

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 1997
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Second Extraordinary Session, 1996

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Chapters 1 — 19
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CHAPTER 124

(H. B. 2893—By Delegates Mahan, Kominar, Linch, Tillis,
Hutchins, White and Riggs)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seventeen, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the priority of legislative business for members and designated employees over actions and matters pending before tribunals of the executive and judicial branches.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.

§4-1-17. Priority of legislative business for members and designated employees.

1 (a) In accordance with the constitutional separation of
2 powers and principles of comity, it is the purpose of this
3 section to provide that members of the Legislature and
4 certain designated legislative employees are not required
5 to attend to matters pending before tribunals of the execu-
6 tive and judicial branches of government when the timing
7 of those matters may present conflicts with the discharge
8 of the public duties and responsibilities that are incumbent
9 upon members or employees of the Legislature. During
10 legislative sessions or meetings and for reasonable time
11 periods before and after, the judicial and executive
12 branches should refrain from requiring the personal pres-

13 ence and attention of a legislator or designated employee
14 who is engaged in conducting the business of the Legisla-
15 ture.

16 (b) For the purposes of this section, the words or terms
17 defined in this subsection have the meanings ascribed to
18 them. These definitions are applicable unless a different
19 meaning clearly appears from the context.

20 (1) "Applicable time period" means and includes the
21 following:

22 (A) The ten-day time period immediately before any
23 regular or extraordinary session of the Legislature;

24 (B) The time period during any regular or extraordi-
25 nary session of the Legislature;

26 (C) The thirty-day time period immediately following
27 the adjournment sine die of any regular or extraordinary
28 session of the Legislature;

29 (D) The four-day time period before any interim
30 meetings of any committee of the Legislature or before
31 any party caucus;

32 (E) The time period during any interim meetings of
33 the Legislature or any party caucus; or

34 (F) The four-day time period following the conclu-
35 sion of any interim meetings of any committee of the
36 Legislature or party caucus.

37 (2) "Designated employee" means any legislative
38 employee designated in writing by the speaker of the West
39 Virginia House of Delegates to the clerk of the House of
40 Delegates or by the president of the West Virginia Senate
41 to the clerk of the West Virginia Senate to be necessary to
42 the operation of the Legislature, such that the legislative
43 employee will be afforded the protections of this section.

44 (3) "Member" means a member of the West Virginia
45 House of Delegates or the West Virginia Senate.

46 (4) "Tribunal" means a judicial or quasi-judicial
47 entity of the judicial or executive branch of government,

48 or any legislative, judicial or quasi-judicial entity of a
49 political subdivision, created or authorized under the con-
50 stitution or laws of this state.

51 (c) A notice filed with a tribunal pursuant to subsec-
52 tion (e) of this section operates as an automatic stay of a
53 judicial or administrative action or proceeding com-
54 menced before or after the notice was filed. The automat-
55 ic stay is in force for the applicable time period or periods
56 described in the notice, unless it is otherwise waived in
57 accordance with the provisions of subsection (f) of this
58 section. In the event a session or meeting of the Legisla-
59 ture is extended, the notice may be amended to reflect a
60 longer applicable time period. The filing of the notice
61 and the automatic stay do not prohibit the commencement
62 of an action or proceeding, the issuance or employment of
63 process, or other preliminary procedures that do not re-
64 quire the presence or personal attention of the member or
65 designated employee.

66 (d) During any applicable time period, a member or
67 designated employee who does not otherwise consent to a
68 waiver of the stay is not required to do any of the follow-
69 ing:

70 (1) Appear in any tribunal, whether as an attorney,
71 party, witness or juror;

72 (2) Respond in any tribunal to any complaint, petition,
73 pleading, notice or motion that would require a personal
74 appearance or the filing of a responsive pleading;

75 (3) File in any tribunal any brief, memorandum or
76 motion;

77 (4) Respond to any motion for depositions upon oral
78 examination or written questions;

79 (5) Respond to any written interrogatories, request for
80 production of documents or things, request for admissions
81 or any other discovery procedure, whether or not denomi-
82 nated as such; or

83 (6) Appear or respond to any other act or thing in the
84 nature of those described in subdivisions (1), (2), (3), (4)

85 or (5) of this subsection; or

86 (7) Make any other appearance before a tribunal or
87 attend to any other matter pending in a tribunal that in the
88 discretion of the member or designated employee would
89 inhibit the member or designated employee in the exercise
90 of the legislative duties and responsibilities owed to the
91 public.

92 (e) A member or designated employee who desires to
93 exercise the protections afforded by this section shall not
94 be required to appear in any tribunal to assert the
95 protections. In all cases, it shall be sufficient if the mem-
96 ber or designated employee notifies the tribunal in ques-
97 tion orally or in writing, stating that he or she is invoking
98 the protections of this section, describing the action, pro-
99 ceeding or act to be stayed, and further identifying the
100 applicable period or periods for which the notice will
101 operate as a stay. An oral communication with the tribu-
102 nal shall be followed by a written notice or facsimile trans-
103 mission to the tribunal mailed or transmitted no later than
104 two business days after the oral communication. From the
105 time of the oral communication or the mailing or trans-
106 mission of the written notice, whichever is earlier, the no-
107 tice operates as a stay of all proceedings in the pending
108 matter until the applicable time periods have passed and
109 expired.

110 (f) Notwithstanding the filing of a notice that operates
111 as a stay, a member or designated employee may later
112 consent to waive the stay and make an appearance or at-
113 tend to a matter that would otherwise be stayed. However,
114 a waiver as to a particular appearance or act does not ter-
115 minate, annul, modify or condition the stay for any other
116 purpose.

117 (g) The deference afforded by this section to mem-
118 bers and designated employees who are serving a client in
119 a representative capacity is also fully and completely ex-
120 tended to their clients, so that no person whose representa-
121 tive before a tribunal is a member or designated employee
122 may be required, during any applicable time period, to do
123 anything that his or her representative is not required to
124 do under subsection (d) above.

1 (h) Unless the member or designated employee con-
2 sents thereto, no co-counsel, partner, associate, spouse or
3 employee of the member or designated employee may be
4 required to make any appearance or do any act during
5 any applicable time period in the place and stead of the
6 member or designated employee.

7 (i) Any sentence, judgment, order, decree, finding,
8 decision, recommendation or award made contrary to the
9 provisions of this section in any action or proceeding in
10 any tribunal, without the consent of the member or desig-
11 nated employee, is void.

CHAPTER 125

(S. B. 537—Originating in the Committee on Education)

[Passed April 10, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article one, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to setting the salary of the secretary of the West Virginia library commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-13. State library commission — Officers.

1 The officers of the commission shall be a chairman,
2 elected from the members of the commission, for a term
3 of one year, and a secretary, who shall be a person trained
4 in modern library methods, not a member of the commis-
5 sion. The secretary shall be appointed by the commission
6 and shall serve at the will of the commission. Notwith-

7 standing any other provision of the code to the contrary,
 8 the salary of the secretary shall be sixty-two thousand five
 9 hundred dollars per year. The commission may establish
 10 headquarters or maintain its office at such point in the
 11 state as it may determine.

12 The secretary shall keep a record of the proceedings
 13 of the commission, have charge of its work in organizing
 14 new libraries and improving those already established,
 15 supervise the work of the traveling libraries, and in general
 16 perform such duties as may from time to time be assigned
 17 to him or her by the commission.

CHAPTER 126

(Com. Sub. for S. B. 332—By Senators Oliverio, Buckalew, Craigo, Ball, Sprouse,
 Fanning, Bowman, Plymale, Ross, Sharpe and Anderson)

[Passed April 3, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact sections ten and sixteen, article twenty-two, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to lottery sales agents; providing for an increase in lottery sales agent commissions; and providing for payment of the increased commissions from unclaimed prize funds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 22. STATE LOTTERY ACT.

§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.

§29-22-16. Disposition of unclaimed prize money.

§29-22-10. Licensed lottery sales agents; restrictions; annual license and fee; factors; application; bond; age; nonassignable license; organizations qualified; commissions; display of license; geographic distribution; monopoly prohibited; lottery retailers; preprinted instant type lottery tickets; fee; certificate of authority; security; bond.

1 (a) The commission shall propose rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code, for the licensing of
4 lottery sales agents for the sale and dispensing of lottery
5 tickets, materials and lottery games, and the operations of
6 electronic computer terminals therefor, subject to the fol-
7 lowing:

8 (1) The commission shall issue its annual license to the
9 lottery sales agents for each lottery outlet and for such fee
10 as is established by the commission to cover its costs there-
11 of, but not to exceed one thousand dollars. Application
12 for licensing as a lottery sales agent shall be on forms to
13 be prescribed and furnished by the director.

14 (2) No licensee may engage in business exclusively as
15 a lottery sales agent.

16 (3) The commission shall ensure geographic distribu-
17 tion of lottery sales agents throughout the state.

18 (4) Before issuance of a license to an applicant, the
19 commission shall consider factors such as the financial
20 responsibility, security, background, accessibility of the
21 place of business or activity to the public, public conve-
22 nience and the volume of expected sales.

23 (5) No person under the age of twenty-one may be
24 licensed as an agent. No licensed agent may employ any
25 person under the age of eighteen for sales or dispensing
26 of lottery tickets or materials or operation of a lottery
27 terminal.

28 (6) A license is valid only for the premises stated
29 thereon.

30 (7) The director may issue a temporary license when

31 determined necessary.

32 (8) A license is not assignable or transferable.

33 (9) Before a license is issued, an agent shall be bonded
34 for an amount and in the form and manner to be deter-
35 mined by the director, or shall provide such other security,
36 in an amount, form and manner determined by the direc-
37 tor, as will ensure the performance of the agent's duties
38 and responsibilities as a licensed lottery agent or the in-
39 demnification of the commission.

40 (10) The commission may issue licenses to any legiti-
41 mate business, organization, person or entity, including,
42 but not limited to, civic or fraternal organizations; parks
43 and recreation commissions or similar authorities; senior
44 citizen centers, state-owned stores, persons lawfully en-
45 gaged in nongovernmental business on state property,
46 persons lawfully engaged in the sale of alcoholic beverag-
47 es; political subdivisions or their agencies or departments,
48 state agencies, commission-operated agencies; persons
49 licensed under the provisions of article twenty-three, chap-
50 ter nineteen of this code, and religious, charitable or sea-
51 sonal businesses.

52 (11) Licensed lottery sales agents shall receive six and
53 one quarter percent of gross sales as commission for the
54 performance of their duties: *Provided*, That a portion of
55 the commission not to exceed one and one quarter percent
56 of gross sales may be paid from unclaimed prize moneys
57 accumulated under section sixteen of this article. In addi-
58 tion, the commission may promulgate a bonus-incentive
59 plan as additional compensation not to exceed one percent
60 of annual gross sales. The method and time of payment
61 shall be determined by the commission.

62 (12) Licensed lottery sales agents shall prominently
63 display the license on the premises where lottery sales are
64 made.

65 (13) No person or entity or subsidiary, agent or sub-
66 contractor thereof may receive or hold more than twenty-
67 five percent of the licenses to act as licensed lottery sales
68 agent in any one county or municipality nor more than

69 five percent of the licenses issued throughout this state:
70 *Provided*, That the limitations of twenty-five percent and
71 five percent in this subdivision do not apply if it is deter-
72 mined by the commission that there are not a sufficient
73 number of qualified applicants for licenses to comply with
74 these requirements.

75 (b) The commission shall propose rules for legislative
76 approval in accordance with the provisions of article three,
77 chapter twenty-nine-a of this code, specifying the terms
78 and conditions for contracting with lottery retailers for
79 sale of preprinted instant type lottery tickets and may
80 provide for the dispensing of such tickets through ma-
81 chines and devices. Tickets may be sold or dispensed in
82 any public or private store, operation or organization,
83 without limitation. The commission may establish an
84 annual fee not to exceed fifty dollars for such persons, per
85 location or site, and shall issue a certificate of authority to
86 act as a lottery retailer to such persons. The commission
87 shall establish procedures to ensure the security, honesty
88 and integrity of the lottery and distribution system. The
89 commission shall establish the method of payment, com-
90 mission structure, methods of payment of winners, includ-
91 ing payment in merchandise and tickets, and may require
92 prepayment by lottery retailers, require bond or security
93 for payment and require deposit of receipts in accounts
94 established therefor. Retailers shall prominently display
95 the certificate of authority issued by the commission on
96 the premises where lottery sales are made.

§29-22-16. Disposition of unclaimed prize money.

1 Unclaimed prize money for the prize on a winning
2 ticket shall be retained by the director for the person enti-
3 tled thereto for one hundred eighty days after the drawing
4 in which the prize was won or for one hundred eighty
5 days after the announced end of a game. If no claim is
6 made for said money within one hundred eighty days, the
7 prize money reverts to the state lottery fund for the pur-
8 poses of paying a portion of the sales commission to lot-
9 tery sales agents pursuant to section ten of this article or
10 for awarding additional prizes. The commission shall
11 promulgate rules for the awarding of additional prizes.

CHAPTER 127

(S. B. 360 —By Senators Schoonover and Love)

[Passed April 10, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to magistrate courts; and providing an additional magistrate for Nicholas County.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

1 (a) The number of magistrates to be elected in each
2 county of this state shall be determined in accordance with
3 the provisions of this section.

4 (b) On or before the thirty-first day of January, one
5 thousand nine hundred ninety-six, and on or before the
6 first day of January in every fourth year thereafter, the
7 supreme court of appeals shall certify to the board of
8 ballot commissioners of each county the number of mag-
9 istrates to be elected in that county for the term of office
10 commencing on the first day of January of the succeeding
11 year. The number of magistrates so certified shall be
12 determined in accordance with the following:

13 (1) The court may not provide:

14 (A) For the total number of magistrates in the state to
15 exceed one hundred fifty-six in number: *Provided, That,*
16 effective the first day of July, one thousand nine hundred
17 ninety-seven, the total number of magistrates in the state

18 may not exceed one hundred fifty-seven in number. An
19 appointment shall be made on the effective date of this
20 subsection to fill the additional magistrate position created
21 herein;

22 (B) For the number of magistrates in any one county
23 to exceed ten in number; or

24 (C) For the number of magistrates in any one county
25 to be less than two in number.

26 (2) The court shall determine the number of magis-
27 trates that would be apportioned for each county by the
28 application of an equal proportions formula, as follows:

29 (A) Two magistrates shall be allocated to each county;

30 (B) The population of the county shall be divided by a
31 mathematical factor, as established by the equal propor-
32 tion method, to establish each county's priority claim to
33 additional magistrates above the two magistrates provided
34 for by paragraph (A) of this subdivision; and

35 (C) Additional numbers of magistrates shall be allocat-
36 ed to the several counties in order of priority claims, be-
37 ginning with the largest claim, until magistrates have been
38 assigned within the limits of this section.

39 For purposes of this article, a determination made in
40 accordance with the provisions of this subdivision is the
41 "equal proportion number".

42 (3) The court shall determine the number of magis-
43 trates elected in each county at the last general election in
44 which magistrates were regularly elected next prior to the
45 preceding census taken under the authority of the United
46 States government. For purposes of this article, that num-
47 ber shall be referred to as the "election number".

48 (4) The court shall determine the number of case
49 filings per magistrate in each magistrate court for the most
50 recent fiscal year preceding the date of certification, and
51 shall rank the magistrate courts from one through
52 fifty-five, in the order of their case filings per magistrate,

53 with the court having the most filings per magistrate being
54 ranked number one, and the court with the least filings per
55 magistrate being ranked number fifty-five.

56 (5) If the court determines that the equal proportion
57 number for a county is the same as the election number
58 for that county, the court shall certify that number as the
59 number of magistrates to be elected in that county at the
60 next election.

61 (6) If the court determines that the equal proportion
62 number for a county is different from the election number
63 for that county, the court shall apply the ranking estab-
64 lished by subdivision (4) of this subsection and determine
65 the number of magistrates for the county, as follows:

66 (A) If the equal proportion number exceeds the elec-
67 tion number, the number of magistrates to be elected in
68 that county at the next election shall be the election num-
69 ber: *Provided*, That, if the county is ranked as one
70 through ten, inclusive, in accordance with subdivision (4)
71 of this subsection, the court shall certify the equal propor-
72 tion number as the number of magistrates to be elected in
73 that county at the next election;

74 (B) If the equal proportion number is less than the
75 election number, the number of magistrates to be elected
76 in that county at the next election shall be the equal pro-
77 portion number: *Provided*, That if the county is ranked as
78 one through ten, inclusive, in accordance with subdivision
79 (4) of this subsection, the court shall certify the election
80 number as the number of magistrates to be elected in that
81 county at the next election.

82 (c) Any magistrate in office at the time of the effective
83 date of this section shall continue as a magistrate, unless
84 sooner removed or retired as provided by law, until the
85 first day of January, one thousand nine hundred
86 ninety-three.

CHAPTER 128

(H. B. 2259—By Delegates Staton, Fleischauer, Amores and Faircloth)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article one, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section two, article two of said chapter; to amend and reenact section two-a, article three of said chapter; to amend and reenact sections two and seven, article four of said chapter; to amend and reenact section nine, article five of said chapter; to amend and reenact section five, article one, chapter sixty-two of said code; and to amend and reenact section five, article one-c of said chapter, all relating to magistrate courts generally; to vacancies in the office of magistrate; to venue and change of venue in magistrate court criminal cases; enforcement of payment of costs, fines, fees, forfeitures, restitution or penalties imposed by magistrates in criminal cases; payment by credit card; circumstances under which payment may be made in installments; suspension of privilege to drive a motor vehicle if payment in full is not timely made; procedure for obtaining a license to drive for employment purposes; suspension of privilege to hunt if payment in full of amount imposed for hunting violation is not timely made; suspension of privilege to fish if payment in full of amount imposed for fishing violation is not timely made; enforcement of requirement to appear or respond in criminal cases; suspension of privilege to drive motor vehicle if defendant in criminal case fails to timely appear or respond when required until final judgment and, if convicted, until payment in full of all costs, fines, fees, forfeitures, restitution or penalties imposed; suspension of privilege to hunt if defendant charged with hunting violation fails to timely appear or respond when required until final judgment and, if convicted, until payment in full of all costs, fines, fees, forfeitures, restitution or penalties imposed; suspension of privilege to fish if defendant charged with fishing violation

fails to timely appear or respond when required until final judgment and, if convicted, until payment in full of all costs, fines, fees, forfeitures, restitution or penalties imposed; authority of magistrate to order restitution in criminal cases; duties of magistrate clerk to issue and deliver abstracts of unpaid judgments and releases of judgments; duties of prosecuting attorney to file abstracts and releases of judgments; duties of county clerk to record and index abstracts and releases of judgments; commencement of criminal prosecutions; procedures to be followed when disqualification of magistrate asserted; time requirement to render a finding of guilty or not guilty and impose a sentence in a magistrate criminal case; procedure for delivery of prisoner before magistrate; complaint for person arrested without warrant; and return of recognizance and disposition of deposits.

Be it enacted by the Legislature of West Virginia:

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

Chapter

50. Magistrate Courts.

62. Criminal Procedure.

CHAPTER 50. MAGISTRATE COURTS.

Article

1. Courts and Officers.

2. Jurisdiction and Authority.

3. Costs, Fines and Records.

4. Procedure Before Trial.

5. Trials, Hearings and Appeals.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-6. Vacancy in office of magistrate.

1 Subject to the provisions of section one, article ten,
2 chapter three of this code, when a vacancy occurs in the
3 office of magistrate, the judge of the circuit court, or the
4 chief judge thereof if there is more than one judge of the
5 circuit court, shall fill the same by appointment.

6 At a general election in which a magistrate is elected
7 for an unexpired term, the circuit judge, or the chief judge
8 thereof if there is more than one judge of the circuit court,
9 shall cause a notice of such election to be published prior
10 to such election as a Class II-0 legal advertisement in
11 compliance with the provisions of article three, chapter
12 fifty-nine of this code, and the publication area for such
13 publication shall be the county involved. If the vacancy
14 occurs before the primary election held to nominate
15 candidates to be voted for at the general election, at which
16 any such vacancy is to be filled, candidates to fill such
17 vacancy shall be nominated at such primary election in
18 accordance with the time requirements and the provisions
19 and procedures prescribed in article five, chapter three of
20 this code. Otherwise, they shall be nominated by the
21 county executive committee in the manner provided in
22 section nineteen, article five, chapter three of this code, as
23 in the case of filling vacancies in nominations, and the
24 names of the persons so nominated and certified to the
25 clerk of the circuit court of such county shall be placed
26 upon the ballot to be voted at such next general election.

ARTICLE 2. JURISDICTION AND AUTHORITY.**§50-2-2. Venue; change of venue.**

1 (a) The provisions of article one, chapter fifty-six of
2 this code, relating to venue of actions in circuit courts,
3 shall apply to venue of actions in magistrate courts as if
4 the same were set forth fully herein.

5 (b) The circuit court may, on the petition of the
6 accused and for good cause shown, order the venue of the
7 trial of a criminal case in magistrate court to be removed
8 to some other county. Upon the filing of the petition, the
9 proceedings in magistrate court shall be stayed until

10 disposition by the circuit court. When the venue is so
11 changed, the court making the order shall determine the
12 county to which the case is to be removed and order the
13 defendant to appear on some certain day before the court
14 to which the case is removed. Where the defendant is in
15 custody, the court may, if appropriate, order the defendant
16 confined in a jail convenient to the court to which the case
17 is removed. Upon receipt of the order changing venue, the
18 magistrate court shall certify copies of its file of the case
19 to the court to which the case is removed, and such court
20 shall proceed with the case as if the prosecution had been
21 originally therein, and for that purpose the certified copies
22 aforesaid shall be sufficient.

ARTICLE 3. COSTS, FINES AND RECORDS.

***§50-3-2a. Payment by credit card or payment plan;
suspension of licenses for failure to make
payments or appear or respond; restitution;
liens.**

1 (a) A magistrate court may accept credit cards in
2 payment of all costs, fines, fees, forfeitures, restitution or
3 penalties in accordance with rules promulgated by the
4 supreme court of appeals. Any charges made by the credit
5 company shall be paid by the person responsible for
6 paying the cost, fine, forfeiture or penalty.

7 (b) Unless otherwise required by law, a magistrate
8 court may collect a portion of any costs, fines, fees,
9 forfeitures, restitution or penalties at the time the amount
10 is imposed by the court so long as the court requires the
11 balance to be paid in accordance with a payment plan
12 which specifies: (1) The number of payments to be made;
13 (2) the dates on which such payments are due; and (3) the
14 amounts due for each payment.

15 (c) (1) If any costs, fines, fees, forfeitures, restitution
16 or penalties imposed by the magistrate court in a criminal
17 case are not paid within three months from the date of

*Clerk's Note: This section was also amended by S. B. 563 (Chapter 95),
which passed prior to this act.

18 judgment and the expiration of any stay of execution, the
19 magistrate court clerk or, upon judgment rendered on
20 appeal, the circuit clerk shall notify the commissioner of
21 the division of motor vehicles of the failure to pay. Upon
22 such notice, the division of motor vehicles shall suspend
23 any privilege the person defaulting on payment may have
24 to operate a motor vehicle in this state, including any
25 driver's license issued to the person by the division of
26 motor vehicles, until such time that all the costs, fines, fees,
27 forfeitures, restitution or penalties are paid in full. The
28 suspension shall be imposed in accordance with the
29 provisions of section six, article three, chapter seventeen-b
30 of this code: *Provided*, That any person who has had his
31 or her license to operate a motor vehicle in this state
32 suspended pursuant to this subsection and his or her
33 failure to pay is based upon inability to pay may, if he or
34 she is employed on a full or part-time basis, petition to the
35 circuit court for an order authorizing him or her to
36 operate a motor vehicle solely for employment purposes.
37 Upon a showing satisfactory to the court of inability to
38 pay, employment and compliance with other applicable
39 motor vehicle laws, the court shall issue such an order.

40 (2) In addition to the provisions of subdivision (1) of
41 this subsection, if any costs, fines, fees, forfeitures,
42 restitution or penalties imposed or ordered by the
43 magistrate court for a hunting violation described in
44 chapter twenty of this code are not paid within three
45 months from the date of judgment and the expiration of
46 any stay of execution, the magistrate court clerk or, upon
47 a judgment rendered on appeal, the circuit clerk shall
48 notify the director of the division of natural resources of
49 such failure to pay. Upon such notice, the director of the
50 division of natural resources shall suspend any privilege
51 the person failing to appear or otherwise respond may
52 have to hunt in this state, including any hunting license
53 issued to the person by the division of natural resources,
54 until all the costs, fines, fees, forfeitures, restitution or
55 penalties are paid in full.

56 (3) In addition to the provisions of subdivision (1) of
57 this subsection, if any costs, fines, fees, forfeitures,
58 restitution or penalties imposed or ordered by the

59 magistrate court for a fishing violation described in
60 chapter twenty of this code are not paid within three
61 months from the date of judgment and the expiration of
62 any stay of execution, the magistrate court clerk or, upon
63 a judgment rendered on appeal, the circuit clerk shall
64 notify the director of the division of natural resources of
65 such failure to pay. Upon such notice, the director of the
66 division of natural resources shall suspend any privilege
67 the person failing to appear or otherwise respond may
68 have to fish in this state, including any fishing license
69 issued to the person by the division of natural resources,
70 until all the costs, fines, fees, forfeitures, restitution or
71 penalties are paid in full.

72 (d) (1) If a person charged with any criminal violation
73 of this code fails to appear or otherwise respond in court,
74 the magistrate court shall notify the commissioner of the
75 division of motor vehicles thereof within fifteen days of
76 the scheduled date to appear, unless the person sooner
77 appears or otherwise responds in court to the satisfaction
78 of the magistrate. Upon such notice, the division of motor
79 vehicles shall suspend any privilege the person failing to
80 appear or otherwise respond may have to operate a motor
81 vehicle in this state, including any driver's license issued
82 to the person by the division of motor vehicles, until final
83 judgment in the case and, if a judgment of guilty, until
84 such time that all the costs, fines, fees, forfeitures,
85 restitution or penalties imposed are paid in full. The
86 suspension shall be imposed in accordance with the
87 provisions of section six, article three, chapter seventeen-b
88 of this code.

89 (2) In addition to the provisions of subdivision (1) of
90 this subsection, if a person charged with any hunting
91 violation described in chapter twenty of this code fails to
92 appear or otherwise respond in court, the magistrate court
93 shall notify the director of the division of natural
94 resources of such failure thereof within fifteen days of the
95 scheduled date to appear, unless the person sooner appears
96 or otherwise responds in court to the satisfaction of the
97 magistrate. Upon such notice, the director of the division
98 of natural resources shall suspend any privilege the person
99 failing to appear or otherwise respond may have to hunt in

100 this state, including any hunting license issued to the
101 person by the division of natural resources, until final
102 judgment in the case and, if a judgment of guilty, until
103 such time that all the costs, fines, fees, forfeitures,
104 restitution or penalties imposed are paid in full.

105 (3) In addition to the provisions of subdivision (1) of
106 this subsection, if a person charged with any fishing
107 violation described in chapter twenty of this code fails to
108 appear or otherwise respond in court, the magistrate court
109 shall notify the director of the division of natural
110 resources of such failure thereof within fifteen days of the
111 scheduled date to appear, unless the person sooner appears
112 or otherwise responds in court to the satisfaction of the
113 magistrate. Upon such notice, the director of the division
114 of natural resources shall suspend any privilege the person
115 failing to appear or otherwise respond may have to fish in
116 this state, including any fishing license issued to the
117 person by the division of natural resources, until final
118 judgment in the case and, if a judgment of guilty, until
119 such time that all the costs, fines, fees, forfeitures,
120 restitution or penalties imposed are paid in full.

121 (e) In every criminal case which involves a
122 misdemeanor violation, a magistrate may order restitution
123 where appropriate when rendering judgment.

124 (f) (1) If all costs, fines, fees, forfeitures, restitution or
125 penalties imposed by a magistrate court and ordered to be
126 paid are not paid within three months from the date of
127 judgment and the expiration of any stay of execution, the
128 clerk of the magistrate court shall notify the prosecuting
129 attorney of the county of such nonpayment and provide
130 the prosecuting attorney with an abstract of judgment.
131 The prosecuting attorney shall file the abstract of
132 judgment in the office of the clerk of the county
133 commission in the county where the defendant was
134 convicted and in any county wherein the defendant resides
135 or owns property. The clerks of the county commissions
136 shall record and index the abstracts of judgment without
137 charge or fee to the prosecuting attorney, and when so
138 recorded, the amount stated to be owing in the abstract
139 shall constitute a lien against all property of the defendant.

140 (2) When all the costs, fines, fees, forfeitures,
141 restitution or penalties described in subdivision (1) of this
142 subsection for which an abstract of judgment has been
143 recorded are paid in full, the clerk of the magistrate court
144 shall notify the prosecuting attorney of the county of such
145 payment and provide the prosecuting attorney with a
146 release of judgment, prepared in accordance with the
147 provisions of section one, article twelve, chapter thirty-
148 eight of this code, for filing and recordation pursuant to
149 the provisions of this subdivision. Upon receipt from the
150 clerk, the prosecuting attorney shall file the release of
151 judgment in the office of the clerk of the county
152 commission in each county where an abstract of the
153 judgment was recorded. The clerks of the county
154 commissions shall record and index the release of
155 judgment without charge or fee to the prosecuting
156 attorney.

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-2. Commencement of criminal prosecutions.

§50-4-7. Disqualification of magistrate.

§50-4-2. Commencement of criminal prosecutions.

1 Except where the provisions of this code or rule of
2 the supreme court of appeals permit the commencement
3 of a criminal prosecution through the issuance of a
4 citation, a criminal prosecution shall be commenced by
5 the filing of a complaint in accordance with the
6 requirements of rules of the supreme court of appeals.

§50-4-7. Disqualification of magistrate.

1 A motion for the disqualification of a magistrate in a
2 magistrate court proceeding shall be filed in accordance
3 with the requirements of the rules of the supreme court of
4 appeals.

ARTICLE 5. TRIALS, HEARINGS AND APPEALS.

§50-5-9. Verdict and sentence.

1 (a) In every criminal case in which the defendant is in
2 custody, a magistrate shall render a finding of guilty or
3 not guilty immediately upon the conclusion of the trial or

4 hearing. In all other proceedings, a magistrate shall
5 render a finding of guilty or not guilty no later than the
6 next succeeding day after the conclusion of the trial or
7 hearing, excluding Saturdays, Sundays and legal holidays.

8 (b) (1) Sentence shall be imposed in open court within
9 sixty days from the date of the finding of guilt except
10 where sentence is required to be imposed within a lesser
11 period under the provisions of subdivision (2) of this
12 subsection.

13 (2) Sentence shall be imposed in open court upon a
14 defendant in custody on or before the date of the
15 expiration of the time equivalent to the maximum
16 sentence that may be imposed for the offense. In
17 determining the date, the magistrate shall include in the
18 computation any credit to which the defendant is entitled
19 for the time of confinement spent by the defendant in jail
20 awaiting trial and sentencing.

CHAPTER 62. CRIMINAL PROCEDURE.

Article

1. Preliminary Procedure.

1C. Bail.

ARTICLE 1. PRELIMINARY PROCEDURE.

§62-1-5. Same — Delivery of prisoner before magistrate; complaint for person arrested without warrant; return.

1 (a) (1) An officer making an arrest under a warrant
2 issued upon a complaint, or any person making an arrest
3 without a warrant for an offense committed in his presence
4 or as otherwise authorized by law, shall take the arrested
5 person without unnecessary delay before a magistrate of
6 the county where the arrest is made.

7 (2) If a person arrested without a warrant is brought
8 before a magistrate, a complaint shall be filed forthwith in
9 accordance with the requirements of rules of the supreme
10 court of appeals.

11 (3) An officer executing a warrant shall make return
12 thereof to the magistrate before whom the defendant is
13 brought.

14 (b) (1) Notwithstanding any other provision of this
15 code to the contrary, if a person arrested without a warrant
16 is brought before a magistrate prior to the filing of a
17 complaint, a complaint shall be filed forthwith in
18 accordance with the requirements of rules of the supreme
19 court of appeals, and the issuance of a warrant or a
20 summons to appear is not required.

21 (2) When a person appears initially before a magistrate
22 either in response to a summons or pursuant to an arrest
23 with or without a warrant, the magistrate shall proceed in
24 accordance with the requirements of the applicable
25 provisions of the rules of the supreme court of appeals.

ARTICLE 1C. BAIL.

§62-1C-5. Recognizance and deposits subject to order of court or magistrate.

1 The recognizance shall be returnable to and all
2 deposits shall be held by the court before whom the
3 defendant is to appear or does appear, and upon the
4 transfer of the case to any other court the recognizance
5 shall be returnable to and transmitted together with any
6 deposits to such other court.

CHAPTER 129

(H. B. 2194—By Delegates Staton, Amores and Fleischauer)

[Passed April 11, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article four, chapter fifty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to procedures that must be followed before default judgment against a person in active military service of the United States may be rendered in magistrate court.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. PROCEDURE BEFORE TRIAL.

§50-4-10. Default judgment; confession of judgment.

1 (a) If a defendant in a civil action fails to appear or
2 otherwise notify the magistrate court within the time limits
3 prescribed by section five of this article that he wishes to
4 contest the action, the magistrate may render judgment as
5 justice may require as follows:

6 (1) The magistrate shall render judgment by default
7 only upon affidavit or sworn testimony reflecting the
8 nature of the claim, whether or not it is for a sum certain
9 or for a sum which can by computation be made certain,
10 the defendant's failure to appear or otherwise notify the
11 court within the time limits prescribed by section five of
12 this article that he wishes to contest the action and
13 supporting the relief sought. In the event the plaintiff's
14 claim is not for a sum certain or for a sum which can by
15 computation be made certain, the court shall require such
16 further proof by affidavit or sworn testimony as is
17 necessary to determine the propriety of the relief sought.

18 (2)(A) No judgment by default shall be rendered
19 against a person who is an infant, incompetent person or
20 incarcerated convict unless such person is represented in
21 the action by a guardian ad litem, guardian, committee,
22 curator or other like fiduciary.

23 (B) No judgment by default may be rendered against a
24 person in active military service of the United States who
25 has not made an appearance unless the provisions of 50
26 App. U.S.C. §520 have been followed, including the
27 appointment of an attorney upon motion of a plaintiff.

28 (b) Upon motion made by the defendant within twenty
29 days after the date of such judgment, or, in the case of a
30 person in the military service, within the time provided by
31 50 App. U.S.C. §520, the magistrate may, for good cause
32 shown, set aside the judgment and set the matter for trial.

1 (c) If a defendant offers to confess judgment at any
 2 time, the magistrate shall take the same in writing and
 3 render judgment for the amount confessed plus costs. In
 4 the event the amount claimed by the plaintiff exceeds the
 5 amount confessed by the defendant the plaintiff may
 6 request that the matter be set for trial. If the plaintiff's
 7 recovery therein does not exceed the amount confessed,
 8 costs shall be assessed against the plaintiff.

CHAPTER 130

(H. B. 2828—By Delegate Smirt)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend article fourteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section six, relating to authorizing the university of West Virginia board of trustees on behalf of Marshall university to sell and convey a parcel of land located on the north side of U. S. Route 60 at University Heights in Huntington, Cabell County; and providing that the proceeds from the sale be deposited in a special revenue account for the development of parking on the downtown campus at Marshall university in Huntington.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14. MISCELLANEOUS.

§18B-14-6. Marshall university authorization to sell property; use of net proceeds.

1 (a) Subject to the provisions of section five of this
 2 article, relating to the authority of governing boards to sell

3 any surplus real property and deposit the net proceeds
4 into a special revenue account in the state treasury to be
5 appropriated by the Legislature for the purchase of addi-
6 tional real property or technology, or for capital improve-
7 ments at the institution that sold the surplus real property,
8 the board of trustees is hereby authorized and empowered
9 to sell those parcels of land situate along U. S. Route 60,
10 being a subdivision of a 2.75 acre tract into eight separate
11 lots situate on the waters of the Guyandotte River in
12 Guyandotte District, Cabell County, West Virginia, bound-
13 ed and described as follows:

14 Beginning at a 5/8" rebar with cap set on the north
15 side of U. S. Route 60 at a common corner to the property
16 of the university of West Virginia board of trustees and
17 Lambert Construction; thence N. 43° 51' E. a distance of
18 167.99 feet to a 5/8" rebar with cap set in the boundary of
19 Lot 1 of the subdivision; thence N. 85° 52' E. a distance of
20 103.16 feet to 5/8" rebar with cap set in the common
21 corner to Lot 1 and Lot 2 of the subdivision; thence N.
22 85° 52' E. a distance of 129.37 feet to a 5/8" rebar with
23 cap set in the common corner to Lot 2 and Lot 3 of the
24 subdivision; thence N. 82° 52' E. a distance of 98.91 feet
25 to a 5/8" rebar with cap set in the common corner to Lot 3
26 and Lot 4 of the subdivision; thence N. 82° 52' E. a dis-
27 tance of 98.95 feet to a 5/8" rebar with cap set in the com-
28 mon corner to Lot 4 and Lot 5 of the subdivision; thence
29 N. 82° 52' E. a distance of 105.88 feet to a 5/8" rebar with
30 cap set in the common corner to Lot 5 and Lot 6 of the
31 subdivision; thence N. 82° 52' E. a distance of 105.96
32 feet to a 5/8" rebar with cap set in the common corner to
33 Lot 6 and Lot 7 of the subdivision; thence N. 82° 52' E. a
34 distance of 106.06 feet to a 5/8" rebar with cap set in the
35 common corner to Lot 7 and Lot 8 of the subdivision;
36 thence N. 82° 52' E. a distance of 162.16 feet to a 5/8"
37 rebar with cap set in the common corner to Lot 8 of the
38 subdivision and the Crans property; thence S. 09° 49' E. a
39 distance of 103.75 feet to a 5/8" rebar with cap set in the
40 line separating Lot 8 and the Crans property to a 5/8"
41 rebar with cap set in that line; thence S 09° 49' a distance
42 of 25.00 feet to 5/8" rebar with cap set in the southeastern
43 corner of Lot 8; thence S. 82° 02' W. a distance of 166.00

44 feet and running with the chord of U. S. Route 60 to a
45 5/8" rebar with cap set in that line, which is a common
46 corner to Lot 8 and Lot 7 of the subdivision; thence S. 82°
47 44' W. a distance of 107.00 feet and running with the
48 chord of U. S. Route 60 to a 5/8" rebar with cap set in that
49 line, which is a common corner to Lot 7 and Lot 6 of the
50 subdivision; thence S. 83° 16' W. a distance of 107.00 feet
51 and running with the chord of U. S. Route 60 to a 5/8"
52 rebar with cap set in that line, which is a common corner
53 to Lot 6 and Lot 5 of the subdivision; thence S. 83° 45'
54 W. a distance of 89.06 feet and running with the chord of
55 U. S. Route 60 to a rebar with cap stamped "WV DOH";
56 thence N. 06° 01' W. a distance of 20.00 feet to a rebar
57 with cap stamped "WV DOH"; thence S. 84° 06' W. a
58 distance of 17.91.00 feet to a 5/8" rebar with cap set, which
59 is a common corner to Lot 5 and Lot 4 of the subdivision;
60 thence S. 84° 06' W. a distance of 31.79 feet to a rebar
61 with cap stamped "WV DOH"; thence S. 05° 46' E. a
62 distance of 20.00 feet to a rebar with cap stamped "WV
63 DOH"; thence S. 84° 24' W. a distance of 68.21 feet and
64 running with the chord of U. S. Route 60 to a 5/8" rebar
65 with cap set in that line, which is a common corner to Lot
66 4 and Lot 3 of the subdivision; thence S. 84° 39' W. a
67 distance of 31.35 feet to a rebar with cap stamped "WV
68 DOH"; thence N. 05° 16' W. a distance of 8.00 feet to a
69 rebar with cap stamped "WV DOH"; thence S. 84° 57' W.
70 a distance of 68.65 feet running parallel to U. S. Route 60
71 to a 5/8" rebar with cap set in that line, which is a common
72 corner to Lot 3 and Lot 2 of the subdivision; thence S. 84°
73 57' W. a distance of 20.89 feet to a rebar with cap stamped
74 "WV DOH"; thence S. 04° 57' W. a distance of 8.00 feet
75 to a rebar with cap stamped "WV DOH"; thence S. 85°
76 27' W. a distance of 110.00 feet and running with the
77 chord of U. S. Route 60 to a 5/8" rebar with cap set in that
78 line, which is a common corner to Lot 2 and Lot 1 of the
79 subdivision; thence S. 84° 54' W. a distance of 64.24 feet
80 and running with the chord of U. S. Route 60 to a 5/8"
81 rebar with cap set in that line; thence N. 03° 57' W. a dis-
82 tance of 10.00 feet to 5/8" rebar with cap set; thence S. 86°
83 16' W. running parallel to U. S. Route 60 a distance of
84 84.55 feet to 5/8" rebar with cap set; thence N. 03° 31' W.
85 a distance of 10.00 feet to a 5/8" rebar with cap set; thence

86 S. 86• 59' W. running parallel to U. S. Route 60 a distance
87 of 79.66 feet to the place of beginning, containing 2.75
88 acres as described in a deed to the university of West
89 Virginia board of trustees recorded in the county clerk's
90 office in Cabell County in deed book 116 at page 304;
91 and being the same property shown on a map of the
92 subdivision of the 2.75 acre tract entitled "Plat of Survey
93 Showing Subdivision Of A 2.75 Acre Tract described in
94 deed book 116 at page 304 for university of West Virginia
95 board of trustees located along U. S. Route 60 situate on
96 the waters of the Guyandotte River in Guyandotte District,
97 Cabell County, West Virginia" dated March 13, 1997, as
98 surveyed by Mark C. Shamblin land surveyor, the
99 subdivision being eight lots from this real property.

