or its possessions, of
61 the federal land bank, or of the homeowners' loan
62 corporation; full faith and credit general obligation
63 bonds of the state of West Virginia, or other states, and
64 of any county, district or municipality of the state of
65 West Virginia or other states; or certificates of deposit
66 in a bank in this state, which certificates shall be in
67 favor of the division. The cash deposit or market value
68 of such securities or certificates shall be equal to or
69 greater than the sum of the bond. The director shall,
70 upon receipt of any such deposit of cash, securities or
71 certificates, promptly place the same with the treasurer
72 of the state of West Virginia whose duty it is to receive

73 and hold the same in the name of the state in trust for
74 the purpose for which the deposit is made when the
75 permit is issued. The operator making the deposit is
76 entitled from time to time to receive from the state
77 treasurer, upon the written approval of the director, the
78 whole or any portion of any cash, securities or certifi-
79 cates so deposited, upon depositing with the treasurer
80 in lieu thereof, cash or other securities or certificates of
81 the classes herein specified having value equal to or
82 greater than the sum of the bond.

83 (d) Within twelve months prior to the expiration of the
84 thirty-year period following final closure, the division
85 will conduct a final inspection of the facility. The
86 purpose of the inspection is to determine compliance
87 with this article, the division's rules, the terms and
88 conditions of the permit, orders of the division and the
89 terms and conditions of the bond. Based upon this
90 determination, the division will either forfeit the bond
91 prior to the expiration of the thirty-year period follow-
92 ing final closure, or release the bond at the expiration
93 of the thirty-year period following final closure. Bond
94 release requirements shall be provided in rules promul-
95 gated by the director.

96 (e) If the operator of a commercial solid waste facility
97 abandons the operation of a solid waste disposal facility
98 for which a permit is required by this article or if the
99 permittee fails or refuses to comply with the require-
100 ments of this article in any respect for which liability
101 has been charged on the bond, the director shall declare
102 the bond forfeited and shall certify the same to the
103 attorney general who shall proceed to enforce and collect
104 the amount of liability forfeited thereon, and where the
105 operation has deposited cash or securities as collateral
106 in lieu of corporate surety, the secretary shall declare
107 said collateral forfeited and shall direct the state
108 treasurer to pay said funds into a waste management
109 fund to be used by the director to effect proper closure
110 and to defray the cost of administering this article.
111 Should any corporate surety fail to promptly pay, in full,
112 forfeited bond, it is disqualified from writing any
113 further surety bonds under this article.

§20-5F-10. Municipal and commercial solid waste incineration and backhauling prohibited; exceptions.

1 (a) Notwithstanding any other provision of this code
2 to the contrary, it shall be unlawful to install, establish
3 or construct a new municipal or commercial solid waste
4 facility utilizing incineration technology for the purpose
5 of solid waste incineration: *Provided*, That such prohi-
6 bition shall not include the development of pilot projects
7 which may include tire or tire material incineration,
8 designed to analyze the efficiency and environmental
9 impacts of incineration technologies: *Provided, however*,
10 That any pilot project proposing to incinerate solid
11 waste must comply with regulatory requirements for
12 solid waste facilities established in this chapter and
13 shall demonstrate with particularity to the division that
14 it has the financial and technical ability to comply with
15 all regulations applicable to solid waste facilities
16 utilizing incineration technologies. The division shall
17 require a surety bond, deposit or similar instrument in
18 an amount sufficient to cover the costs of potential
19 future environmental harm at the site.

20 (b) It shall be unlawful to engage in the practice of
21 backhauling as such term is defined in section two of
22 this article.

ARTICLE 5N. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§20-5N-4. Solid waste assessment fee; penalties.

1 (a) *Imposition.* — A solid waste assessment fee is
2 hereby levied and imposed upon the disposal of solid
3 waste at any solid waste disposal facility in this state
4 in the amount of three dollars and fifty cents per ton
5 or like ratio on any part thereof of solid waste, except
6 as provided in subsection (e) of this section: *Provided*,
7 That any solid waste disposal facility may deduct from
8 this assessment fee an amount, not to exceed the fee,
9 equal to the amount that such facility is required by the
10 public service commission to set aside for the purpose
11 of closure of that portion of the facility required to close
12 by article fifteen of this chapter. The fee imposed by this

13 section is in addition to all other fees and taxes levied
14 by law and shall be added to and constitute part of any
15 other fee charged by the operator or owner of the solid
16 waste disposal facility.