100 (b) Prior to the sale, the board of trustees shall cause
101 the property to be appraised by two independent licensed
102 appraisers and may not sell the property for less than the
103 average of the two appraisals.

104 (c) The proceeds from the sale of the property
105 referred to shall be deposited in a special revenue account
106 from which the board of trustees is hereby authorized to
107 expend funds for development of parking on the
108 downtown campus at Marshall university in Huntington.

CHAPTER 131

(S. B. 121—By Senators Oliverio, Prazioso, McKenzie, Snyder, Scott, Ross,
Anderson, Deem, Buckalew, Sharpe, Ball and Dugan)

[Passed March 24, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections seven, nine, eleven and thirteen, article two, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to allowing all subcontractors and those providing labor or materials to contractors or subcontractors seventy-five days within which to claim their mechanics' liens.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. MECHANICS' LIENS.

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

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

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

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

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

1 But the lien created and authorized by section one of
 2 this article shall be discharged from and after ninety days
 3 from the completion of the contract, and the lien created
 4 and authorized by section two of this article shall be
 5 discharged from and after seventy-five days from the
 6 completion of the subcontract, and the lien created and
 7 authorized by section three of this article shall be dis-
 8 charged from and after ninety days from the furnishing of
 9 the last of the materials, machinery or other supplies and
 10 equipment, and the lien created and authorized by section
 11 four of this article shall be discharged from and after
 12 seventy-five days from the date of the furnishing of the
 13 last of the materials, machinery or other equipment or
 14 supplies, and the lien created and authorized by section
 15 five of this article shall be discharged from and after
 16 ninety days from the date of the performing of the last of
 17 the work and labor, and the lien created and authorized by
 18 section six of this article shall be discharged from and
 19 after seventy-five days from the date of the performing of
 20 the last of the work and labor, unless within the respective
 21 periods, the claimant of any such lien shall have perfected
 22 and preserved the same, as hereinafter provided in this
 23 article.

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

1 For the purpose of perfecting and preserving his or
 2 her lien, every subcontractor mentioned in section two of
 3 this article shall, within seventy-five days after the comple-

4 tion of his or her subcontract, give to the owner or his or
5 her authorized agent, by any of the methods provided by
6 law for the service of a legal notice or summons, a notice
7 of lien, which notice shall be sufficient if in form and
8 effect as follows:

9 Notice of Mechanic's Lien.

10 To.....

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

28

29 State of West Virginia,

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

33 Taken, subscribed and sworn to before me this
34 day of, 19....

35 My commission expires

36
37 (Official Capacity)

38 But the lien shall be discharged and avoided, unless
39 within ninety days after the completion of his or her
40 subcontract as aforesaid the subcontractor shall cause to
41 be recorded in the office of the clerk of the county

42 commission of the county wherein the property is situate a
 43 notice of the lien, which notice shall be sufficient if in
 44 form and effect as that provided in section eight of this
 45 article.

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

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

13 Notice of Mechanic's Lien.

14 To.....

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

27 (Here insert itemized account.)

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

35
 36 State of West Virginia,
 37 County of, being first duly sworn, upon
 38 his oath says that the statements in the foregoing notice of
 39 lien contained are true, as he verily believes.
 40 Taken, subscribed and sworn to before me this
 41 day of, 19.....
 42 My commission expires
 43
 44 (Official Capacity)

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

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

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

13 Notice of Mechanic's Lien.
 14 To.....

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

27 (Here insert itemized account.)

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

34

35 State of West Virginia,

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

39 Taken, subscribed and sworn to before me this
 40 day of, 19.....

41 My commission expires

42
 43 (Official Capacity)

44 But the lien shall be discharged, unless such workman,
 45 artisan, mechanic, laborer or other person shall cause to be
 46 recorded in the office of the clerk of the county commis-
 47 sion wherein such property is situate, within ninety days
 48 after he or she shall have ceased to do work or perform
 49 labor upon the building or improvement thereto, a notice
 50 of the lien, which notice shall be sufficient if in form and
 51 effect as that provided in section eight of this article and
 52 which recorded notice need not include such itemized
 53 account.

CHAPTER 132

(S. B. 409—By Senators Snyder, Anderson and Ball)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-k, relating to public participation in the decision to locate commercial infectious medical waste management facilities; defining terms; and setting forth procedure for public participation in decision to locate commercial infectious medical waste management facilities.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5K. COMMERCIAL INFECTIOUS MEDICAL WASTE FACILITY SITING APPROVAL.

§20-5K-1. Legislative purpose.

§20-5K-2. Definitions.

§20-5K-3. Procedure for public participation.

§20-5K-1. Legislative purpose.

- 1 The purpose of this article is to provide the opportuni-
- 2 ty for public participation in the decision to locate com-
- 3 mercial infectious medical waste management facilities.

§20-5K-2. Definitions.

- 1 Unless the context clearly requires a different mean-
- 2 ing, as used in this article the terms:
- 3 (a) "Commercial infectious medical waste facility"
- 4 means any infectious medical waste management facility
- 5 at which thirty-five percent or more by weight of the total

6 infectious medical waste stored, treated or disposed of by
7 the facility in any calendar year is generated off-site.

8 (b) "Infectious medical waste" means medical waste
9 identified as capable of producing an infectious disease.
10 Medical waste shall be considered capable of producing
11 an infectious disease if it has been, or is likely to have
12 been, contaminated by an organism likely to be pathogen-
13 ic to healthy humans, if such organism is not routinely
14 and freely available in the community, and such organism
15 has a significant probability of being present in sufficient
16 quantities and with sufficient virulence to transmit disease.
17 For the purposes of this article, infectious medical waste
18 includes the following:

19 (1) Cultures and stocks of microorganisms and
20 biologicals;

21 (2) Blood and blood products;

22 (3) Pathological wastes;

23 (4) Sharps;

24 (5) Animal carcasses, body parts, bedding and related
25 wastes;

26 (6) Isolation wastes;

27 (7) Any residue or contaminated soil, water or other
28 debris resulting from the cleanup of a spill of any infec-
29 tious medical waste; and

30 (8) Any waste contaminated by or mixed with infec-
31 tious medical waste.

32 (c) "Off-site" means a facility or area for the collec-
33 tion, storage, transfer, processing, treatment or disposal of
34 infectious medical waste that is not on the generator's site,
35 or a facility or area that received infectious medical waste
36 for storage or treatment that has not been generated on-
37 site.

38 (d) "Secretary" means the secretary of the depart-
39 ment of health and human resources or his or her
40 designee.

§20-5K-3. Procedure for public participation.

1 (a) From and after the effective date of this article, in
2 order to obtain approval to locate a commercial infectious
3 medical waste facility, currently not under permit to
4 operate, an applicant shall:

5 (1) File a pre-siting notice with the county commission
6 and local solid waste authority of the county or counties in
7 which the facility is to be located or proposed. Such
8 notice shall be submitted on forms prescribed by the
9 secretary;

10 (2) File a pre-siting notice with the secretary; and

11 (3) File a pre-siting notice with the division of envi-
12 ronmental protection.

13 (b) If a pre-siting notice is filed in accordance with
14 subsection (a) of this section, the county commission shall
15 publish a Class II legal advertisement in compliance with
16 the provisions of article three, chapter fifty-nine of this
17 code, in a newspaper of general circulation in the counties
18 wherein the commercial infectious medical waste facility is
19 to be located. Upon an affirmative vote of the majority of
20 the county commissioners or upon the written petition of
21 registered voters residing in the county equal to not less
22 than fifteen percent of the number of votes cast within the
23 county for governor at the preceding gubernatorial
24 election, which petition shall be filed with the county
25 commission within sixty days after the last date of publica-
26 tion of the notice provided in this section, the county
27 commission shall, upon verification of the required
28 number of signatures on the petition, and not less than
29 fifty-six days before the election, order a referendum be
30 placed upon the ballot. Any referendum conducted
31 pursuant to this section shall be held at the next primary,
32 general or other county-wide election:

33 (1) Such referendum is to determine whether it is the
34 will of the voters of the county that a commercial infec-
35 tious medical waste management facility be located in the
36 county. Any election at which such question of locating a
37 commercial infectious medical waste management facility

38 is voted upon shall be held at the voting precincts estab-
39 lished for holding primary or general elections. All of the
40 provisions of the general election laws, when not in
41 conflict with the provisions of this article, apply to voting
42 and elections hereunder, insofar as practicable. The
43 secretary of state shall prescribe the form of the petition
44 which shall include the printed name, address and date of
45 birth of each person whose signature appears on the
46 petition.

47 (2) The ballot, or the ballot labels where voting
48 machines are used, shall have printed thereon substantially
49 the following depending upon the type of facility to be
50 located within the county:

51 Shall a commercial infectious medical waste manage-
52 ment facility be located within _____
53 County.

54 For the facility

55 Against the facility

56 (Place a cross mark in the square opposite your
57 choice.)

58 (3) If a majority of the legal votes cast upon the
59 question is against the facility, then the county commis-
60 sion shall notify the local solid waste authority, the
61 division of environmental protection and the secretary of
62 the department of health and human resources of the
63 result and the commercial infectious medical waste
64 management facility may not proceed any further with the
65 application. If a majority of the legal votes cast upon the
66 question is for the facility, then the application process as
67 set forth in article five-j of this chapter may proceed:
68 *Provided*, That such vote is not binding on nor does it
69 require the secretary to issue the permit. If the majority of
70 the legal votes cast is against the question, the question
71 may be submitted to a vote at any subsequent election in
72 the manner herein specified: *Provided, however*, That the
73 question may not be resubmitted to a vote until two years
74 after the date of the previous referendum.

CHAPTER 133

(S. B. 520—By Senators Love, Kimble and Bailey)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, thirteen, fifteen, seventeen, eighteen and twenty-eight, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to surface coal mining reclamation; adding definitions; allowing for a compliance conference; establishing procedures for reinstatement of revoked permits; allowing coal removal of existing abandoned coal process waste piles under reclamation contract; creating provisions for no cost reclamation contracts, coal extraction under a government financed reclamation contract and coal extraction incidental to land development; and modifying certain bonding requirement.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

- §22-3-3. Definitions.
- §22-3-13. General environmental protection performance standards for surface-mining; variances.
- §22-3-15. Inspections; monitoring; right of entry; inspection of records; identification signs; progress maps.
- §22-3-17. Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the board; prosecution; injunctive relief.
- §22-3-18. Approval, denial, revision and prohibition of permit.
- §22-3-28. Special permits authorization for reclamation of existing abandoned coal processing waste piles; coal extraction pursuant to a government-financed reclamation contract; coal extraction as an incidental part of development of land for

commercial, residential, industrial or civic use; no cost reclamation contract.

§22-3-3. Definitions.

1 As used in this article, unless used in a context that
2 clearly requires a different meaning, the term:

3 (a) "Adequate treatment" means treatment of water
4 by physical, chemical or other approved methods in a
5 manner so that the treated water does not violate the
6 effluent limitations or cause a violation of the water
7 quality standards established for the river, stream or
8 drainway into which such water is released.

9 (b) "Affected area" means, when used in the context
10 of surface-mining activities, all land and water resources
11 within the permit area which are disturbed or utilized
12 during the term of the permit in the course of surface-
13 mining and reclamation activities. "Affected area" means,
14 when used in the context of underground mining activi-
15 ties, all surface land and water resources affected during
16 the term of the permit: (1) By surface operations or
17 facilities incident to underground mining activities; or (2)
18 by underground operations.

19 (c) "Adjacent areas" means, for the purpose of
20 permit application, renewal, revision, review and approval,
21 those land and water resources, contiguous to or near a
22 permit area, upon which surface-mining and reclamation
23 operations conducted within a permit area during the life
24 of such operations may have an impact. "Adjacent
25 areas" means, for the purpose of conducting surface-
26 mining and reclamation operations, those land and water
27 resources contiguous to or near the affected area upon
28 which surface-mining and reclamation operations con-
29 ducted within a permit area during the life of such opera-
30 tions may have an impact.

31 (d) "Applicant" means any person who has or should
32 have applied for any permit pursuant to this article.

33 (e) "Approximate original contour" means that
34 surface configuration achieved by the backfilling and
35 grading of the disturbed areas so that the reclaimed area,

36 including any terracing or access roads, closely resembles
37 the general surface configuration of the land prior to
38 mining and blends into and complements the drainage
39 pattern of the surrounding terrain, with all highwalls and
40 spoil piles eliminated: *Provided*, That water impound-
41 ments may be permitted pursuant to subdivision (8),
42 subsection (b), section thirteen of this article: *Provided*,
43 *however*, That minor deviations may be permitted in order
44 to minimize erosion and sedimentation, retain moisture to
45 assist revegetation, or to direct surface runoff.

46 (f) "Assessment officer" means an employee of the
47 division, other than a surface-mining reclamation supervi-
48 sor, inspector or inspector-in-training, appointed by the
49 director to issue proposed penalty assessments and to
50 conduct informal conferences to review notices, orders
51 and proposed penalty assessments.

52 (g) "Breakthrough" means the release of water which
53 has been trapped or impounded, or the release of air into
54 any underground cavity, pocket or area as a result of
55 surface-mining operations.

56 (h) "Coal processing wastes" means earth materials
57 which are or have been combustible, physically unstable
58 or acid-forming or toxic-forming, which are wasted or
59 otherwise separated from product coal, and slurried or
60 otherwise transported from coal processing plants after
61 physical or chemical processing, cleaning or concentrating
62 of coal.

63 (i) "Director" means the director of the division of
64 environmental protection or such other person to whom
65 the director has delegated authority or duties pursuant to
66 sections six or eight, article one of this chapter.

67 (j) "Disturbed area" means an area where vegetation,
68 topsoil or overburden has been removed or placed by
69 surface-mining operations, and reclamation is incomplete.

70 (k) "Division" means the division of environmental
71 protection.

72 (l) "Imminent danger to the health or safety of the
73 public" means the existence of such condition or practice,

74 or any violation of a permit or other requirement of this
75 article, which condition, practice or violation could
76 reasonably be expected to cause substantial physical harm
77 or death to any person outside the permit area before such
78 condition, practice or violation can be abated. A reason-
79 able expectation of death or serious injury before abate-
80 ment exists if a rational person, subjected to the same
81 conditions or practices giving rise to the peril, would not
82 expose the person to the danger during the time necessary
83 for the abatement.

84 (m) "Minerals" means clay, coal, flagstone, gravel,
85 limestone, manganese, sand, sandstone, shale, iron ore and
86 any other metal or metallurgical ore.

87 (n) "Operation" means those activities conducted by
88 an operator who is subject to the jurisdiction of this article.

89 (o) "Operator" means any person who is granted or
90 who should obtain a permit to engage in any activity
91 covered by this article and any rule promulgated hereun-
92 der and includes any person who engages in surface-
93 mining or surface-mining and reclamation operations, or
94 both. The term shall also be construed in a manner
95 consistent with the federal program pursuant to the federal
96 Surface-Mining Control and Reclamation Act of 1977, as
97 amended.

98 (p) "Permit" means a permit to conduct surface-
99 mining operations pursuant to this article.

100 (q) "Permit area" means the area of land indicated on
101 the approved proposal map submitted by the operator as
102 part of the operator's application showing the location of
103 perimeter markers and monuments and shall be readily
104 identifiable by appropriate markers on the site.

105 (r) "Permittee" means a person holding a permit
106 issued under this article.

107 (s) "Person" means any individual, partnership, firm,
108 society, association, trust, corporation, other business entity
109 or any agency, unit or instrumentality of federal, state or
110 local government.

111 (t) "Prime farmland" has the same meaning as that
112 prescribed by the United States secretary of agriculture on
113 the basis of such factors as moisture availability, tempera-
114 ture regime, chemical balance, permeability, surface layer
115 composition, susceptibility to flooding and erosion
116 characteristics, and which historically have been used for
117 intensive agricultural purposes and as published in the
118 federal register.

119 (u) "Surface mine", "surface-mining" or "surface-
120 mining operations" means:

121 (1) Activities conducted on the surface of lands for the
122 removal of coal, or, subject to the requirements of section
123 fourteen of this article, surface operations and surface
124 impacts incident to an underground coal mine, including
125 the drainage and discharge therefrom. Such activities
126 include: Excavation for the purpose of obtaining coal,
127 including, but not limited to, such common methods as
128 contour, strip, auger, mountaintop removal, box cut, open
129 pit and area mining; the uses of explosives and blasting;
130 reclamation; in situ distillation or retorting, leaching or
131 other chemical or physical processing; the cleaning,
132 concentrating or other processing or preparation and
133 loading of coal for commercial purposes at or near the
134 mine site; and

135 (2) The areas upon which the above activities occur or
136 where such activities disturb the natural land surface.
137 Such areas shall also include any adjacent land, the use of
138 which is incidental to any such activities; all lands affected
139 by the construction of new roads or the improvement or
140 use of existing roads to gain access to the site of such
141 activities and for haulage; and excavations, workings,
142 impoundments, dams, ventilation shafts, entryways, refuse
143 banks, dumps, stockpiles, overburden piles, spoil banks,
144 culm banks, tailings, holes or depressions, repair areas,
145 storage areas, processing areas, shipping areas and other
146 areas upon which are sited structures, facilities, or other
147 property or materials on the surface, resulting from or
148 incident to such activities: *Provided*, That such activities
149 do not include the extraction of coal incidental to the
150 extraction of other minerals where coal does not exceed

151 sixteen and two-thirds percent of the tonnage of minerals
152 removed for purposes of commercial use or sale, or coal
153 prospecting subject to section seven of this article.
154 Surface-mining may not include any of the following:

155 (i) Coal extraction authorized pursuant to a govern-
156 ment-financed reclamation contract;

157 (ii) Coal extraction authorized as an incidental part of
158 development of land for commercial, residential, industri-
159 al, or civic use; or

160 (iii) The reclamation of an abandoned or forfeited
161 mine by a no cost reclamation contract.

162 (v) "Underground mine" means the surface effects
163 associated with the shaft, slopes, drifts or inclines connect-
164 ed with excavations penetrating coal seams or strata and
165 the equipment connected therewith which contribute
166 directly or indirectly to the mining, preparation or han-
167 dling of coal.

168 (w) "Significant, imminent environmental harm to
169 land, air or water resources" means the existence of any
170 condition or practice, or any violation of a permit or other
171 requirement of this article, which condition, practice or
172 violation could reasonably be expected to cause signifi-
173 cant and imminent environmental harm to land, air or
174 water resources. The term "environmental harm" means
175 any adverse impact on land, air or water resources, includ-
176 ing, but not limited to, plant, wildlife and fish, and the
177 environmental harm is imminent if a condition or practice
178 exists which is causing such harm or may reasonably be
179 expected to cause such harm at any time before the end of
180 the abatement time set by the director. An environmental
181 harm is significant if that harm is appreciable and not
182 immediately repairable.

183 (x) "Unanticipated event or condition" as used in
184 section eighteen of this article means an event or condition
185 in a remining operation that was not contemplated by the
186 applicable surface coal mining and reclamation permit.

187 (y) "Lands eligible for remining" means those lands
188 that would be eligible for expenditures under section four,

189 article two of this chapter. Surface-mining operations on
190 lands eligible for remining may not affect the eligibility of
191 such lands for reclamation and restoration under article
192 two of this chapter. In event the bond or deposit for lands
193 eligible for remining is forfeited, funds available under
194 article two of this chapter may be used to provide for
195 adequate reclamation or abatement. However, if condi-
196 tions constitute an emergency as provided in section 410
197 of the federal Surface-Mining Control and Reclamation
198 Act of 1977, as amended, then those federal provisions
199 shall apply.

200 (z) "Replacement of water supply" means with
201 respect to water supplies contaminated, diminished, or
202 interrupted, provision of water supply on both a tempo-
203 rary and permanent basis of equivalent quality and
204 quantity. Replacement includes provision of an equivalent
205 water delivery system and payment of operation and
206 maintenance cost in excess of customary and reasonable
207 delivery cost for the replaced water supplies.

208 Upon agreement by the permittee and the water
209 supply owner, the obligation to pay such costs may be
210 satisfied by a one-time payment in an amount which
211 covers the present annual operation and maintenance costs
212 for a period agreed to by the permittee and the water
213 supply owner.

§22-3-13. General environmental protection performance standards for surface-mining; variances.

1 (a) Any permit issued by the director pursuant to this
2 article to conduct surface-mining operations shall require
3 that the surface-mining operations will meet all applicable
4 performance standards of this article and other require-
5 ments as the director promulgates.

6 (b) The following general performance standards are
7 applicable to all surface mines and require the operation,
8 at a minimum to:

9 (1) Maximize the utilization and conservation of the
10 solid fuel resource being recovered to minimize
11 reffecting the land in the future through surface-mining;

12 (2) Restore the land affected to a condition capable of
13 supporting the uses which it was capable of supporting
14 prior to any mining, or higher or better uses of which
15 there is reasonable likelihood so long as the use or uses do
16 not present any actual or probable hazard to public health
17 or safety or pose any actual or probable threat of water
18 diminution or pollution, and the permit applicants'
19 declared proposed land use following reclamation is not
20 deemed to be impractical or unreasonable, inconsistent
21 with applicable land use policies and plans, involves
22 unreasonable delay in implementation, or is violative of
23 federal, state or local law;

24 (3) Except as provided in subsection (c) of this
25 section, with respect to all surface mines, backfill, compact
26 where advisable to ensure stability or to prevent leaching
27 of toxic materials, and grade in order to restore the
28 approximate original contour: *Provided*, That in surface-
29 mining which is carried out at the same location over a
30 substantial period of time where the operation transects the
31 coal deposit, and the thickness of the coal deposits relative
32 to the volume of the overburden is large and where the
33 operator demonstrates that the overburden and other spoil
34 and waste materials at a particular point in the permit area
35 or otherwise available from the entire permit area is
36 insufficient, giving due consideration to volumetric
37 expansion, to restore the approximate original contour, the
38 operator, at a minimum, shall backfill, grade and compact,
39 where advisable, using all available overburden and other
40 spoil and waste materials to attain the lowest practicable
41 grade, but not more than the angle of repose, to provide
42 adequate drainage and to cover all acid-forming and other
43 toxic materials, in order to achieve an ecologically sound
44 land use compatible with the surrounding region: *Provid-*
45 *ed, however*, That in surface-mining where the volume of
46 overburden is large relative to the thickness of the coal
47 deposit and where the operator demonstrates that due to
48 volumetric expansion the amount of overburden and other
49 spoil and waste materials removed in the course of the
50 mining operation is more than sufficient to restore the
51 approximate original contour, the operator shall, after
52 restoring the approximate contour, backfill, grade and

53 compact, where advisable, the excess overburden and other
54 spoil and waste materials to attain the lowest grade, but not
55 more than the angle of repose, and to cover all acid-
56 forming and other toxic materials, in order to achieve an
57 ecologically sound land use compatible with the surround-
58 ing region and, the overburden or spoil shall be shaped
59 and graded in such a way as to prevent slides, erosion and
60 water pollution and is revegetated in accordance with the
61 requirements of this article: *Provided further*, That the
62 director shall promulgate rules governing variances to the
63 requirements for return to approximate original contour
64 or highwall elimination and where adequate material is not
65 available from surface-mining operations permitted after
66 the effective date of this article for: (A) Underground
67 mining operations existing prior to the third day of
68 August, one thousand nine hundred seventy-seven; or (B)
69 for areas upon which surface-mining prior to the first day
70 of July, one thousand nine hundred seventy-seven, created
71 highwalls;

72 (4) Stabilize and protect all surface areas, including
73 spoil piles, affected by the surface-mining operation to
74 effectively control erosion and attendant air and water
75 pollution;

76 (5) Remove the topsoil from the land in a separate
77 layer, replace it on the backfill area, or if not utilized
78 immediately, segregate it in a separate pile from other
79 spoil and, when the topsoil is not replaced on a backfill
80 area within a time short enough to avoid deterioration of
81 the topsoil, maintain a successful vegetative cover by quick
82 growing plants or by other similar means in order to
83 protect topsoil from wind and water erosion and keep it
84 free of any contamination by other acid or toxic material:
85 *Provided*, That if topsoil is of insufficient quantity or of
86 poor quality for sustaining vegetation, or if other strata
87 can be shown to be more suitable for vegetation require-
88 ments, then the operator shall remove, segregate and
89 preserve in a like manner such other strata which is best
90 able to support vegetation;

91 (6) Restore the topsoil or the best available subsoil
92 which is best able to support vegetation;

93 (7) Ensure that all prime farmlands are mined and
94 reclaimed in accordance with the specifications for soil
95 removal, storage, replacement and reconstruction estab-
96 lished by the United States secretary of agriculture and the
97 soil conservation service pertaining thereto. The operator,
98 at a minimum, shall be required to: (A) Segregate the A
99 horizon of the natural soil, except where it can be shown
100 that other available soil materials will create a final soil
101 having a greater productive capacity, and if not utilized
102 immediately, stockpile this material separately from other
103 spoil, and provide needed protection from wind and water
104 erosion or contamination by other acid or toxic material;
105 (B) segregate the B horizon of the natural soil, or underly-
106 ing C horizons or other strata, or a combination of such
107 horizons or other strata that are shown to be both
108 texturally and chemically suitable for plant growth and
109 that can be shown to be equally or more favorable for
110 plant growth than the B horizon, in sufficient quantities to
111 create in the regraded final soil a root zone of comparable
112 depth and quality to that which existed in the natural soil,
113 and if not utilized immediately, stockpile this material
114 separately from other spoil and provide needed protection
115 from wind and water erosion or contamination by other
116 acid or toxic material; (C) replace and regrade the root
117 zone material described in subparagraph (B) above with
118 proper compaction and uniform depth over the regraded
119 spoil material; and (D) redistribute and grade in a uniform
120 manner the surface soil horizon described in subpara-
121 graph (A) above;

122 (8) Create, if authorized in the approved surface-
123 mining and reclamation plan and permit, permanent
124 impoundments of water on mining sites as part of recla-
125 mation activities in accordance with rules promulgated by
126 the director;

127 (9) Where augering is the method of recovery, seal all
128 auger holes with an impervious and noncombustible
129 material in order to prevent drainage except where the
130 director determines that the resulting impoundment of
131 water in such auger holes may create a hazard to the
132 environment or the public welfare and safety: *Provided,*
133 That the director may prohibit augering if necessary to

134 maximize the utilization, recoverability or conservation of
135 the mineral resources or to protect against adverse water
136 quality impacts;

137 (10) Minimize the disturbances to the prevailing
138 hydrologic balance at the mine site and in associated off-
139 site areas and to the quality and quantity of water in
140 surface and groundwater systems both during and after
141 surface-mining operations and during reclamation by:
142 (A) Avoiding acid or other toxic mine drainage by such
143 measures as, but not limited to: (i) Preventing or remov-
144 ing water from contact with toxic producing deposits; (ii)
145 treating drainage to reduce toxic content which adversely
146 affects downstream water upon being released to water
147 courses; and (iii) casing, sealing or otherwise managing
148 boreholes, shafts and wells and keep acid or other toxic
149 drainage from entering ground and surface waters; (B)
150 conducting surface-mining operations so as to prevent to
151 the extent possible, using the best technology currently
152 available, additional contributions of suspended solids to
153 streamflow or runoff outside the permit area, but in no
154 event shall contributions be in excess of requirements set
155 by applicable state or federal law; (C) constructing an
156 approved drainage system pursuant to subparagraph (B)
157 of this subdivision prior to commencement of surface-
158 mining operations, such system to be certified by a person
159 approved by the director to be constructed as designed
160 and as approved in the reclamation plan; (D) avoiding
161 channel deepening or enlargement in operations requiring
162 the discharge of water from mines; (E) unless otherwise
163 authorized by the director, cleaning out and removing
164 temporary or large settling ponds or other siltation
165 structures after disturbed areas are revegetated and
166 stabilized, and depositing the silt and debris at a site and in
167 a manner approved by the director; (F) restoring recharge
168 capacity of the mined area to approximate premining
169 conditions; and (G) such other actions as the director may
170 prescribe;

171 (11) With respect to surface disposal of mine wastes,
172 tailings, coal processing wastes and other wastes in areas
173 other than the mine working excavations, stabilize all waste
174 piles in designated areas through construction in con-act-

175 ed layers, including the use of noncombustible and
176 impervious materials if necessary, and assure the final
177 contour of the waste pile will be compatible with natural
178 surroundings and that the site will be stabilized and
179 revegetated according to the provisions of this article;

180 (12) Design, locate, construct, operate, maintain,
181 enlarge, modify and remove or abandon, in accordance
182 with standards and criteria developed pursuant to subsec-
183 tion (f) of this section, all existing and new coal mine
184 waste piles consisting of mine wastes, tailings, coal process-
185 ing wastes or other liquid and solid wastes, and used either
186 temporarily or permanently as dams or embankments;

187 (13) Refrain from surface-mining within five hundred
188 feet of any active and abandoned underground mines in
189 order to prevent breakthroughs and to protect health or
190 safety of miners: *Provided*, That the director shall permit
191 an operator to mine near, through or partially through an
192 abandoned underground mine or closer to an active
193 underground mine if: (A) The nature, timing and se-
194 quencing of the approximate coincidence of specific
195 surface mine activities with specific underground mine
196 activities are coordinated jointly by the operators involved
197 and approved by the director; and (B) such operations will
198 result in improved resource recovery, abatement of water
199 pollution or elimination of hazards to the health and
200 safety of the public: *Provided, however*, That any break-
201 through which does occur shall be sealed;

202 (14) Ensure that all debris, acid-forming materials,
203 toxic materials or materials constituting a fire hazard are
204 treated or buried and compacted, or otherwise disposed of
205 in a manner designed to prevent contamination of ground
206 or surface waters, and that contingency plans are devel-
207 oped to prevent sustained combustion: *Provided*, That the
208 operator shall remove or bury all metal, lumber, equip-
209 ment and other debris resulting from the operation before
210 grading release;

211 (15) Ensure that explosives are used only in accor-
212 dance with existing state and federal law and the rules
213 promulgated by the director, which shall include provi-
214 sions to: (A) Provide adequate advance written notice to

215 local governments and residents who might be affected by
216 the use of the explosives by publication of the planned
217 blasting schedule in a newspaper of general circulation in
218 the locality and by mailing a copy of the proposed
219 blasting schedule to every resident living within one-half
220 mile of the proposed blasting site: *Provided*, That this
221 notice shall suffice as daily notice to residents or occu-
222 pants of the areas; (B) maintain for a period of at least
223 three years and make available for public inspection, upon
224 written request, a log detailing the location of the blasts,
225 the pattern and depth of the drill holes, the amount of
226 explosives used per hole and the order and length of delay
227 in the blasts; (C) limit the type of explosives and detonat-
228 ing equipment, the size, the timing and frequency of blasts
229 based upon the physical conditions of the site so as to
230 prevent: (i) Injury to persons; (ii) damage to public and
231 private property outside the permit area; (iii) adverse
232 impacts on any underground mine; and (iv) change in the
233 course, channel or availability of ground or surface water
234 outside the permit area; (D) require that all blasting
235 operations be conducted by persons certified by the
236 director; and (E) provide that upon written request of a
237 resident or owner of a man-made dwelling or structure
238 within one-half mile of any portion of the permit area, the
239 applicant or permittee shall conduct a preblasting survey
240 or other appropriate investigation of the structures and
241 submit the results to the director and a copy to the resident
242 or owner making the request. The area of the survey shall
243 be determined by the director in accordance with rules
244 promulgated by him or her;

245 (16) Ensure that all reclamation efforts proceed in an
246 environmentally sound manner and as contemporaneously
247 as practicable with the surface-mining operations. Time
248 limits shall be established by the director requiring
249 backfilling, grading and planting to be kept current:
250 *Provided*, That where surface-mining operations and
251 underground mining operations are proposed on the same
252 area, which operations must be conducted under separate
253 permits, the director may grant a variance from the
254 requirement that reclamation efforts proceed as contem-

255 poraneously as practicable to permit underground mining
256 operations prior to reclamation:

257 (A) If the director finds in writing that:

258 (i) The applicant has presented, as part of the permit
259 application, specific, feasible plans for the proposed
260 underground mining operations;

261 (ii) The proposed underground mining operations are
262 necessary or desirable to assure maximum practical
263 recovery of the mineral resource and will avoid multiple
264 disturbance of the surface;

265 (iii) The applicant has satisfactorily demonstrated that
266 the plan for the underground mining operations conforms
267 to requirements for underground mining in the jurisdic-
268 tion and that permits necessary for the underground
269 mining operations have been issued by the appropriate
270 authority;

271 (iv) The areas proposed for the variance have been
272 shown by the applicant to be necessary for the implement-
273 ing of the proposed underground mining operations;

274 (v) No substantial adverse environmental damage,
275 either on-site or off-site, will result from the delay in
276 completion of reclamation as required by this article; and

277 (vi) Provisions for the off-site storage of spoil will
278 comply with subdivision (22), subsection (b) of this
279 section;

280 (B) If the director has promulgated specific rules to
281 govern the granting of such variances in accordance with
282 the provisions of this subparagraph and has imposed such
283 additional requirements as the director deems necessary;

284 (C) If variances granted under the provisions of this
285 paragraph are reviewed by the director not more than
286 three years from the date of issuance of the permit:
287 *Provided*, That the underground mining permit shall
288 terminate if the underground operations have not com-
289 menced within three years of the date the permit was
290 issued, unless extended as set forth in subdivision (3),
291 section eight of this article; and

292 (D) If liability under the bond filed by the applicant
293 with the director pursuant to subsection (b), section eleven
294 of this article is for the duration of the underground
295 mining operations and until the requirements of subsec-
296 tion (g), section eleven and section twenty-three of this
297 article have been fully complied with.

298 (17) Ensure that the construction, maintenance and
299 postmining conditions of access and haulroads into and
300 across the site of operations will control or prevent erosion
301 and siltation, pollution of water, damage to fish or wildlife
302 or their habitat, or public or private property: *Provided,*
303 That access roads constructed for and used to provide
304 infrequent service to surface facilities, such as ventilators
305 or monitoring devices, are exempt from specific construc-
306 tion criteria provided adequate stabilization to control
307 erosion is achieved through alternative measures;

308 (18) Refrain from the construction of roads or other
309 access ways up a stream bed or drainage channel or in
310 proximity to the channel so as to significantly alter the
311 normal flow of water;

312 (19) Establish on the regraded areas, and all other
313 lands affected, a diverse, effective and permanent vegeta-
314 tive cover of the same seasonal variety native to the area of
315 land to be affected or of a fruit, grape or berry producing
316 variety suitable for human consumption and capable of
317 self-regeneration and plant succession at least equal in
318 extent of cover to the natural vegetation of the area, except
319 that introduced species may be used in the revegetation
320 process where desirable or when necessary to achieve the
321 approved postmining land use plan;

322 (20) Assume the responsibility for successful
323 revegetation, as required by subdivision (19) of this
324 subsection, for a period of not less than five growing
325 seasons, as defined by the director, after the last year of
326 augmented seeding, fertilizing, irrigation or other work in
327 order to assure compliance with subdivision (19) of this
328 subsection: *Provided,* That when the director issues a
329 written finding approving a long-term agricultural
330 postmining land use as a part of the mining and reclama-
331 tion plan, the director may grant exception to the provi-

332 sions of subdivision (19) of this subsection: *Provided,*
333 *however,* That when the director approves an agricultural
334 postmining land use, the applicable five growing seasons
335 of responsibility for revegetation begins on the date of
336 initial planting for such agricultural postmining land use;

337 On lands eligible for remining assume the responsibil-
338 ity for successful revegetation, as required by subdivision
339 (19) of this subsection, for a period of not less than two
340 growing seasons, as defined by the director after the last
341 year of augmented seeding, fertilizing, irrigation or other
342 work in order to assure compliance with subdivision (19)
343 of this subsection.

344 (21) Protect off-site areas from slides or damage
345 occurring during surface-mining operations and not
346 deposit spoil material or locate any part of the operations
347 or waste accumulations outside the permit area: *Provided,*
348 That spoil material may be placed outside the permit area,
349 if approved by the director after a finding that environ-
350 mental benefits will result from such;

351 (22) Place all excess spoil material resulting from
352 surface-mining activities in such a manner that: (A) Spoil
353 is transported and placed in a controlled manner in
354 position for concurrent compaction and in a way as to
355 assure mass stability and to prevent mass movement; (B)
356 the areas of disposal are within the bonded permit areas
357 and all organic matter is removed immediately prior to
358 spoil placements; (C) appropriate surface and internal
359 drainage system or diversion ditches are used to prevent
360 spoil erosion and movement; (D) the disposal area does
361 not contain springs, natural water courses or wet weather
362 seeps, unless lateral drains are constructed from the wet
363 areas to the main underdrains in a manner that filtration of
364 the water into the spoil pile will be prevented; (E) if placed
365 on a slope, the spoil is placed upon the most moderate
366 slope among those upon which, in the judgment of the
367 director, the spoil could be placed in compliance with all
368 the requirements of this article, and is placed, where
369 possible, upon, or above, a natural terrace, bench or berm,
370 if placement provides additional stability and prevents
371 mass movement; (F) where the toe of the spoil rests on a

372 downslope, a rock toe buttress, of sufficient size to prevent
373 mass movement, is constructed; (G) the final configuration
374 is compatible with the natural drainage pattern and
375 surroundings and suitable for intended uses; (H) design of
376 the spoil disposal area is certified by a qualified registered
377 professional engineer in conformance with professional
378 standards; and (I) all other provisions of this article are
379 met: *Provided*, That where the excess spoil material
380 consists of at least eighty percent, by volume, sandstone,
381 limestone or other rocks that do not slake in water and will
382 not degrade to soil material, the director may approve
383 alternate methods for disposal of excess spoil material,
384 including fill placement by dumping in a single lift, on a
385 site specific basis: *Provided, however*, That the services of
386 a qualified registered professional engineer experienced in
387 the design and construction of earth and rockfill embank-
388 ment are utilized: *Provided further*, That such approval
389 may not be unreasonably withheld if the site is suitable;

390 (23) Meet such other criteria as are necessary to
391 achieve reclamation in accordance with the purposes of
392 this article, taking into consideration the physical, climato-
393 logical and other characteristics of the site;

394 (24) To the extent possible, using the best technology
395 currently available, minimize disturbances and adverse
396 impacts of the operation on fish, wildlife and related
397 environmental values, and achieve enhancement of these
398 resources where practicable; and

399 (25) Retain a natural barrier to inhibit slides and
400 erosion on permit areas where outcrop barriers are
401 required: *Provided*, That constructed barriers may be
402 allowed where: (A) Natural barriers do not provide
403 adequate stability; (B) natural barriers would result in
404 potential future water quality deterioration; and (C)
405 natural barriers would conflict with the goal of maximum
406 utilization of the mineral resource: *Provided, however*,
407 That at a minimum, the constructed barrier must be of
408 sufficient width and height to provide adequate stability
409 and the stability factor must equal or exceed that of the
410 natural outcrop barrier: *Provided further*, That where
411 water quality is paramount, the constructed barrier must be

412 composed of impervious material with controlled dis-
413 charge points.

414 (c) (1) The director may prescribe procedures pursu-
415 ant to which he or she may permit surface-mining opera-
416 tions for the purposes set forth in subdivision (3) of this
417 subsection.

418 (2) Where an applicant meets the requirements of
419 subdivisions (3) and (4) of this subsection, a permit
420 without regard to the requirement to restore to approxi-
421 mate original contour set forth in subsection (b) or (d) of
422 this section may be granted for the surface-mining of coal
423 where the mining operation will remove an entire coal
424 seam or seams running through the upper fraction of a
425 mountain, ridge or hill, except as provided in subpara-
426 graph (A), subdivision (4) of this subsection, by removing
427 all of the overburden and creating a level plateau or a
428 gently rolling contour with no highwalls remaining, and
429 capable of supporting postmining uses in accordance with
430 the requirements of this subsection.

431 (3) In cases where an industrial, commercial, wood-
432 land, agricultural, residential, public or fish and wildlife
433 habitat and recreation lands use is proposed for the
434 postmining use of the affected land, the director may
435 grant a permit for a surface-mining operation of the
436 nature described in subdivision (2) of this subsection
437 where: (A) The proposed postmining land use is deemed
438 to constitute an equal or better use of the affected land, as
439 compared with premining use; (B) the applicant presents
440 specific plans for the proposed postmining land use and
441 appropriate assurances that the use will be: (i) Compatible
442 with adjacent land uses; (ii) practicable with respect to
443 achieving the proposed use; (iii) supported by commit-
444 ments from public agencies where appropriate; (iv)
445 practicable with respect to private financial capability for
446 completion of the proposed use; (v) planned pursuant to a
447 schedule attached to the reclamation plan so as to integrate
448 the mining operation and reclamation with the postmining
449 land use; and (vi) designed by a person approved by the
450 director in conformance with standards established to
451 assure the stability, drainage and configuration necessary

452 for the intended use of the site; (C) the proposed use
453 would be compatible with adjacent land uses, and existing
454 state and local land use plans and programs; (D) the
455 director provides the county commission of the county in
456 which the land is located and any state or federal agency
457 which the director, in his or her discretion, determines to
458 have an interest in the proposed use, an opportunity of not
459 more than sixty days to review and comment on the
460 proposed use; and (E) all other requirements of this article
461 will be met.

462 (4) In granting any permit pursuant to this subsection,
463 the director shall require that: (A) A natural barrier be
464 retained to inhibit slides and erosion on permit areas
465 where outcrop barriers are required: *Provided*, That
466 constructed barriers may be allowed where: (i) Natural
467 barriers do not provide adequate stability; (ii) natural
468 barriers would result in potential future water quality
469 deterioration; and (iii) natural barriers would conflict with
470 the goal of maximum utilization of the mineral resource:
471 *Provided, however*, That, at a minimum, the constructed
472 barrier must be sufficient width and height to provide
473 adequate stability and the stability factor must equal or
474 exceed that of the natural outcrop barrier: *Provided*
475 *further*, That where water quality is paramount, the con-
476 structed barrier must be composed of impervious material
477 with controlled discharge points; (B) the reclaimed area is
478 stable; (C) the resulting plateau or rolling contour drains
479 inward from the out slopes except at specific points; (D) no
480 damage will be done to natural watercourses; (E) spoil will
481 be placed on the mountaintop bench as is necessary to
482 achieve the planned postmining land use: *And provided*
483 *further*, That all excess spoil material not retained on the
484 mountaintop shall be placed in accordance with the
485 provisions of subdivision (22), subsection (b) of this
486 section; and (F) ensure stability of the spoil retained on
487 the mountaintop and meet the other requirements of this
488 article.

489 (5) All permits granted under the provisions of this
490 subsection shall be reviewed not more than three years
491 from the date of issuance of the permit; unless the appli-
492 cant affirmatively demonstrates that the proposed devel-

493 ment is proceeding in accordance with the terms of the
494 approved schedule and reclamation plan.

495 (d) In addition to those general performance standards
496 required by this section, when surface-mining occurs on
497 slopes of twenty degrees or greater, or on such lesser
498 slopes as may be defined by rule after consideration of
499 soil and climate, no debris, abandoned or disabled equip-
500 ment, spoil material or waste mineral matter will be placed
501 on the natural downslope below the initial bench or
502 mining cut: *Provided*, That soil or spoil material from the
503 initial cut of earth in a new surface-mining operation may
504 be placed on a limited specified area of the downslope
505 below the initial cut if the permittee can establish to the
506 satisfaction of the director that the soil or spoil will not
507 slide and that the other requirements of this section can
508 still be met.

509 (e) The director may promulgate rules that permit
510 variances from the approximate original contour require-
511 ments of this section: *Provided*, That the watershed
512 control of the area is improved: *Provided, however*, That
513 complete backfilling with spoil material is required to
514 completely cover the highwall, which material will main-
515 tain stability following mining and reclamation.

516 (f) The director shall promulgate rules for the design,
517 location, construction, maintenance, operation, enlarge-
518 ment, modification, removal and abandonment of new and
519 existing coal mine waste piles. In addition to engineering
520 and other technical specifications, the standards and
521 criteria developed pursuant to this subsection must include
522 provisions for review and approval of plans and specifica-
523 tions prior to construction, enlargement, modification,
524 removal or abandonment; performance of periodic
525 inspections during construction; issuance of certificates of
526 approval upon completion of construction; performance
527 of periodic safety inspections; and issuance of notices and
528 orders for required remedial or maintenance work or
529 affirmative action: *Provided*, That whenever the director
530 finds that any coal processing waste pile constitutes an
531 imminent danger to human life, he or she may, in addition
532 to all other remedies and without the necessity of obtain-

533 ing the permission of any person prior or present who
534 operated or operates a pile or the landowners involved,
535 enter upon the premises where any such coal processing
536 waste pile exists and may take or order to be taken such
537 remedial action as may be necessary or expedient to
538 secure the coal processing waste pile and to abate the
539 conditions which cause the danger to human life: *Provid-*
540 *ed, however,* That the cost reasonably incurred in any
541 remedial action taken by the director under this subsection
542 may be paid for initially by funds appropriated to the
543 division for these purposes, and the sums so expended
544 shall be recovered from any responsible operator or
545 landowner, individually or jointly, by suit initiated by the
546 attorney general at the request of the director. For
547 purposes of this subsection "operates" or "operated"
548 means to enter upon a coal processing waste pile, or part
549 thereof, for the purpose of disposing, depositing, dumping
550 coal processing wastes thereon or removing coal process-
551 ing waste therefrom, or to employ a coal processing waste
552 pile for retarding the flow of or for the impoundment of
553 water.

§22-3-15. Inspections; monitoring; right of entry; inspection of records; identification signs; progress maps.

1 (a) The director shall cause to be made inspections of
2 surface-mining operations as are necessary to effectively
3 enforce the requirements of this article and for such
4 purposes the director or his or her authorized representa-
5 tive shall without advance notice and upon presentation of
6 appropriate credentials: (A) Have the right of entry to,
7 upon or through surface-mining operations or any
8 premises in which any records required to be maintained
9 under subdivision (1), subsection (b) of this section are
10 located; and (B) at reasonable times and without delay,
11 have access to and copy any records and inspect any
12 monitoring equipment or method of operation required
13 under this article.

14 (b) For the purpose of enforcement under this article,
15 in the administration and enforcement of any permit
16 under this article, or for determining whether any person
17 is in violation of any requirement of this article:

18 (1) The director shall, at a minimum, require any
19 operator to: (A) Establish and maintain appropriate
20 records; (B) make monthly reports to the division; (C)
21 install, use and maintain any necessary monitoring
22 equipment or methods consistent with subdivision (11),
23 subsection (a), section nine of this article; (D) evaluate
24 results in accordance with such methods, at such locations,
25 intervals and in such manner as the director prescribes;
26 and (E) provide any other information relative to surface-
27 mining operations as the director finds reasonable and
28 necessary; and

29 (2) For those surface-mining operations which remove
30 or disturb strata that serve as aquifers which significantly
31 ensure the hydrologic balance of water use either on or
32 off the mining site, the director shall require that: (A)
33 Monitoring sites be established to record the quantity and
34 quality of surface drainage above and below the mine site
35 as well as in the potential zone of influence; (B) monitor-
36 ing sites be established to record level, amount and
37 samples of groundwater and aquifers potentially affected
38 by the surface-mining and also below the lowermost
39 mineral seam to be mined; (C) records or well logs and
40 borehole data be maintained; and (D) monitoring sites be
41 established to record precipitation. The monitoring, data
42 collection and analysis required by this section shall be
43 conducted according to standards and procedures set forth
44 by the director in order to assure their reliability and
45 validity.

46 (c) All surface-mining operations shall be inspected at
47 least once every thirty days. The inspections shall be
48 made on an irregular basis without prior notice to the
49 operator or the operator's agents or employees, except for
50 necessary on-site meetings with the operator. The inspec-
51 tions shall include the filing of inspection reports adequate
52 to enforce the requirements, terms and purposes of this
53 article.

54 (d) Each permittee shall maintain at the entrances to
55 the surface-mining operations a clearly visible monument
56 which sets forth the name, business address and telephone

57 number of the permittee and the permit number of the
58 surface-mining operations.

59 (e) Copies of any records, reports, inspection materials
60 or information obtained under this article by the director
61 shall be made immediately available to the public at
62 central and sufficient locations in the county, multicounty
63 or state area of mining so that they are conveniently
64 available to residents in the areas of mining unless specifi-
65 cally exempted by this article.

66 (f) Within thirty days after service of a copy of an
67 order of the director upon an operator by registered or
68 certified mail, the operator shall furnish to the director five
69 copies of a progress map prepared by or under the
70 supervision of a person approved by the director showing
71 the disturbed area to the date of such map. Such progress
72 map shall contain information identical to that required
73 for both the proposed and final maps required by this
74 article, and shall show in detail completed reclamation
75 work as required by the director. Such progress map shall
76 include a geologic survey sketch showing the location of
77 the operation, shall be properly referenced to a permanent
78 landmark, and shall be within such reasonable degree of
79 accuracy as may be prescribed by the director. If no land
80 has been disturbed by operations during the preceding
81 year, the operator shall notify the director of that fact.

82 (g) Whenever on the basis of available information,
83 including reliable information from any person, the
84 director has cause to believe that any person is in violation
85 of this article, any permit condition or any rule promul-
86 gated under this article, the director shall immediately
87 order state inspection of the surface-mining operation at
88 which the alleged violation is occurring unless the infor-
89 mation is available as a result of a prior state inspection.
90 The director shall notify any person who supplied such
91 reliable information when the state inspection will be
92 carried out. Such person may accompany the inspector
93 during the inspection.

94 (h) When requested by the permittee, the director may
95 provide for a compliance conference with his or her
96 authorized representative to review the compliance status

97 of any coal exploration or surface-coal mining and
98 reclamation operation. Any such conference may not
99 constitute an inspection as defined in this section.

§22-3-17. Notice of violation; procedure and actions; enforcement; permit revocation and bond forfeiture; civil and criminal penalties; appeals to the board; prosecution; injunctive relief.

1 (a) If any of the requirements of this article, rules
2 promulgated pursuant thereto or permit conditions have
3 not been complied with, the director shall cause a notice of
4 violation to be served upon the operator or the operator's
5 duly authorized agent. A copy of the notice shall be
6 handed to the operator or the operator's duly authorized
7 agent in person or served by certified mail addressed to
8 the operator at the permanent address shown on the
9 application for a permit. The notice shall specify in what
10 respects the operator has failed to comply with this article,
11 rules or permit conditions and shall specify a reasonable
12 time for abatement of the violation not to exceed thirty
13 days. If the operator has not abated the violation within
14 the time specified in the notice, or any reasonable exten-
15 sion thereof, not to exceed sixty days, the director shall
16 order the cessation of the operation or the portion thereof
17 causing the violation, unless the operator affirmatively
18 demonstrates that compliance is unattainable due to
19 conditions totally beyond the control of the operator. If a
20 violation is not abated within the time specified or any
21 extension thereof, or any cessation order is issued, a
22 mandatory civil penalty of not less than seven hundred
23 fifty dollars per day per violation shall be assessed. A
24 cessation order remains in effect until the director deter-
25 mines that the violation has been abated or until modified,
26 vacated or terminated by the director or by a court. In
27 any cessation order issued under this subsection, the
28 director shall determine the steps necessary to abate the
29 violation in the most expeditious manner possible and
30 shall include the necessary measures in the order.

31 (b) If the director determines that a pattern of viola-
32 tions of any requirement of this article or any permit
33 condition exists or has existed, as a result of the operator's

34 lack of reasonable care and diligence, or that the violations
35 are willfully caused by the operator, the director shall
36 immediately issue an order directing the operator to show
37 cause why the permit should not be suspended or revoked
38 and giving the operator thirty days in which to request a
39 public hearing. If a hearing is requested, the director shall
40 inform all interested parties of the time and place of the
41 hearing. Any hearing under this section shall be recorded
42 and is subject to the provisions of chapter twenty-nine-a of
43 this code. Within sixty days following the public hearing,
44 the director shall issue and furnish to the permittee and all
45 other parties to the hearing a written decision, and the
46 reasons therefor, concerning suspension or revocation of
47 the permit. Upon the operator's failure to show cause
48 why the permit should not be suspended or revoked, the
49 director shall immediately suspend or revoke the opera-
50 tor's permit. If the permit is revoked, the director shall
51 initiate procedures in accordance with rules promulgated
52 by the director to forfeit the entire amount of the opera-
53 tor's bond, or other security posted pursuant to section
54 eleven or twelve of this article, and give notice to the
55 attorney general, who shall collect the forfeiture without
56 delay: *Provided*, That the entire proceeds of such forfei-
57 ture shall be deposited with the treasurer of the state of
58 West Virginia to the credit of the special reclamation fund.
59 All forfeitures collected shall be deposited in the special
60 reclamation fund and shall be expended back upon the
61 areas for which the bond was posted: *Provided, however*,
62 That any excess therefrom shall remain in the special
63 reclamation fund.

64 Within one year following the notice of permit
65 revocation, subject to the discretion of the director and
66 based upon a petition for reinstatement, the revoked
67 permit may be reinstated. The reinstated permit may be
68 assigned to any person who meets the permit eligibility
69 requirements of this article.

70 (c) Any person engaged in surface-mining operations
71 who violates any permit condition or who violates any
72 other provision of this article or rules promulgated
73 pursuant thereto may also be assessed a civil penalty. The
74 penalty may not exceed five thousand dollars. Each day

75 of continuing violation may be deemed a separate viola-
76 tion for purposes of penalty assessments. In determining
77 the amount of the penalty, consideration shall be given to
78 the operator's history of previous violations at the particu-
79 lar surface-mining operation, the seriousness of the
80 violation, including any irreparable harm to the environ-
81 ment and any hazard to the health or safety of the public,
82 whether the operator was negligent, and the demonstrated
83 good faith of the operator charged in attempting to
84 achieve rapid compliance after notification of the viola-
85 tion.

86 (d) (1) Upon the issuance of a notice or order pursu-
87 ant to this section, the assessment officer shall, within thirty
88 days, set a proposed penalty assessment and notify the
89 operator in writing of such proposed penalty assessment.
90 The proposed penalty assessment must be paid in full
91 within thirty days of receipt or, if the operator wishes to
92 contest either the amount of the penalty or the fact of
93 violation, an informal conference with the assessment
94 officer may be requested within fifteen days or a formal
95 hearing before the surface mine board may be requested
96 within thirty days. The notice of proposed penalty
97 assessment shall advise the operator of the right to an
98 informal conference and a formal hearing pursuant to this
99 section. When an informal conference is requested, the
100 operator has fifteen days from receipt of the assessment
101 officer's decision to request a formal hearing before the
102 board.

103 (A) When an informal conference is held, the assess-
104 ment officer has authority to affirm, modify or vacate the
105 notice, order or proposed penalty assessment.

106 (B) When a formal hearing is requested, the amount of
107 the proposed penalty assessment shall be forwarded to the
108 director for placement in an escrow account. Formal
109 hearings shall be of record and subject to the provisions of
110 article five, chapter twenty-nine-a of this code. Following
111 the hearing the board shall affirm, modify or vacate the
112 notice, order or proposed penalty assessment and, when
113 appropriate, incorporate an assessment order requiring
114 that the assessment be paid.

115 (2) Civil penalties owed under this section may be
116 recovered by the director in the circuit court of Kanawha
117 County. Civil penalties collected under this article shall be
118 deposited with the treasurer of the state of West Virginia to
119 the credit of the special reclamation fund established in
120 section eleven of this article. If, through the administrative
121 or judicial review of the proposed penalty it is determined
122 that no violation occurred or that the amount of the
123 penalty should be reduced, the director shall within thirty
124 days remit the appropriate amount to the person, with
125 interest at the rate of six percent or at the prevailing
126 United States department of the treasury rate, whichever is
127 greater. Failure to forward the money to the director
128 within thirty days is a waiver of all legal rights to contest
129 the violation or the amount of the penalty.

130 (e) Any person having an interest which is or may be
131 adversely affected by any order of the director or the
132 surface mine board may file an appeal only in accordance
133 with the provisions of article one, chapter twenty-two-b of
134 this code, within thirty days after receipt of the order.

135 (f) The filing of an appeal or a request for an informal
136 conference or formal hearing provided for in this section
137 does not stay execution of the order appealed from.
138 Pending completion of the investigation and conference
139 or hearing required by this section, the applicant may file
140 with the director a written request that the director grant
141 temporary relief from any notice or order issued under
142 section sixteen or seventeen of this article, together with a
143 detailed statement giving reasons for granting such relief.
144 The director shall issue an order or decision granting or
145 denying such relief expeditiously: *Provided*, That where
146 the applicant requests relief from an order for cessation of
147 surface-mining and reclamation operations, the decision
148 on the request shall be issued within five days of its
149 receipt. The director may grant such relief, under such
150 conditions as he or she may prescribe if:

151 (1) All parties to the proceedings have been notified
152 and given an opportunity to be heard on a request for
153 temporary relief;

154 (2) The person requesting the relief shows that there is
155 a substantial likelihood that they will prevail on the merits
156 in the final determination of the proceedings;

157 (3) The relief will not adversely affect the public
158 health or safety or cause significant imminent environ-
159 mental harm to land, air or water resources; and

160 (4) The relief sought is not the issuance of a permit
161 where a permit has been denied, in whole or in part, by the
162 director.

163 (g) Any person who willfully and knowingly violates a
164 condition of a permit issued pursuant to this article or
165 rules promulgated pursuant thereto, or fails or refuses to
166 comply with any order issued under said article and rules
167 or any order incorporated in a final decision issued by the
168 director, is guilty of a misdemeanor and, upon conviction
169 thereof, shall be fined not less than one hundred dollars
170 nor more than ten thousand dollars, or imprisoned in the
171 county jail not more than one year, or both fined and
172 imprisoned.

173 (h) Whenever a corporate operator violates a condition
174 of a permit issued pursuant to this article, rules promulgat-
175 ed pursuant thereto, or any order incorporated in a final
176 decision issued by the director, any director, officer or
177 agent of the corporation who willfully and knowingly
178 authorized, ordered or carried out the failure or refusal, is
179 subject to the same civil penalties, fines and imprisonment
180 that may be imposed upon a person under subsections (c)
181 and (g) of this section.

182 (i) Any person who knowingly makes any false
183 statement, representation or certification, or knowingly
184 fails to make any statement, representation or certification
185 in any application, petition, record, report, plan or other
186 document filed or required to be maintained pursuant to
187 this article or rules promulgated pursuant thereto, is guilty
188 of a misdemeanor and, upon conviction thereof, shall be
189 fined not less than one hundred dollars nor more than ten
190 thousand dollars, or imprisoned in the county jail not
191 more than one year, or both fined and imprisoned.

192 (j) Whenever any person: (A) Violates or fails or
193 refuses to comply with any order or decision issued by the
194 director under this article; or (B) interferes with, hinders or
195 delays the director in carrying out the provisions of this
196 article; or (C) refuses to admit the director to the mine; or
197 (D) refuses to permit inspection of the mine by the
198 director; or (E) refuses to furnish any reasonable informa-
199 tion or report requested by the director in furtherance of
200 the provisions of this article; or (F) refuses to permit
201 access to, and copying of, such records as the director
202 determines necessary in carrying out the provisions of this
203 article; or (G) violates any other provisions of this article,
204 the rules promulgated pursuant thereto, or the terms and
205 conditions of any permit, the director, the attorney general
206 or the prosecuting attorney of the county in which the
207 major portion of the permit area is located may institute a
208 civil action for relief, including a permanent or temporary
209 injunction, restraining order or any other appropriate
210 order, in the circuit court of Kanawha County or any court
211 of competent jurisdiction to compel compliance with and
212 enjoin such violations, failures or refusals. The court or
213 the judge thereof may issue a preliminary injunction in
214 any case pending a decision on the merits of any applica-
215 tion filed without requiring the filing of a bond or other
216 equivalent security.

217 (k) Any person who, except as permitted by law,
218 willfully resists, prevents, impedes or interferes with the
219 director or any of his or her agents in the performance of
220 duties pursuant to this article is guilty of a misdemeanor
221 and, upon conviction thereof, shall be punished by a fine
222 of not more than five thousand dollars or by imprison-
223 ment for not more than one year, or both.

§22-3-18. Approval, denial, revision and prohibition of permit.

1 (a) Upon the receipt of a complete surface-mining
2 application or significant revision or renewal thereof,
3 including public notification and an opportunity for a
4 public hearing, the director shall grant, require revision of,
5 or deny the application for a permit within sixty days and
6 notify the applicant in writing of the decision. The

7 applicant for a permit, or revision of a permit, has the
8 burden of establishing that the application is in compli-
9 ance with all the requirements of this article and the rules
10 promulgated hereunder.

11 (b) No permit or significant revision of a permit may
12 be approved unless the applicant affirmatively demon-
13 strates and the director finds in writing on the basis of the
14 information set forth in the application or from informa-
15 tion otherwise available which shall be documented in the
16 approval and made available to the applicant that:

17 (1) The permit application is accurate and complete
18 and that all the requirements of this article and rules
19 thereunder have been complied with;

20 (2) The applicant has demonstrated that reclamation as
21 required by this article can be accomplished under the
22 reclamation plan contained in the permit application;

23 (3) The assessment of the probable cumulative impact
24 of all anticipated mining in the area on the hydrologic
25 balance, as specified in section nine of this article, has
26 been made by the director and the proposed operation has
27 been designed to prevent material damage to the hydro-
28 logic balance outside the permit area;

29 (4) The area proposed to be mined is not included
30 within an area designated unsuitable for surface-mining
31 pursuant to section twenty-two of this article or is not
32 within an area under administrative study by the director
33 for such designation; and

34 (5) In cases where the private mineral estate has been
35 severed from the private surface estate, the applicant has
36 submitted: (A) The written consent of the surface owner
37 to the extraction of coal by surface-mining; or (B) a
38 conveyance that expressly grants or reserves the right to
39 extract the coal by surface-mining; or (C) if the convey-
40 ance does not expressly grant the right to extract coal by
41 surface-mining, the surface subsurface legal relationship
42 shall be determined in accordance with applicable law:
43 *Provided*, That nothing in this article shall be construed to

44 authorize the director to adjudicate property rights
45 disputes.

46 (c) Where information available to the division
47 indicates that any surface-mining operation owned or
48 controlled by the applicant is currently in violation of this
49 article or other environmental laws or rules, the permit
50 may not be issued until the applicant submits proof that
51 such violation has been corrected or is in the process of
52 being corrected to the satisfaction of the director or the
53 department or agency which has jurisdiction over the
54 violation, and no permit may be issued to any applicant
55 after a finding by the director, after an opportunity for
56 hearing, that the applicant or the operator specified in the
57 application controls or has controlled mining operations
58 with a demonstrated pattern of willful violations of this
59 article or of other state or federal programs implementing
60 the federal Surface-Mining Control and Reclamation Act
61 of 1977, as amended, of such nature and duration with
62 such irreparable damage to the environment as to indicate
63 an intent not to comply with the provisions of this article
64 or the federal Surface-Mining Control and Reclamation
65 Act of 1977, as amended: *Provided*, That if the director
66 finds that the applicant is or has been affiliated with, or
67 managed or controlled by, or is or has been under the
68 common control of, other than as an employee, a person
69 who has had a surface-mining permit revoked or bond or
70 other security forfeited for failure to reclaim lands as
71 required by the laws of this state, he or she may not issue a
72 permit to the applicant: *Provided, however*, That subject
73 to the discretion of the director and based upon a petition
74 for reinstatement, permits may be issued to any applicant
75 if: (1) After the revocation or forfeiture, the operator
76 whose permit has been revoked or bond forfeited has paid
77 into the special reclamation fund any additional sum of
78 money determined by the director to be adequate to
79 reclaim the disturbed area; (2) the violations which
80 resulted in the revocation or forfeiture have not caused
81 irreparable damage to the environment; and (3) the
82 director is satisfied that the petitioner will comply with this
83 article.

84 (d) (1) In addition to finding the application in
85 compliance with subsection (b) of this section, if the area
86 proposed to be mined contains prime farmland, the
87 director may, pursuant to rules promulgated hereunder,
88 grant a permit to mine on prime farmland if the operator
89 affirmatively demonstrates that the operator has the
90 technological capability to restore such mined area, within
91 a reasonable time, to equivalent or higher levels of yield as
92 nonmined prime farmland in the surrounding area under
93 equivalent levels of management, and can meet the soil
94 reconstruction standards in subdivision (7), subsection (b),
95 section thirteen of this article. Except for compliance with
96 subsection (b) of this section, the requirements of this
97 subdivision apply to all permits issued after the third day
98 of August, one thousand nine hundred seventy-seven.

99 (2) Nothing in this subsection applies to any permit
100 issued prior to the third day of August, one thousand nine
101 hundred seventy-seven, or to any revisions or renewals
102 thereof, or to any existing surface-mining operations for
103 which a permit was issued prior to said date.

104 (e) If the director finds that the overburden on any
105 part of the area of land described in the application for a
106 permit is such that experience in the state with a similar
107 type of operation upon land with similar overburden
108 shows that one or more of the following conditions cannot
109 feasibly be prevented: (1) Substantial deposition of
110 sediment in stream beds; (2) landslides; or (3) acid-water
111 pollution, the director may delete such part of the land
112 described in the application upon which such overburden
113 exists.

114 (f) The prohibition of subsection (c) of this section
115 may not apply to a permit application due to any violation
116 resulting from an unanticipated event or condition at a
117 surface coal mine eligible for remining under a permit
118 held by the applicant.

**§22-3-28. Special permits authorization for reclamation of
existing abandoned coal processing waste piles;**

coal extraction pursuant to a government-financed reclamation contract; coal extraction as an incidental part of development of land for commercial, residential, industrial or civic use; no cost reclamation contract.

1 (a) Except where exempted by section twenty-six of
2 this article, it is unlawful for any person to engage in
3 surface-mining as defined in this article as an incident to
4 the development of land for commercial, residential,
5 industrial or civic use without having first obtained from
6 the director a permit therefor as provided in section eight
7 of this article, unless a special authorization therefor has
8 been first obtained from the director as provided in this
9 section.

10 Application for a special authorization to engage in
11 surface-mining as an incident to the development of land
12 for commercial, residential, industrial or civic use shall be
13 made in writing on forms prescribed by the director and
14 shall be signed and verified by the applicant. The applica-
15 tion shall be accompanied by:

16 (1) A site preparation plan, prepared and certified by
17 or under the supervision of a person approved by the
18 director, showing the tract of land which the applicant
19 proposes to develop for commercial, residential, industrial
20 or civic use; the probable boundaries and areas of the coal
21 deposit to be mined and removed from said tract of land
22 incident to the proposed commercial, residential, industrial
23 or civic use thereof; and such other information as
24 prescribed by the director;

25 (2) A development plan for the proposed commercial,
26 residential, industrial or civic use of said land;

27 (3) The name of owner of the surface of the land to be
28 developed;

29 (4) The name of owner of the coal to be mined
30 incident to the development of the land;

31 (5) A reasonable estimate of the number of acres of
32 coal that would be mined as a result of the proposed

33 development of said land: *Provided*, That in no event may
34 such number of acres to be mined, excluding roadways,
35 exceed five acres; and

36 (6) Such other information as the director may require
37 to satisfy and assure the director that the surface-mining
38 under special authorization is incidental or secondary to
39 the proposed commercial, residential, industrial or civic
40 use of said land.

41 (b) There shall be attached to the application for the
42 special authorization a certificate of insurance certifying
43 that the applicant has in force a public liability insurance
44 policy issued by an insurance company authorized to do
45 business in this state affording personal injury protection
46 in accordance with subsection (d), section nine of this
47 article.

48 The application for the special authorization shall also
49 be accompanied by a bond, or cash or collateral securities
50 or certificates of the same type, in the form as prescribed
51 by the director and in the minimum amount of two
52 thousand dollars per acre, for a maximum disturbance of
53 five acres.

54 The bond shall be payable to the state of West Virginia
55 and conditioned that the applicant complete the site
56 preparation for the proposed commercial, residential,
57 industrial or civic use of said land. At the conclusion of
58 the site preparation, in accordance with the site preparation
59 plan submitted with the application, the bond conditions
60 are satisfied and the bond and any cash, securities or
61 certificates furnished with said bond may be released and
62 returned to the applicant. The filing fee for the special
63 authorization is five hundred dollars. The special authori-
64 zation is valid for two years.

65 (c) The purpose of this section is to vest jurisdiction in
66 the director, where the surface-mining is incidental or
67 secondary to the preparation of land for commercial,
68 residential, industrial or civic use and where, as an incident
69 to such preparation of land, minerals must be removed,
70 including, but not limited to, the building and construction

71 of railroads, shopping malls, factory and industrial sites,
72 residential and building sites and recreational areas.
73 Anyone who has been issued a special authorization may
74 not be issued an additional special authorization on the
75 same or adjacent tract of land unless satisfactory evidence
76 has been submitted to the director that such authorization
77 is necessary to subsequent development or construction.
78 As long as the operator complies with the purpose and
79 provisions of this section, the other sections of this article
80 are not applicable to the operator holding a special
81 authorization: *Provided*, That the director shall promul-
82 gate rules establishing applicable performance standards
83 for operations permitted under this section.

84 (d) The director may, in the exercise of his or her
85 sound discretion, when not in conflict with the purposes
86 and findings of this article and to bring about a more
87 desirable land use or to protect the public and the environ-
88 ment, issue a reclamation contract solely for the removal
89 of existing abandoned coal processing waste piles:
90 *Provided*, That a bond and a reclamation plan is required
91 for such operations.

92 (e) No person may engage in coal extraction pursuant
93 to a government-financed reclamation contract without a
94 valid surface-mining permit issued pursuant to this article
95 unless such person affirmatively demonstrates that he is
96 eligible to secure special authorization pursuant to this
97 section to engage in a government-financed reclamation
98 contract authorizing incidental and necessary coal extrac-
99 tion. The director shall determine eligibility before
100 entering into a government-financed reclamation contract
101 authorizing incidental and necessary coal extraction. The
102 director may provide the special authorization as part of
103 the government-financed reclamation contract: *Provided*,
104 That the contract contains and does not violate the re-
105 quirements of this section. The director may not be
106 required to grant a special authorization to any eligible
107 person. The director may, however, in his or her discre-
108 tion, grant a special authorization allowing incidental and
109 necessary coal extraction pursuant to a government-

110 financed reclamation contract in accordance with this
111 section.

112 Only eligible persons may secure special authorization
113 to engage in incidental and necessary coal extraction
114 pursuant to a government-financed reclamation contract.
115 Any eligible person who proposes to engage in coal
116 extraction pursuant to a government-financed reclamation
117 contract may request and secure special authorization
118 from the director to conduct such activities under this
119 section. A special authorization can only be obtained if a
120 clause is inserted in a government-financed reclamation
121 contract authorizing such extraction and the person
122 requesting such authorization has affirmatively demon-
123 strated to the director's satisfaction that he or she has
124 satisfied the provisions of this section. A special authori-
125 zation shall only be granted by the director prior to the
126 commencement of coal extraction on a project area. In
127 order to be considered for a special authorization by the
128 director, an eligible person must meet the permit eligibility
129 requirements of this article and demonstrate at a minimum
130 that:

131 (1) The primary purpose of the operation to be
132 undertaken is the reclamation of abandoned or forfeited
133 mine lands;

134 (2) The extraction of coal will be incidental and
135 necessary to accomplish the reclamation of abandoned or
136 forfeited mine lands pursuant to a government-financed
137 reclamation contract;

138 (3) Incidental and necessary coal extraction will be
139 confined to the project area being reclaimed; or

140 (4) All coal extraction and reclamation activity
141 undertaken pursuant to a government-financed reclama-
142 tion project will be accomplished pursuant to the applica-
143 ble environmental protection performance standards and
144 conditions included in the government-financed reclama-
145 tion contract.

146 Prior to commencing coal extraction pursuant to a
147 government-financed reclamation project, the contractor
148 shall file with the director a performance bond condi-
149 tioned upon the contractor's performance of all the
150 requirements of the government-financed reclamation
151 contract pursuant to this article. For a no cost reclamation
152 contract, the criteria for establishing the amount of the
153 performance bond shall be the engineering estimate,
154 determined by the director: *Provided*, That the director
155 may establish a lesser bond amount for long term, no cost
156 reclamation projects in which the reclamation schedule
157 extends beyond two years. In these contracts, the director
158 may in the alternative establish a bond amount which
159 reflects the cost of the proportionate amount of reclama-
160 tion which will occur during a specified period. The
161 performance bond which is provided by the contractor
162 under a federally financed or state financed reclamation
163 contract shall be deemed to satisfy the requirements of this
164 section: *Provided, however*, That the amount of such
165 bond is equivalent to or greater than the amount deter-
166 mined by the criteria set forth in this subsection.

167 (f) Any person engaging in coal extraction pursuant
168 to this section is subject to the following:

169 (1) Payment of all applicable taxes and fees related to
170 coal extraction;

171 (2) Replacement or restoration of the water supply of
172 an owner of interest in real property who obtains all or
173 part of the owner's supply of water for domestic, agricul-
174 tural, industrial or other legitimate use from an under-
175 ground or surface source where such supply has been
176 affected by contamination, diminution or interruption
177 proximately caused by coal extraction;

178 (3) Extraction pursuant to this section cannot be
179 initiated without the consent of the surface owner for right
180 of entry and consent of the mineral owner for extraction
181 of coal.

CHAPTER 134

(H. B. 2890—By Delegates Staton, Amores, Linch, Fleischauer,
Thomas, Kominar and Buchanan)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section thirty-seven, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said chapter by adding thereto a new article, designated article two-a, all relating to the establishment of standards and procedures for the use and maintenance of diesel-powered equipment in underground coal mines; modifying the prohibition on underground equipment powered by internal combustion engines; authorizing the use of diesel-powered equipment; stating purpose and intent; defining certain terms; creating the West Virginia diesel equipment commission; establishing the qualifications and eligibility of members of the commission; prescribing terms of office for members; providing for nomination and appointment of members; providing for removal of members; providing for compensation and reimbursement for expenses; defining a quorum of the commission and the necessary affirmative vote required for adoption of a measure; providing for the promulgation of rules by the commission; establishing an arbitration process to be followed in the event the commission fails to adopt rules before the first day of April, one thousand nine hundred ninety-eight; describing the duties of the commission after the adoption of initial rules; directing the promulgation of rules requiring the monitoring and control of exhaust emissions and establishing standards for allowable concentrations of exhaust emissions; providing for approval of diesel power package or diesel engine; providing for approval of exhaust emissions control and conditioning systems and establishing requirements and standards for exhaust emissions control and conditioning systems; requiring monitoring and controlling of emissions; requiring monitoring and controlling of exhaust gases; requiring values for minimum quantities of ventilating air; requiring approval of diesel-powered equipment and the attachment of an approval plate; establishing standards for fuel and fuel storage facili-

ties; requiring rules governing the refueling of diesel-powered equipment; providing for rules to govern where refueling may take place; requiring rules governing fire suppression systems for diesel powered equipment, fuel transportation units and permanent underground diesel fuel storage facilities; regulating or prohibiting certain starting aids; providing for fire and safety training; providing for service and maintenance of diesel-powered equipment; requiring training and qualification of persons working on diesel-powered equipment; requiring on-shift examination of equipment by the operator; providing for scheduled maintenance; requiring on-board performance and maintenance diagnostics systems; requiring periodic examination and testing of diesel-powered equipment; providing for record-keeping as to all tests, examinations, maintenance or repair; providing for rules to establish programs for training, a certification process and refresher training.

Be it enacted by the Legislature of West Virginia:

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

Article

2. Underground Mines.

2A. Use of Diesel-Powered Equipment in Underground Coal Mines.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.

1 (a) The roadbed, rails, joints, switches, frogs and other
2 elements of all haulage roads shall be constructed, in-
3 stalled and maintained in a manner consistent with speed
4 and type of haulage operations being conducted to ensure
5 safe operation. Where transportation of personnel is exclu-
6 sively by rail, track shall be maintained to within five hun-
7 dred feet of the nearest working face, except that when
8 any section is fully developed and being prepared for
9 retreating, then the distance of such maintenance can be
10 extended to eight hundred feet if a rubber tired vehicle is
11 readily available.

12 (b) Track switches, except room and entry develop-
13 ment switches, shall be provided with properly installed
14 throws, bridle bars and guard rails; switch throws and
15 stands, where possible, shall be placed on the clearance
16 side.

17 (c) Haulage roads on entries shall have a continuous,
18 unobstructed clearance of at least twenty-four inches from
19 the farthest projection of any moving equipment on the
20 clearance side.

21 (d) On haulage roads where trolley lines are used, the
22 clearance shall be on the side opposite the trolley lines.

23 (e) On the trolley wire or "tight" side, there shall be
24 at least twelve inches of clearance from the farthest projec-
25 tion of any moving equipment.

26 (f) Warning lights or reflective signs or tapes shall be
27 installed along haulage roads at locations of abrupt or
28 sudden changes in the overhead clearance.

29 (g) The clearance space on all haulage roads shall be
30 kept free of loose rock, coal, supplies or other material:
31 *Provided*, That not more than twenty-four inches need be
32 kept free of such obstructions.

33 (h) Ample clearance shall be provided at all points
34 where supplies are loaded or unloaded along haulage
35 roads or conveyors which in no event shall be less than
36 twenty-four inches.

37 (i) Shelter holes shall be provided along haulage en-
38 tries. Such shelter holes shall be spaced not more than
39 one hundred feet apart, except when variances are autho-
40 rized by the director with unanimous agreement of the
41 mine safety and technical review committee. Shelter holes
42 shall be on the side of the entry opposite the trolley wire
43 except that shelter holes may be on the trolley wire and
44 feeder wire side if the trolley wire and feeder wire are
45 guarded in a manner approved by the director.

46 (j) Shelter holes shall be at least five feet in depth, not
47 more than four feet in width, and as high as the traveling
48 space, unless the director with unanimous agreement of

49 the mine safety and technical review committee grants a
50 waiver. Room necks and crosscuts may be used as shelter
51 holes even though their width exceeds four feet.

52 (k) Shelter holes shall be kept clear of refuse and
53 other obstructions.

54 (l) Shelter holes shall be provided at switch throws and
55 manually operated permanent doors.

56 (m) No steam locomotive shall be used in mines where
57 miners are actually employed in the extraction of coal, but
58 this shall not prevent operation of a steam locomotive
59 through any tunnel haulway or part of a mine that is not
60 in actual operation and producing coal.

61 (n) Underground equipment powered by internal
62 combustion engines using petroleum products, alcohol, or
63 any other compound shall not be used in a coal mine,
64 unless the equipment is diesel-powered equipment ap-
65 proved, operated and maintained as provided in article
66 two-a of this chapter.

67 (o) Locomotives, personnel carriers, mine cars, supply
68 cars, shuttle cars, and all other haulage equipment shall be
69 maintained in a safe operating condition. Each locomo-
70 tive, personnel carrier, barrier tractor and other related
71 equipment shall be equipped with a suitable lifting jack
72 and handle. An audible warning device and headlights
73 shall be provided on each locomotive and each shuttle car.
74 All other mobile equipment, using the face areas of the
75 mine, shall be provided with a conspicuous light or other
76 approved device so as to reduce the possibility of colli-
77 sion.

78 (p) No persons other than those necessary to operate a
79 trip or car shall ride on any loaded car or on the outside
80 of any car. Where pusher locomotives are not used, the
81 locomotive operator shall have an assistant to assist him in
82 his duties.

83 (q) The pushing of trips, except for switching purpos-
84 es, is prohibited on main haulage roads: *Provided*, That
85 nothing herein shall prohibit the use of a pusher locomo-
86 tive to assist the locomotive pulling a trip. Motormen and

87 trip riders shall use care in handling locomotives and cars.
88 It shall be their duty to see that there is a conspicuous light
89 on the front and rear of each trip or train of cars when in
90 motion: *Provided, however,* That trip lights need not be
91 used on cars being shifted to and from loading machines,
92 or on cars being handled at loading heads during gather-
93 ing operations at working faces. No person except the
94 operator or his assistant shall ride on locomotives or load-
95 ed cars. An empty car or cars shall be used to provide a
96 safe distance between the locomotive and the material car
97 when rail, pipe or long timbers are being hauled. A safe
98 clearance shall be maintained between the end car or trips
99 placed on side tracks and moving traffic. On haulage
100 roads the clearance point shall be marked with an ap-
101 proved device.

102 (r) No motorman, trip rider or brakeman shall get on
103 or off cars, trips or locomotives while they are in motion,
104 except that a trip rider or brakeman may get on or off the
105 rear end of a slowly moving trip or the stirrup of a slowly
106 moving locomotive to throw a switch, align a derail or
107 open or close a door.

108 (s) Flying or running switches and riding on the front
109 bumper of a car or locomotive are prohibited. Back pol-
110 ing shall be prohibited except with precaution to the near-
111 est turning point (not over eighty feet), or when going up
112 extremely steep grades and then only at slow speed. The
113 operator of a shuttle car shall face in the direction of travel
114 except during the loading operation when he shall face the
115 loading machine.

116 (t) (1) A system of signals, methods or devices shall be
117 used to provide protection for trips, locomotives and
118 other equipment coming out onto tracks used by other
119 equipment.

120 (2) In any coal mine where more than three hundred
121 fifty tons of coal are produced on any shift in each twen-
122 ty-four hour period, a dispatcher shall be on duty when
123 there are movements of track equipment underground,
124 including time when there is no production of coal. Such
125 traffic shall move only at the direction of the dispatcher.

126 (3) The dispatcher's only duty shall be to direct traf-
127 fic: *Provided*, That the dispatcher's duties may also in-
128 clude those of the responsible person required by section
129 forty-two of this article: *Provided, however*, That the dis-
130 patcher may perform other duties which do not interfere
131 with his dispatching responsibilities and do not require
132 him to leave the dispatcher's station except as approved
133 by the mine safety and technical review committee.

134 (4) Any dispatcher's station shall be on the surface.

135 (5) All self-propelled track equipment shall be
136 equipped with two-way communications.

137 (u) Motormen shall inspect locomotives, and report
138 any mechanical defects found to the proper supervisor
139 before a locomotive is put in operation.

140 (v) A locomotive following another trip shall maintain
141 a distance of at least three hundred feet from the rear end
142 of the trip ahead, unless such locomotive is coupled to the
143 trip ahead.

144 (w) Positive stop blocks or derails shall be installed on
145 all tracks near the top and at landings of shafts, slopes and
146 surface inclines. Positive-acting stop blocks or derails
147 shall be used where necessary to protect persons from
148 danger of runaway haulage equipment.

149 (x) Shuttle cars shall not be altered by the addition of
150 sideboards so as to inhibit the view of the operator.

151 (y) Mining equipment shall not be parked within fif-
152 teen feet of a check curtain or fly curtain.

153 (z) All self-propelled track haulage equipment shall
154 be equipped with an emergency stop switch, self centering
155 valves, or other devices designed to de-energize the trac-
156 tion motor circuit in the event of an emergency. All track
157 mounted trolley equipment shall be equipped with trolley
158 pole swing limiters or other means approved by the mine
159 safety and technical review committee to restrict move-
160 ment of the trolley pole when it is disengaged from the
161 trolley wire. Battery powered mobile equipment shall

162 have the operating controls clearly marked to distinguish
163 the forward and reverse positions.

ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.