17 (b) *Collection, return, payment and records.* — The
18 person disposing of solid waste at the solid waste
19 disposal facility shall pay the fee imposed by this
20 section, whether or not such person owns the solid waste,
21 and the fee shall be collected by the operator of the solid
22 waste facility who shall remit it to the tax commissioner.

23 (1) The fee imposed by this section accrues at the time
24 the solid waste is delivered to the solid waste disposal
25 facility.

26 (2) The operator shall remit the fee imposed by this
27 section to the tax commissioner on or before the fifteenth
28 day of the month next succeeding the month in which
29 the fee accrued. Upon remittance of the fee, the operator
30 shall file returns on forms and in the manner prescribed
31 by the tax commissioner.

32 (3) The operator shall account to the state for all fees
33 collected under this section and shall hold them in trust
34 for the state until they are remitted to the tax
35 commissioner.

36 (4) If any operator fails to collect the fee imposed by
37 this section, he or she is personally liable for such
38 amount as he or she failed to collect, plus applicable
39 additions to tax, penalties and interest imposed by
40 article ten, chapter eleven of this code.

41 (5) Whenever any operator fails to collect, truthfully
42 account for, remit the fee or file returns with the fee
43 as required in this section, the tax commissioner may
44 serve written notice requiring such operator to collect
45 the fees which become collectible after service of such
46 notice, to deposit such fees in a bank approved by the
47 tax commissioner, in a separate account, in trust for and
48 payable to the tax commissioner, and to keep the amount
49 of such fees in such account until remitted to the tax
50 commissioner. Such notice shall remain in effect until
51 a notice of cancellation is served on the operator or

52 owner by the tax commissioner.

53 (6) Whenever the owner of a solid waste disposal
54 facility leases the solid waste facility to an operator, the
55 operator is primarily liable for collection and remittance
56 of the fee imposed by this section and the owner is
57 secondarily liable for remittance of the fee imposed by
58 this section. However, if the operator fails, in whole or
59 in part, to discharge his or her obligations under this
60 section, the owner and the operator of the solid waste
61 facility are jointly and severally responsible and liable
62 for compliance with the provisions of this section.

63 (7) If the operator or owner responsible for collecting
64 the fee imposed by this section is an association or
65 corporation, the officers thereof are liable, jointly and
66 severally, for any default on the part of the association
67 or corporation, and payment of the fee and any additions
68 to tax, penalties and interest imposed by article ten,
69 chapter eleven of this code may be enforced against
70 them as against the association or corporation which
71 they represent.

72 (8) Each person disposing of solid waste at a solid
73 waste disposal facility and each person required to
74 collect the fee imposed by this section shall keep
75 complete and accurate records in such form as the tax
76 commissioner may require in accordance with the rules
77 of the tax commissioner.

78 (c) *Regulated motor carriers.* — The fee imposed by
79 this section is a necessary and reasonable cost for motor
80 carriers of solid waste subject to the jurisdiction of the
81 public service commission under chapter twenty-four-a
82 of this code. Notwithstanding any provision of law to the
83 contrary, upon the filing of a petition by an affected
84 motor carrier, the public service commission shall,
85 within fourteen days, reflect the cost of said fee in said
86 motor carrier's rates for solid waste removal service. In
87 calculating the amount of said fee to said motor carrier,
88 the commission shall use the national average of pounds
89 of waste generated per person per day as determined by
90 the United States Environmental Protection Agency.

91 (d) *Definitions.* — For purposes of this section, the

92 term "solid waste disposal facility" means any approved
93 solid waste facility or open dump in this state, and
94 includes a transfer station when the solid waste collected
95 at the transfer station is not finally disposed of at a solid
96 waste facility within this state that collects the fee
97 imposed by this section. Nothing in this section autho-
98 rizes in any way the creation or operation of or
99 contribution to an open dump.