- §22A-2A-101. Use of diesel-powered equipment authorized.
- §22A-2A-102. Control of diesel safety and health hazards.
- §22A-2A-201. Applicability of definitions.
- §22A-2A-202. Board defined.
- §22A-2A-203. Certificate of approval defined.
- §22A-2A-204. Commission defined.
- §22A-2A-205. Diesel fuel tank defined.
- §22A-2A-206. Diesel fuel transportation unit defined.
- §22A-2A-207. Diesel engine defined.
- §22A-2A-208. Diesel power package defined.
- §22A-2A-209. Exhaust emission defined.
- §22A-2A-210. Exhaust emissions control and conditioning system defined.
- §22A-2A-211. MSHA defined.
- §22A-2A-212. Permanent underground diesel fuel storage facility defined.
- §22A-2A-213. Safety can defined.
- §22A-2A-214. Temporary underground diesel fuel storage area defined.
- §22A-2A-301. Creation of the West Virginia diesel equipment commission.
- §22A-2A-302. Members of the commission; qualifications and eligibility.
- §22A-2A-303. Appointment and terms of commission members.
- §22A-2A-304. Nomination and appointment of members.
- §22A-2A-305. Removal of members.
- §22A-2A-306. Compensation of members; reimbursement for expenses.
- §22A-2A-307. Quorum; majority vote required.
- §22A-2A-308. Promulgation of initial rules by the commission.
- §22A-2A-309. Failure to promulgate initial rules; arbitration.
- §22A-2A-310. Duties of commission following promulgation of initial rules.
- §22A-2A-401. General provisions relating to requirements for exhaust emissions.
- §22A-2A-402. Approval of diesel power package or diesel engine.
- §22A-2A-403. Exhaust emissions control and conditioning systems.
- §22A-2A-404. Emissions monitoring and control.
- §22A-2A-405. Exhaust gas monitoring and control.
- §22A-2A-501. Ventilation.
- §22A-2A-601. Specifications for fuel.
- §22A-2A-602. Fuel storage facilities.
- §22A-2A-603. Dispensing of diesel fuel.
- §22A-2A-604. Location of fueling.
- §22A-2A-701. Fire suppression systems for diesel-powered equipment and fuel transportation units.
- §22A-2A-702. Fire suppression for storage areas.
- §22A-2A-703. Use of certain starting aids regulated or prohibited.

- §22A-2A-704. Fire and safety training.
- §22A-2A-801. Maintenance of diesel-powered equipment.
- §22A-2A-802. Training and qualification of persons working on diesel-powered equipment.
- §22A-2A-803. Examination of equipment by operator.
- §22A-2A-804. Scheduled maintenance.
- §22A-2A-805. On-board performance and maintenance diagnostics systems.
- §22A-2A-806. Diagnostic testing.
- §22A-2A-807. Records.
- §22A-2A-901. Training and general requirements.

PART I. GENERAL PROVISIONS

§22A-2A-101. Use of diesel-powered equipment authorized.

1 Diesel-powered equipment for use in underground
2 coal mines may only be approved, operated, and main-
3 tained in accordance with rules, requirements and stan-
4 dards established pursuant to this article. Diesel-powered
5 equipment shall not be used in underground coal mines
6 until the West Virginia diesel equipment commission pro-
7 mulgates its initial rules, requirements and standards gov-
8 erning the operation of diesel equipment in underground
9 coal mines.

§22A-2A-102. Control of diesel safety and health hazards.

1 The purpose of this article is to reduce or eliminate
2 the inherent hazards of electric-powered equipment in
3 underground coal mines while recognizing that the intro-
4 duction of an internal combustion engine into that envi-
5 ronment presents a different set of safety and health risks
6 for miners. The provisions of this article are intended to
7 provide an integrated approach to the control of diesel
8 safety and health hazards in underground coal mines.

PART 2. DEFINITIONS.

§22A-2A-201. Applicability of definitions.

1 (a) For the purposes of this article, the words or phras-
2 es defined in this part 2 have the meanings ascribed to
3 them. These definitions are applicable unless a different
4 meaning clearly appears from the context.

5 (b) When used in this article, the words and phrases
6 defined in section two, article one of this chapter have the
7 meaning ascribed to them in that section. Those defini-
8 tions are applicable to this article unless a different mean-
9 ing clearly appears from the context in which the word or
10 phrase is used in this article.

§22A-2A-202. Board defined.

1 “Board” means the board of coal mine health and
2 safety continued by section three, article six of this chap-
3 ter.

§22A-2A-203. Certificate of approval defined.

1 “Certificate of approval” means a formal document
2 issued by MSHA stating that a complete assembly has met
3 the requirements of part 36, title thirty of the code of
4 federal regulations, 30 C.F.R. § 36.1, et seq., for mobile
5 diesel-powered transportation equipment and authorizing
6 the use and attachment of an official approval plate so
7 indicating.

§22A-2A-204. Commission defined.

1 “Commission” means the West Virginia diesel equip-
2 ment commission created under the provisions of section
3 three hundred one of this article.

§22A-2A-205. Diesel fuel tank defined.

1 “Diesel fuel tank” means a closed metal vessel specif-
2 ically designed for the storage or transport of diesel fuel.

§22A-2A-206. Diesel fuel transportation unit defined.

1 “Diesel fuel transportation unit” means a self-pro-
2 pelled or portable wheeled vehicle used to transport a
3 diesel fuel tank.

§22A-2A-207. Diesel engine defined.

1 “Diesel engine” means any compression ignition
2 internal combustion engine using the basic diesel cycle
3 where combustion results from the spraying of fuel into
4 air heated by compression.

§22A-2A-208. Diesel power package defined.

1 “Diesel power package” means a diesel engine with
2 an intake system, exhaust system, and a safety shutdown
3 system installed that meets the specific requirements for
4 MSHA approval of diesel power packages intended for
5 use in approved equipment in areas of underground coal
6 mines where electric equipment is required to be per-
7 missible.

§22A-2A-209. Exhaust emission defined.

1 “Exhaust emission” means any substance emitted to
2 the atmosphere from the exhaust port of the combustion
3 chamber of a diesel engine.

§22A-2A-210. Exhaust emissions control and conditioning system defined.

1 “Exhaust emissions control and conditioning sys-
2 tem” means a device or combination of devices that will
3 collect and treat diesel exhaust emissions at the exhaust
4 port of the engine, and will reduce the volume of, or elimi-
5 nate emissions of, diesel particulate matter, carbon monox-
6 ide and oxides of nitrogen in accordance with the require-
7 ments and standards of the commission established in
8 accordance with the provisions of section four hundred
9 three of this article.

§22A-2A-211. MSHA defined.

1 “MSHA” means the mine safety and health adminis-
2 tration of the United States department of labor.

§22A-2A-212. Permanent underground diesel fuel storage facility defined.

1 “Permanent underground diesel fuel storage facility”
2 means a facility designed and constructed to remain at one
3 location for the storage or dispensing of diesel fuel, which
4 does not move as mining progresses.

§22A-2A-213. Safety can defined.

1 “Safety can” means a metal container intended for
2 storage, transport or dispensing of diesel fuel, with a nomi-

3 nal capacity of five gallons, listed or approved by a na-
4 tionally recognized independent testing laboratory.

§22A-2A-214. Temporary underground diesel fuel storage area defined.

1 “Temporary underground diesel fuel storage area”
2 means an area of a mine provided for the short-term stor-
3 age of diesel fuel in a fuel transportation unit, which
4 moves as mining progresses.

PART 3. WEST VIRGINIA DIESEL EQUIPMENT COMMISSION.

§22A-2A-301. Creation of the West Virginia diesel equipment commission.

1 The West Virginia diesel equipment commission, con-
2 sisting of six members, is hereby created in the office of
3 miners’ health, safety and training of the bureau of com-
4 merce.

§22A-2A-302. Members of the commission; qualifications and eligibility.

1 (a) Each member of the commission shall be a citizen
2 of the United States and a resident of the state of West
3 Virginia.

4 (b) No member of the Legislature, or person holding
5 any elective or full-time appointive office in the federal,
6 state, or local government shall be eligible to serve as a
7 member of the commission.

§22A-2A-303. Appointment and terms of commission members.

1 (a) The members of the commission shall be appoint-
2 ed to initial terms as follows:

3 (1) Two members shall serve for a term beginning on
4 the first day of May, one thousand nine hundred ninety-
5 seven and ending on the thirtieth day of June, one thou-
6 sand nine hundred ninety-nine;

7 (2) Two members shall serve for a term beginning on
8 the first day of May, one thousand nine hundred ninety-

9 seven and ending on the thirtieth day of June, two thou-
10 sand;

11 (3) Two members shall serve for a term beginning on
12 the first day of May, one thousand nine hundred ninety-
13 seven and ending on the thirtieth day of June, two thou-
14 sand one.

15 (b) Of the two members appointed under each of
16 subdivisions (1), (2) and (3) of subsection (a), one shall be
17 a person who can reasonably be expected to represent the
18 viewpoint or interests of coal operators in this state, and
19 one shall be a person who can reasonably be expected to
20 represent the viewpoint or interests of working miners in
21 this state.

22 (c) The initial term of each of the six members first
23 appointed shall be designated by the governor.

24 (d) After the initial appointments, all members shall be
25 appointed for terms of four years. Members shall not
26 serve more than two terms of four years each.

§22A-2A-304. Nomination and appointment of members.

1 (a) Prior to the appointment of a person to the com-
2 mission, the governor shall request the nomination of a
3 candidate for the appointment. If the position is to be
4 filled by a person who can reasonably be expected to
5 represent the viewpoint or interests of underground coal
6 operators in this state, the governor shall request the nomi-
7 nation from the major trade association representing un-
8 derground coal operators in this state. If the position is to
9 be filled by a person who can reasonably be expected to
10 represent the viewpoint or interests of working miners in
11 this state, the governor shall request the nomination from
12 the highest ranking officer of the major employee organi-
13 zation representing coal miners in this state.

14 (b) The governor shall appoint a member to serve for
15 the term for which the person was nominated, and until his
16 or her successor has been nominated and appointed: *Pro-*
17 *vided*, That if a successor is not appointed within one hun-
18 dred twenty days after the expiration of a member's term,
19 a vacancy is deemed to exist. The governor may reject a
20 nomination and decline to appoint a nominee only if the

21 person does not have the qualifications, integrity and re-
22 sponsibility necessary to enable the person to perform his
23 or her duties as a member of the commission.

24 (c) Appointments to fill vacancies on the commission
25 shall be for the unexpired term of the member to be re-
26 placed.

§22A-2A-305. Removal of members.

1 When a member fails to appear at three consecutive
2 meetings of the commission or at one half of the meetings
3 held during a one-year period, any member of the com-
4 mission may notify the member and the governor of such
5 fact. Such member shall be removed by the governor
6 unless good cause for absences is shown.

§22A-2A-306. Compensation of members; reimbursement for expenses.

1 Each member of the commission shall be paid the
2 same compensation and expense reimbursement as is paid
3 to members of the Legislature for their interim duties as
4 recommended by the citizens legislative compensation
5 commission and authorized by law for each day or por-
6 tion thereof engaged in the discharge of official duties.
7 No reimbursement for expenses shall be made except
8 upon an itemized account, properly certified by the mem-
9 bers of the commission. All reimbursement for expenses
10 shall be paid out of the state treasury upon a requisition
11 on the state auditor.

§22A-2A-307. Quorum; majority vote required.

1 A quorum of the commission consists of not less than
2 two of the members who represent the viewpoint or inter-
3 ests of coal operators and two of the members who repre-
4 sent the viewpoint or interests of working miners. A mea-
5 sure before the commission for its consideration is adopt-
6 ed on the affirmative vote of any four of the six members.

**§22A-2A-308. Promulgation of initial rules by the commis-
sion.**

1 (a) The West Virginia diesel equipment commission
2 shall prepare and adopt the initial rules for the operation

3 of diesel equipment in underground coal mines in this
4 state. In preparing and adopting initial rules, the commis-
5 sion shall consider the highest achievable measures of
6 protection for miners' health and safety through available
7 technology, engineering controls and performance re-
8 quirements, and shall further consider the cost, availability,
9 adaptability and suitability of any available technology,
10 engineering controls and performance requirements as
11 they relate to the use of diesel equipment in underground
12 coal mines. Authorization for the commission to establish
13 the initial rules shall cease to exist after the thirty-first day
14 of March, one thousand nine hundred ninety-eight, except
15 that the commission shall, if necessary, promulgate initial
16 rules following a decision made by the board of arbitra-
17 tors pursuant to section three hundred nine of this article.

18 (b) In promulgating the initial rules pursuant to sub-
19 section (a) of this section, the commission shall follow the
20 procedures set forth in article three, chapter twenty-nine-a
21 of this code that are prescribed for an agency proposing a
22 legislative rule, to the point where an agency would ap-
23 prove a rule for submission to the Legislature. At that
24 point, the commission shall proceed to final adoption of
25 the initial rules and file a notice of the final adoption in
26 the state register and with the legislative rule-making re-
27 view committee. Upon final adoption by the commission,
28 the initial rules are thereby promulgated and have the
29 effect of law without further action by the commission or
30 the Legislature. The initial rules shall be published in the
31 code of state rules and continue in effect until modified or
32 superseded in accordance with the provisions of this arti-
33 cle.

§22A-2A-309. Failure to promulgate initial rules; arbitration.

1 (a) If the commission fails to finally adopt its initial
2 rules before the first day of April, one thousand nine hun-
3 dred ninety-eight, the members who represent the view-
4 point or interests of coal operators and the members who
5 represent the viewpoint or interests of working miners
6 shall each prepare a final draft of proposed initial rules,
7 which drafts shall be considered the "last best offer" by
8 each group of members. Thereafter, the matters in contro-

9 versy which the commission is unable to resolve shall be
10 submitted to arbitration as soon as is practicable.

11 (b) The board of appeals established and continued
12 pursuant to the provisions of article five of this chapter
13 shall begin the selection of arbitrators by contacting the
14 alternative dispute resolution department of the federal
15 mediation and conciliation service to obtain a roster of the
16 names of fifteen persons who are willing to serve as neu-
17 tral members of a special subcommittee of the board of
18 appeals that will function as a board of arbitration. The
19 board of appeals shall request that the federal mediation
20 and conciliation service, in compiling the roster, consider
21 experience, training, affiliations, actual or potential con-
22 flicts of interest and other matters when selecting persons
23 who may serve as neutral and independent arbitrators.
24 From the roster of fifteen persons so compiled, the board
25 of appeals shall draw five names by lot. The persons
26 drawn shall comprise the board of arbitration, and they are
27 empowered to resolve all outstanding issues that prevent
28 final adoption of initial rules by the diesel equipment
29 commission.

30 (c) In the event that an arbitrator shall die, or refuse to
31 act or become incapable of acting as an arbitrator before
32 the matters pending before the board of arbitration are
33 concluded, then the remaining arbitrators shall appoint
34 another person from the roster of available persons to be
35 an arbitrator in place of the arbitrator who no longer con-
36 tinues to act.

37 (d) Each arbitrator shall be compensated at a per diem
38 rate of two hundred twenty-five dollars per day for each
39 day or portion thereof engaged in the discharge of official
40 duties. Each member of the commission shall be paid the
41 same expense reimbursement as is paid to members of the
42 Legislature for their interim duties as recommended by
43 the citizens legislative compensation commission and
44 authorized by law. No reimbursement for expenses shall
45 be made except upon an itemized account, properly certi-
46 fied by the arbitrators. All reimbursement for expenses
47 shall be paid out of the state treasury upon a requisition
48 on the state auditor.

49 (e) On the fifth day of January, one thousand nine
50 hundred ninety-nine, the board of arbitrators shall resolve
51 issues presented by the proposed drafts drawn up by the
52 members of the commission. Only matters in controversy
53 may be addressed by the board of arbitration. Arbitration
54 is conditioned by limiting the range of outcomes to a
55 choice between the positions submitted by each opposing
56 group within the commission as their "last best offer."
57 As to each issue raised by the proposed drafts, the board
58 of arbitration shall adopt a position advanced by one of
59 the member groups and shall have no authority to com-
60 promise the positions or substitute an alternative position.
61 In making its decisions, the board of arbitrators shall con-
62 sider the highest achievable measures of protection for
63 miners' health and safety through available technology,
64 engineering controls and performance requirements, and
65 shall further consider the cost, availability, adaptability and
66 suitability of any available technology, engineering con-
67 trols and performance requirements as they relate to the
68 use of diesel equipment in underground coal mines.
69 When the board of arbitration reaches agreement on a
70 proposed rule, at the conclusion of its work the board of
71 arbitration shall transmit a report containing the proposed
72 rule to the commission, the president of the Senate and the
73 speaker of the House of Delegates. The board of arbitra-
74 tion may include in its report any other information, rec-
75 ommendations, or materials that the board of arbitration
76 considers appropriate, including suggested legislation.
77 Any arbitrator may include as an addendum to the report
78 any additional information, recommendations, or materi-
79 als.

80 (f) The board of coal mine health and safety shall
81 provide appropriate administrative support to the board of
82 arbitration, including technical assistance.

83 (g) Within twenty-eight days following the resolution
84 of all issues by the board of arbitration, the commission
85 shall adopt the initial rules, fully incorporating the deci-
86 sion of the board of arbitration. The commission shall file
87 a notice of the final adoption in the state register and with
88 the legislative rule-making review committee. The initial
89 rules are thereby promulgated and have the effect of law

90 without further action by the commission or the Legisla-
91 ture. The initial rules shall be published in the code of
92 state rules and continue in effect until modified or super-
93 seded in accordance with the provisions of this article, or
94 by act of the Legislature.

**§22A-2A-310. Duties of commission following promulgation
of initial rules.**

1 (a) After the promulgation of the initial rules, the
2 commission shall have as its primary duties the implemen-
3 tation of this article and the evaluation and adoption of
4 state of the art technology and methods, reflected in en-
5 gines and engine components, emission control equip-
6 ment, and procedures, that when applied to diesel-powered
7 underground mining machinery shall reasonably reduce
8 or eliminate diesel exhaust emissions and enhance
9 protections of the health and safety of miners. The tech-
10 nology and methods adopted by the commission shall
11 have been demonstrated to be reliable. In making a deci-
12 sion to adopt new technology and methods, the commis-
13 sion shall consider the highest achievable measures of
14 protection for miners' health and safety through available
15 technology, engineering controls and performance re-
16 quirements, and shall further consider the cost, availability,
17 adaptability and suitability of any available technology,
18 engineering controls and performance requirements as
19 they relate to the use of diesel equipment in underground
20 coal mines. Any state of the art technology or methods
21 adopted by the commission shall not reduce or compro-
22 mise the level of health and safety protection of miners.

23 (b) Upon application of a coal mine operator, the
24 commission shall consider site-specific requests for use of
25 alternative diesel-related health and safety technologies
26 and methods. The commission's action on applications
27 submitted under this subsection shall be on a mine-by-
28 mine basis. Upon receipt of a site-specific application, the
29 commission shall conduct an investigation, which investi-
30 gation shall include consultation with the mine operator
31 and the authorized representatives of the miners at the
32 mine. Authorized representatives of the miners shall in-
33 clude a mine health and safety committee elected by min-

34 ers at the mine, a person or persons employed by an em-
35 ployee organization representing miners at the mine, or a
36 person or persons authorized as the representative or rep-
37 resentatives of miners of the mine in accordance with
38 MSHA regulations at 30 C.F.R. Pt. 40 (relating to repre-
39 sentative of miners). Where there is no authorized repre-
40 sentative of the miners, the commission shall consult with a
41 reasonable number of miners at the mine.

42 (1) Within one hundred eighty days of receipt of an
43 application for use of alternative technologies or methods,
44 the commission shall complete its investigation. The time
45 period may be extended with the consent of the applicant.

46 (2) The commission shall have thirty days in which to
47 render a final decision approving or rejecting the applica-
48 tion.

49 (3) The commission members shall not approve an
50 application made under this section if, at the conclusion of
51 the investigation, the commission members have made a
52 determination that the use of the alternative technology or
53 method will reduce or compromise the level of health and
54 safety protection of miners.

55 (4) The written approval of an application for the use
56 of alternative technologies or methods shall include the
57 results of the commission's investigation and describe the
58 specific conditions of use for the alternative technology or
59 method.

60 (5) The written decision to reject an application for
61 the use of alternative technologies or methods shall in-
62 clude the results of the commission's investigation and
63 shall outline in detail the basis for the rejection.

64 (c) The commission shall establish conditions for the
65 use of diesel-powered equipment in shaft and slope con-
66 struction operations at coal mines.

67 (d) In performing its functions, the commission shall
68 have access to the services of the board of coal mine
69 health and safety. The board shall make clerical support
70 and assistance available to enable the commission to carry
71 out its duties.

72 (e) Any action taken by the commission to either
73 approve or reject the use of an alternative technology or
74 method, or establish conditions under subsection (c) of
75 this section, shall be final and binding and not subject to
76 further review except where a decision by the commission
77 may be deemed to be an abuse of discretion or contrary to
78 law. If any party affected by a decision of the commis-
79 sion believes that the decision is an abuse of discretion or
80 contrary to law, that party may file a petition for review
81 with the circuit court of Kanawha County in accordance
82 with the provisions of the administrative procedures act
83 relating to judicial review of governmental determinations.
84 The court, in finding that any decision made by the com-
85 mission is an abuse of discretion or contrary to law, shall
86 vacate and, if appropriate, remand the case.

87 (f) The powers and duties of the commission shall be
88 limited to the matters regarding the use of diesel-powered
89 equipment in underground coal mines.

90 (g) Appropriations for the funding of the commission
91 and to effectuate the purposes of this article shall be made
92 to a budget account hereby established for that purpose in
93 the general revenue fund.

PART 4. EXHAUST EMISSION REQUIREMENTS

FOR DIESEL POWER PACKAGES.

§22A-2A-401. General provisions relating to requirements for exhaust emissions.

1 This part 4 is intended to control the potential health
2 hazards of diesel exhaust, by requiring that diesel-powered
3 machines be equipped with clean-burning engines, that
4 exhaust emissions control and conditioning systems may
5 be required on diesel engines as specified by the commis-
6 sion, that exhaust emissions be monitored and controlled
7 and that standards be established for the allowable concen-
8 trations of exhaust emissions in a mine environment.

§22A-2A-402. Approval of diesel power package or diesel engine.

1 Every diesel power package or diesel engine used in
2 underground coal mining shall be approved by the West
3 Virginia diesel equipment commission when it complies
4 with applicable requirements, standards, and procedures
5 established by rules of the commission, and be certified or
6 approved, as applicable, by MSHA and maintained in
7 accordance with MSHA certification or approval.

§22A-2A-403. Exhaust emissions control and conditioning systems.

1 (a) All exhaust emissions control and conditioning
2 systems and their component devices shall be approved by
3 the West Virginia diesel equipment commission. Such
4 approval requires compliance with applicable standards
5 and procedures established by rules of the commission for
6 the use of the system or device in reducing or eliminating
7 diesel particulate matter, carbon monoxide and oxides of
8 nitrogen.

9 The rules of the commission shall require all exhaust
10 emissions control and conditioning systems to undergo an
11 initial series of laboratory tests, using test equipment re-
12 quirements and standard procedures approved by the
13 commission for testing for gaseous and particulate emis-
14 sions. The commission shall compile a list of acceptable
15 third-party laboratories where testing is performed compe-
16 tently and reliable results are produced.

17 (b) Requirements and standards for exhaust emissions
18 control and conditioning systems include, but are not
19 limited to, the following:

20 (1) A minimum standard, stated as an average percent-
21 age, for the reduction of diesel particulate matter emis-
22 sions by a diesel particulate matter filter or other compar-
23 ably effective emissions control device;

24 (2) A minimum standard, stated in parts per million,
25 for the reduction of emissions of undiluted carbon mon-
26 oxide, using an oxidation catalyst or other gaseous emis-
27 sions control device;

28 (3) A minimum standard, stated in parts per million,
29 for the reduction of emissions of oxides of nitrogen, using

30 advanced control technology such as catalytic control
31 technology or other comparably effective control meth-
32 ods;

33 (4) Any additional requirements established by the
34 rules of the commission or MSHA regulations relating to
35 requirements for permissible mobile diesel-powered trans-
36 portation equipment set forth in part 36, title thirty of the
37 code of federal regulations, 30 C.F.R. § 36.1, et seq.

§22A-2A-404. Emissions monitoring and control.

1 Rules of the commission shall establish procedures for
2 monitoring and controlling emissions from diesel-pow-
3 ered equipment. Such procedures shall include, but not
4 be limited to, monitoring and controlling activities to be
5 performed by a qualified person.

§22A-2A-405. Exhaust gas monitoring and control.

1 (a) For monitoring and controlling exhaust gases, the
2 rules of the commission shall establish the maximum al-
3 lowable ambient concentration of exhaust gases in the
4 mine atmosphere. Standards for exhaust gases, stated in
5 parts per million, shall be established for carbon monox-
6 ide and oxides of nitrogen. The rules shall establish the
7 location in the mine at which the concentration of these
8 exhaust gases is to be measured, the frequency at which
9 measurements are to be made, and requirements prescrib-
10 ing the sampling instruments to be used in the measure-
11 ment of exhaust gases.

12 (b) Rules of the commission shall establish the con-
13 centration of exhaust gas, stated as a percentage of an
14 exposure limit, that when present will require changes to
15 be made in the use of diesel-powered equipment or the
16 methods of mine ventilation, or will require other modifi-
17 cations in the mining process.

18 (c) Rules of the commission shall provide for the re-
19 medial action to be taken if the concentration of any of
20 the gases listed in subsection (a) of this section exceeds the
21 exposure limit.

22 (d) In addition to the other maintenance requirements
23 required by this article, rules of the commission shall pro-
24 vide for service, maintenance and tests which are specific
25 to an engine's fuel delivery system, timing or exhaust
26 emissions control and conditioning system.

PART 5. VENTILATION.

§22A-2A-501. Ventilation.

1 (a) Rules of the commission shall establish values to
2 be maintained for the minimum quantities of ventilating
3 air where diesel-powered equipment is operated. The
4 purpose of these rules is to ensure that necessary mini-
5 mum ventilating air quantity is provided where diesel-
6 powered equipment is operated.

7 (b) Rules of the commission shall require that each
8 specific model of diesel-powered equipment shall be ap-
9 proved before it is taken underground. The rules shall
10 provide that in addition to requiring that each diesel en-
11 gine have an assigned MSHA approval number securely
12 attached to the engine with the information required by 30
13 C.F.R. §§ 7.90 and 7.105, the approval plate shall also
14 specify the minimum ventilating air quantity required by
15 the commission for the specific piece of diesel-powered
16 equipment. The rules shall provide that the minimum
17 ventilating air quantity be determined based on the
18 amount of air necessary at all times to maintain the ex-
19 haust emissions at levels not exceeding the exposure limits
20 established by the commission pursuant to section four
21 hundred six of this article.

22 (c) Rules of the commission shall require that the
23 minimum quantities of air in any split where any individu-
24 al unit of diesel-powered equipment is being operated
25 shall be at least that specified on the approval plate for that
26 equipment. Air quantity measurements to determine com-
27 pliance with this requirement shall be made at the individ-
28 ual unit of diesel-powered equipment.

29 (d) Rules of the commission shall establish the mini-
30 mum quantities of air required in any split when multiple
31 units are operated. Air quantity measurements to deter-

32 mine compliance with this requirement shall be made at
33 the most downwind unit of diesel-powered equipment that
34 is being operated in that air split.

35 (e) Rules of the commission shall provide that mini-
36 mum quantities of air in any split where any diesel-pow-
37 ered equipment is operated shall not be less than the mini-
38 mum air quantities established pursuant to subsections (a)
39 and (b) of this section and shall be specified in the mine
40 diesel ventilation plan.

PART 6. FUEL.

§22A-2A-601. Specifications for fuel.

1 (a) The commission shall establish standards for fuel
2 to be used in diesel-powered equipment in underground
3 coal mines. A purpose of these standards is to require the
4 use of low volatile fuels that will lower diesel engine gas-
5 eous and particulate emissions and will reduce equipment
6 maintenance by limiting the amount of sulfur in the fuel.
7 Another purpose of the standards for fuel is to reduce the
8 risk of fire in underground mines by establishing a mini-
9 mum flash point for the diesel fuel used.

10 (b) Rules of the commission shall require each coal
11 mine using diesel equipment underground to establish a
12 quality control plan for assuring that the diesel fuel used
13 complies with the standards established pursuant to this
14 section. The rules shall also establish a procedure under
15 which each mine operator will provide evidence that the
16 diesel fuel used in diesel-powered equipment under-
17 ground meets the standards for fuel established by the
18 commission.

§22A-2A-602. Fuel storage facilities.

1 (a) The commission shall establish requirements for
2 the safe storage of diesel fuel underground so as to mini-
3 mize the risks associated with fire hazards in areas where
4 diesel fuel is stored.

5 (b) (1) Rules of the commission shall either provide:

6 (A) That all stationary underground diesel fuel tanks
7 are prohibited; or

8 (B) That a stationary underground diesel fuel tank
9 may only be authorized through a petitioning process that
10 permits a stationary underground diesel fuel tank to be
11 located in a permanent underground diesel fuel storage
12 facility, on a site-specific basis. Stationary underground
13 diesel fuel tanks may not be located in temporary under-
14 ground diesel fuel storage areas.

15 (c) Rules of the commission shall govern the transpor-
16 tation and storage of diesel fuel in diesel fuel tanks and
17 safety cans.

18 (d) Rules of the commission shall establish limits on
19 the total amount of diesel fuel that may be stored in each
20 permanent underground diesel fuel storage facility and in
21 each temporary underground diesel fuel storage area.

§22A-2A-603. Dispensing of diesel fuel.

1 Rules of the commission governing the refueling of
2 diesel-powered equipment shall, at a minimum, comply
3 with the provisions of part 75 of the code of federal regu-
4 lations dealing with the dispensing of diesel fuel, set forth
5 in 30 C.F.R. § 75.1905, effective the twenty-fifth day of
6 April, one thousand nine hundred ninety seven.

§22A-2A-604. Location of fueling.

1 (a) Rules of the commission shall require that fueling
2 of diesel-powered equipment is not to be conducted in the
3 intake escapeways unless the mine design and entry con-
4 figuration make it necessary. For those cases where fuel-
5 ing in the intake escapeways is necessary, the rules shall
6 establish a procedure whereby the mine operator shall
7 submit a plan for approval, outlining the special safety
8 precautions that will be taken to insure the protection of
9 miners. The plan shall specify a fixed location where
10 fueling will be conducted in the intake escapeway and all
11 other safety precautions that will be taken, which shall
12 include an examination of the area for spillage or fire by a
13 qualified person.

14 (b) Rules of the commission shall require that at least
15 one person, specially trained in the cleanup and disposal
16 of diesel fuel spills, shall be on duty at the mine when

17 diesel-powered equipment or mobile fuel transportation
18 equipment is being used or when any fueling of diesel-
19 powered equipment is being conducted.

PART 7. FIRE SUPPRESSION.

§22A-2A-701. Fire suppression systems for diesel-powered equipment and fuel transportation units.

1 Rules of the commission governing fire suppression
2 systems for diesel-powered equipment and fuel transporta-
3 tion units shall, at a minimum, comply with the provisions
4 of part 75 of the code of federal regulations dealing with
5 fire suppression systems for diesel-powered equipment
6 and fuel transportation units, set forth in 30 C.F.R.
7 §75.1911, effective the twenty-fifth day of April, one
8 thousand nine hundred ninety-seven.

§22A-2A-702. Fire suppression for storage areas.

1 Rules of the commission governing fire suppression
2 systems for permanent underground diesel fuel storage
3 facilities shall, at a minimum, comply with the provisions
4 of part 75 of the code of federal regulations dealing with
5 fire suppression systems for permanent underground
6 diesel fuel storage facilities, set forth in 30 C.F.R.
7 §75.1912, effective the twenty-fifth day of April, one
8 thousand nine hundred ninety-seven.

§22A-2A-703. Use of certain starting aids regulated or prohibited.

1 Rules of the commission shall regulate or prohibit the
2 use of volatile or chemical starting aids.

§22A-2A-704. Fire and safety training.

1 (a) Rules of the commission shall provide for all un-
2 derground employees at the mine to receive special in-
3 struction related to fighting fires involving diesel fuel.
4 This training may be included in annual refresher training
5 under MSHA regulations set forth in 30 C.F.R. Pt. 48
6 (relating to training and retraining of miners), or included
7 in the fire drills required under MSHA regulations set
8 forth in 30 C.F.R. § 75.1101.23 (relating to program of
9 instruction; location and use of fire fighting equipment;

10 location of escapeways, exits, and routes of travel; evacua-
11 tion procedures; fire drills).

12 (b) Rules of the commission shall provide for all min-
13 ers to be trained in precautions for safe and healthful
14 handling and disposal of diesel-powered equipment filters.

PART 8. MAINTENANCE.

§22A-2A-801. Maintenance of diesel-powered equipment.

1 (a) Rules of the commission shall require diesel-pow-
2 ered equipment to be maintained in an approved and safe
3 condition or removed from service. Failure of the mine
4 operator to comply with the maintenance requirements
5 established by the board may result in revocation of the
6 commission's approval of the diesel-powered equipment.
7 The commission shall establish procedures for appropriate
8 notification to be given to the mine operator, requiring the
9 submission, evaluation and implementation of a plan to
10 achieve and maintain compliance.

11 (b) Rules of the commission shall provide that service
12 and maintenance of diesel-powered equipment shall be
13 performed according to a specified routine maintenance
14 schedule, on-board performance and maintenance diag-
15 nostics readings, emissions test results, and component
16 manufacturer's recommendations.

§22A-2A-802. Training and qualification of persons working on diesel-powered equipment.

1 (a) Rules of the commission shall require that all
2 maintenance, repairs, examinations and tests on diesel-
3 powered equipment shall be performed by a person who,
4 at a minimum, is trained and qualified in accordance with
5 the provisions of part 75 of the code of federal regulations
6 dealing with the training and qualification of persons
7 working on diesel powered equipment, as set forth in 30
8 C.F.R. § 75.1915, effective the twenty-fifth day of April,
9 one thousand nine hundred ninety-seven.

10 (b) Rules of the commission shall require that the
11 training and qualification program and record made avail-
12 able for inspection pursuant to the provisions of 30 C.F.R.

13 § 75.1915(c) be made available to the commission or its
14 authorized representative.

§22A-2A-803. Examination of equipment by operator.

1 Rules of the commission shall require that mobile
2 diesel-powered equipment that is to be used during a shift
3 be visually examined by the equipment operator before
4 being placed in operation, and that equipment defects
5 affecting safety be reported promptly to the mine opera-
6 tor. Rules of the commission shall specify the inspection
7 procedures to be followed and the operating conditions
8 under which the examination is to be made. Rules of the
9 commission shall establish record-keeping requirements
10 for such visual examinations.

§22A-2A-804. Scheduled maintenance.

1 Rules of the commission shall establish the intervals at
2 which a qualified person will evaluate and interpret the
3 results of tests and examinations, perform maintenance
4 and make all necessary adjustments or repairs or remove
5 the diesel-powered equipment from service. The commis-
6 sion shall establish record-keeping requirements for per-
7 sons performing maintenance.

**§22A-2A-805. On-board performance and maintenance diag-
nostics systems.**

1 Rules of the commission shall require that on-board
2 engine performance and maintenance diagnostics systems
3 shall be capable of continuously monitoring and giving
4 read-outs. The diagnostics system shall identify levels that
5 exceed the engine or component manufacturer's recom-
6 mendation, standards established by the commission or the
7 applicable MSHA requirements.

§22A-2A-806. Diagnostic testing.

1 (a) The commission shall require periodic examina-
2 tion and testing of all diesel-powered equipment by a
3 person trained and qualified as required by rules of the
4 commission.

5 (b) Rules of the commission shall prescribe the scope
6 of the examination and testing and the procedures to be
7 followed, and the rules requiring testing of undiluted ex-
8 haust emissions may exceed the written standard operating
9 procedures for such testing and evaluation required by
10 part 75 of the code of federal regulations, set forth in 30
11 C.F.R. § 75.1915(g).

§22A-2A-807. Records.

1 (a) Rules of the commission shall provide:

2 (1) That a record be made of all tests, examinations
3 and maintenance and repairs of diesel-powered equip-
4 ment;

5 (2) That the person performing the test, examination,
6 maintenance or repair certify by date, time, engine hour
7 reading, and signature that the test, examination, mainte-
8 nance or repair was made;

9 (3) That records of tests and examinations include the
10 specific results of such tests and examinations;

11 (4) That records of maintenance and repairs include a
12 description of the work or service that was performed, and
13 the results of any subsequently required emissions testing.

14 (b) Rules of the commission shall specify the persons
15 who are required to countersign records of tests, examina-
16 tions, maintenance and repairs.

17 (c) Rules of the commission shall establish procedures
18 and time periods for the retention of records and their
19 availability for inspection by the commission and by min-
20 ers and their representatives.

PART 9. TRAINING.

§22A-2A-901. Training and general requirements.

1 (a) Rules of the commission shall establish programs
2 for training equipment operators and members of the
3 mine health and safety committee. Training shall include,
4 but not be limited to, the following:

- 5 (1) Fundamentals of the operation of a diesel engine;
6 (2) Federal and state regulations governing the use of
7 diesel-powered equipment;
8 (3) The mine operator's rules for safe operation;
9 (4) Specific features of each piece of equipment; and
10 (5) Problem recognition.
- 11 (b) Required training shall include equipment specific,
12 hands-on orientation given in an area of the mine where
13 the equipment will be operated. This orientation shall be
14 specific to the type and make of the diesel machine and
15 shall be presented in small groups.
- 16 (c) Rules of the commission shall establish a certifica-
17 tion process for qualifying equipment operators to operate
18 a specific type of diesel-powered equipment. An operator
19 may be qualified to operate more than one type of equip-
20 ment by completing additional equipment-specific train-
21 ing covering differences specific to each additional type
22 of equipment.
- 23 (d) Rules of the commission shall require refresher
24 training, separate from that required by MSHA regulations
25 at 30 C.F.R. Pt. 48 (relating to the training and retraining
26 of miners), and annual recertification.

CHAPTER 135

(Com. Sub. for S. B. 470—By Senator Hunter)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five-c, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the state minimum wage to the federal standard.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.

§21-5C-2. Minimum wages.

1 (a) *Minimum wage:*

2 (1) After the thirtieth day of September, one thousand
3 nine hundred ninety-seven, every employer shall pay to
4 each of his or her employees wages at a rate not less than
5 four dollars and seventy-five cents per hour.

6 (2) After the thirty-first day of August, one thousand
7 nine hundred ninety-eight, every employer shall pay to
8 each of his or her employees wages at a rate not less than
9 five dollars and fifteen cents per hour.

10 (b) *Training wage:*

11 (1) Notwithstanding the provisions set forth in subsec-
12 tion (a) of this section to the contrary, an employer may
13 pay an employee first hired after the thirtieth day of Sep-
14 tember, one thousand nine hundred ninety-seven, a
15 subminimum training wage not less than four dollars and
16 twenty-five cents per hour.

17 (2) An employer may not pay the subminimum train-
18 ing wage set forth in subdivision (1) of this subsection to
19 any individual:

20 (i) Who has attained or attains while an employee of
21 the employer, the age of twenty years; or

22 (ii) For a cumulative period of not more than ninety
23 days per employee: *Provided*, That if any business has
24 not been in operation for more than ninety days at the
25 time the employer hired the employee, the employer may
26 pay the employee the subminimum training wage set forth
27 in subdivision (1) of this subsection for an additional
28 period not to exceed ninety days.

CHAPTER 136

(Com. Sub. for H. B. 2093—By Delegates Douglas, Staton,
Mahan, Hutchins and Martin)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article nine, relating to the establishment of the missing children information clearinghouse; definitions; duties of the state police; duties of the department of education; duties of law-enforcement agencies; request for information by custodian; missing child reports; procedures upon receipt of missing child report; law-enforcement requirements upon receipt of information about unidentified bodies of children; release of dental records; immunity from civil liability or criminal prosecution for release of records; cross-checking and matching of information; cooperation required of state agencies and schools; confidentiality of information and records; duties of attorney general to enforce provisions; duty of law-enforcement agencies to forward contents of completed report; duties of law-enforcement agencies to update information and provide notice; creation of a clearinghouse advisory council as a public corporation and governmental instrumentality; membership of the council; appointment; terms of office; compensation and expenses; quorum; appointment of chairman; council to be subject to open governmental meetings act; designation of state police employee as executive director of council; authority to contract for research and administrative services; advisory services to the Legislature; annual report required; comprehensive strategic plan and recommendations required; advisory services to the state police; cooperation and coordination with other agencies; authority to seek funding from public and private sources; initial comprehensive plan to be presented by the first day of July, one thousand nine hundred ninety-eight; contents of initial

plan; authority to enter into public-private partnerships; approval of majority required; council members not prohibited from sitting on certain boards; application of governmental ethics act to council members; authority of council to solicit and accept gifts, grants, bequests and devises; and deposit of same into state treasury special account.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. MISSING CHILDREN INFORMATION ACT.

- §49-9-1. Short title.
- §49-9-2. Definitions.
- §49-9-3. Clearinghouse function.
- §49-9-4. State department of education; missing children program.
- §49-9-5. Information to clearinghouse.
- §49-9-6. Custodian request for information.
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§49-9-1. Short title.

- 1 This article may be cited as the "Missing Children
- 2 Information Act."

§49-9-2. Definitions.

- 1 As used in this article:

2 (a) "Child" means an individual under the age of
3 eighteen years who is not emancipated;

4 (b) "Clearinghouse" means the West Virginia missing
5 children information clearinghouse;

6 (c) "Custodian" means a parent, guardian, custodian
7 or other person who exercises legal physical control, care
8 or custody of a child;

9 (d) "Missing child" means a child whose whereabouts
10 are unknown to the child's custodian and the
11 circumstances of whose absence indicate that:

12 (1) The child did not leave the care and control of the
13 custodian voluntarily and the taking of the child was not
14 authorized by law; or

15 (2) The child voluntarily left the care and control of
16 his or her custodian without the custodian's consent and
17 without intent to return;

18 (e) "Missing child report" means information that is:

19 (1) Given to a law-enforcement agency on a form
20 used for sending information to the national crime
21 information center; and

22 (2) About a child whose whereabouts are unknown to
23 the reporter and who is alleged in the form submitted by
24 the reporter to be missing;

25 (f) "Possible match" means the similarities between
26 an unidentified body of a child and a missing child that
27 would lead one to believe they are the same child;

28 (g) "Reporter" means the person who reports a
29 missing child; and

30 (h) "State agency" means an agency of the state,
31 political subdivision of the state or public postsecondary
32 educational institution.

§49-9-3. Clearinghouse function.

1 (a) The missing children information clearinghouse is
2 established under the West Virginia state police. The state
3 police:

4 (1) Shall provide for the administration of the
5 clearinghouse; and

6 (2) May promulgate rules in accordance with the
7 provisions of article three, chapter twenty-nine-a of this
8 code to carry out the provisions of this article.

9 (b) The clearinghouse is a central repository of
10 information on missing children and shall be used by all
11 law-enforcement agencies in this state.

12 (c) The clearinghouse shall:

13 (1) Establish a system of intrastate communication of
14 information relating to missing children;

15 (2) Provide a centralized file for the exchange of
16 information on missing children and unidentified bodies
17 of children within the state;

18 (3) Communicate with the national crime information
19 center for the exchange of information on missing
20 children suspected of interstate travel;

21 (4) Collect, process, maintain and disseminate accurate
22 and complete information on missing children;

23 (5) Provide a statewide toll-free telephone line for the
24 reporting of missing children and for receiving
25 information on missing children;

26 (6) Disseminate to custodians, law-enforcement
27 agencies, the state department of education, the governor's
28 cabinet on children and families and the general public
29 information that explains how to prevent child abduction
30 and what to do if a child becomes missing;

31 (7) Compile statistics relating to the incidence of
32 missing children within the state;

33 (8) Provide training materials and technical assistance
34 to law-enforcement agencies and social services agencies
35 pertaining to missing children; and

36 (9) Establish a media protocol for disseminating
37 information pertaining to missing children.

38 (d) The clearinghouse shall print and distribute
39 posters, flyers and other forms of information containing
40 descriptions of missing children.

41 (e) The state police may accept public or private
42 grants, gifts and donations to assist in carrying out the
43 provisions of this article.

§49-9-4. State department of education; missing children program.

1 (a) The state department of education shall develop
2 and administer a program for the location of missing
3 children who may be enrolled in the West Virginia school
4 system, including private schools, and for the reporting of
5 children who may be missing or who may be unlawfully
6 removed from schools.

7 (b) The program shall include the use of information
8 received from the clearinghouse and shall be coordinated
9 with the operations of the clearinghouse.

10 (c) The state board of education may promulgate rules
11 in accordance with the provisions of article three, chapter
12 twenty-nine-a of this code for the operation of the
13 program and shall require the participation of all school
14 districts and state-accredited private schools in this state.

§49-9-5. Information to clearinghouse.

1 Every law-enforcement agency in West Virginia shall
2 provide to the clearinghouse any information the law-
3 enforcement agency has that would assist in locating or
4 identifying a missing child.

§49-9-6. Custodian request for information.

1 (a) Upon written request made to a law-enforcement
2 agency by the custodian of a missing child, the law-
3 enforcement agency shall request from the clearinghouse
4 information concerning the child that may aid the
5 custodian in locating or identifying the child.

6 (b) A law-enforcement agency to which a request has
7 been made pursuant to subsection (a) of this section shall
8 report to the custodian on the results of its inquiry within
9 fourteen calendar days after the day the written request is
10 received by the law-enforcement agency.

§49-9-7. Missing child report forms.

1 (a) The clearinghouse shall distribute missing child
2 report forms to law-enforcement agencies in the state.

3 (b) A missing child report may be made to a law-
4 enforcement agency in person or by telephone or other
5 indirect method of communication and the person taking
6 the report may enter the information on the form for the
7 reporter. A missing child report form may be completed
8 by the reporter and delivered to a law-enforcement office.

9 (c) A copy of the missing child report form shall be
10 filed with the clearinghouse.

§49-9-8. Law-enforcement requirements; missing child reports; unidentified bodies.

1 (a) A law-enforcement agency, upon receiving a
2 missing child report, shall:

3 (1) Immediately start an investigation to determine the
4 present location of the child if it determines that the child
5 is in danger; and

6 (2) Enter the name of the missing child into the
7 clearinghouse and the national crime information center
8 missing person file if the child meets the center's criteria,
9 with all available identifying features, including dental
10 records, fingerprints, other physical characteristics and a
11 description of the clothing worn when the missing child
12 was last seen.

13 (b) Information not immediately available shall be
14 obtained as soon as possible by the law-enforcement
15 agency and entered into the clearinghouse and the
16 national crime information center file as a supplement to
17 the original entry.

18 (c) All West Virginia law-enforcement agencies shall
19 enter information about all unidentified bodies of children
20 found in their jurisdiction into the clearinghouse and the
21 national crime information center unidentified person file,
22 including all available identifying features of the body
23 and a description of the clothing found on the body. If
24 an information entry into the national crime information
25 center file results in an automatic entry of the information
26 into the clearinghouse, the law-enforcement agency is not
27 required to make a direct entry of that information into
28 the clearinghouse.

§49-9-9. Release of dental records; immunity.

1 (a) At the time a missing child report is made, the law-
2 enforcement agency to which the missing child report is
3 given may, when feasible and appropriate, provide a dental
4 record release form to the parent, custodian, health care
5 surrogate or other legal entity authorized to release the
6 dental records of the missing child. The law-enforcement
7 agency shall endorse the dental record release form with a
8 notation that a missing child report has been made in
9 compliance with the provisions of this article. When the
10 dental record release form is properly completed by the
11 parent, custodian, health care surrogate or other legal
12 entity authorized to release the dental records of the
13 missing child and contains the endorsement, the form is
14 sufficient to permit a dentist or physician in this state to
15 release dental records relating to the missing child to the
16 law-enforcement agency.

17 (b) A circuit court judge may for good cause shown
18 authorize the release of dental records of a missing child
19 to a law-enforcement agency.

20 (c) A law-enforcement agency which receives dental
21 records under the provisions of subsections (a) or (b) of
22 this section shall send the dental records to the
23 clearinghouse.

24 (d) A dentist or physician who releases dental records
25 to a person presenting a proper release executed or
26 ordered pursuant to this section is immune from civil

27 liability or criminal prosecution for the release of the
28 dental records.

§49-9-10. Cross-checking and matching.

1 (a) The clearinghouse shall, in accordance with
2 national crime information center policies and procedures,
3 cross-check and attempt to match unidentified bodies with
4 descriptions of missing children. When the clearinghouse
5 discovers a possible match between an unidentified body
6 and a missing child description, the clearinghouse shall
7 notify the appropriate law-enforcement agencies.

8 (b) A law-enforcement agency that receives notice of a
9 possible match shall make arrangements for positive
10 identification. If a positive identification is made, the law-
11 enforcement agency shall complete and close the
12 investigation with notification to the clearinghouse.

§49-9-11. Interagency cooperation.

1 (a) State agencies and public and private schools shall
2 cooperate with a law-enforcement agency that is
3 investigating a missing child report and shall furnish any
4 information, including confidential information, that will
5 assist the law-enforcement agency in completing the
6 investigation.

7 (b) Information provided by a state agency or a public
8 or private school may not be released to any person
9 outside the law-enforcement agency or the clearinghouse,
10 except as provided by rules of the West Virginia state
11 police.

§49-9-12. Confidentiality of records.

1 (a) The state police shall promulgate rules according
2 to the provisions of article three, chapter twenty-nine-a of
3 this code to provide for the classification of information
4 and records as confidential that:

5 (1) Are otherwise confidential under state or federal
6 law or rules promulgated pursuant to state or federal law;

7 (2) Are related to the investigation by a law-
8 enforcement agency of a missing child or an unidentified

9 body, if the state police, in consultation with the law-
10 enforcement agency, determines that release of the
11 information would be deleterious to the investigation;

12 (3) Are records or notations that the clearinghouse
13 maintains for internal use in matters relating to missing
14 children and unidentified bodies and the state police
15 determines that release of the internal documents might
16 interfere with an investigation by a law-enforcement
17 agency in West Virginia or any other jurisdiction; or

18 (4) Are records or information that the state police
19 determines might interfere with an investigation or
20 otherwise harm a child or custodian.

21 (b) The rules may provide for the sharing of
22 confidential information with the custodian of the missing
23 child.

§49-9-13. Attorney general to require compliance.

1 The attorney general shall require each law-
2 enforcement agency to comply with the provisions of the
3 Missing Children Information Act and may seek writs of
4 mandamus or other appropriate remedies to enforce the
5 provisions of this article.

§49-9-14. Agencies that receive report.

1 (a) Upon completion of the missing child report the
2 law-enforcement agency shall immediately forward the
3 contents of the report to the missing children information
4 clearinghouse and the national crime information center's
5 missing person file: *Provided*, That if an information
6 entry into the national crime information center file results
7 in an automatic entry of the information into the
8 clearinghouse, the law-enforcement agency is not required
9 to make a direct entry of that information into the
10 clearinghouse.

11 (b) Within fifteen days after completion of the report,
12 if the child is less than thirteen years of age the law-
13 enforcement agency may, when appropriate, forward the
14 contents of the report to the last:

15 (1) Child care center or child care home in which the
16 child was enrolled; or

17 (2) School the child attended in West Virginia, if any.

18 (c) A law-enforcement agency involved in the
19 investigation of a missing child shall:

20 (1) Update the initial report filed by the agency that
21 received notification of the missing child upon the
22 discovery of new information concerning the
23 investigation;

24 (2) Forward the updated report to the appropriate
25 agencies and organizations;

26 (3) Search the national crime information center's
27 wanted person file for reports of arrest warrants issued for
28 persons who allegedly abducted or unlawfully retained
29 children and compare these reports to the missing child's
30 national crime information center's missing person file;
31 and

32 (4) Notify all law-enforcement agencies involved in
33 the investigation, the missing children information clear-
34 inghouse, and the national crime information center when
35 the missing child is located.

**§49-9-15. Clearinghouse advisory council; members, appoint-
ments and expenses; appointment, duties and
compensation of director.**

1 (a) There is hereby created a clearinghouse advisory
2 council, which is a body corporate and politic, constituting
3 a public corporation and government instrumentality.
4 The council shall consist of eleven members, who are
5 knowledgeable about and interested in issues relating to
6 missing or exploited children, as follows:

7 (1) Four members to be appointed by the governor,
8 with the advice and consent of the Senate, with not more
9 than two belonging to the same political party, three being
10 from different congressional districts of the state and, as
11 nearly as possible, providing broad state geographical
12 distribution of members of the council, and at least one
13 representing a nonprofit organization involved with

14 preventing the abduction, runaway or exploitation of
15 children or locating missing children;

16 (2) One person to be appointed by the governor, with
17 the advice and consent of the Senate, from a list of two
18 persons recommended by the speaker of the House of
19 Delegates;

20 (3) One member to be appointed by the governor,
21 with the advice and consent of the Senate, from a list of
22 two persons recommended by the president of the Senate;

23 (4) The secretary of the department of health and
24 human resources or his or her designee;

25 (5) The superintendent of the West Virginia state
26 police or his or her designee;

27 (6) The state superintendent of schools or his or her
28 designee;

29 (7) The director of the criminal justice and highway
30 safety division or his or her designee; and

31 (8) The executive director of the governor's cabinet
32 on children and families.

33 (b) Not later than the first day of June, one thousand
34 nine hundred ninety-seven, the governor shall appoint the
35 six appointed council members for staggered terms. The
36 terms of the board members first taking office on or after
37 the effective date of this legislation shall expire as
38 designated by the governor at the time of their
39 appointment, one at the end of the year, two at the end of
40 the second year, and two at the end of the third year. As
41 the original appointments expire, each subsequent
42 appointment shall be for a full three-year term. Any
43 appointed member whose term is expired shall serve until
44 a successor has been duly appointed and qualified. Any
45 person appointed to fill a vacancy shall serve only for the
46 unexpired term. A member is eligible for only one
47 successive reappointment. In cases of any vacancy in the
48 office of a member, such vacancy shall be filled by the
49 governor in the same manner as the original appointment
50 was made.

51 (c) Members of the council are not entitled to
52 compensation for services performed as members but are
53 entitled to reimbursement for all reasonable and
54 necessary expenses actually incurred in the performance
55 of their duties. A majority of serving members constitutes
56 a quorum for the purpose of conducting business. The
57 chairman of the council shall be designated by the
58 governor from among the appointed council members
59 who represent nonprofit organizations involved with
60 preventing the abduction, runaway or exploitation of
61 children or locating missing children. The term of the
62 chairman shall run concurrently with his or her term of
63 office as a member of the council. The council shall
64 conduct all meetings in accordance with the open
65 governmental meetings law pursuant to article nine-a,
66 chapter six of this code.

67 (d) The employee of the West Virginia state police
68 who is primarily responsible for the clearinghouse
69 established by section three of this article shall serve as the
70 executive director of the council. He or she shall receive
71 no additional compensation for service as the executive
72 director of the council but shall be reimbursed for any
73 reasonable and necessary expenses actually incurred in the
74 performance of his or her duties as executive director.

75 (e) The expenses of the council members and the
76 executive director shall be reimbursed from funds
77 provided by foundation grants, in-kind contributions or
78 funds obtained pursuant to subsection (b), section
79 seventeen of this article.

80 (f) The executive director shall provide or obtain
81 information necessary to support the administrative work
82 of the council and, to that end, may contract with one or
83 more nonprofit organizations or state agencies for
84 research and administrative support. The executive
85 director of the council shall be available to the governor
86 and to the speaker of the House of Delegates and the
87 president of the Senate to analyze and comment upon
88 proposed legislation and rules which relate to or materially
89 affect missing or exploited children.

90 (g) The council shall prepare and publish an annual
91 report of its activities and accomplishments and submit it
92 to the governor and to the Legislature's joint committee
93 on government and finance on or before the fifteenth day
94 of December of each year.

§49-9-16. Powers and duties of clearinghouse advisory council.

1 (a) The council shall prepare a comprehensive
2 strategic plan and recommendation of programs in
3 furtherance thereof that will support efforts to prevent the
4 abduction, runaway and exploitation, or any thereof, of
5 children and to locate missing children; advise the West
6 Virginia state police regarding operation of the
7 clearinghouse and its other responsibilities under this
8 article; and cooperate with and coordinate the efforts of
9 state agencies and private organizations involved with
10 issues relating to missing or exploited children. The
11 council may seek public and private grants, contracts,
12 matching funds and procurement arrangements from the
13 state and federal government, private industry and other
14 agencies in furtherance of its mission and programs. An
15 initial comprehensive strategic plan that will support and
16 foster efforts to prevent the abduction, runaway and
17 exploitation of children and to locate missing children
18 shall be developed and provided to the governor, the
19 speaker of the House of Delegates and the president of
20 the Senate no later than the first day of July, one thousand
21 nine hundred ninety-eight, and shall include, but not be
22 limited to, the following:

23 (1) Findings and determinations regarding the extent
24 of the problem in this state related to: (i) Abducted
25 children; (ii) runaway children; and (iii) exploited
26 children;

27 (2) Findings and determinations identifying the
28 systems, both public and private, existing in the state to
29 prevent the abduction, runaway or exploitation of children
30 and to locate missing children and assessing the strengths
31 and weaknesses of those systems and the clearinghouse;

32 (3) The inclusion of exploited children within the
33 functions of the clearinghouse. For purposes of this
34 article, an exploited child is a person under the age of
35 eighteen years who has been: (i) Used in the production of
36 pornography; (ii) subjected to sexual exploitation or
37 sexual offenses under article eight-b, chapter sixty-one of
38 this code; or (iii) employed or exhibited in any injurious,
39 immoral or dangerous business or occupation in violation
40 of the provisions of sections five through eight, article
41 eight, chapter sixty-one of this code;

42 (4) Recommendations of legislative changes required
43 to improve the effectiveness of the clearinghouse and
44 other efforts to prevent abduction, runaway or exploitation
45 of children and to locate missing children. Those
46 recommendations shall consider the following:

47 (i) Interaction of the clearinghouse with child custody
48 proceedings;

49 (ii) Involvement of hospitals, child care centers and
50 other private agencies in efforts to prevent child
51 abduction, runaway or exploitation and to locate missing
52 children;

53 (iii) Publication of a directory of and periodic reports
54 regarding missing children;

55 (iv) Required reporting by public and private agencies
56 and penalties for failure to report and false reporting;

57 (v) Removal of names from the list of missing
58 children;

59 (vi) Creating of an advocate for missing and exploited
60 children;

61 (vii) State funding for the clearinghouse and efforts to
62 prevent the abduction, runaway and exploitation of
63 children and to locate missing children;

64 (viii) Mandated involvement of state agencies, such as
65 publication of information regarding missing children in
66 existing state publications and coordination with the state
67 registrar of vital statistics under section twelve-b, article
68 five, chapter sixteen of this code;

70 (ix) Expanded requirement for boards of education to
71 notify the clearinghouse in addition to local law-
72 enforcement agencies under section five-c, article two,
73 chapter eighteen of this code or if a birth certificate or
74 school record received appears to be inaccurate or
75 fraudulent and to receive clearinghouse approval before
76 releasing records;

77 (5) Methods that will coordinate and engender
78 collaborative efforts among organizations throughout the
79 state, whether public or private, involved with missing or
80 exploited children;

81 (6) Plans for the use of technology in the
82 clearinghouse and other efforts related to missing or
83 exploited children;

84 (7) Compliance of the clearinghouse, state law and all
85 rules promulgated pursuant thereto with applicable federal
86 law so as to enhance opportunities for receiving federal
87 grants;

88 (8) Consultation with the state board of education and
89 other agencies responsible for promulgating rules under
90 this article;

91 (9) Possible methods for identifying missing children
92 prior to enrollment in a public or nonpublic school;

93 (10) The feasibility and effectiveness of utilizing the
94 federal parent locator service in locating missing children;
95 and

96 (11) Programs for voluntary fingerprinting.

§49-9-17. Public-private partnerships; funding.

1 (a) In furtherance of its mission, the clearinghouse
2 council is authorized to enter into contracts or joint
3 venture agreements with federal and state agencies; with
4 nonprofit corporations organized pursuant to the
5 corporate laws of this state or other jurisdictions that are
6 qualified under section 501(c)(3) of the Internal Revenue
7 Code; and with other organizations that conduct research,
8 make grants, improve educational programs and work for
9 the prevention of missing or exploited children and to
10 locate missing children. All contracts and joint venture
11 agreements must be approved by a majority vote of the

12 council. The council may also enter into such contractual
13 agreements for consideration or recompense to it even
14 though such entities are funded from sources other than
15 the state. Members of the council are not prohibited from
16 sitting on the boards of directors of any contracting pri-
17 vate nonprofit corporation, foundation or firm: *Provided,*
18 That members of the council shall not be exempt from
19 any of the provisions of chapter six-b of this code.

20 (b) The council shall solicit and is authorized to re-
21 ceive and accept gifts or grants from private foundations,
22 corporations, individuals, devises and bequests or from
23 other lawful sources. Such funds shall be paid into a spe-
24 cial account in the state treasury for the use and benefit of
25 the council.

CHAPTER 137

(S. B. 549—By Senators Dittmar, Wooton, Ball, Bowman, Hunter, Ross,
Schoonover, Snyder, Buckalew, Deem and Scott)

[Passed April 11, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article seven, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to promulgation of rules for motor boating.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, article seven, 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 7. LAW ENFORCEMENT, MOTOR BOATING, LITTER.

§20-7-23. Local rules.

1 (a) The provisions of this article, and of other applica-
2 ble laws of this state, shall govern the operation, equip-
3 ment, numbering and all other matters relating thereto

4 state, or when any activity regulated by this article shall
5 take place thereon, but nothing in this article shall be con-
6 strued to prevent the adoption of any ordinance or local
7 law relating to operation and equipment of vessels the
8 provisions of which are identical to the provisions of this
9 article, amendments thereto or rules promulgated thereun-
10 der: *Provided*, That such ordinances or local laws shall be
11 operative only so long as to the extent that they continue
12 to be identical to provisions of this article, amendments
13 thereto or rules promulgated thereunder.

14 (b) Any subdivision of this state may, at any time, but
15 only after public notice, make formal application to the
16 director for special rules with reference to the operation of
17 vessels on any waters within its territorial limits and shall
18 set forth therein the reasons which make such special rules
19 necessary or appropriate.

20 (c) The director is hereby authorized to promulgate
21 special rules with reference to the operation of vessels on
22 any waters within the territorial limits of any subdivision
23 of this state.

24 (d) The director shall immediately promulgate an
25 emergency rule pursuant to the provisions of section fif-
26 teen, article three, chapter twenty-nine-a of this code, pro-
27 viding for the use of electric motors on the waters of
28 Miletree lake in Roane County.

CHAPTER 138

(Com. Sub. for S. B. 74—By Senator Dittmar)

[Passed March 28, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and four, article three of said chapter; to amend and reenact section one, article five of said chapter; and to

amend and reenact sections one and three, article ten of said chapter, all relating to definition, titling, registration and taxation of special mobile equipment and mixed use equipment.

Be it enacted by the Legislature of West Virginia:

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

Article

1. Words and Phrases Defined.

3. Original and Renewal of Registration; Issuance of Certificates of Title.

5. Permits to Nonresident Owners.

10. Fees for Registration; Licensing, Etc.

ARTICLE 1. WORDS AND PHRASES DEFINED.

***§17A-1-1. Definitions.**

1 Except as otherwise provided in this chapter the fol-
2 lowing words and phrases when used in this chapter shall
3 have the meanings respectively ascribed to them in this
4 article:

5 (a) "Vehicle" means every device in, upon or by
6 which any person or property is or may be transported or
7 drawn upon a highway, excepting devices moved by hu-
8 man power or used exclusively upon stationary rails or
9 tracks.

10 (b) "Motor vehicle" means every vehicle which is
11 self-propelled and every vehicle which is propelled by
12 electric power obtained from overhead trolley wires, but
13 not operated upon rails.

*Clerk's Note: This section was also amended by S. B. 47 (Chapter 92), which passed subsequent to this act.

14 (c) "Motorcycle" means every motor vehicle, includ-
15 ing motor-driven cycles and mopeds as defined in sections
16 five and five-a, article one, chapter seventeen-c of this
17 code, having a saddle for the use of the rider and designed
18 to travel on not more than three wheels in contact with the
19 ground but excluding a tractor.

20 (d) "School bus" means every motor vehicle owned
21 by a public governmental agency and operated for the
22 transportation of children to or from school or privately
23 owned and operated for compensation for the transporta-
24 tion of children to or from school.

25 (e) "Bus" means every motor vehicle designed for
26 carrying more than seven passengers and used for the
27 transportation of persons; and every motor vehicle, other
28 than a taxicab, designed and used for the transportation of
29 persons for compensation.

30 (f) "Truck tractor" means every motor vehicle de-
31 signed and used primarily for drawing other vehicles and
32 not so constructed as to carry a load other than a part of
33 the weight of the vehicle and load so drawn.

34 (g) "Farm tractor" means every motor vehicle de-
35 signed and used primarily as a farm implement for draw-
36 ing plows, mowing machines and other implements of
37 husbandry.

38 (h) "Road tractor" means every motor vehicle de-
39 signed, used or maintained for drawing other vehicles and
40 not so constructed as to carry any load thereon either
41 independently or any part of the weight of a vehicle or
42 load so drawn.

43 (i) "Truck" means every motor vehicle designed,
44 used or maintained primarily for the transportation of
45 property.

46 (j) "Trailer" means every vehicle with or without
47 motive power designed for carrying persons or property
48 and for being drawn by a motor vehicle and so construct-
49 ed that no part of its weight rests upon the towing vehicle
50 but excluding recreational vehicles.

51 (k) "Semitrailer" means every vehicle with or without
52 motive power designed for carrying persons or property
53 and for being drawn by a motor vehicle and so construct-
54 ed that some part of its weight and that of its load rests
55 upon or is carried by another vehicle.

56 (l) "Pole trailer" means every vehicle without motive
57 power designed to be drawn by another vehicle and at-
58 tached to the towing vehicle by means of a reach, or pole,
59 or by being boomed or otherwise secured to the towing
60 vehicle, and ordinarily used for transporting long or irreg-
61 ularly shaped loads such as poles, pipes, or structural
62 members capable, generally, of sustaining themselves as
63 beams between the supporting connections.

64 (m) "Specially constructed vehicles" means every
65 vehicle of a type required to be registered hereunder not
66 originally constructed under a distinctive name, make,
67 model or type by a generally recognized manufacturer of
68 vehicles and not materially altered from its original con-
69 struction.

70 (n) "Reconstructed vehicle" means every vehicle of a
71 type required to be registered hereunder materially altered
72 from its original construction by the removal, addition or
73 substitution of essential parts, new or used.

74 (o) "Essential parts" means all integral and body
75 parts of a vehicle of a type required to be registered here-
76 under, the removal, alteration or substitution of which
77 would tend to conceal the identity of the vehicle or sub-
78 stantially alter its appearance, model, type or mode of
79 operation.

80 (p) "Foreign vehicle" means every vehicle of a type
81 required to be registered hereunder brought into this state
82 from another state, territory or country other than in the
83 ordinary course of business by or through a manufacturer
84 or dealer and not registered in this state.

85 (q) "Implement of husbandry" means every vehicle
86 which is designed for or adapted to agricultural purposes
87 and used by the owner thereof primarily in the conduct of
88 his agricultural operations, including, but not limited to,

89 trucks used for spraying trees and plants: *Provided*, That
90 said vehicle shall not be let for hire at any time.

91 (r) "Special mobile equipment" means every self-
92 propelled vehicle not designed or used primarily for the
93 transportation of persons or property and incidentally
94 operated or moved over the highways, including, without
95 limitation, road construction or maintenance machinery,
96 ditch-digging apparatus, stone crushers, air compressors,
97 power shovels, graders, rollers, asphalt spreaders, bitumi-
98 nous mixers, bucket loaders, ditchers, leveling graders,
99 finishing machines, motor graders, road rollers, scarifiers,
100 earth-moving carryalls, scrapers, drag lines, rock-drilling
101 equipment and earth-moving equipment. The foregoing
102 enumeration shall be deemed partial and shall not operate
103 to exclude other such vehicles which are within the general
104 terms of this subdivision.

105 (s) "Pneumatic tire" means every tire in which com-
106 pressed air is designed to support the load.

107 (t) "Solid tire" means every tire of rubber or other
108 resilient material which does not depend upon compressed
109 air for the support of the load.

110 (u) "Metal tire" means every tire the surface of which
111 in contact with the highway is wholly or partly of metal or
112 other hard, nonresilient material.

113 (v) "Commissioner" means the commissioner of
114 motor vehicles of this state.

115 (w) "Department" means the department of motor
116 vehicles of this state acting directly or through its duly
117 authorized officers and agents.

118 (x) "Person" means every natural person, firm, co-
119 partnership, association or corporation.

120 (y) "Owner" means a person who holds the legal title
121 to a vehicle, or in the event a vehicle is the subject of an
122 agreement for the conditional sale or lease thereof with the
123 right of purchase upon performance of the conditions
124 stated in the agreement and with an immediate right of
125 possession vested in the conditional vendee or lessee, or in

126 the event a mortgagor of a vehicle is entitled to possession,
127 then such conditional vendee or lessee or mortgagor shall
128 be deemed the owner for the purpose of this chapter.

129 (z) "Nonresident" means every person who is not a
130 resident of this state.

131 (aa) "Dealer" or "dealers" is a general term mean-
132 ing, depending upon the context in which used, either a
133 new motor vehicle dealer, used motor vehicle dealer, facto-
134 ry-built home dealer, recreational vehicle dealer, trailer
135 dealer or motorcycle dealer, as defined in section one,
136 article six of this chapter, or all of such dealers or a com-
137 bination thereof, and in some instances a new motor vehi-
138 cle dealer or dealers in another state.

139 (bb) "Registered dealer" or "registered dealers" is a
140 general term meaning, depending upon the context in
141 which used, either a new motor vehicle dealer, used motor
142 vehicle dealer, house trailer dealer, trailer dealer, recre-
143 ational vehicle dealer or motorcycle dealer, or all of such
144 dealers or a combination thereof, licensed under the provi-
145 sions of article six of this chapter.

146 (cc) "Licensed dealer" or "licensed dealers" is a
147 general term meaning, depending upon the context in
148 which used, either a new motor vehicle dealer, used motor
149 vehicle dealer, house trailer dealer, trailer dealer, recre-
150 ational vehicle dealer or motorcycle dealer, or all of such
151 dealers or a combination thereof, licensed under the provi-
152 sions of article six of this chapter.

153 (dd) "Transporter" means every person engaged in
154 the business of delivering vehicles of a type required to be
155 registered hereunder from a manufacturing, assembling or
156 distributing plant to dealers or sales agents of a manufac-
157 turer.

158 (ee) "Manufacturer" means every person engaged in
159 the business of constructing or assembling vehicles of a
160 type required to be registered hereunder at a place of
161 business in this state which is actually occupied either
162 continuously or at regular periods by such manufacturer

163 where his books and records are kept and a large share of
164 his business is transacted.

165 (ff) "Street" or "highway" means the entire width
166 between boundary lines of every way publicly maintained
167 when any part thereof is open to the use of the public for
168 purposes of vehicular travel.

169 (gg) "Motorboat" means any vessel propelled by an
170 electrical, steam, gas, diesel or other fuel propelled or
171 driven motor, whether or not such motor is the principal
172 source of propulsion, but shall not include a vessel which
173 has a valid marine document issued by the bureau of cus-
174 toms of the United States government or any federal agen-
175 cy successor thereto.

176 (hh) "Motorboat trailer" means every vehicle de-
177 signed for or ordinarily used for the transportation of a
178 motorboat.

179 (ii) "All-terrain vehicle" (ATV) means any motor
180 vehicle designed for off-highway use and designed for
181 operator use only with no passengers, having a seat or
182 saddle designed to be straddled by the operator, and han-
183 dlebars for steering control.

184 (jj) "Travel trailer" means every vehicle, mounted on
185 wheels, designed to provide temporary living quarters for
186 recreational, camping or travel use of such size or weight
187 as not to require special highway movement permits when
188 towed by a motor vehicle and of gross trailer area less than
189 four hundred square feet.

190 (kk) "Fold down camping trailer" means every vehi-
191 cle consisting of a portable unit mounted on wheels and
192 constructed with collapsible partial sidewalls which fold
193 for towing by another vehicle and unfold at the camp site
194 to provide temporary living quarters for recreational,
195 camping or travel use.

196 (ll) "Motor home" means every vehicle, designed to
197 provide temporary living quarters, built into an integral
198 part of or permanently attached to a self-propelled motor
199 vehicle, chassis or van including: (1) Type A motor home
200 built on an incomplete truck chassis with the truck cab

201 constructed by the second stage manufacturer; (2) Type B
202 motor home consisting of a van-type vehicle which has
203 been altered to provide temporary living quarters; and (3)
204 Type C motor home built on an incomplete van or truck
205 chassis with a cab constructed by the chassis manufacturer.

206 (mm) "Snowmobile" means a self-propelled vehicle
207 intended for travel primarily on snow and driven by a
208 track or tracks in contact with the snow and steered by a
209 ski or skis in contact with the snow.

210 (nn) "Recreational vehicle" means a motorboat, mo-
211 torboat trailer, all-terrain vehicle, travel trailer, fold down
212 camping trailer, motor home or snowmobile.

213 (oo) Mobile equipment means every self-propelled
214 vehicle not designed or used primarily for the transporta-
215 tion of persons or property over the highway but which
216 may infrequently or incidentally travel over the highway
217 among job sites, equipment storage sites or repair sites,
218 including farm equipment, implements of husbandry,
219 well-drillers, cranes and wood-sawing equipment.

220 (pp) "Factory-built home" includes mobile homes,
221 house trailers and manufactured homes.

222 (qq) "Manufactured home" has the same meaning as
223 the term is defined in section two, article nine, chapter
224 twenty-one of this code which meets the National Manu-
225 factured Housing Construction and Safety Standards Act
226 of 1974 (42 U.S.C. §5401 et seq.), effective on the fif-
227 teenth day of June, one thousand nine hundred
228 seventy-six, and the federal manufactured home construc-
229 tion and safety standards and regulations promulgated by
230 the secretary of the United States department of housing
231 and urban development.

232 (rr) "Mobile home" means a transportable structure
233 that is wholly, or in substantial part, made, fabricated,
234 formed or assembled in manufacturing facilities for instal-
235 lation or assembly and installation on a building site and
236 designed for long-term residential use and built prior to
237 enactment of the federal Manufactured Housing Construc-
238 tion and Safety Standards Act of 1974 (42 U.S.C. §5401

239 et seq.), effective on the fifteenth day of June, one thou-
 240 sand nine hundred seventy-six, and usually built to the
 241 voluntary industry standard of the American national
 242 standards institute (ANSI) — A119.1 standards for mobile
 243 homes.

244 (ss) “House trailers” means all trailers designed and
 245 used for human occupancy on a continual nonrecreational
 246 basis, but may not include fold down camping and travel
 247 trailers, mobile homes or manufactured homes.

248 (tt) “Parking enforcement vehicle” means a motor
 249 vehicle which does not fit into any other classification of
 250 vehicle in this chapter, has three or four wheels and is
 251 designed for use in an incorporated municipality by a city,
 252 county, state or other governmental entity primarily for
 253 parking enforcement or other governmental purposes with
 254 an operator area with sides permanently enclosed with
 255 rigid construction and a top which may be convertible,
 256 sealed beam headlights, turn signals, brake lights, horn, at
 257 least one rear view mirror on each side and such other
 258 equipment that will enable it to pass a standard motorcycle
 259 vehicle inspection.

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
 ISSUANCE OF CERTIFICATES OF TITLE.**

§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.

§17A-3-4. Application for certificate of title; tax for privilege of certification of title; exceptions; privilege tax on payments for leased vehicles; revenue allocations; transfers; penalty for false swearing.

***§17A-3-2. Every motor vehicle, etc., subject to registration and certificate of title provisions; exceptions.**

1 (a) Every motor vehicle, trailer, semitrailer, pole trailer
 2 and recreational vehicle when driven or moved upon a
 3 highway shall be subject to the registration and certificate
 4 of title provisions of this chapter except:

*Clerk’s Note: This section was also amended by S. B. 47 (Chapter 92), which passed subsequent to this act.

5 (1) Any such vehicle driven or moved upon a high-
6 way in conformance with the provisions of this chapter
7 relating to manufacturers, transporters, dealers, lienholders
8 or nonresidents or under a temporary registration permit
9 issued by the department as hereinafter authorized;

10 (2) Any implement of husbandry upon which is se-
11 curely attached a machine for spraying fruit trees and
12 plants of the owner or lessee or for any other implement
13 of husbandry which is used exclusively for agricultural or
14 horticultural purposes on lands owned or leased by the
15 owner thereof and which is not operated on or over any
16 public highway of this state for any other purpose other
17 than for the purpose of operating it across a highway or
18 along a highway other than an expressway as designated
19 by the commissioner of the division of highways from one
20 point of the owner's land to another part thereof, irrespec-
21 tive of whether or not the tracts adjoin: *Provided*, That the
22 distance between the points shall not exceed twenty-five
23 miles, or for the purpose of taking it or other fixtures
24 thereto attached, to and from a repair shop for repairs.
25 The foregoing exemption from registration and license
26 requirements shall also apply to any vehicle hereinbefore
27 described or to any farm trailer owned by the owner or
28 lessee of the farm on which such trailer is used, when such
29 trailer is used by the owner thereof for the purpose of
30 moving farm produce and livestock from such farm along
31 a public highway for a distance not to exceed twenty-five
32 miles to a storage house or packing plant, when such use is
33 a seasonal operation:

34 (A) The exemptions contained in this section shall
35 also apply to farm machinery and tractors: *Provided*,
36 That such machinery and tractors may use the highways in
37 going from one tract of land to another tract of land re-
38 gardless of whether such land be owned by the same or
39 different persons.

40 (B) Any vehicle exempted hereunder from the re-
41 quirements of annual registration certificate and license
42 plates and fees therefor shall not be permitted to use the
43 highways between sunset and sunrise.

44 (C) Any vehicle exempted hereunder from the re-
45 quirements of annual registration certificate and license
46 plates shall be permitted to use the highways as herein
47 provided whether such exempt vehicle is self-propelled,
48 towed by another exempt vehicle or towed by another
49 vehicle for which registration is required.

50 (D) Any vehicle used as an implement of husbandry
51 exempt hereunder must have the words "farm use" af-
52 fixed to both sides of the implement in ten inch letters.
53 Any vehicle which would be subject to registration as a
54 Class A or B vehicle if not exempted by this section shall
55 display a farm use exemption certificate on the lower
56 driver's side of the windshield:

57 (i) The farm use exemption certificate shall be provid-
58 ed by the commissioner and shall be issued annually by
59 the assessor of the applicant's county of residence. The
60 assessor shall issue a farm use exemption certificate upon
61 his or her determination pursuant to an examination of the
62 property books or documentation provided by the appli-
63 cant that the vehicle has been properly assessed as Class I
64 personal property. The assessor shall charge a fee of two
65 dollars for each certificate, one dollar of the fee shall be
66 retained by the assessor and one dollar shall be remitted
67 by the assessor to the commissioner of the division of
68 motor vehicles to be deposited in a special revolving fund
69 to be used in the administration of this section.

70 (ii) A farm use exemption certificate shall in no way
71 exempt the applicant from maintaining the security as
72 required by chapter seventeen-d of this code on any vehi-
73 cle being operated on the roads or highways of this state.

74 (iii) No person charged with operating a vehicle with-
75 out a farm use exemption certificate, if required under this
76 section, shall be convicted if he or she produces in court
77 or in the office of the arresting officer a valid farm use
78 exemption certificate for the vehicle in question within
79 five days;

80 (3) Any vehicle which is propelled exclusively by
81 electric power obtained from overhead trolley wires
82 though not operated upon rails;

83 (4) Any vehicle of a type subject to registration owned
84 by the government of the United States;

85 (5) Any wrecked or disabled vehicle which is being
86 towed by a licensed wrecker or dealer on the public high-
87 ways of this state;

88 (6) The following recreational vehicles shall be ex-
89 empt from the requirements of annual registration, license
90 plates and fees, unless otherwise specified by law, but shall
91 be subject to the certificate of title provisions of this chap-
92 ter regardless of highway use: Motorboats, all-terrain
93 vehicles and snowmobiles;

94 (7) Any special mobile equipment as defined in sub-
95 section (r), section one, article one of this chapter.

96 (b) The provisions of this article relating to recreation-
97 al vehicles shall become effective on the first day of July,
98 one thousand nine hundred eighty-nine.

99 (c) Notwithstanding the provisions of subsections (a)
100 and (b) of this section:

101 (1) Mobile homes or manufactured homes are exempt
102 from the requirements of annual registration, license plates
103 and fees;

104 (2) House trailers may be registered and licensed; and

105 (3) Factory-built homes are subject to the certificate
106 of title provisions of this chapter.

***§17A-3-4. Application for certificate of title; tax for privilege
of certification of title; exceptions; privilege tax
on payments for leased vehicles; revenue alloca-
tions; transfers; penalty for false swearing.**

1 (a) Certificates of registration of any vehicle or regis-
2 tration plates therefor, whether original issues or dupli-
3 cates, shall not be issued or furnished by the division of
4 motor vehicles or any other officer charged with the duty,
5 unless the applicant therefor already has received, or at the

*Clerk's Note: This section was also amended by S. B. 47 (Chapter 92),
which passed subsequent to this act.

86 the titling of Class C or Class L semitrailers, full trailers,
87 pole trailers and converter gear: *Provided*, That if an
88 owner of a vehicle has previously titled the vehicle at a
89 declared gross weight of fifty-five thousand pounds or
90 more and the title was issued without the payment of the
91 tax imposed by this section, then before the owner may
92 obtain registration for the vehicle at a gross weight less
93 than fifty-five thousand pounds, the owner must surrender
94 to the commissioner the exempted registration, the ex-
95 empted certificate of title, and pay the tax imposed by this
96 section based upon the current market value of the vehi-
97 cle: *Provided, however*, That notwithstanding the provi-
98 sions of section nine, article fifteen, chapter eleven of this
99 code, the exemption from tax under this section for Class
100 B, Class K or Class E vehicles in excess of fifty-five thou-
101 sand pounds and Class C or Class L semitrailers, full trail-
102 ers, pole trailers and converter gear shall not subject the
103 sale or purchase of the vehicles to the consumers sales tax.

104 (6) The tax imposed by this section does not apply to
105 titling of vehicles leased by residents of West Virginia. A
106 tax is hereby imposed upon the monthly payments for the
107 lease of any motor vehicle leased by a resident of West
108 Virginia, which tax is equal to five percent of the amount
109 of the monthly payment, applied to each payment, and
110 continuing for the entire term of the initial lease period.
111 The tax shall be remitted to the division of motor vehicles
112 on a monthly basis by the lessor of the vehicle.

113 (7) The tax imposed by this section does not apply to
114 titling of vehicles by a registered dealer of this state for
115 resale only, nor does the tax imposed by this section apply
116 to titling of vehicles by this state or any political subdivi-
117 sion thereof, or by any volunteer fire department or duly
118 chartered rescue or ambulance squad organized and in-
119 corporated under the laws of the state of West Virginia as a
120 nonprofit corporation for protection of life or property.
121 The total amount of revenue collected by reason of this
122 tax shall be paid into the state road fund and expended by
123 the commissioner of highways for matching federal funds
124 allocated for West Virginia. In addition to the tax, there is
125 a charge of five dollars for each original certificate of title
126 or duplicate certificate of title so issued: *Provided*, That

127 this state or any political subdivision thereof, or any vol-
128 unteer fire department, or duly chartered rescue squad, is
129 exempt from payment of the charge.