100 (e) *Exemptions.* — The following transactions are
101 exempt from the fee imposed by this section:

102 (1) Disposal of solid waste at a solid waste disposal
103 facility by the person who owns, operates or leases the
104 solid waste disposal facility if the facility is used
105 exclusively to dispose of waste originally produced by
106 such person in such person's regular business or
107 personal activities or by persons utilizing the facility on
108 a cost-sharing or nonprofit basis;

109 (2) Reuse or recycling of any solid waste;

110 (3) Disposal of residential solid waste by an individual
111 not in the business of hauling or disposing of solid waste
112 on such days and times as designated by the director as
113 exempt from the solid waste assessment fee; and

114 (4) Disposal of solid waste at a solid waste disposal
115 facility by a commercial recycler which disposes of
116 thirty percent or less of the total waste it processes for
117 recycling. In order to qualify for this exemption each
118 commercial recycler must keep accurate records of
119 incoming and outgoing waste by weight. Such records
120 must be made available to the appropriate inspectors
121 from the division of environmental protection, upon
122 request.

123 (f) *Procedure and administration.* — Notwithstanding
124 section three, article ten, chapter eleven of this code,
125 each and every provision of the "West Virginia Tax
126 Procedure and Administration Act" set forth in article
127 ten, chapter eleven of this code applies to the fee
128 imposed by this section with like effect as if said act
129 were applicable only to the fee imposed by this section
130 and were set forth in extenso herein.

131 (g) *Criminal penalties.* — Notwithstanding section
132 two, article nine, chapter eleven of this code, sections
133 three through seventeen, article nine, chapter eleven of
134 this code apply to the fee imposed by this section with
135 like effect as if said sections were applicable only to the
136 fee imposed by this section and were set forth in extenso
137 herein.

138 (h) *Dedication of proceeds.* — Fifty percent of the
139 proceeds of the fee collected pursuant to this article in
140 excess of thirty thousand tons per month from any
141 landfill which is permitted to accept in excess of thirty
142 thousand tons per month pursuant to section nine,
143 article fifteen of this chapter shall be remitted, at least
144 monthly, to the county commission in the county in
145 which the landfill is located. The remainder of the
146 proceeds of the fee collected pursuant to this section
147 shall be deposited in the closure cost assistance fund
148 established pursuant to section twelve of this article.

CHAPTER 127

(Com. Sub. for S. B. 400—By Senators Craigo, Brackenrich and Boley)

[Passed April 9, 1993; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article eleven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to extending the deadline for prohibition on the disposal of yard waste, lead-acid batteries and tires in solid waste facilities.

Be it enacted by the Legislature of West Virginia:

That section eight, article eleven, 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 11. WEST VIRGINIA RECYCLING PLAN.

§20-11-8. Prohibition on the disposal of certain items; plans for the proper handling of said items required.

1 (a) Effective the first day of June, one thousand nine
2 hundred ninety-four, it shall be unlawful to deposit yard
3 waste, including grass clippings and leaves, and lead-
4 acid batteries in a solid waste facility in West Virginia;
5 effective the first day of June, one thousand nine
6 hundred ninety-five, it shall be unlawful to deposit tires
7 in a solid waste facility in West Virginia: *Provided*, That
8 such prohibitions do not apply to a facility designed
9 specifically to compost such yard waste or otherwise
10 recycle or reuse such items: *Provided, however*, That
11 reasonable and necessary exceptions to such prohibitions
12 may be included as part of the rules promulgated
13 pursuant to subsection (c) of this section.

14 (b) No later than the first day of May, one thousand
15 nine hundred ninety-three, the solid waste management
16 board shall design a comprehensive program to provide
17 for the proper handling of yard waste and lead-acid
18 batteries. No later than the first day of May, one
19 thousand nine hundred ninety-four, a comprehensive
20 plan shall be designed in the same manner to provide
21 for the proper handling of tires.

22 (c) No later than the first day of August, one thousand
23 nine hundred ninety-three, the division of environmental
24 protection shall promulgate rules, in accordance with
25 chapter twenty-nine-a of this code, as amended, to
26 implement and enforce the program for yard waste and
27 lead-acid batteries designed pursuant to subsection (b)
28 of this section. No later than the first day of August, one
29 thousand nine hundred ninety-four, the division of
30 environmental protection shall promulgate rules, in
31 accordance with said chapter, as amended, to implement
32 and enforce the program for tires designed pursuant to
33 subsection (b) of this section.