130 (8) The certificate is good for the life of the vehicle,
131 so long as the same is owned or held by the original hold-
132 er of the certificate, and need not be renewed annually, or
133 any other time, except as provided in this section.

134 (9) If, by will or direct inheritance, a person becomes
135 the owner of a motor vehicle and the tax imposed by this
136 section previously has been paid, to the division of motor
137 vehicles, on that vehicle, he or she is not required to pay
138 the tax.

139 (10) A person who has paid the tax imposed by this
140 section is not required to pay the tax a second time for the
141 same motor vehicle, but is required to pay a charge of five
142 dollars for the certificate of retitle of that motor vehicle,
143 except that the tax shall be paid by the person when the
144 title to the vehicle has been transferred either in this or
145 another state from such person to another person and
146 transferred back to such person.

147 (c) Notwithstanding any provisions of this code to the
148 contrary, the owners of trailers, semitrailers, recreational
149 vehicles and other vehicles not subject to the certificate of
150 title tax prior to the enactment of this chapter are subject
151 to the privilege tax imposed by this section: *Provided,*
152 That the certification of title of any recreational vehicle
153 owned by the applicant on the thirtieth day of June, one
154 thousand nine hundred eighty-nine, is not subject to the
155 tax imposed by this section: *Provided, however,* That
156 mobile homes, manufactured homes, modular homes,
157 house trailers and similar nonmotive propelled vehicles,
158 except recreational vehicles, susceptible of being moved
159 upon the highways but primarily designed for habitation
160 and occupancy, rather than for transporting persons or
161 property, or any vehicle operated on a nonprofit basis and
162 used exclusively for the transportation of mentally retard-
163 ed or physically handicapped children when the applica-
164 tion for certificate of registration for the vehicle is accom-
165 panied by an affidavit stating that the vehicle will be oper-
166 ated on a nonprofit basis and used exclusively for the

167 transportation of mentally retarded and physically handi-
168 capped children, are not subject to the tax imposed by this
169 section, but are taxable under the provisions of articles
170 fifteen and fifteen-a, chapter eleven of this code.

171 (d) Any person making any affidavit required under
172 any provision of this section, who knowingly swears false-
173 ly, or any person who counsels, advises, aids or abets an-
174 other in the commission of false swearing, is on the first
175 offense guilty of a misdemeanor and, upon conviction
176 thereof, shall be fined not more than five hundred dollars
177 or be imprisoned in the county jail for a period not to
178 exceed six months, or, in the discretion of the court, both
179 fined and imprisoned. For a second or any subsequent
180 conviction within five years, that person is guilty of a felo-
181 ny and, upon conviction thereof, shall be fined not more
182 than five thousand dollars or be imprisoned in the peni-
183 tentiary for not less than one year nor more than five
184 years, or, in the discretion of the court, fined and impris-
185 oned.

186 (e) Notwithstanding any other provisions of this sec-
187 tion, any person in the military stationed outside West
188 Virginia, or his or her dependents who possess a motor
189 vehicle with valid registration, are exempt from the provi-
190 sions of this article for a period of nine months from the
191 date that that person returns to this state or the date his or
192 her dependent returns to this state, whichever is later.

193 (f) After the first day of July, one thousand nine hun-
194 dred ninety-seven, no person may transfer, purchase or
195 sell a factory-built home without a certificate of title issued
196 by the commissioner in accordance with the provisions of
197 this article:

198 (1) Any person who fails to provide a certificate of
199 title upon the transfer, purchase or sale of a factory-built
200 home is guilty of a misdemeanor and, upon conviction
201 thereof, shall for the first offense be fined not less than
202 one hundred dollars nor more than one thousand dollars,
203 or be imprisoned in the county or regional jail for not
204 more than one year or, both fined and imprisoned. For
205 each subsequent offense, the fine may be increased to not
206 more than two thousand dollars, with imprisonment in the

207 county or regional jail not more than one year or, both
208 fined and imprisoned.

209 (2) Failure of the seller to transfer a certificate of title
210 upon sale or transfer of the factory-built home gives rise
211 to a cause of action, upon prosecution thereof, and allows
212 for the recovery of damages, costs and reasonable attorney
213 fees.

ARTICLE 5. PERMITS TO NONRESIDENT OWNERS.

§17A-5-1. Exemptions from registration of nonresident owners; special permit and certificate in lieu of registration for nonresidents maintaining temporary and recurrent or seasonal residence in state.

1 (a) A nonresident owner, except as otherwise provided
2 in this section, owning any vehicle registered in a foreign
3 state or country of a Class A type otherwise subject to
4 registration hereunder may operate or permit the opera-
5 tion of such vehicle within this state for a period of thirty
6 days without registering such vehicle in, or paying any
7 fees to, this state subject to the condition that such vehicle
8 at all times when operated in this state is duly registered in
9 and displays upon it a valid registration card and registra-
10 tion plate or plates issued for such vehicle in the place of
11 residence of such owner and that such vehicle is not oper-
12 ated for commercial purposes.

13 (b) Every nonresident, including any foreign corpora-
14 tion, carrying on business within this state and owning and
15 regularly operating in such business any motor vehicle,
16 trailer or semitrailer or mobile equipment as defined in
17 section one, article one, chapter seventeen-a of this code,
18 within this state, shall be required to register each such
19 vehicle and pay the same fee therefor as is required with
20 reference to like vehicles owned by residents of this state,
21 except as otherwise provided by reciprocal agreements
22 with other states accomplished pursuant to sections ten and
23 ten-a, article two of this chapter.

24 (c) Any nonresident who accepts or engages in tem-
25 porary and recurrent or seasonal employment, business,
26 profession or occupation in this state and maintains tem-

27 porary and recurrent or seasonal residence in this state in
28 connection with such employment, business, profession or
29 occupation, and any nonresident, including any corpora-
30 tion carrying on business of a temporary and recurrent or
31 seasonal nature in this state and owning and temporarily
32 and recurrently or seasonally operating in such business
33 any motor vehicle, trailer or semitrailer or mobile equip-
34 ment as defined in section one, article one, chapter
35 seventeen-a of this code, within this state, may operate or
36 permit the operation of such vehicle within this state with-
37 out causing said vehicle to be registered as otherwise re-
38 quired by article three of this chapter: *Provided*, That
39 such nonresident, in lieu of registration of such vehicle,
40 shall make application to the division and receive a special
41 permit for such vehicle which shall be evidenced by a
42 metal identification plate and certificate in writing, which
43 special permit plate and certificate shall together identify
44 the vehicle for which such special permit and plate shall
45 issue and such certificate shall bear the name and address
46 of the owner of such vehicle. Such special permit shall be
47 issued without previous certification of title to such vehicle
48 as otherwise required by article three of this chapter or the
49 provisions of subsection (b) of this section:

50 (1) Every owner of a vehicle for which such special
51 permit is desired shall make a verified application to the
52 division for such special permit upon the appropriate form
53 or forms furnished by the division and shall bear the sig-
54 nature of the owner written with pen and ink and shall
55 contain the character of information called for by section
56 three, article three of this chapter, a description of the
57 employment, residence, business and location of such
58 business set forth in such manner as to show the tempo-
59 rary and recurrent or seasonal nature of such residence,
60 employment, business, profession or occupation, and that
61 such vehicle is duly registered in the state of residence of
62 such owner. There shall be an application for each vehicle
63 for which a special permit is desired.

64 (2) Any special permit or plate issued by the division
65 under this section shall be effective and valid for a period
66 of sixty consecutive days from and including the date of
67 issuance and, upon similar application by the owner, the

68 commissioner may renew any such special permit for
69 immediately ensuing similar period or periods of sixty
70 days in any fiscal year. The division shall charge a fee of
71 fifty dollars for each special permit issued under this sec-
72 tion:

73 (A) A special permit shall be issued for one vehicle
74 only and no combination of two or more vehicles shall be
75 operated under fewer special permits than the number of
76 vehicles in such combination. A special permit shall not
77 be issued for any vehicle which is not duly registered in
78 the state of residence of the owner thereof.

79 (B) The registration plate issued for such vehicle by
80 the state of residence of the owner shall not be displayed
81 on such vehicle while being operated over any highway
82 during any period for which a special permit shall have
83 been issued for such vehicle under this section, but there
84 shall be carried in such vehicle the certificate of registra-
85 tion issued for such vehicle by the state of residence of
86 such owner.

87 (C) Any owner of any vehicle making application to
88 operate such vehicle upon the highways of this state pur-
89 suant to the provisions of this article shall also be required
90 to comply with the provisions of chapter seventeen-d of
91 this code prior to commencing such operation.

92 (3) The commissioner shall prescribe the substance,
93 form, color and context of the certificate or special permit
94 and the special permit plate, each of which shall be visual-
95 ly distinguishable from the certificates of registration and
96 registration plates issued under article three of this chap-
97 ter.

98 (4) It is a misdemeanor for any person to drive or
99 move or knowingly to permit to be moved or driven upon
100 any highway any vehicle for which a special permit shall
101 have been issued under this section unless such vehicle
102 shall bear the special plate called for by the certificate
103 evidencing such special permit.

104 (5) When the employment, business, profession, occu-
105 pation or residence of the owner of a vehicle for which

106 such special permit shall have been issued shall cease to be
107 temporary and recurrent or seasonal, any special permit
108 issued for such vehicle pursuant to this section shall imme-
109 diately terminate and become void and such vehicle shall
110 thereupon become subject to registration under article
111 three of this chapter or the provisions of subsection (b) of
112 this section.

113 (6) Any special permit issued pursuant to this section
114 shall be valid and effective on and after the first day of a
115 month; that is, such special permit issued between the first
116 and fifteenth days of a month shall be effective during
117 sixty consecutive days from and including the first day of
118 the month in which the permit shall issue; and a special
119 permit issued after the fifteenth day of any month shall be
120 effective during sixty consecutive days commencing with
121 and including the first day of the month next following
122 the month in which such special permit shall be issued.

123 (d) Any other provision of this section notwithstand-
124 ing, any nonresident referred to in subsection (c) of this
125 section who is engaged by a public utility, as the latter is
126 defined in chapter twenty-four of this code, for the exclu-
127 sive purpose of restoring the service of said utility as a
128 result of an emergency in which such service is affected
129 shall be permitted to operate such motor vehicle, trailer or
130 semitrailer or mobile equipment as defined in section one,
131 article one, chapter seventeen-a of this code, within this
132 state, without causing said motor vehicle, trailer or semi-
133 trailer or mobile equipment as defined in section one,
134 article one, chapter seventeen-a of this code to be regis-
135 tered as otherwise provided by this section and article
136 three of this chapter for the period actually necessary for
137 such restoration but not to exceed a period of ten consec-
138 utive days: *Provided*, That said motor vehicle, trailer or
139 semitrailer or mobile equipment shall be registered in
140 another state upon entry into this state. The provisions of
141 this subsection shall not affect the requirements of recip-
142 rocal agreements with other states accomplished pursuant
143 to sections ten and ten-a, article two of this chapter.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-1. Classification of vehicles for purpose of registration.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

§17A-10-1. Classification of vehicles for purpose of registration.

1 Vehicles subject to registration under the provisions of
2 this chapter shall be placed in the following classes for the
3 purpose of registration:

4 Class A. Motor vehicles of passenger type and trucks
5 with a gross weight of not more than eight thousand
6 pounds, other than those operated for compensation;

7 Class B. Motor vehicles designated as trucks with a
8 gross weight of more than eight thousand pounds, truck
9 tractors, or road tractors other than those operated for
10 compensation;

11 Class C. All trailers and semitrailers, except those op-
12 erated for compensation, and except house trailers and
13 trailers or semitrailers designed to be drawn by Class A
14 motor vehicles and having a gross weight of less than two
15 thousand pounds;

16 Class E. Motor vehicles designated as trucks, truck
17 tractors or road tractors operated for transportation of
18 property for compensation, but being exempt from the
19 operating jurisdiction of the public service commission,
20 and for which a statement of exemption has been received
21 from the public service commission;

22 Class G. Motorcycles and parking enforcement vehi-
23 cles;

24 Class H. Motor vehicles operated regularly for the
25 transportation of persons for compensation under a certifi-
26 cate of convenience and necessity or contract carrier
27 permit issued by the public service commission;

28 Class J. Motor vehicles operated for transportation of
29 persons for compensation by common carriers, not run-
30 ning over a regular route or between fixed termini;

31 Class K. Motor vehicles designated as trucks, truck
32 tractors or road tractors operated for transportation of
33 property for compensation under a certificate of conve-
34 nience and necessity or a contract carrier permit issued by
35 the public service commission;

36 Class L. All trailers and semitrailers used for transpor-
37 tation of property for compensation;

38 Class M. Mobile equipment as defined in subdivision
39 (oo), section one, article one of this chapter;

40 Class R. House trailers;

41 Class T. Trailers or semitrailers of a type designed to
42 be drawn by Class A vehicles and having a gross weight of
43 less than two thousand pounds; and

44 Class Farm Truck. Motor vehicles designated as trucks
45 having a minimum gross weight of more than eight thou-
46 sand pounds and a maximum gross weight of sixty-four
47 thousand pounds, used exclusively in the conduct of a
48 farming business, engaged in the production of agricultur-
49 al products by means of: (a) The planting, cultivation and
50 harvesting of agricultural, horticultural, vegetable or other
51 products of the soil; or (b) the raising, feeding and care of
52 livestock, poultry, bees and dairy cattle. Such farm truck
53 shall be used only for the transportation of agricultural
54 products so produced by the owner thereof, or for the
55 transportation of agricultural supplies used in such pro-
56 duction, or for private passenger use.

***§17A-10-3. Registration fees for vehicles equipped with
pneumatic tires.**

1 The following registration fees for the classes indicat-
2 ed shall be paid to the division for the registration of vehi-
3 cles subject to registration hereunder when equipped with
4 pneumatic tires:

5 (a) Registration fees for the following classes shall be
6 paid to the division annually:

7 (1) *Class A.* — The registration fee for all motor vehi-
8 cles of this class is as follows:

9 (A) For motor vehicles of a weight of three thousand
10 pounds or less — twenty-five dollars.

*Clerk's Note: This section was also amended by S.B. 548 (Chapter 142),
which passed subsequent to this act.

11 (B) For motor vehicles of a weight of three thousand
12 one pounds to four thousand pounds — thirty dollars.

13 (C) For motor vehicles of a weight in excess of four
14 thousand pounds — thirty-six dollars.

15 (D) For motor vehicles designed as trucks with de-
16 clared gross weights of four thousand pounds or less —
17 twenty-five dollars.

18 (E) For motor vehicles designed as trucks with de-
19 clared gross weights of four thousand one pounds to eight
20 thousand pounds — thirty dollars.

21 For the purpose of determining the weight, the actual
22 weight of the vehicle shall be taken: *Provided*, That for
23 vehicles owned by churches, or by trustees for churches,
24 which vehicles are regularly used for transporting parish-
25 ioners to and from church services, no license fee shall be
26 charged, but notwithstanding such exemption, the certifi-
27 cate of registration and license plates shall be obtained the
28 same as other cards and plates under this article.

29 (2) *Class B, Class E and Class K.* — The registration
30 fee for all motor vehicles of these three classes is as fol-
31 lows:

32 (A) For declared gross weights of eight thousand one
33 pounds to sixteen thousand pounds — twenty-eight dol-
34 lars plus five dollars for each one thousand pounds or
35 fraction thereof that the gross weight of such vehicle or
36 combination of vehicles exceeds eight thousand pounds.

37 (B) For declared gross weights greater than sixteen
38 thousand pounds, but less than fifty-five thousand pounds
39 — seventy-eight dollars and fifty cents plus ten dollars for
40 each one thousand pounds or fraction thereof that the
41 gross weight of such vehicle or combination of vehicles
42 exceeds sixteen thousand pounds.

43 (C) For declared gross weights of fifty-five thousand
44 pounds or more — seven hundred thirty-seven dollars and
45 fifty cents plus fifteen dollars and seventy-five cents for

46 each one thousand pounds or fraction thereof that the
47 gross weight of such vehicle or combination of vehicles
48 exceeds fifty-five thousand pounds.

49 (3) *Class C and Class L.* — The registration fee for all
50 vehicles of these two classes is seventeen dollars and fifty
51 cents except that semitrailers, full trailers, pole trailers and
52 converter gear registered as Class C and Class L may be
53 registered for a period of ten years at a fee of one hun-
54 dred dollars.

55 (4) *Class G.* — The registration fee for each motorcy-
56 cle or parking enforcement vehicle is eight dollars.

57 (5) *Class H.* — The registration fee for all vehicles for
58 this class operating entirely within the state is five dollars;
59 and for vehicles engaged in interstate transportation of
60 persons, the registration fee is the amount of the fees pro-
61 vided by this section for Class B, Class E and Class K re-
62 duced by the amount that the mileage of such vehicles
63 operated in states other than West Virginia bears to the
64 total mileage operated by such vehicles in all states under
65 a formula to be established by the division of motor vehi-
66 cles.

67 (6) *Class J.* — The registration fee for all motor vehi-
68 cles of this class is eighty-five dollars. Ambulances and
69 hearses used exclusively as such are exempt from the
70 above special fees.

71 (7) *Class M.* — The registration fee for all vehicles of
72 this class is seventeen dollars and fifty cents.

73 (8) *Class U.* — The registration fee for all vehicles of
74 this class is fifty-seven dollars and fifty cents.

75 (9) *Class Farm Truck.* — The registration fee for all
76 motor vehicles of this class is as follows:

77 (A) For farm trucks of declared gross weights of eight
78 thousand one pounds to sixteen thousand pounds — thirty
79 dollars.

80 (B) For farm trucks of declared gross weights of six-
81 teen thousand one pounds to twenty-two thousand pounds
82 — sixty dollars.

83 (C) For farm trucks of declared gross weights of
84 twenty-two thousand one pounds to twenty-eight thousand
85 pounds — ninety dollars.

86 (D) For farm trucks of declared gross weights of
87 twenty-eight thousand one pounds to thirty-four thousand
88 pounds — one hundred fifteen dollars.

89 (E) For farm trucks of declared gross weights of
90 thirty-four thousand one pounds to forty-four thousand
91 pounds — one hundred sixty dollars.

92 (F) For farm trucks of declared gross weights of
93 forty-four thousand one pounds to fifty-four thousand
94 pounds — two hundred five dollars.

95 (G) For farm trucks of declared gross weights of
96 fifty-four thousand one pounds to sixty-four thousand
97 pounds — two hundred fifty dollars.

98 (b) Registration fees for the following classes shall be
99 paid to the division for a maximum period of three years,
100 or portion thereof based on the number of years remain-
101 ing in the three-year period designated by the commis-
102 sioner:

103 (1) *Class R.* — The annual registration fee for all
104 vehicles of this class is twelve dollars.

105 (2) *Class T.* — The annual registration fee for all vehi-
106 cles of this class is eight dollars.

107 (c) The fees paid to the division for a multiyear regis-
108 tration provided for by this chapter shall be the same as
109 the annual registration fee established by this section and
110 any other fee required by this chapter multiplied by the
111 number of years for which the registration is issued.

CHAPTER 139

(Com. Sub for H. B. 2598—By Mr. Speaker, Mr. Kliss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fourteen, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the issuance of specialized registration plates to members of certain military organizations and members of the silver haired legislature; and requiring the issuance of specialized registration plates displaying a species of nongame wildlife native to West Virginia; design of insignia; application for plates; requirements for issuance; fees for issuance; and disposition of fees; proposal of legislative rules.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

§17A-3-14. Registration plates generally; description of plates; issuance of special numbers and plates; registration fees; special application fees; exemptions; commissioner to promulgate forms; suspension and nonrenewal.

1 (a) The division upon registering a vehicle shall issue
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; the
9 name of this state, which may be abbreviated; and the year
10 number for which it is issued or the date of expiration of
11 the plate.

12 (2) Every registration plate and the required letters
13 and numerals on the plate shall be of sufficient size to be
14 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 shall
19 begin with number two.

20 (c) The division may not issue, permit to be issued or
21 distribute any special registration plates except as follows:

22 (1) The governor shall be issued two registration
23 plates, on one of which shall be imprinted the numeral one
24 and on the other the word one.

25 (2) State officials and judges may be issued special
26 registration plates as follows:

27 (A) Upon appropriate application, there shall be issued
28 to the secretary of state, state superintendent of schools,
29 auditor, treasurer, commissioner of agriculture and the
30 attorney general, the members of both houses of the
31 Legislature, including the elected officials thereof, the
32 justices of the supreme court of appeals of West Virginia,
33 the representatives and senators of the state in the
34 Congress of the United States, the judges of the United
35 States district courts for the state of West Virginia and the
36 judges of the United States court of appeals for the fourth
37 circuit, if any of the judges are residents of West Virginia,
38 a special registration plate for a Class A motor vehicle
39 owned by the official or his or her spouse: *Provided*, That
40 the division may not issue more than two plates for each
41 official.

42 (B) Each plate issued pursuant to this subdivision shall
43 bear any combination of letters and numbers not to
44 exceed an amount determined by the commissioner and a
45 designation of the office. Each plate shall supersede the

46 regular numbered plate assigned to the official or his or
47 her spouse during the official's term of office and while
48 the motor vehicle is owned by the official or his or her
49 spouse.

50 (C) An annual fee of fifteen dollars shall be charged
51 for every registration plate issued pursuant to this
52 subdivision, which is in addition to all other fees required
53 by this chapter.

54 (3) Members of the national guard forces may be
55 issued special registration plates as follows:

56 (A) Upon receipt of an application on a form
57 prescribed by the division and receipt of written evidence
58 from the chief executive officer of the army national
59 guard or air national guard, as appropriate, or the
60 commanding officer of any United States armed forces
61 reserve unit that the applicant is a member thereof, the
62 division shall issue to any member of the national guard
63 of this state or a member of any reserve unit of the United
64 States armed forces a special registration plate designed by
65 the commissioner for any number of Class A motor
66 vehicles owned by the member.

67 (B) An initial application fee of ten dollars shall be
68 charged for each special registration plate issued pursuant
69 to this subdivision, which is in addition to all other fees
70 required by this chapter. All initial application fees
71 collected by the division shall be deposited into a special
72 revolving fund to be used in the administration of this
73 section.

74 (C) A surviving spouse may continue to use his or her
75 deceased spouse's national guard forces license plate until
76 the surviving spouse dies, remarries or does not renew the
77 license plate.

78 (4) Specially arranged registration plates may be
79 issued as follows:

80 (A) Upon appropriate application, any owner of a
81 motor vehicle subject to Class A registration, or a
82 motorcycle subject to Class G registration, as defined by
83 this article, may request that the division issue a

84 registration plate bearing specially arranged letters or
85 numbers with the maximum number of letters or numbers
86 to be determined by the commissioner. The division shall
87 attempt to comply with the request wherever possible.

88 (B) The commissioner shall propose rules for
89 legislative approval in accordance with the provisions of
90 chapter twenty-nine-a of this code regarding the orderly
91 distribution of the plates: *Provided*, That for purposes of
92 this subdivision, the registration plates requested and
93 issued shall include all plates bearing the numbers two
94 through two thousand.

95 (C) An annual fee of fifteen dollars shall be charged
96 for each special registration plate issued pursuant to this
97 subdivision, which is in addition to all other fees required
98 by this chapter.

99 (5) Honorably discharged veterans may be issued
100 special registration plates as follows:

101 (A) Upon appropriate application, there shall be issued
102 to any honorably discharged veteran, of any branch of the
103 armed services of the United States, a special registration
104 plate for any number of vehicles titled in the name of the
105 qualified applicant with an insignia designed by the
106 commissioner of the division of motor vehicles.

107 (B) A special initial application fee of ten dollars shall
108 be charged in addition to all other fees required by law.
109 This special fee is to compensate the division of motor
110 vehicles for additional costs and services required in the
111 issuing of the special registration and shall be collected by
112 the division and deposited in a special revolving fund to
113 be used for the administration of this section: *Provided*,
114 That nothing in this section may be construed to exempt
115 any veteran from any other provision of this chapter.

116 (C) A surviving spouse may continue to use his or her
117 deceased spouse's honorably discharged veterans license
118 plate until the surviving spouse dies, remarries or does not
119 renew the license plate.

120 (6) Disabled veterans may be issued special
121 registration plates as follows:

122 (A) Upon appropriate application, there shall be issued
123 to any disabled veteran, who is exempt from the payment
124 of registration fees under the provisions of this chapter, a
125 registration plate for a vehicle titled in the name of the
126 qualified applicant which bears the letters "DV" in red
127 and also the regular identification numerals in red.

128 (B) A surviving spouse may continue to use his or her
129 deceased spouse's disabled veterans license plate until the
130 surviving spouse dies, remarries or does not renew the
131 license plate.

132 (C) A qualified disabled veteran may obtain a second
133 disabled veteran license plate as described in this section
134 for use on a passenger vehicle titled in the name of the
135 qualified applicant. An annual fee of fifteen dollars, in
136 addition to all other fees required by this chapter, shall be
137 charged for the second plate.

138 (7) Recipients of the distinguished purple heart medal
139 may be issued special registration plates as follows:

140 (A) Upon appropriate application, there shall be issued
141 to any armed service person holding the distinguished
142 purple heart medal for persons wounded in combat a
143 registration plate for a vehicle titled in the name of the
144 qualified applicant bearing letters or numbers. The
145 registration plate shall be designed by the commissioner
146 of motor vehicles and shall denote that those individuals
147 who are granted this special registration plate are
148 recipients of the purple heart. All letterings shall be in
149 purple where practical.

150 (B) Registration plates issued pursuant to this
151 subdivision are exempt from all registration fees otherwise
152 required by the provisions of this chapter.

153 (C) A surviving spouse may continue to use his or her
154 deceased spouse's purple heart medal license plate until
155 the surviving spouse dies, remarries or does not renew the
156 license plate.

157 (D) A recipient of the purple heart medal may obtain
158 a second purple heart medal license plate as described in
159 this section for use on a passenger vehicle titled in the
160 name of the qualified applicant. An annual fee of fifteen
161 dollars, in addition to all other fees required by this
162 chapter, shall be charged for the second plate.

163 (8) Survivors of the attack on Pearl Harbor may be
164 issued special registration plates as follows:

165 (A) Upon appropriate application, the owner of a
166 motor vehicle who was enlisted in any branch of the
167 armed services that participated in and survived the attack
168 on Pearl Harbor on the seventh day of December, one
169 thousand nine hundred forty-one, shall be issued a special
170 registration plate for a vehicle titled in the name of the
171 qualified applicant. The registration plate shall be
172 designed by the commissioner of motor vehicles.

173 (B) Registration plates issued pursuant to this
174 subdivision are exempt from the payment of all
175 registration fees otherwise required by the provisions of
176 this chapter.

177 (C) A surviving spouse may continue to use his or her
178 deceased spouse's survivors of the attack on Pearl Harbor
179 license plate until the surviving spouse dies, remarries or
180 does not renew the license plate.

181 (D) A survivor of the attack on Pearl Harbor may
182 obtain a second survivors of the attack on Pearl Harbor
183 license plate as described in this section for use on a
184 passenger vehicle titled in the name of the qualified
185 applicant. An annual fee of fifteen dollars, in addition to
186 all other fees required by this chapter, shall be charged for
187 the second plate.

188 (9) Nonprofit charitable and educational organizations
189 may be issued special registration plates as follows:

190 (A) Nonprofit charitable and educational organ-
191 izations may design a logo or emblem for inclusion on a
192 special registration plate and submit the logo or emblem
193 to the commissioner for approval and authorization.
194 Upon the approval and authorization, the nonprofit

195 charitable and educational organizations may market the
196 special registration plate to organization members and the
197 general public.

198 (B) Approved nonprofit charitable and educational
199 organizations may accept and collect applications for
200 special registration plates from owners of Class A motor
201 vehicles together with a special annual fee of fifteen
202 dollars, which is in addition to all other fees required by
203 this chapter. The applications and fees shall be submitted
204 to the division of motor vehicles with the request that the
205 division issue a registration plate bearing a combination of
206 letters or numbers with the organizations' logo or
207 emblem, with the maximum number of letters or numbers
208 to be determined by the commissioner.

209 (C) The commissioner shall propose rules for
210 legislative approval in accordance with the provisions of
211 chapter twenty-nine-a of this code regarding the
212 procedures for and approval of special registration plates
213 issued pursuant to this subdivision.

214 (D) The commissioner shall set an appropriate fee to
215 defray the administrative costs associated with designing
216 and manufacturing special registration plates for a
217 nonprofit charitable or educational organization. The
218 nonprofit charitable or educational organization shall
219 collect this fee and forward it to the division for deposit in
220 a special revolving fund to pay the administrative costs.
221 The nonprofit charitable or educational organization may
222 also collect a fee for marketing the special registration
223 plates.

224 (10) Specified emergency or volunteer registration
225 plates may be issued as follows:

226 (A) Any owner of a motor vehicle who is a resident of
227 the state of West Virginia and who is a certified paramedic
228 or emergency medical technician, a member of a
229 volunteer fire company or a paid fire department, a
230 member of the state fire commission, the state fire marshal,
231 the state fire marshal's assistants, the state fire
232 administrator and voluntary rescue squad members may
233 apply for a special license plate for any number of Class A

234 vehicles titled in the name of the qualified applicant which
235 bears the insignia of the profession, group or commission.
236 Any insignia shall be designed by the commissioner.
237 License plates issued pursuant to this subdivision shall
238 bear the requested insignia in addition to the registration
239 number issued to the applicant pursuant to the provisions
240 of this article.

241 (B) Each application submitted pursuant to this
242 subdivision shall be accompanied by an affidavit signed
243 by the fire chief or department head of the applicant
244 stating that the applicant is justified in having a
245 registration with the requested insignia; proof of
246 compliance with all laws of this state regarding registration
247 and licensure of motor vehicles; and payment of all
248 required fees.

249 (C) Each application submitted pursuant to this
250 subdivision shall be accompanied by payment of a special
251 initial application fee of ten dollars, which is in addition to
252 any other registration or license fee required by this
253 chapter. All special fees shall be collected by the division
254 and deposited into a special revolving fund to be used for
255 the purpose of compensating the division of motor
256 vehicles for additional costs and services required in the
257 issuing of the special registration and for the
258 administration of this section.

259 (11) Special scenic registration plates:

260 (A) Upon appropriate application, the commissioner
261 shall issue a special registration plate displaying a scenic
262 design of West Virginia no later than the first day of
263 January, one thousand nine hundred ninety-six. This
264 special plate shall display the words "Wild Wonderful" as
265 a slogan.

266 (B) A special one-time initial application fee of ten
267 dollars shall be charged in addition to all other fees
268 required by this chapter. All initial application fees
269 collected by the division shall be deposited into a special
270 revolving fund to be used in the administration of this
271 chapter.

272 (12) Honorably discharged marine corps league
273 members may be issued special registration plates as
274 follows:

275 (A) Upon appropriate application, there shall be issued
276 to any honorably discharged marine corps league
277 member, a special registration plate for any number of
278 vehicles titled in the name of the qualified applicant with
279 an insignia designed by the commissioner of the division
280 of motor vehicles.

281 (B) A special one-time initial application fee of ten
282 dollars shall be charged in addition to all other fees
283 required by this chapter. This special fee is to compensate
284 the division of motor vehicles for additional costs and
285 services required in the issuing of the special registration
286 and shall be collected by the division and deposited in a
287 special revolving fund to be used for the administration of
288 this section: *Provided*, That nothing in this section may
289 be construed to exempt any veteran from any other
290 provision of this chapter.

291 (C) A surviving spouse may continue to use his or her
292 deceased spouse's honorably discharged marine corps
293 league license plate until the surviving spouse dies,
294 remarries or does not renew the license plate.

295 (13) Military organization registration plates:

296 (A) The division may issue a special registration plate
297 for the members of any military organization chartered by
298 the United States Congress upon receipt of a guarantee
299 from such organization of a minimum of one hundred
300 applicants. The insignia on the plate shall be designed by
301 the commissioner.

302 (B) Upon appropriate application, members of the
303 chartered organization in good standing, as determined by
304 the governing body of the chartered organization, may be
305 issued a special registration plate for any number of
306 vehicles titled in the name of the qualified applicant.

307 (C) A special one-time initial application fee of ten
308 dollars shall be charged for each special license plate in
309 addition to all other fees required by this chapter. All

310 initial application fees collected by the division shall be
311 deposited into a special revolving fund to be used in the
312 administration of this chapter: *Provided*, That nothing in
313 this section may be construed to exempt any veteran from
314 any other provision of this chapter.

315 (D) A surviving spouse may continue to use his or her
316 deceased spouse's military organization registration plate
317 until the surviving spouse dies, remarries or does not
318 renew the special military organization registration plate.

319 (14) Special nongame wildlife registration plates:

320 (A) Upon appropriate application, the division shall
321 issue a special registration plate displaying a species of
322 West Virginia nongame wildlife no later than the first day
323 of January, one thousand nine hundred ninety-eight. This
324 special plate shall display a species of nongame wildlife
325 native to West Virginia as prescribed and designated by
326 the commissioner and the director of the division of
327 natural resources.

328 (B) An annual fee of fifteen dollars shall be charged
329 for each special nongame wildlife registration plate in
330 addition to all other fees required by this chapter. All
331 annual fees collected for nongame wildlife registration
332 plates shall be deposited in a special revenue account
333 designated the nongame wildlife fund and credited to the
334 division of natural resources.

335 (C) A special one-time initial application fee of ten
336 dollars shall be charged in addition to all other fees
337 required by this chapter. All initial application fees
338 collected by the division shall be deposited in a special
339 revolving fund to be used in the administration of this
340 chapter.

341 (15) Members of the silver haired legislature may be
342 issued special registration plates as follows:

343 (A) Upon appropriate application, there shall be issued
344 to any person who is a duly qualified member of the silver
345 haired legislature a specialized registration plate which

346 bears recognition of the applicant as a member of the
347 silver haired legislature.

348 (B) A qualified member of the silver haired legislature
349 may obtain one registration plate described in this
350 subdivision for use on a passenger vehicle titled in the
351 name of the qualified applicant. An annual fee of fifteen
352 dollars, in addition to all other fees required by this
353 chapter, shall be charged for the plate. All annual fees
354 collected by the division shall be deposited in a special
355 revolving fund to be used in the administration of this
356 chapter.

357 (d) The commissioner shall propose rules for
358 legislative approval in accordance with the provisions of
359 chapter twenty-nine-a of this code regarding the proper
360 forms to be used in making application for the special
361 license plates authorized by this section.

362 (e) (1) Nothing in this section may be construed to
363 require a charge for a free prisoner of war license plate or
364 a free recipient of the congressional medal of honor
365 license plate for a vehicle titled in the name of the
366 qualified applicant as authorized by other provisions of
367 this code.

368 (2) A surviving spouse may continue to use his or her
369 deceased spouse's prisoner of war or congressional medal
370 of honor license plate until the surviving spouse dies,
371 remarries or does not renew the license plate.

372 (3) Qualified former prisoners of war and recipients of
373 the congressional medal of honor may obtain a second
374 special registration plate for use on a passenger vehicle
375 titled in the name of the qualified applicant. An annual
376 fee of fifteen dollars, in addition to all other fees required
377 by this chapter, shall be charged for the second special
378 plate.

379 (f) Special ten-year registration plates may be issued
380 as follows:

381 (1) The commissioner may issue or renew for a period
3 2 of no more than ten years any registration plate exempted

383 from registration fees pursuant to any provision of this
384 code or any restricted use antique motor vehicle license
385 plate authorized by section three-a, article ten of this
386 chapter: *Provided*, That the provisions of this subsection
387 do not apply to any person who has had a special
388 registration suspended for failure to maintain motor
389 vehicle liability insurance as required by section three,
390 article two-a, chapter seventeen-d of this code or failure to
391 pay personal property taxes as required by section three-a
392 of this article.

393 (2) An initial nonrefundable fee shall be charged for
394 each special registration plate issued pursuant to this
395 subsection, which is the total amount of fees required by
396 section fifteen, article ten of this chapter, section three,
397 article three of this chapter or section three-a, article ten of
398 this chapter for the period requested.

399 (g) The provisions of this section may not be
400 construed to exempt any registrant from maintaining
401 motor vehicle liability insurance as required by section
402 three, article two-a, chapter seventeen-d of this code or
403 from paying personal property taxes on any motor vehicle
404 as required by section three-a of this article.

405 (h) The commissioner may, in his or her discretion,
406 issue a registration plate of reflectorized material suitable
407 for permanent use on motor vehicles, trailers and
408 semitrailers, together with appropriate devices to be
409 attached thereto to indicate the year for which the vehicles
410 have been properly registered or the date of expiration of
411 the registration. The design and expiration of the plates
412 shall be determined by the commissioner.

413 (i) Any license plate issued or renewed pursuant to this
414 chapter, which is paid for by a check that is returned for
415 nonsufficient funds, is void without further notice to the
416 applicant. The applicant may not reinstate the registration
417 until the returned check is paid by the applicant in cash,
418 money order or certified check and all applicable fees
419 assessed as a result thereof have been paid.

CHAPTER 140

(Com. Sub. for H. B. 2435—By Delegates Proudfoot, Boggs, Prunty, Stemple, Claypole, Border and Evans)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article three, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to license plates for conservation officers.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION;
ISSUANCE OF CERTIFICATES OF TITLE.**

§17A-3-23. Registration plates to state, county, municipal and other governmental vehicles; use for undercover activities.

1 Any motor vehicle designed to carry passengers,
2 owned or leased by the state of West Virginia, or any of its
3 departments, bureaus, commissions or institutions, except
4 vehicles used by the governor, treasurer, three plates per
5 elected office of the board of public works, vehicles oper-
6 ated by the state police, vehicles operated by conservation
7 officers of the division of natural resources, not to exceed
8 ten vehicles operated by the arson investigators of the
9 office of state fire marshal and not to exceed sixteen vehi-
10 cles operated by inspectors of the office of the alcohol
11 beverage control commissioner, may not be operated or
12 driven by any person unless it has displayed and attached
13 to the front thereof, in the same manner as regular motor
14 vehicle registration plates are attached, a plate of the same
15 size as the regular registration plate, with white lettering on
16 a green background bearing the words "West Virginia"
17 in one line and the words "State Car" in another line, and
18 the lettering for the words "State Car" shall be of suffi-

19 cient size to be plainly readable from a distance of one
20 hundred feet during daylight.

21 The vehicle shall also have attached to the rear a plate
22 bearing a number and any other words and figures as the
23 commissioner of motor vehicles shall prescribe. The rear
24 plate shall also be green with the number in white.

25 On registration plates issued to vehicles owned by
26 counties, the color shall be white on red with the word
27 "County" on top of the plate and the words "West Vir-
28 ginia" on the bottom. On any registration plates issued to
29 a city or municipality, the color shall be white on blue with
30 the word "City" on top, and the words "West Virginia"
31 on the bottom. The colors may not be reversed and shall
32 be of reflectorized material. The registration plates issued
33 to counties, municipalities and other governmental agen-
34 cies authorized to receive colored plates hereunder shall
35 be affixed to both the front and rear of the vehicles.

36 The commissioner is authorized to designate the
37 colors and design of any other registration plates that are
38 issued without charge to any other agency in accordance
39 with the motor vehicle laws.

40 Upon application and payment of fees, the commis-
41 sioner is authorized to issue a maximum of five Class A
42 license plates per applicant to be used by county sheriffs
43 and municipalities on law-enforcement vehicles while
44 engaged in undercover investigations.

45 The commissioner is authorized to issue an unlimited
46 number of license plates per applicant to authorized drug
47 and violent crime task forces in the state of West Virginia
48 when the chairperson of the control group of a drug and
49 violent crime task force signs a written affidavit stating that
50 the vehicle or vehicles for which the plates are being re-
51 quested will be used only for official undercover work
52 conducted by a drug and violent crime task force.

53 The commissioner is authorized to issue twenty Class
54 A license plates to the criminal investigation division of
55 the department of tax and revenue for use by its investiga-
56 tors.

57 The commissioner may issue a maximum of ten
58 Class A license plates to the division of natural resources

59 for use by conservation officers. The commissioner shall
60 designate the color and design of the registration plates to
61 be displayed on the front and the rear of all other state-
62 owned vehicles owned by the division of natural resources
63 and operated by conservation officers.

64 No other registration plate may be issued for, or at-
65 tached to, any state-owned vehicle.

66 The commissioner of motor vehicles shall have a suffi-
67 cient number of both front and rear plates produced to
68 attach to all state-owned cars. The numbered registration
69 plates for the vehicles shall start with the number "five
70 hundred" and the commissioner shall issue consecutive
71 numbers for all state-owned cars.

72 It is the duty of each office, department, bureau, com-
73 mission or institution furnished any vehicle to have plates
74 as described herein affixed thereto prior to the operation
75 of the vehicle by any official or employee.

76 Any person who violates the provisions of this section
77 shall be guilty of a misdemeanor and, upon conviction
78 thereof, shall be fined not less than fifty dollars nor more
79 than one hundred dollars.

80 Magistrates shall have concurrent jurisdiction with
81 circuit and criminal courts for the enforcement of this
82 section.

CHAPTER 141

(S. B. 376—By Senators Oliverio, Wooton, Ball, Bowman, Dittmar, Fanning,
Hunter, Ross, Schoonover, Snyder, White, Wiedebusch, Deem, Kimble and
Scott)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, five, seven, eight, ten and thirteen, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to motor vehicles, distributors, wholesalers and manufacturers generally; providing definitions; modifying requirements for cancellation of dealer

contracts and notification thereof; providing circumstances not constituting good cause; modifying notice provisions; modifying reasonable compensation to dealer upon termination of agreement; providing prohibited practices; and modifying obligations regarding warranties and limiting the period of time for audits thereon.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five, seven, eight, ten and thirteen, article six-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALERS AND MANUFACTURERS.

- §17A-6A-3. Definitions.
- §17A-6A-4. Cancellation of dealer contract; notification.
- §17A-6A-5. Circumstances not constituting good cause.
- §17A-6A-7. Notice provisions.
- §17A-6A-8. Reasonable compensation to dealer.
- §17A-6A-10. Prohibited practices.
- §17A-6A-13. Obligations regarding warranties.

§17A-6A-3. Definitions.

1 For the purposes of this article, the words and phrases
2 defined in this section have the meanings ascribed to them,
3 except where the context clearly indicates a different
4 meaning.

5 "Dealer agreement" means the agreement or contract
6 in writing between a manufacturer, distributor, and a new
7 motor vehicle dealer, which purports to establish the legal
8 rights and obligations of the parties to the agreement or
9 contract with regard to the purchase, lease or sale of new
10 motor vehicles, accessories, service and sale of parts for
11 motor vehicles.

12 "Designated family member" means the spouse,
13 child, grandchild, parent, brother or sister of a deceased
14 new motor vehicle dealer who is entitled to inherit the
15 deceased dealer's ownership interest in the new motor
16 vehicle dealership under the terms of the dealer's will, or
17 who has otherwise been designated in writing by a de-
18 ceased dealer to succeed the deceased dealer in the new

19 motor vehicle dealership, or is entitled to inherit under the
20 laws of intestate succession of this state. With respect to an
21 incapacitated new motor vehicle dealer, the term means the
22 person appointed by a court as the legal representative of
23 the new motor vehicle dealer's property. The term also
24 includes the appointed and qualified personal representa-
25 tive and the testamentary trustee of a deceased new motor
26 vehicle dealer. However, the term shall mean only that
27 designated successor nominated by the new motor vehicle
28 dealer in a written document filed by the dealer with the
29 manufacturer or distributor, if such a document is filed.

30 "Distributor" means any person, resident or nonresi-
31 dent, who, in whole or in part, offers for sale, sells or dis-
32 tributes any new motor vehicle to a new motor vehicle
33 dealer or who maintains a factory representative, resident
34 or nonresident, or who controls any person, resident or
35 nonresident, who, in whole or in part, offers for sale, sells
36 or distributes any new motor vehicle to a new motor vehi-
37 cle dealer.

38 "Established place of business" means a permanent,
39 enclosed commercial building located within this state
40 easily accessible and open to the public at all reasonable
41 times and at which the business of a new motor vehicle
42 dealer, including the display and repair of motor vehicles,
43 may be lawfully carried on in accordance with the terms
44 of all applicable building codes, zoning and other land-
45 use regulatory ordinances.

46 "Factory branch" means an office maintained by a
47 manufacturer or distributor for the purpose of selling or
48 offering for sale, vehicles to a distributor, wholesaler or
49 new motor vehicle dealer, or for directing or supervising,
50 in whole or in part, factory or distributor representatives.
51 The term includes any sales promotion organization main-
52 tained by a manufacturer or distributor which is engaged
53 in promoting the sale of a particular make of new motor
54 vehicles in this state to new motor vehicle dealers.

55 "Factory representative" means an agent or employee
56 of a manufacturer, distributor or factory branch retained
57 or employed for the purpose of making or promoting the
58 sale of new motor vehicles or for supervising or contract-

59 ing with new motor vehicle dealers or proposed motor
60 vehicle dealers.

61 "Good faith" means honesty in fact and the observa-
62 tion of reasonable commercial standards of fair dealing in
63 the trade.

64 "Manufacturer" means any person who manufactures
65 or assembles new motor vehicles; or any distributor, facto-
66 ry branch or factory representative.

67 "Motor vehicle" means that term as defined in sec-
68 tion one, article one of this chapter, including motorcycle
69 and recreational vehicle as defined in subsections (c) and
70 (nn), respectively, of that section, but not including a trac-
71 tor or farm equipment.

72 "New motor vehicle" means a motor vehicle which is
73 in the possession of the manufacturer, distributor or
74 wholesaler, or has been sold only to a new motor vehicle
75 dealer and on which the original title has not been issued
76 from the new motor vehicle dealer.

77 "New motor vehicle dealer" means a person who
78 holds a dealer agreement granted by a manufacturer or
79 distributor for the sale of its motor vehicles, who is en-
80 gaged in the business of purchasing, selling, leasing, ex-
81 changing or dealing in new motor vehicles, service of said
82 vehicles, warranty work and sale of parts who has an estab-
83 lished place of business in this state.

84 "Person" means a natural person, partnership, corpo-
85 ration, association, trust, estate or other legal entity.

86 "Proposed new motor vehicle dealer" means a person
87 who has an application pending for a new dealer agree-
88 ment with a manufacturer or distributor. Proposed motor
89 vehicle dealer does not include a person whose dealer
90 agreement is being renewed or continued.

91 "Relevant market area" means:

92 (a) For a proposed new motor vehicle dealer or a new
93 motor vehicle dealer who plans to relocate his or her place
94 of business in a county having a population which is
95 greater than thirty thousand, the area within a radius of

96 eight miles of the intended site of the proposed or relocat-
97 ed dealer.

98 (b) For a proposed new motor vehicle dealer or a new
99 motor vehicle dealer who plans to relocate his or her place
100 of business in a county having a population which is not
101 greater than thirty thousand, the area within a radius of
102 fifteen miles of the intended site of the proposed or relo-
103 cated dealer.

§17A-6A-4. Cancellation of dealer contract; notification.

1 (1) Notwithstanding any agreement, a manufacturer or
2 distributor shall not cancel, terminate, fail to renew or
3 refuse to continue any dealer agreement with a new motor
4 vehicle dealer unless the manufacturer or distributor has
5 complied with all of the following:

6 (a) Satisfied the notice requirement of section seven of
7 this article;

8 (b) Acted in good faith;

9 (c) Engaged in full and open communication with
10 franchised dealer; and

11 (d) Has good cause for the cancellation, termination,
12 nonrenewal or discontinuance.

13 (2) Notwithstanding any agreement, good cause shall
14 exist for the purposes of a termination, cancellation,
15 nonrenewal or discontinuance under subdivision (d), sub-
16 section (1) of this section when both of the following
17 occur:

18 (a) There is a failure by the new motor vehicle dealer
19 to comply with a provision of the dealer agreement and
20 the provision is both reasonable and of material signifi-
21 cance to the relationship between the manufacturer or
22 distributor and the new motor vehicle dealer; and

23 (b) The manufacturer or distributor first acquired
24 actual or constructive knowledge of the failure not more
25 than two years prior to the date on which notification was
26 given pursuant to section seven of this article.

27 (3) If the failure by the new motor vehicle dealer to
28 comply with a provision of the dealer agreement relates to
29 the performance of the new motor vehicle dealer in sales

30 or service, good cause shall exist for the purposes of a
31 termination, cancellation, nonrenewal or discontinuance
32 under subsection (1) of this section when the new motor
33 vehicle dealer failed to effectively carry out the perfor-
34 mance provisions of the dealer agreement if all of the
35 following have occurred:

36 (a) The new motor vehicle dealer was given written
37 notice by the manufacturer or distributor of the failure;

38 (b) The notification stated that the notice of failure of
39 performance was provided pursuant to this article;

40 (c) The new motor vehicle dealer was afforded a rea-
41 sonable opportunity to exert good faith efforts to carry
42 out the dealer agreement; and

43 (d) The failure continued for more than one hundred
44 eighty days after the date notification was given pursuant
45 to subdivision (a) of this subsection.

§17A-6A-5. Circumstances not constituting good cause.

1 Notwithstanding any agreement, the following alone
2 shall not constitute good cause for the termination, cancel-
3 lation, nonrenewal or discontinuance of a dealer agree-
4 ment under subdivision (d), subsection (1), section four of
5 this article:

6 (a) A change in ownership of the new motor vehicle
7 dealer's dealership. The subdivision does not authorize
8 any change in ownership which would have the effect of a
9 sale or an assignment of the dealer agreement or a change
10 in the principal management of the dealership without the
11 manufacturer's or distributor's prior written consent.

12 (b) The refusal of the new motor vehicle dealer to
13 purchase or accept delivery of any new motor vehicle
14 parts, accessories, or any other commodity or services not
15 ordered by the new motor vehicle dealer.

16 (c) The fact that the new motor vehicle dealer owns,
17 has an investment in, participates in the management of, or
18 holds a dealer agreement for the sale of another make or
19 line of new motor vehicles, or that the new motor vehicle
20 dealer has established another make or line of new motor
21 vehicles in the same dealership facilities as those of the
22 manufacturer or distributor: *Provided*, That the new mo-

23 tor vehicle dealer maintains a reasonable line of credit for
24 each make or line of new motor vehicles, and that the new
25 motor vehicle dealer remains in substantial compliance
26 with the terms and conditions of the dealer agreement and
27 with any reasonable facilities' requirements of the manu-
28 facturer or distributor.

29 (d) The fact that the new motor vehicle dealer sells or
30 transfers ownership of the dealership or sells or transfers
31 capital stock in the dealership to the new motor vehicle
32 dealer's spouse, son or daughter: *Provided*, That the sale
33 or transfer shall not have the effect of a sale or an assign-
34 ment of the dealer agreement or a change in the principal
35 management of the dealership without the manufacturer's
36 or distributor's prior written consent.

§17A-6A-7. Notice provisions.

1 Notwithstanding any agreement, prior to the termina-
2 tion, cancellation, nonrenewal or discontinuance of any
3 dealer agreement, the manufacturer or distributor shall
4 furnish notice of the termination, cancellation, nonrenewal
5 or discontinuance to the new motor vehicle dealer as fol-
6 lows:

7 (a) Except as provided in subdivision (c) or (d) of this
8 subsection, notice shall be made not less than ninety days
9 prior to the effective date of the termination, cancellation,
10 nonrenewal or discontinuance.

11 (b) Notice shall be by certified mail to the new motor
12 vehicle dealer and shall contain the following:

13 (i) A statement of intention to terminate, cancel, not
14 renew or discontinue the dealer agreement.

15 (ii) A statement of the reasons for the termination,
16 cancellation, nonrenewal or discontinuance. Such state-
17 ment shall include, at a minimum, a complete explanation
18 of each reason upon which the manufacturer or distributor
19 relies to support its proposed action, along with all sup-
20 porting documentation which is material to the proposed
21 action and available to the manufacturer or distributor at
22 the time of termination, cancellation, nonrenewal or dis-
23 continuance.

24 (iii) The date on which the termination, cancellation,
25 nonrenewal or discontinuance takes effect.

26 (c) Notwithstanding subdivision (a) of this subsection,
27 notice shall be made not less than fifteen days prior to the
28 effective date of the termination, cancellation, nonrenewal
29 or discontinuance for any of the following reasons:

30 (i) Insolvency of the new motor vehicle dealer, or the
31 filing of any petition by or against the new motor vehicle
32 dealer under any bankruptcy or receivership law.

33 (ii) Failure of the new motor vehicle dealer to conduct
34 his or her customary sales and service operations during
35 his or her customary business hours for seven consecutive
36 business days.

37 (iii) Conviction of the new motor vehicle dealer or its
38 principal owners of a crime, but only if the crime is pun-
39 ishable by imprisonment in excess of one year under the
40 law under which the dealer was convicted, or the crime
41 involved theft, dishonesty or false statement regardless of
42 the punishment.

43 (iv) Revocation of a motor vehicle dealership license
44 in accordance with section eighteen, article six, chapter
45 seventeen-a of this code.

46 (v) A fraudulent misrepresentation by the new motor
47 vehicle dealer to the manufacturer or distributor, which is
48 material to the dealer agreement.

49 (d) Notwithstanding subdivision (a) of this subsection
50 notice shall be made not less than twelve months prior to
51 the effective date of a termination, cancellation,
52 nonrenewal or discontinuance if a manufacturer or distrib-
53 utor discontinues production of the new motor vehicle
54 dealer's product line or discontinues distribution of the
55 product line in this state.

§17A-6A-8. Reasonable compensation to dealer.

1 (1) Upon the termination, cancellation, nonrenewal or
2 discontinuance of any dealer agreement, the new motor
3 vehicle dealer shall be allowed fair and reasonable com-
4 pensation by the manufacturer or distributor for the fol-
5 lowing:

6 (a) Any new motor vehicle inventory purchased from
7 the manufacturer or distributor, which has not been mate-
8 rially altered, substantially damaged or driven for more

9 than five hundred miles, except that for any new motorcy-
10 cle inventory purchased from the manufacturer or distrib-
11 utor, that inventory must not have been materially altered,
12 substantially damaged or driven for more than fifty miles.

13 (b) Supplies and parts inventory purchased from the
14 manufacturer or distributor and listed in the manufactur-
15 er's or distributor's current parts catalog.

16 (c) Equipment, furnishings and signs purchased from
17 the manufacturer or distributor.

18 (d) Special tools purchased from the manufacturer or
19 distributor within three years of the date of termination,
20 cancellation, nonrenewal or discontinuance.

21 (2) Upon the termination, cancellation, nonrenewal or
22 discontinuance of a dealer agreement by the manufacturer
23 or distributor, the manufacturer or distributor shall also
24 pay to the new motor vehicle dealer a sum equal to the
25 current, fair rental value of his or her established place of
26 business for a period of one year from the effective date
27 of termination, cancellation, nonrenewal or discontinu-
28 ance, or the remainder of the lease, whichever is less.
29 However, the payment required by this subsection shall
30 not apply to any termination, cancellation, nonrenewal or
31 discontinuance made pursuant to subsection (c), section
32 five of this article.

§17A-6A-10. Prohibited practices.

1 (1) A manufacturer or distributor shall not require any
2 new motor vehicle dealer in this state to do any of the
3 following:

4 (a) Order or accept delivery of any new motor vehicle,
5 part or accessory thereof, equipment or any other com-
6 modity not required by law which was not voluntarily
7 ordered by the new motor vehicle dealer. This section
8 shall not be construed to prevent the manufacturer or
9 distributor from requiring that new motor vehicle dealers
10 carry a reasonable inventory of models offered for sale by
11 the manufacturer or distributor.

12 (b) Order or accept delivery of any new motor vehicle
13 with special features, accessories or equipment not includ-
14 ed in the list price of the new motor vehicle as publicly
15 advertised by the manufacturer or distributor.

16 (c) Participate monetarily in any advertising campaign
17 or contest, or purchase any promotional materials, display
18 devices or display decorations or materials at the expense
19 of the new motor vehicle dealer.

20 (d) Enter into any agreement with the manufacturer or
21 distributor or do any other act prejudicial to the new mo-
22 tor vehicle dealer by threatening to terminate a dealer
23 agreement or any contractual agreement or understanding
24 existing between the dealer and the manufacturer or dis-
25 tributor. Notice in good faith to any dealer of the dealer's
26 violation of any terms or provisions of the dealer agree-
27 ment shall not constitute a violation of this article.

28 (e) Change the capital structure of the new motor
29 vehicle dealership or the means by or through which the
30 dealer finances the operation of the dealership if the deal-
31 ership at all times meets any reasonable capital standards
32 determined by the manufacturer in accordance with uni-
33 formly applied criteria.

34 (f) Refrain from participation in the management of,
35 investment in or the acquisition of any other line of new
36 motor vehicle or related products, provided that the dealer
37 maintains a reasonable line of credit for each make or line
38 of vehicle, remains in compliance with reasonable facilities
39 requirements, and makes no change in the principal man-
40 agement of the dealer.

41 (g) Change the location of the new motor vehicle
42 dealership or make any substantial alterations to the deal-
43 ership premises, where to do so would be unreasonable.

44 (h) Prospectively assent to a release, assignment, nova-
45 tion, waiver or estoppel which would relieve any person
46 from liability imposed by this article or require any con-
47 troversy between a new motor vehicle dealer and a manu-
48 facturer or distributor to be referred to a person other than
49 the duly constituted courts of the state or the United States,
50 if the referral would be binding upon the new motor vehi-
51 cle dealer.

52 (2) A manufacturer or distributor shall not do any of
53 the following:

54 (a) Fail to deliver new motor vehicles or new motor
55 vehicle parts or accessories within a reasonable time and in

56 reasonable quantities relative to the new motor vehicle
57 dealer's market area and facilities, unless the failure is
58 caused by acts or occurrences beyond the control of the
59 manufacturer or distributor, or unless the failure results
60 from an order by the new motor vehicle dealer in excess
61 of quantities reasonably and fairly allocated by the manu-
62 facturer or distributor. No manufacturer or distributor
63 may penalize a new motor vehicle dealer for an alleged
64 failure to meet sales quotas where the alleged failure is due
65 to actions of the manufacturer or distributor.

66 (b) Refuse to disclose to a new motor vehicle dealer
67 the method and manner of distribution of new motor
68 vehicles by the manufacturer or distributor.

69 (c) Refuse to disclose to a new motor vehicle dealer
70 the total number of new motor vehicles of a given model,
71 which the manufacturer or distributor has sold during the
72 current model year within the dealer's marketing district,
73 zone or region, whichever geographical area is the small-
74 est.

75 (d) Increase prices of new motor vehicles which the
76 new motor vehicle dealer had ordered and then eventually
77 delivered to the same retail consumer for whom the vehi-
78 cle was ordered, if the order was made prior to the dealer's
79 receipt of the written official price increase notification. A
80 sales contract signed by a private retail consumer and
81 binding on the dealer shall constitute evidence of each
82 order. In the event of manufacturer or distributor price
83 reductions or cash rebates, the amount of any reduction or
84 rebate received by a dealer shall be passed on to the pri-
85 vate retail consumer by the dealer. Any price reduction in
86 excess of five dollars shall apply to all vehicles in the deal-
87 er's inventory which were subject to the price reduction. A
88 price difference applicable to new model or series motor
89 vehicles at the time of the introduction of the new models
90 or the series shall not be considered a price increase or
91 price decrease. This subdivision shall not apply to price
92 changes caused by the following:

93 (i) The addition to a motor vehicle of required or
94 optional equipment pursuant to state or federal law.

95 (ii) In the case of foreign made vehicles or compo-
96 nents, revaluation of the United States dollar.

97 (iii) Any increase in transportation charges due to an
98 increase in rates charged by a common carrier and trans-
99 porters.

100 (e) Offer any refunds or other types of inducements to
101 any dealer for the purchase of new motor vehicles of a
102 certain line make to be sold to this state or any political
103 subdivision of this state without making the same offer
104 available upon request to all other new motor vehicle deal-
105 ers of the same line make.

106 (f) Release to an outside party, except under subpoena
107 or in an administrative or judicial proceeding to which the
108 new motor vehicle dealer or the manufacturer or distribu-
109 tor are parties, any business, financial or personal informa-
110 tion which has been provided by the dealer to the manu-
111 facturer or distributor, unless the new motor vehicle dealer
112 gives his or her written consent.

113 (g) Deny a new motor vehicle dealer the right to asso-
114 ciate with another new motor vehicle dealer for any lawful
115 purpose.

116 (h) Establish a new motor vehicle dealership which
117 would unfairly compete with a new motor vehicle dealer
118 of the same line make operating under a dealer agreement
119 with the manufacturer or distributor in the relevant market
120 area. A manufacturer or distributor shall not be consid-
121 ered to be unfairly competing if the manufacturer or dis-
122 tributor is:

123 (i) Operating a dealership temporarily for a reasonable
124 period.

125 (ii) Operating a dealership which is for sale at a rea-
126 sonable price.

127 (iii) Operating a dealership with another person who
128 has made a significant investment in the dealership and
129 who will acquire full ownership of the dealership under
130 reasonable terms and conditions.

131 (i) Unreasonably withhold consent to the sale, transfer
132 or exchange of the dealership to a qualified buyer capable
133 of being licensed as a new motor vehicle dealer in this
134 state.

135 (j) Fail to respond in writing to a request for consent
136 to a sale, transfer or exchange of a dealership within sixty
137 days after receipt of a written application from the new
138 motor vehicle dealer on the forms generally utilized by
139 the manufacturer or distributor for such purpose and
140 containing the information required therein. Failure to
141 respond to the request within the sixty days shall be
142 deemed to be consent.

143 (k) Unfairly prevent a new motor vehicle dealer from
144 receiving reasonable compensation for the value of the
145 new motor vehicle dealership.

146 (l) Audit any motor vehicle dealer in this state for
147 warranty parts or warranty service compensation, service
148 compensation, service incentives, rebates or other forms of
149 sales incentive compensation more than twelve months
150 after the claim for payment or reimbursement has been
151 made by the automobile dealer: *Provided*, That the provi-
152 sions of this subsection shall not apply where a claim is
153 fraudulent.

154 (3) A manufacturer or distributor, either directly or
155 through any subsidiary, shall not terminate, cancel, fail to
156 renew or discontinue any lease of the new motor vehicle
157 dealer's established place of business except for a material
158 breach of the lease.

§17A-6A-13. Obligations regarding warranties.

1 (1) Each new motor vehicle manufacturer or distribu-
2 tor shall specify in writing to each of its new motor vehicle
3 dealers licensed in this state the dealer's obligations for
4 preparation, delivery and warranty service on its products.
5 The manufacturer or distributor shall compensate the new
6 motor vehicle dealer for warranty service required of the
7 dealer by the manufacturer or distributor. The manufac-
8 turer or distributor shall provide the new motor vehicle
9 dealer with the schedule of compensation to be paid to the
10 dealer for parts, work and service, and the time allowance
11 for the performance of the work and service.

12 (2) The schedule of compensation shall include rea-
13 sonable compensation for diagnostic work, as well as re-
14 pair service and labor. Time allowances for the diagnosis
15 and performance of warranty work and service shall be
16 reasonable and adequate for the work to be performed. In

17 the determination of what constitutes reasonable compen-
18 sation under this section, the principal factor to be given
19 consideration shall be the prevailing wage rates being paid
20 by dealers in the community in which the dealer is doing
21 business, and in no event shall the compensation of a deal-
22 er for warranty labor and parts be less than the rates
23 charged by the dealer for like service to retail customers
24 for nonwarranty service and repairs, provided that such
25 rates are reasonable. However, in the case of a new motor
26 vehicle dealer of motorcycles or recreational vehicles, in
27 no event may the compensation of a dealer for warranty
28 parts be less than the dealer's cost of acquiring the part
29 plus twenty percent.

30 (3) A manufacturer or distributor shall not do any of
31 the following:

32 (a) Fail to perform any warranty obligation.

33 (b) Fail to include in written notices of factory recalls
34 to new motor vehicle owners and dealers the expected date
35 by which necessary parts and equipment will be available
36 to dealers for the correction of the defects.

37 (c) Fail to compensate any of the new motor vehicle
38 dealers licensed in this state for repairs effected by the
39 recall.

40 (4) All claims made by a new motor vehicle dealer
41 pursuant to this section for labor and parts shall be paid
42 within thirty days after their approval. All claims shall be
43 either approved or disapproved by the manufacturer or
44 distributor within thirty days after their receipt on a proper
45 form generally used by the manufacturer or distributor
46 and containing the usually required information therein.
47 Any claim not specifically disapproved in writing within
48 thirty days after the receipt of the form shall be consid-
49 ered to be approved and payment shall be made within
50 thirty days. The manufacturer has the right to initiate an
51 audit of a claim within twelve months after payment and to
52 charge back to the new motor vehicle dealer the amount
53 of any false, fraudulent or unsubstantiated claim.

CHAPTER 142

(S. B. 548—By Senators Ross, Dittmar, Wiedebusch, Schoonover, Love, Oliverio, McKenzie, Buckalew and Ball)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article ten, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to motor vehicle registration and licensing fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

***§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.**

1 The following registration fees for the classes indicat-
 2 ed shall be paid to the division for the registration of vehi-
 3 cles subject to registration under this chapter when
 4 equipped with pneumatic tires:

5 (a) Registration fees for the following classes shall be
 6 paid to the division annually:

7 (1) *Class A.* — The registration fee for all motor vehi-
 8 cles of this class is twenty-eight dollars and fifty cents:
 9 *Provided,* That the registration fees and any other fees
 10 required by this chapter for Class A vehicles under the
 11 optional biennial staggered registration system shall be
 12 multiplied by two and paid biennially to the division.

*Clerk's Note: This section was also amended by S. B. 74 (Chapter 138), which passed prior to this act.

13 No license fee shall be charged for vehicles owned by
14 churches, or by trustees for churches, which are regularly
15 used for transporting parishioners to and from church
16 services. Notwithstanding the exemption, the certificate of
17 registration and license plates shall be obtained the same
18 as other cards and plates under this article.

19 (2) *Class B, Class E and Class K.* — The registration
20 fee for all motor vehicles of these three classes is as fol-
21 lows:

22 (A) For declared gross weights of eight thousand one
23 pounds to sixteen thousand pounds — twenty-eight dol-
24 lars plus five dollars for each one thousand pounds or
25 fraction thereof that the gross weight of the vehicle or
26 combination of vehicles exceeds eight thousand pounds.

27 (B) For declared gross weights greater than sixteen
28 thousand pounds, but less than fifty-five thousand pounds
29 — seventy-eight dollars and fifty cents plus ten dollars for
30 each one thousand pounds or fraction thereof that the
31 gross weight of the vehicle or combination of vehicles
32 exceeds sixteen thousand pounds.

33 (C) For declared gross weights of fifty-five thousand
34 pounds or more — seven hundred thirty-seven dollars and
35 fifty cents plus fifteen dollars and seventy-five cents for
36 each one thousand pounds or fraction thereof that the
37 gross weight of the vehicle or combination of vehicles
38 exceeds fifty-five thousand pounds.

39 (3) *Class C and Class L.* — The registration fee for all
40 vehicles of these two classes is seventeen dollars and fifty
41 cents except that semitrailers, full trailers, pole trailers and
42 converter gear registered as Class C and Class L may be
43 registered for a period of ten years at a fee of one hun-
44 dred dollars.

45 (4) *Class G.* — The registration fee for each motorcy-
46 cle or parking enforcement vehicle is eight dollars.

47 (5) *Class H.* — The registration fee for all vehicles for
48 this class operating entirely within the state is five dollars;
49 and for vehicles engaged in interstate transportation of
50 persons, the registration fee is the amount of the fees pro-

51 vided by this section for Class B, Class E and Class K re-
52 duced by the amount that the mileage of the vehicles op-
53 erated in states other than West Virginia bears to the total
54 mileage operated by the vehicles in all states under a for-
55 mula to be established by the division of motor vehicles.

56 (6) *Class J.* — The registration fee for all motor vehi-
57 cles of this class is eighty-five dollars. Ambulances and
58 hearses used exclusively as such are exempt from the
59 special fees set forth in this section.

60 (7) *Class M.* — The registration fee for all vehicles of
61 this class is seventeen dollars and fifty cents.

62 (8) *Class U.* — The registration fee for all vehicles of
63 this class is fifty-seven dollars and fifty cents.

64 (9) *Class Farm Truck.* — The registration fee for all
65 motor vehicles of this class is as follows:

66 (A) For farm trucks of declared gross weights of eight
67 thousand one pounds to sixteen thousand pounds — thirty
68 dollars.

69 (B) For farm trucks of declared gross weights of six-
70 teen thousand one pounds to twenty-two thousand pounds
71 — sixty dollars.

72 (C) For farm trucks of declared gross weights of
73 twenty-two thousand one pounds to twenty-eight thousand
74 pounds — ninety dollars.

75 (D) For farm trucks of declared gross weights of
76 twenty-eight thousand one pounds to thirty-four thousand
77 pounds — one hundred fifteen dollars.

78 (E) For farm trucks of declared gross weights of
79 thirty-four thousand one pounds to forty-four thousand
80 pounds — one hundred sixty dollars.

81 (F) For farm trucks of declared gross weights of
82 forty-four thousand one pounds to fifty-four thousand
83 pounds — two hundred five dollars.

84 (G) For farm trucks of declared gross weights of
85 fifty-four thousand one pounds to sixty-four thousand
86 pounds — two hundred fifty dollars.

87 (b) Registration fees for the following classes shall be
88 paid to the division for a maximum period of three years,
89 or portion thereof based on the number of years
90 remaining in the three-year period designated by the
91 commissioner:

92 (1) *Class R.* — The annual registration fee for all
93 vehicles of this class is twelve dollars.

94 (2) *Class T.* — The annual registration fee for all
95 vehicles of this class is eight dollars.

96 (c) The fees paid to the division for a multi-year
97 registration provided for by this chapter shall be the same
98 as the annual registration fee established by this section
99 and any other fee required by this chapter multiplied by
100 the number of years for which the registration is issued.

CHAPTER 143

(H. B. 2163—By Delegates Osborne, Cann, Thompson,
Yeager and Frederick)

[Passed April 7, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article seven, chapter seventeen-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to restricting the use of marked left turn lanes on roadways.

Be it enacted by the Legislature of West Virginia:

That section nine, article seven, 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 7. DRIVING ON RIGHT SIDE OF ROADWAY, OVERTAKING AND PASSING, ETC.**§17C-7-9. Driving on roadways laned for traffic.**

1 Whenever any roadway has been divided into two or
2 more clearly marked lanes for traffic the following rules
3 in addition to all others consistent herewith shall apply:

4 (a) A vehicle shall be driven as nearly as practicable
5 entirely within a single lane and shall not be moved from
6 such lane until the driver has first ascertained that such
7 movement can be made with safety.

8 (b) Upon a roadway which is divided into three lanes a
9 vehicle shall not be driven in the center lane which is
10 clearly marked as a left turn lane except in preparation for
11 a left turn or where such center lane is at the time allocated
12 exclusively to traffic moving in the direction the vehicle is
13 proceeding and is signposted to give notice of such allocation.
14

15 (c) Official signs may be erected directing slow-moving
16 traffic to use a designated lane or designating those
17 lanes to be used by traffic moving in a particular direction
18 regardless of the center of the roadway and drivers of
19 vehicles shall obey the directions of every such sign.

CHAPTER 144

(S. B. 395—By Senators Wiedebusch and Buckalew)

[Passed April 9, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article thirteen, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to public utilities tax imposed by municipalities and the exceptions or exemptions thereto.

Be it enacted by the Legislature of West Virginia:

That section five-a, 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.

PART 1. POWERS OF TAXATION.

§8-13-5a. Public utilities tax.

1 Every municipality has the plenary power and author-
2 ity to levy and collect an excise tax on the privilege of
3 purchasing, using or consuming, within the corporate
4 limits of the municipality, public utility services and tangi-
5 ble personal property from public utilities subject to the
6 jurisdiction of the public service commission of West Vir-
7 ginia. The tax is computed on the basis of an amount not
8 to exceed two percent of the gross amount of each period-
9 ic statement rendered purchasers or consumers by public
10 utilities: *Provided*, That sales of tangible personal proper-
11 ty such as appliances or the like, as distinguished from the
12 public service supplied, are not included in the gross
13 amount subject to the measure of this tax: *Provided, how-*
14 *ever*, That this tax does not apply to sales of telecommuni-
15 cations services to another telecommunications provider
16 for the purposes of access, interconnection or resale to
17 consumers. Charges or fees for items on the periodic
18 statement that are not public utility services, including
19 surcharges for telecommunications relay services for the
20 hearing impaired and fees for enhanced emergency tele-
21 phone systems, are not included in the gross amount sub-
22 ject to the measure of this tax. The purchasers or consum-
23 ers shall pay to the public utilities the amount of the tax
24 levied pursuant to this section which is added to and con-
25 stitutes a part of the cost of the service or property so
26 purchased or consumed and is collectible as such by the
27 public utilities who shall account to the municipality levy-
28 ing same for all tax paid by the purchasers or consumers
29 pursuant to the provisions of any ordinance imposing the
30 tax.

31 Any ordinance imposing the tax shall require the
32 collection thereof uniformly from all purchasers and con-
33 sumers of all the services and property within the corpo-
34 rate limits of the municipality and contain reasonable rules

35 governing the collection thereof by the utilities and the
36 method of its payment and accounting to the
37 municipality: *Provided*, That the tax is not effective until
38 the municipality gives sixty days written notice by
39 certified mail to any utility doing business therein of the
40 effective date of the ordinance. Any required separation
41 of gross income shall occur in the ordinance whenever
42 necessary to comply with state or federal law: *Provided*,
43 *however*, That the tax authorized by this section may not
44 be levied upon charges for telephone services which are
45 paid by the insertion of coins into coin-operated
46 telephones, and specific charges for telephone calls to
47 points outside the taxing municipality: *Provided further*,
48 That specific charges for telephone calls to points outside
49 the taxing municipality is construed to mean separately
50 itemized or bulk-billed charges for long distance
51 telecommunications service to points outside the local
52 exchange service area. The charges subject to the tax
53 authorized by this section include local usage charges
54 applicable to telephone calls originating within the
55 corporate limits of the municipality which imposes the tax,
56 regardless of where the calls terminate, and also include
57 the federal subscriber line charge.

58 Notwithstanding any other provisions of the law to the
59 contrary contained in the code of West Virginia, one
60 thousand nine hundred thirty-one, as amended, the
61 provisions of this section are in addition to all other taxing
62 authority heretofore granted municipalities.

CHAPTER 145

(S. B. 558—By Senators Helmick, Bailey, Oliverio, Wooton, Kimble, Buckalew,
Dittmar, Prezioso and Hunter)

[Passed April 11, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact sections sixteen and seventeen,
article one-b, chapter fifteen of the code of West Virginia,
one thousand nine hundred thirty-one, as amended, all relat-

ing to pay allowances for the national guard; and increasing the pay for the national guard.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1B. NATIONAL GUARD.

§15-1B-16. Pay and allowances.

§15-1B-17. Command pay; inspections; compensation for clerical services and care of property.

§15-1B-16. Pay and allowances.

1 (a) Pay and allowances for officers and enlisted per-
2 sonnel of the national guard for drill, encampment or
3 other duty for training prescribed or ordered by the feder-
4 al government, shall be such as are provided by the laws of
5 the United States.

6 (b) Officers and enlisted personnel of the national
7 guard in active service of the state shall receive the same
8 pay and allowances, in accordance with their rank and
9 service, as are prescribed for the armed forces of the Unit-
10 ed States: *Provided*, That no member of the national
11 guard shall receive base pay of less than seventy-five dol-
12 lars per day while he or she is in active service of the state.

13 (c) Notwithstanding any of the provisions of this arti-
14 cle, members of the national guard, may, with their con-
15 sent, perform without pay, or without pay and allowances,
16 any duties prescribed by section thirteen of this article
17 pursuant to competent orders therefor: *Provided*, That
18 necessary expenses may be furnished such personnel
19 within the discretion of the adjutant general.

§15-1B-17. Command pay; inspections; compensation for clerical services and care of property.

1 (a) There may be paid to each commander of a bri-
2 gade, regiment, air wing, army group or other correspond-
3 ing type organization, one hundred dollars per month and
4 to each commander of a battalion, army squadron, air
5 group or other equivalent type organization, fifty dollars
6 per month, and to each commander of a company, air
7 squadron or other equivalent type organization, twenty-
8 five dollars per month, payable quarterly, to be known as
9 command pay.

10 (b) There shall be allowed to each headquarters of a
11 brigade, regiment, air wing, army group or equivalent type
12 organization the sum of one hundred dollars per month
13 and each headquarters of a battalion, army squadron, air
14 group or corresponding type organization, the sum of
15 fifty dollars per month for clerical services; and to each
16 company air squadron or corresponding type unit, the
17 sum of twenty-five dollars per month for like services,
18 payable quarterly. The commandant of the West Virginia
19 military academy shall be allowed the sum of twenty-five
20 dollars a month, payable quarterly, for like services.

21 (c) At the discretion of the adjutant general, there may
22 be paid to the enlisted man or woman who is directly re-
23 sponsible for the care and custody of the federal and state
24 property of each organization or unit, the sum of ten dol-
25 lars per month, payable quarterly, upon the certificate of
26 his or her commanding officer, that he or she has faithful-
27 ly and satisfactorily performed the duties assigned him or
28 her and accounted for all property entrusted to his or her
29 care.

30 (d) The adjutant general shall determine the amount
31 of entitlement to command pay and clerical pay, not to
32 exceed the amounts set forth in subsections (a) and (b) of
33 this section, using organizational charts showing chain of
34 command and authorized strengths and defining other
35 equivalent type organizations.

CHAPTER 146

(H. B. 2707—By Delegates Proudfoot, Collins, Everson, Williams,
Evans, Claypole and Faircloth)

[Passed April 7, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making uniform statewide the seasons in which dogs can be trained in the hunting or tracking of wild animals.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5. Unlawful methods of hunting and fishing and other unlawful acts.

1 Except as authorized by the director, it is unlawful at
2 any time for any person to:

3 (1) Shoot at or to shoot any wild bird or animal
4 unless it is plainly visible to him or her;

5 (2) Dig out, cut out or smoke out, or in any manner
6 take or attempt to take, any live wild animal or wild bird
7 out of its den or place of refuge, except as may be autho-
8 rized by rules promulgated by the director or by law;

9 (3) Make use of, or take advantage of, any artificial
10 light in hunting, locating, attracting, taking, trapping or
11 killing any wild bird or wild animal, or to attempt to do so,
12 while having in his or her possession or subject to his or
13 her control, or for any person accompanying him or her

14 to have in his or her possession or subject to his or her
15 control, any firearm, whether cased or uncased, bow, ar-
16 row, or both, or other implement or device suitable for
17 taking, killing or trapping a wild bird or animal: *Provid-*
18 *ed*, That it may not be unlawful to hunt or take raccoon,
19 opossum or skunk by the use of artificial lights. No per-
20 son shall be guilty of a violation of this subdivision merely
21 because he or she looks for, looks at, attracts or makes
22 motionless a wild bird or wild animal with or by the use of
23 an artificial light, unless at such time he or she has in his
24 or her possession a firearm, whether cased or uncased,
25 bow, arrow, or both, or other implement or device suitable
26 for taking, killing or trapping a wild bird or wild animal,
27 or unless such artificial light (other than the head lamps of
28 an automobile or other land conveyance) is attached to, a
29 part of, or used from within or upon an automobile or
30 other land conveyance.

31 Any person violating the provisions of this subdivi-
32 sion shall be guilty of a misdemeanor and, upon convic-
33 tion thereof, shall for each offense be fined not less than
34 one hundred dollars nor more than five hundred dollars
35 and shall be imprisoned in the county jail for not less than
36 ten days nor more than one hundred days;

37 (4) Hunt for, take, kill, wound or shoot at wild ani-
38 mals or wild birds from an airplane, or other airborne
39 conveyance, an automobile, or other land conveyance, or
40 from a motor-driven water conveyance, except as may be
41 authorized by rules promulgated by the director;

42 (5) Take any beaver or muskrat by any means other
43 than by trap;

44 (6) Catch, capture, take or kill by seine, net, bait, trap
45 or snare or like device of any kind, any wild turkey, ruffed
46 grouse, pheasant or quail;

47 (7) Destroy or attempt to destroy needlessly or will-
48 fully the nest or eggs of any wild bird or have in his or her
49 possession such nest or eggs unless authorized to do so
50 under rules promulgated by or under a permit issued by
51 the director;

52 (8) Except as provided in section six of this article,
53 carry an uncased or loaded gun in any of the woods of
54 this state except during the open firearms hunting season
55 for wild animals and nonmigratory wild birds within any
56 county of the state, unless he or she has in his or her pos-
57 session a permit in writing issued to him or her by the
58 director: *Provided*, That this section may not prohibit
59 hunting or taking of unprotected species of wild animals
60 and wild birds and migratory wild birds, during the open
61 season, in the open fields, open water and open marshes of
62 the state;

63 (9) Except as provided in subdivision (11) below or
64 in section six of this article, carry an uncased or loaded
65 gun after the hour of five o'clock antemeridian on Sunday
66 in any woods or on any highway, railroad right-of-way,
67 public road, field or stream of this state, except at a regu-
68 larly used rifle, pistol, skeet, target or trapshooting ground
69 or range;

70 (10) Have in his or her possession a loaded firearm
71 or a firearm from the magazine of which all shells and
72 cartridges have not been removed, in or on any vehicle or
73 conveyance, or its attachments, within the state, except as
74 may otherwise be provided by law or regulation. Except
75 as hereinafter provided, between five o'clock postmeridian
76 of one day and seven o'clock antemeridian, eastern stan-
77 dard time of the day following, any unloaded firearm,
78 being lawfully carried in accordance with the foregoing
79 provisions, shall be so carried only when in a case or taken
80 apart and securely wrapped. During the period from the
81 first day of July to the thirtieth day of September, inclu-
82 sive, of each year, the foregoing requirements relative to
83 carrying certain unloaded firearms shall be permissible
84 only from eight-thirty o'clock postmeridian to five o'clock
85 antemeridian, eastern standard time: *Provided*, That the
86 time periods for carrying unloaded and uncased firearms
87 are extended for one hour after the postmeridian times
88 and one hour before the antemeridian times established
89 above if a hunter is preparing to or in the process of trans-
90 porting or transferring the firearms to or from a hunting

- 91 site, campsite, home or other place of abode;
- 92 (11) Hunt, catch, take, kill, trap, injure or pursue with
93 firearms or other implement by which wildlife may be
94 taken after the hour of five o'clock antemeridian on Sun-
95 day any wild animals or wild birds: *Provided*, That traps
96 previously and legally set may be tended after the hour of
97 five o'clock antemeridian on Sunday, and the person so
98 doing may carry only a twenty-two caliber firearm for the
99 purpose of humanely dispatching trapped animals;
- 100 (12) Hunt with firearms or long bow while under the
101 influence of intoxicating liquor;
- 102 (13) Hunt, catch, take, kill, injure or pursue a wild
103 animal or bird with the use of a ferret;
- 104 (14) Buy raw furs, pelts or skins of fur-bearing ani-
105 mals unless licensed to do so;
- 106 (15) Catch, take, kill or attempt to catch, take or kill
107 any fish at any time by any means other than by rod, line
108 and hooks with natural or artificial lures unless otherwise
109 authorized by law or rules issued by the director: *Provid-*
110 *ed*, That snaring of any species of suckers, carp, fallfish
111 and creek chubs shall at all times be lawful;
- 112 (16) Employ or hire, or induce or persuade, by the
113 use of money or other things of value, or by any means,
114 any person to hunt, take, catch or kill any wild animal or
115 wild bird except those species on which there is no closed
116 season, or to fish for, catch, take or kill any fish, amphibi-
117 an or aquatic life which is protected by the provisions of
118 this chapter or rules of the director, or the sale of which is
119 prohibited;
- 120 (17) Hunt, catch, take, kill, capture, pursue, transport,
121 possess or use any migratory game or nongame birds
122 included in the terms of conventions between the United
123 States and Great Britain and between the United States and
124 United Mexican States for the protection of migratory
125 birds and wild mammals concluded, respectively, the six-
126 teenth day of August, one thousand nine hundred sixteen,
127 and the seventh day of February, one thousand nine hun-

128 dred thirty-six, except during the time and in the manner
129 and numbers prescribed by the Federal Migratory Bird
130 Treaty Act and regulations made thereunder;

131 (18) Kill, take, catch or have in his or her possession,
132 living or dead, any wild bird, other than a game bird; or
133 expose for sale, or transport within or without the state any
134 such bird, except as aforesaid. No part of the plumage,
135 skin or body of any protected bird shall be sold or had in
136 possession for sale, except mounted or stuffed plumage,
137 skin, bodies or heads of such birds legally taken and
138 stuffed or mounted, irrespective of whether such bird was
139 captured within or without this state, except the English or
140 European sparrow (*Passer domesticus*), starling (*Sturnus*
141 *vulgaris*), crow (*Corvus brachyrhynchos*) and cowbird
142 (*Molothrus ater*), which may not be protected and the
143 killing thereof at any time is lawful;

144 (19) Use dynamite or any like explosive or poison-
145 ous mixture placed in any waters of the state for the pur-
146 pose of killing or taking fish. Any person violating the
147 provisions of this subdivision shall be guilty of a felony
148 and, upon conviction thereof, shall be fined not more than
149 five hundred dollars or imprisoned for not less than six
150 months nor more than three years, or both fined and im-
151 prisoned;

152 (20) Have a bow and gun, or have a gun and any
153 arrow or arrows, in the fields or woods at the same time;

154 (21) Have a crossbow in the woods or fields or use a
155 crossbow to hunt for, take or attempt to take any wildlife;

156 (22) Take or attempt to take turkey, bear, elk or deer
157 with any arrow unless the same is equipped with a point
158 having at least two sharp cutting edges measuring in ex-
159 cess of three fourths of an inch wide;

160 (23) Take or attempt to take any wildlife with an
161 arrow having an explosive head or shaft, a poisoned arrow
162 or an arrow which would affect wildlife by any chemical
163 action;

164 (24) Shoot an arrow across any public highway or

165 from aircraft, motor-driven watercraft, motor vehicle or
166 other land conveyance;

167 (25) Permit any dog owned by him or her or under
168 his or her control to chase, pursue or follow upon the
169 track of any wild animal or wild bird, either day or night,
170 between the first day of May and the fifteenth day of
171 August next following: *Provided*, That dogs may be
172 trained on wild animals and wild birds, except deer and
173 wild turkeys, and field trials may be held or conducted on
174 the grounds or lands of the owner or by his or her bona
175 fide tenant or tenants or upon the grounds or lands of
176 another person with his or her written permission or on
177 public lands, at any time: *Provided, however*, That non-
178 residents may not train dogs in this state at any time ex-
179 cept during the legal small game hunting season: *Provided*
180 *further*, That the person training said dogs does not have
181 firearms or other implements in his or her possession
182 during the closed season on such wild animals and wild
183 birds, whereby wild animals or wild birds could be taken
184 or killed;

185 (26) Conduct or participate in a field trial,
186 shoot-to-retrieve field trial, water race or wild hunt hereaf-
187 ter referred to as trial: *Provided*, That any person, group
188 of persons, club or organization may hold such trial at any
189 time of the year upon obtaining such permit as is provided
190 for in section fifty-six of this article. The person responsi-
191 ble for obtaining said permit shall prepare and keep an
192 accurate record of the names and addresses of all persons
193 participating in said trial, and make same readily available
194 for inspection by any conservation officer upon request;
195 and

196 (27) Except as provided in section four of this article,
197 hunt, catch, take, kill or attempt to hunt, catch, take or kill
198 any wild animal, wild bird or wild fowl except during the
199 open season established by rule of the director as autho-
200 rized by subdivision (6), section seven, article one of this
201 chapter.

CHAPTER 147

(S. B. 455—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 11, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, four-a, eight, eleven and twelve, article thirteen-j, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the neighborhood investment program act; amending the definition of economically disadvantaged area; eliminating certain definitions; removing certain time limitations within which an application for approval of a project must be certified and permitting the neighborhood investment program advisory board to delay consideration of an application when additional information is needed; requiring project transferees to file quarterly reports on progress of certified projects; removing obsolete language regarding an initial appropriation from general revenue for administrative expenses and initial appointments to the advisory board; permitting advisory board members to solicit support or donations for certified projects; reducing the required number of meetings of the advisory board; clarifying language permitting the tax division and the development office to perform joint audits; clarifying program evaluation language; and providing for termination of the act on the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13J. NEIGHBORHOOD INVESTMENT PROGRAM.

§11-13J-3. Definitions.

§11-13J-4. Eligibility for tax credits; creation of neighborhood investment fund; certification of project plans by the West Virginia

development office.

§11-13J-4a. Neighborhood investment program advisory board.

§11-13J-8. Total maximum aggregate tax credit amount.

§11-13J-11. Audits and examinations; information sharing.

§11-13J-12. Program evaluation; expiration of credit; preservation of entitlements.

§11-13J-3. Definitions.

1 (a) *General.* — When used in this article, or in the
2 administration of this article, terms defined in subsection
3 (b) of this section shall have the meanings ascribed to
4 them by this section, unless a different meaning is clearly
5 required by either the context in which the term is used, or
6 by specific definition in this article.

7 (b) *Terms defined.*

8 (1) *Affiliate.* — The terms “affiliate” or “affiliates”
9 include all concerns which are affiliates of each other
10 when either directly or indirectly:

11 (A) One concern controls or has the power to control
12 the other; or

13 (B) A third party or third parties control or have the
14 power to control both. In determining whether concerns
15 are independently owned and operated and whether or not
16 affiliation exists, consideration shall be given to all appro-
17 priate factors, including common ownership, common
18 management and contractual relationships.

19 (2) *Capacity building.* — The term “capacity build-
20 ing” means to generally enhance the capacity of the com-
21 munity to achieve improvements and to obtain the com-
22 munity services described in items (i) through (v), inclu-
23 sive, of the definition of that term, as set forth in subdivi-
24 sion (4) of this subsection. Capacity building includes,
25 but is not limited to, improvement of the means, or capaci-
26 ty, to:

27 (i) Access, obtain and use private, charitable and gov-
28 ernmental assistance programs, administrative assistance,
29 and private, charitable and governmental resources or
30 funds;

31 (ii) Fulfill legal, bureaucratic and administrative re-
32 quirements and qualifications for accessing assistance,
33 resources or funds; and

34 (iii) Attract and direct political and community atten-
35 tion to needs of the community for the purpose of in-
36 creasing access to and use of assistance, resources or funds
37 for a given purpose, goal or need.

38 (3) *Commissioner or tax commissioner.* — The terms
39 “commissioner” and “tax commissioner” are used inter-
40 changeably herein and mean the tax commissioner of the
41 state of West Virginia, or his or her delegate.

42 (4) *Community services.* — “Community services”
43 means services, provided at no charge whatsoever, of:

44 (i) Providing any type of health, personal finance,
45 psychological or behavioral, religious, legal, marital, edu-
46 cational or housing counseling and advice to economical-
47 ly disadvantaged citizens or a specifically designated
48 group of economically disadvantaged citizens or in an
49 economically disadvantaged area; or

50 (ii) Providing emergency assistance or medical care to
51 economically disadvantaged citizens or to a specifically
52 designated group of economically disadvantaged citizens
53 or in an economically disadvantaged area; or

54 (iii) Establishing, maintaining or operating recreation-
55 al facilities, or housing facilities for economically disad-
56 vantaged citizens or a specifically designated group of
57 economically disadvantaged citizens or in an economical-
58 ly disadvantaged area; or

59 (iv) Providing economic development assistance to
60 economically disadvantaged citizens or a specifically des-
61 ignated group of economically disadvantaged citizens;
62 without regard to whether they are located in an economi-
63 cally disadvantaged area, or to individuals, groups or
64 neighborhood or community organizations, in an eco-
65 nomically disadvantaged area; or

66 (v) Providing community technical assistance and
67 capacity building to economically disadvantaged citizens

68 or a specifically designated group of economically disad-
69 vantaged citizens, or to individuals, groups or neighbor-
70 hood or community organizations in an economically
71 disadvantaged area.

72 (5) *Compensation.* — The term “compensation”
73 means wages, salaries, commissions and any other form of
74 remuneration paid to employees for personal services.

75 (6) *Corporation.* — The term “corporation” means
76 any corporation, joint-stock company or association and
77 any business conducted by a trustee or trustees wherein
78 interest or ownership is evidenced by a certificate of inter-
79 est or ownership or similar written instrument.

80 (7) *Crime prevention.* — “Crime prevention” means
81 any activity which aids in the reduction of crime.

82 (8) *Delegate.* — The term “delegate” in the phrase
83 “or his or her delegate”, when used in reference to the tax
84 commissioner, means any officer or employee of the tax
85 division of the department of tax and revenue duly autho-
86 rized by the tax commissioner directly, or indirectly by
87 one or more redelegations of authority, to perform the
88 functions mentioned or described in this article.

89 (9) *Director or director of the West Virginia develop-*
90 *ment office.* — The term “director” or “director of the
91 West Virginia development office” means the director of
92 the West Virginia office.

93 (10) *Economically disadvantaged area.* — The term
94 “economically disadvantaged area” means:

95 (A) In a municipality - any area not exceeding fifteen
96 square miles in West Virginia which contains any portion
97 of an incorporated municipality and:

98 (i) In which area the aggregate poverty rate of persons
99 residing in the area, based upon the most recent decennial
100 census of population, is at least one hundred twenty-five
101 percent of the statewide poverty rate; and

102 (ii) That is certified as an economically disadvantaged
103 area by the West Virginia development office;

104 (B) In a rural area - any area not exceeding twenty-
105 five square miles in West Virginia:

106 (i) Which area is located in a rural area and which
107 contains no incorporated municipalities or portions there-
108 of;

109 (ii) In which area the aggregate poverty rate of per-
110 sons residing in the area, based upon the most recent de-
111 cennial census of population, is at least one hundred twen-
112 ty-five percent of the statewide poverty rate; and

113 (iii) That is certified as an economically disadvantaged
114 area by the West Virginia development office;

115 (C) An economically disadvantaged area shall qualify
116 as such only pursuant to a certification issued by the West
117 Virginia development office. Such certifications issued by
118 the West Virginia development office shall expire after the
119 passage of five calendar years, unless specifically limited
120 to a shorter time by specific order of the West Virginia
121 development office, and no area shall hold the status of a
122 certified economically disadvantaged area for a period of
123 time greater than ten years, either consecutively or in the
124 aggregate;

125 (D) The certification of an economically disadvan-
126 taged area shall be made on the basis of a determination
127 by the development office that an area meets the poverty
128 criteria established in paragraphs (A) and (B) of this sub-
129 division;

130 (E) No economically disadvantaged area may be certi-
131 fied within twenty-five miles of any other certified eco-
132 nomically disadvantaged area. Not more than six eco-
133 nomically disadvantaged areas may hold the status of
134 certified economically disadvantaged areas at any one
135 time in this state;

136 (F) At least a majority of all economically disadvan-
137 taged areas holding designations as economically disad-
138 vantaged areas at any one time shall be located in rural
139 areas; and

140 (G) Such certification shall be filed with the secretary

141 of state and shall specifically set forth the boundaries of
142 the economically disadvantaged area by both description
143 and map, the date of certification of the area as an eco-
144 nomically disadvantaged area, the date on which such
145 certification will terminate and a statement of the director's
146 findings as to the aggregate poverty rate of persons living
147 in the certified economically disadvantaged area.

148 (11) *Economically disadvantaged citizen.* — The term
149 “economically disadvantaged citizen” means a natural
150 person, who during the current taxable year has, or during
151 the immediately preceding taxable year had, an annual
152 gross personal income not exceeding one hundred twenty-
153 five percent of the federal designated poverty level for
154 personal incomes, and who is a domiciliary and resident of
155 this state.

156 (12) *Education.* — “Education” means any type of
157 scholastic instruction to, or scholarship by, an individual
158 that enables such individual to prepare for better life op-
159 portunities. Education does not include courses in physi-
160 cal training, physical conditioning, physical education,
161 sports training, sports camps and similar training or condi-
162 tioning courses (except for physical therapy prescribed by
163 a physician or other person licensed to prescribe courses
164 of medical treatment under West Virginia law).

165 (13) *Eligible contribution.* —

166 (A) An eligible contribution consists of cash, tangible
167 personal property valued at its fair market value, real
168 property valued at its fair market value or a contribution
169 of in kind professional services valued at seventy-five
170 percent of fair market value;

171 – (B) For purposes of this definition, the value of in
172 kind professional services will not qualify as an eligible
173 contribution unless the services are:

174 (i) Reasonably priced and valued, and reasonably
175 necessary services customarily and normally provided by
176 the contributor in the normal course of business to cus-
177 tomers, clients or patients other than those encompassed
178 by the project plan;

179 (ii) Not reimbursable, in whole or in part, from sources
180 other than the tax credit provided under this article; and

181 (iii) Are services which are not available without cost
182 elsewhere in the community;

183 (C) The term "professional services" means only
184 those services provided directly by a physician licensed to
185 practice in this state, those services provided directly by a
186 dentist licensed to practice in this state, those services pro-
187 vided directly by a lawyer licensed to practice in this state,
188 those services provided directly by a registered nurse,
189 licensed practical nurse, dental hygienist or other health
190 care professional licensed to practice in this state and those
191 services provided directly by a certified public accountant
192 or public accountant licensed to practice in this state;

193 (D) *Minimum contribution.* — No contribution of
194 cash, property or professional services or any combination
195 thereof contributed in any tax year by any taxpayer hav-
196 ing a fair market value of less than five hundred dollars
197 qualifies as an eligible contribution;

198 (E) *Maximum contribution.* — No contribution of
199 cash, property or professional services or any combination
200 thereof contributed in any tax year by any taxpayer hav-
201 ing a fair market value in excess of two hundred thousand
202 dollars qualifies as an eligible contribution; and

203 (F) *Limitations.* — Not more than twenty-five percent
204 of total eligible contributions to a certified project may be
205 in kind contributions. Not more than twenty-five percent
206 of total eligible contributions made by any taxpayer to
207 any certified project may be in kind contributions.

208 (14) *Eligible taxpayer.* —

209 (A) The term "eligible taxpayer" means any person
210 subject to the taxes imposed by article twenty-one, twenty-
211 three or twenty-four of this chapter which makes an eligi-
212 ble contribution to a qualified charitable organization
213 pursuant to the terms of a certified project plan for the
214 purpose of providing neighborhood assistance, communi-
215 ty services or crime prevention, or for the purpose of pro-
216 viding job training or education for individuals not em-

217 ployed by the contributing taxpayer or an affiliate of the
218 contributing taxpayer or a person related to the contribut-
219 ing taxpayer;

220 (B) "Eligible taxpayer" also includes an affiliated
221 group of taxpayers if such group elects to file a consoli-
222 dated corporation net income tax return under article
223 twenty-four of this chapter and if one or more affiliates
224 included in such affiliated group would qualify as an
225 eligible taxpayer under paragraph (A) of this subdivision.

226 (15) *Includes and including.* — The terms "in-
227 cludes" and "including", when used in a definition con-
228 tained in this article, shall not be deemed to exclude other
229 things otherwise within the meaning of the term defined.

230 (16) *Job training.* — "Job training" means instruc-
231 tion to an individual that enables the individual to acquire
232 vocational skills so as to become employable or to be able
233 to seek a higher grade of employment.

234 (17) *Natural person or individual.* — The term "natu-
235 ral person" and the term "individual" means a human
236 being. The terms "natural person" and "individual" do
237 not mean, and specifically exclude any corporation, limit-
238 ed liability company, partnership, joint venture, trust, orga-
239 nization, association, agency, governmental subdivision,
240 syndicate, affiliate or affiliation, group, unit or any entity
241 other than a human being.

242 (18) *Neighborhood assistance.* — "Neighborhood
243 assistance" means either:

244 (A) Furnishing financial assistance, labor, material and
245 technical advice to aid in the physical or economic im-
246 provement of any part or all of an economically disadvan-
247 taged area; or

248 (B) Furnishing technical advice to promote higher
249 employment in an economically disadvantaged area.

250 (19) *Neighborhood organization.* — "Neighborhood
251 organization" means any organization:

252 (A) Which is performing community services, as de-
253 fined in this section; and

254 (B) Which is exempt from income taxation under
255 Section 501(c)(3) of the Internal Revenue Code.

256 (20) *Partnership and partner.* — The term “partner-
257 ship” includes a syndicate, group, pool, joint venture or
258 other unincorporated organization through or by means
259 of which any business, financial operation or venture is
260 carried on, and which is not a trust or estate, a corporation
261 or a sole proprietorship. The term “partner” includes a
262 member in such a syndicate, group, pool, joint venture or
263 organization.

264 (21) *Person.* — The term “person” includes any
265 natural person, corporation, limited liability company or
266 partnership.

267 (22) *Project transferee.* — The term “project transfer-
268 ee” means any neighborhood organization, qualified
269 charitable organization, charitable organization or other
270 organization, entity or person that receives an eligible
271 contribution or part of an eligible contribution from an
272 eligible taxpayer for the purpose of directly or indirectly
273 providing neighborhood assistance, community services or
274 crime prevention, or for the purpose of providing job
275 training or education or other services or assistance pursu-
276 ant to a project plan. The project transferee is typically
277 the first entity or person receiving eligible contributions
278 from eligible taxpayers under a project plan. However, in
279 the case of eligible contributions of in kind services or
280 other eligible contributions or portions thereof made pur-
281 suant to a certified project plan directly to indigent, disad-
282 vantaged or needy persons, economically disadvantaged
283 citizens or other persons or organizations under the spon-
284 sorship or auspices of any neighborhood organization,
285 qualified charitable organization, charitable organization
286 or other organization, entity or person as a certified pro-
287 ject participant, such eligible contributions shall be
288 deemed to have been made to the entity, organization or
289 person under whose sponsorship or auspices such eligible
290 contributions are made, and that entity, organization or
291 person is deemed to be the project transferee with relation
292 to those eligible contributions. The project transferee is
293 the entity, organization or person that is liable under this

294 article for payment of the project certification fee to the
295 West Virginia development office. The term "project
296 transferee" shall mean and include any deemed project
297 transferee, deemed as such under the provisions of this
298 article.

299 (23) *Qualified charitable organization.* — The term
300 "qualified charitable organization" means a neighbor-
301 hood organization, as defined in this section, which is the
302 sponsor of a project which has received certification by
303 the director of the West Virginia development office pur-
304 suant to the requirements of this article: *Provided*, That
305 no organization may qualify as a qualified organization
306 for purposes of this article if such organization is not
307 registered with this state as required under the solicitation
308 of charitable funds act.

309 (24) *Related person.* — The term "related person" or
310 "person related to" a stated taxpayer means:

311 (A) An individual, corporation, partnership, affiliate,
312 association or trust or any combination or group thereof
313 controlled by the taxpayer; or

314 (B) An individual, corporation, partnership, affiliate,
315 association or trust or any combination or group thereof
316 that is in control of the taxpayer; or

317 (C) An individual, corporation, partnership, affiliate,
318 association or trust or any combination or group thereof
319 controlled by an individual, corporation, partnership, affil-
320 iate, association or trust or any combination or group
321 thereof that is in control of the taxpayer; or

322 (D) A member of the same controlled group as the
323 taxpayer.

324 For purposes of this article, "control", with respect to a
325 corporation means ownership, directly or indirectly, of
326 stock possessing fifty percent or more of the total com-
327 bined voting power of all classes of the stock of such cor-
328 poration which entitles its owner to vote. "Control", with
329 respect to a trust, means ownership, directly or indirectly,
330 of fifty percent or more of the beneficial interest in the
331 principal or income of such trust. The ownership of stock

332 in a corporation, of a capital or profits interest in a part-
333 nership or association or of a beneficial interest in a trust
334 shall be determined in accordance with the rules for con-
335 structive ownership of stock provided in Section 267(c),
336 other than paragraph (3) of such section, of the United
337 States Internal Revenue Code, as amended.

338 (25) *State fiscal year.* — “State fiscal year” means a
339 twelve-month period beginning on the first day of July
340 and ending on the thirtieth day of June.

341 (26) *Taxpayer.* — The term “taxpayer” means any
342 person subject to the tax imposed by article twenty-one,
343 twenty-three or twenty-four of this chapter (or any one or
344 combination of such articles of this chapter).

345 (27) *Technical assistance.* — The term “technical
346 assistance” means:

347 (A) Assistance in understanding, using and fulfilling
348 the legal, bureaucratic and administrative requirements
349 and qualifications which must be negotiated for the pur-
350 pose of effectively accessing, obtaining and using private,
351 charitable, not-for-profit or governmental assistance, re-
352 sources or funds, and maximizing the value thereof;

353 (B) Assistance provided by any person holding a li-
354 cense under West Virginia law to practice any licensed
355 profession or occupation, whereby such person, in the
356 practice of such profession or occupation, assists economi-
357 cally disadvantaged citizens or the persons in an economi-
358 cally disadvantaged area by:

359 (i) Providing any type of health, personal finance,
360 psychological or behavioral, religious, legal, marital, edu-
361 cational or housing counseling and advice to economical-
362 ly disadvantaged citizens or a specifically designated
363 group of economically disadvantaged citizens or in an
364 economically disadvantaged area; or

365 (ii) Providing emergency assistance or medical care to
366 economically disadvantaged citizens or to a specifically
367 designated group of economically disadvantaged citizens
368 or in an economically disadvantaged area; or

369 (iii) Establishing, maintaining or operating recreation-
370 al facilities, or housing facilities for economically disad-
371 vantaged citizens or a specifically designated group of
372 economically disadvantaged citizens or in an economical-
373 ly disadvantaged area; or

374 (iv) Providing economic development assistance to
375 economically disadvantaged citizens or a specifically des-
376 igned group of economically disadvantaged citizens,
377 without regard to whether they are located in an economi-
378 cally disadvantaged area, or to individuals, groups or
379 neighborhood or community organizations, in an eco-
380 nomically disadvantaged area; or

381 (v) Providing community technical assistance and
382 capacity building to economically disadvantaged citizens
383 or a specifically designated group of economically disad-
384 vantaged citizens or to individuals, groups or neighbor-
385 hood or community organizations in an economically
386 disadvantaged area.

**§11-13J-4. Eligibility for tax credits; creation of neighbor-
hood investment fund; certification of project
plans by the West Virginia development office.**

1 (a) A neighborhood organization which seeks to spon-
2 sor a project and have that project certified pursuant to
3 this article shall submit to the director of the West Virginia
4 development office an application for certification of a
5 project plan, in such form as the director shall prescribe,
6 setting forth the project to be implemented, the identity of
7 all project participant organizations, the economically
8 disadvantaged citizens or a specifically designated group
9 of economically disadvantaged citizens, to be assisted by
10 the project, or the economically disadvantaged area or
11 areas selected for assistance by the project, the amount of
12 total tax credits to be created by the proposed project
13 pursuant to the receipt of eligible contributions from eligi-
14 ble taxpayers under this article, the amount of the total
15 estimated eligible contributions to be received pursuant to
16 the project and the schedule for implementing the project.

17 (b) *Project certification fee; payment of costs; revolv-*
18 *ing fund. —*

19 (1) (A) *Project certification fee.* — Any project trans-
20 feree that receives eligible contributions under or pursuant
21 to a certified project plan shall pay to the West Virginia
22 development office a project certification fee in the
23 amount of three percent of the amount of the total eligible
24 contributions received by such project transferee pursuant
25 to the certified project plan. The project certification fee
26 shall be paid to the West Virginia development office
27 within thirty days of the receipt of any eligible contribu-
28 tion, or portion thereof.

29 (B) *Eligible contributions made through direct service*
30 *to end users or recipients, or contributions to end users or*
31 *recipients.* — In the case of eligible contributions of in
32 kind services or other eligible contributions or portions
33 thereof made pursuant to a certified project plan and con-
34 tributed or provided directly to indigent, disadvantaged or
35 needy persons, economically disadvantaged citizens or
36 other persons or organizations made under the sponsor-
37 ship or auspices of any neighborhood organization, quali-
38 fied charitable organization, charitable organization or
39 other organization, entity or person as a certified project
40 participant, such eligible contributions shall be deemed to
41 have been made to the entity, organization or person un-
42 der whose sponsorship or auspices such eligible contribu-
43 tions are made, and that entity, organization or person is
44 deemed to be the project transferee with relation to those
45 eligible contributions. Such deemed project transferee
46 shall be liable for the project certification fee due for such
47 eligible contributions.

48 (C) *Computation of fee based on fair market value.* —
49 In the case of eligible contributions consisting of in kind
50 services, tangible personal property or realty, the project
51 transferee shall pay to the West Virginia development
52 office a project certification fee in the amount of three
53 percent of the fair market value of eligible contributions
54 received pursuant to the certified project plan.

55 (2) *Sanctions for failure to timely pay the project cer-*
56 *tification fee.* — Failure to timely pay the project certifica-
57 tion fee imposed by this section shall be grounds for im-
58 position of any of the following sanctions, to be imposed

59 by the director of the West Virginia development office at
60 the discretion of the director:

61 (A) Prospective revocation of the project certification.

62 No tax credit shall be allowed for any project for
63 which certification has been revoked for periods subse-
64 quent to the effective date of revocation. Credit taken by
65 any taxpayer in accordance with this article pursuant to
66 the making of an eligible contribution to a project trans-
67 feree pursuant to a certified project plan prior to the effec-
68 tive date of revocation of project certification shall not be
69 subject to recapture by reason of revocation of the certifi-
70 cation. However, such credit shall otherwise be subject to
71 audit and adjustment or recapture in accordance with the
72 requirements of this article.

73 (B) Retroactive withdrawal of the project certification.

74 No tax credit shall be allowed for any project for
75 which certification has been withdrawn. Credit taken by
76 any taxpayer in accordance with this article pursuant to
77 the making of an eligible contribution to a project trans-
78 feree pursuant to a certified project plan for which certifi-
79 cation is later withdrawn pursuant to the provisions of this
80 section shall be subject to recapture upon withdrawal of
81 the certification.

82 (C) Suspension of the project certification for a stated
83 period of time.

84 No tax credit shall be allowed for contributions made
85 during the suspension period for a project. Credit taken
86 by any taxpayer in accordance with this article pursuant to
87 the making of an eligible contribution to a project trans-
88 feree pursuant to a certified project plan prior to or subse-
89 quent to the suspension period shall not be subject to
90 recapture by reason of the suspension. However, such
91 credit shall otherwise be subject to audit and adjustment or
92 recapture in accordance with the requirements of this
93 article.

94 (D) Temporary or permanent disqualification of one
95 or more project transferees, neighborhood organizations,
96 qualified charitable organizations, charitable organizations

97 or other organizations, entities or persons from participa-
98 tion in a particular specified certified project.

99 No tax credit shall be allowed under this article for
100 any contribution made during the disqualification period
101 to any project transferee, neighborhood organization,
102 qualified charitable organization, charitable organization
103 or other organization, entity or person disqualified under
104 this section from participation in a certified project. Tax
105 credit taken by any taxpayer in accordance with this arti-
106 cle pursuant to the making of an eligible contribution to
107 any project transferee, neighborhood organization, quali-
108 fied charitable organization, charitable organization or
109 other organization, entity or person pursuant to a certified
110 project plan prior to or subsequent to the disqualification
111 period shall not be subject to recapture by reason of the
112 disqualification of the recipient thereof. However, such
113 credit shall otherwise be subject to audit and adjustment or
114 recapture in accordance with the requirements of this
115 article.

116 (E) Temporary or permanent disqualification of any
117 project transferee, neighborhood organization, qualified
118 charitable organization, charitable organization or other
119 organization, entity or person, or group thereof, from
120 participation in any and all certified projects currently in
121 existence or to be formed, proposed or certified under this
122 article:

123 (i) No tax credit shall be allowed under this article for
124 any contribution made during the disqualification period
125 to any project transferee, neighborhood organization,
126 qualified charitable organization, charitable organization
127 or other organization, entity or person disqualified under
128 this section from participation in any and all certified
129 projects under this article. Tax credit taken by any eligi-
130 ble taxpayer in accordance with this article pursuant to the
131 making of an eligible contribution to the project transfer-
132 ee, neighborhood organization, qualified charitable orga-
133 nization, charitable organization or other organization,
134 entity or person disqualified from participation in any and
135 all certified projects under this article, pursuant to a certi-
136 fied project plan prior to or subsequent to the disqualifica-

137 tion period shall not be subject to recapture by reason of
138 the disqualification. However, such credit shall otherwise
139 be subject to audit and adjustment or recapture in accor-
140 dance with the requirements of this article; and

141 (ii) No certification shall be issued during the disquali-
142 fication period for any proposed project in which a pro-
143 ject transferee, neighborhood organization, qualified char-
144 itable organization, charitable organization or other orga-
145 nization, entity or person disqualified under this section
146 from participation in any and all certified projects is listed
147 as a proposed project participant.

148 (F) Any combination of the aforementioned sanctions.

149 (3) *Audits and investigations.* — The West Virginia
150 development office or the department of tax and revenue,
151 or both, may initiate and carry out investigations or audits
152 of any recipient of any eligible contribution under this
153 article, any eligible taxpayer or any project transferee to
154 determine whether the project certification fee imposed by
155 this section has been paid in accordance with the require-
156 ments of this article.

157 (4) *Procedures, failure to timely pay the project certifi-*
158 *cation fee upon written demand.* —

159 (A) *Written demand.* — The director of the West Vir-
160 ginia development office shall, upon a reasonable belief
161 that a project transferee has failed to timely pay the fee
162 imposed by this section, issue a written demand for pay-
163 ment thereof, plus interest determined at the interest rate
164 prescribed under section seventeen, article ten of this
165 chapter, in such form as the director of the West Virginia
166 development office may specify. The director of the West
167 Virginia development office may also impose a penalty
168 for failure to timely pay the project certification fee in the
169 amount of twenty percent of the amount of the project
170 certification fee due and interest due. Such demand shall
171 notify the project transferee of the opportunity to show
172 that the project certification fee is not due and owing.

173 (B) *Failure to pay pursuant to written demand.* —

174 Failure of the project transferee to pay any project

175 certification fee due, with interest and penalties, as stated in
176 the written demand for payment of the project certifica-
177 tion fee, within thirty days of service of such demand, and
178 failure of the project transferee to prove to the satisfaction
179 of the director of the West Virginia development office
180 that the fee imposed by this section is not due and owing,
181 shall result in a determination by the director of the West
182 Virginia development office that sanctions shall apply.

183 (C) *Notice of pending sanctions.* — Upon the making
184 of a determination by the director of the West Virginia
185 development office that sanctions for failure to pay the
186 project certification fee apply, the director of the West
187 Virginia development office shall serve upon the project
188 transferee from which the project certification fee, or some
189 portion thereof, is due and owing, a notice of pending
190 sanctions. If the project transferee from which the certi-
191 fied project fee, or some portion thereof, is due and owing
192 is not the applicant for project certification, then an infor-
193 mational copy of the notice of pending sanctions shall
194 also be served upon the applicant for project certification.

195 (D) *Service of notice, content of notice.* — The notice
196 of pending sanctions shall be served upon the delinquent
197 project transferee in the same manner as an assessment of
198 tax in accordance with article ten of this chapter. Such
199 notice of pending sanctions shall state the sanctions to be
200 applied in accordance with this section, the effective date
201 or dates of such sanctions, with specific statements of
202 whether any sanction is to be applied retroactively or in
203 part retroactively, and the commencement and termination
204 dates for any suspensions of certification or temporary
205 disqualifications of any program transferee, neighborhood
206 organization, qualified charitable organization, charitable
207 organization or other organization, entity or person to be
208 disqualified under this section from participation in certi-
209 fied projects. The notice of pending sanctions shall state
210 that sanctions shall be imposed sixty days after service of
211 the notice of pending sanctions upon the delinquent pro-
212 ject transferee, unless the delinquent project transferee
213 pays the amount of the project certification fee due and
214 owing, plus interest and penalties.

215 (E) *Appeals.* — The project transferee may file an
216 appeal of pending sanctions as if the notice of pending
217 sanctions were an assessment of tax under article ten of
218 this chapter, and the matter on appeal shall be subject to
219 the procedures set forth in article ten of this chapter. On
220 appeal, the burden of proof shall be on the project trans-
221 feree to prove that the project certification fee and associ-
222 ated interest and penalties are not due and owing. The
223 review on appeal shall be limited to:

224 (i) The issue of whether a failure to timely pay the
225 project certification fee or any portion thereof has oc-
226 curred, the time period or periods over which such failure
227 occurred, and whether such failure continues to occur;

228 (ii) The amount of the project certification fee and
229 interest due; and

230 (iii) The mathematical and methodological accuracy
231 of the computation of the project certification fee, interest
232 and penalties.

233 (F) *Statutory confidentiality.* — No information, docu-
234 ment or proceeding brought pursuant to this section, relat-
235 ing to the liability of any project transferee for the project
236 certification fee, interest or penalties imposed under this
237 section is subject to the confidentiality provisions of article
238 ten of this chapter or any other confidentiality provision
239 of this code. However, any proceeding relating to any
240 amount of tax due or the recapture of tax credit taken
241 under this article or any adjustment of the amount of tax
242 credit taken under this article is subject to the provisions
243 of article ten of this chapter, including all statutory confi-
244 dentiality provisions, and shall be subject to all other ap-
245 plicable statutory tax confidentiality provisions of this
246 code.

247 (G) *Effect of a final determination, waiver of penalties*
248 *or sanctions.* — The notice of pending sanctions shall
249 become final sixty days after service, unless an appeal is
250 filed under this section, and shall not be subject to further
251 appeal by the recipient thereof. When a determination has
252 become final that a project transferee has failed to timely
253 pay the project certification fee, or any part thereof, the

254 sanctions described in the notice of pending sanctions
255 shall apply, effective as of the date set forth in that notice,
256 unless the project certification fee, interest and penalties
257 due are paid to the West Virginia development office with-
258 in thirty days of the date on which the determination has
259 become final. The twenty percent penalty authorized
260 under this section may be imposed, adjusted, withdrawn or
261 waived, in whole or in part, at the discretion of the director
262 of the West Virginia development office. However, pay-
263 ment of the project certification fee and interest due shall
264 not be subject to waiver. The sanctions for failure to pay
265 the project certification fee authorized under this section
266 may be imposed, adjusted, withdrawn or waived, in whole
267 or in part, at the discretion of the director of the West
268 Virginia development office.

269 (c) Within sixty days after the close of the regular
270 meeting of the neighborhood investment advisory board
271 at which a complete application for approval of a pro-
272 posed project is considered by the board, the director of
273 the West Virginia development office shall certify, or deny
274 certification of, the proposed project for which such appli-
275 cation has been filed: *Provided*, That applications for
276 which the board requires additional information may be
277 considered at the next regular meeting of the board.
278 Those applications not approved by the director within
279 sixty days of final action of the board shall be deemed
280 disapproved by operation of law.

281 (d) The West Virginia development office shall
282 promptly notify an applicant as to whether an application
283 for certification of a project plan has been approved or
284 disapproved.

285 (e) Those prospective qualified charitable organiza-
286 tions which receive certification of a project plan, and
287 which otherwise comply with the requirements of this
288 article so as to become qualified charitable organizations,
289 as defined in section three of this article, may receive eligi-
290 ble contributions, as defined in said section. Eligible tax-
291 payers which make eligible contributions shall receive a
292 tax credit as provided in section five of this article. No tax
293 credit may be granted under this article for any contribu-
294 tion except eligible contributions made to a project which

295 has been certified in accordance with the requirements of
296 this article prior to the making of the contribution. No tax
297 credit may be granted under this article for any contribu-
298 tion which, if allowed, would cause the amount of tax
299 credit generated by the project to exceed the maximum
300 amount of tax credit for which the project was certified as
301 stated in the application for project certification filed with
302 the West Virginia development office.

303 (f) All applications for certification of a project filed
304 with the West Virginia development office, whether such
305 project is certified or denied certification, are public infor-
306 mation which may be viewed and copied by the public
307 and, at the discretion of the West Virginia development
308 office, published by the West Virginia development office.

309 (g) Project transferees shall file quarterly reports with
310 the West Virginia development office on the progress of
311 the certified project. The quarterly reports shall be filed
312 in a form approved by the director.

313 (h) *Revolving fund.* —

314 (1) For the purpose of permitting payments to be
315 made and costs to be met for operation of the program
316 established by this article, there is hereby created a revolv-
317 ing fund for the West Virginia development office, which
318 shall be known as the neighborhood investment fund. All
319 money received by the West Virginia development office
320 under this article shall be paid into the state treasury, and
321 shall be deposited to the credit of the neighborhood in-
322 vestment fund, and shall be expended only for the purpos-
323 es of defraying the costs of the neighborhood investment
324 program advisory board and the West Virginia develop-
325 ment office in administering the program established
326 pursuant to this article, unless otherwise directed by the
327 Legislature.

328 (2) The neighborhood investment fund shall be accu-
329 mulated and administered as follows:

330 (A) Payments received under this article shall be de-
331 posited into the neighborhood investment fund.

332 (B) Any appropriations made to the neighborhood

333 investment fund shall not be deemed to have expired at
334 the end of any fiscal period.

§11-13J-4a. Neighborhood investment program advisory board.

1 (a) There is hereby created a neighborhood invest-
2 ment program advisory board, which shall consist of
3 twelve voting members and the chairperson.

4 (b) *Chairperson.* —

5 (1) The director of the West Virginia development
6 office, or the designee of the director of the West Virginia
7 development office, shall be the ex officio chairperson of
8 the neighborhood investment program advisory board.

9 (2) The chairperson shall vote on actions of the board
10 only in the event of a tie vote, in which case the chairper-
11 son's vote shall be the deciding vote.

12 (c) *Board members.* —

13 (1) Four members shall be officers or members of the
14 boards of directors of unrelated corporations which are
15 not affiliated with one another and which are currently
16 licensed to do business in West Virginia.

17 (2) Four members shall be executive directors, officers
18 or members of the boards of directors of unrelated not-
19 for-profit organizations which are not affiliated with one
20 another which currently hold charitable organization sta-
21 tus under Section 501(c)(3) of the Internal Revenue Code
22 and which are currently licensed to do business in West
23 Virginia.

24 (3) Four members shall be economically disadvan-
25 taged citizens of the state that, for the taxable year imme-
26 diately preceding the year of appointment to the board,
27 had an annual gross personal income that was not more
28 than one hundred twenty-five percent of the federal desig-
29 nated poverty level for personal incomes, and who has
30 been a domiciliary and resident of this state for at least
31 one year at the time of appointment.

32 A member appointed under this subdivision is not
33 disqualified from completion of his or her term if his or

34 her income in the year of appointment or in any year
35 subsequent to the year of appointment exceeds one hun-
36 dred twenty-five percent of the federal designated poverty
37 level. A member shall not be eligible for reappointment
38 under this subdivision unless he or she meets the original
39 qualifications for appointment: *Provided*, That such
40 member may be reappointed pursuant to qualification
41 under subdivision (1) or (2) of this subsection if the mem-
42 ber meets the requirements of subdivision (1) or (2), re-
43 spectively.

44 (d) *Limitations; terms of members; appointments.* —

45 (1) Not more than four members (exclusive of the
46 chairperson) shall be appointed from any one congressio-
47 nal district. Not more than seven of the members (exclu-
48 sive of the chairperson) may belong to the same political
49 party. Members shall be eligible for reappointment.
50 However, no member may serve for more than three con-
51 secutive terms.

52 (2) *Appointment terms.* —

53 (A) Except for initial appointments described under
54 subdivision (3) of this subsection, and except for midterm
55 special appointments made to fill irregular vacancies on
56 the board, members shall be appointed for terms of three
57 years each.

58 (B) Except for midterm special appointments made to
59 fill irregular vacancies on the board, appointment terms
60 shall begin on the first day of July of the beginning year.
61 All appointment terms, special and regular, shall end on
62 the thirtieth day of June of the ending year.

63 (3) *Selection of members.* —

64 (A) For the initial appointment of members under this
65 subdivision, members shall be selected by the director of
66 the West Virginia development office.

67 (B) At the end of a member's term, the chairperson
68 shall solicit new member nominations from the board and
69 appoint the most appropriate person to serve, in compli-
70 ance with the requirements set forth in this section.

72 (C) Vacancies on the board shall be filled in the same
73 manner as the original appointments for the duration of
74 the unexpired term.

75 (e) *Quorum; meetings; funding.* —

76 (1) The presence of a majority of the members of the
77 board constitutes a quorum for the transaction of business.
78 The board shall elect from among its members a vice
79 chairperson and such other officers as are necessary.

80 (2) The board shall meet not less than four times dur-
81 ing the fiscal year, and additional meetings may be held
82 upon a call of the chairperson or of a majority of the
83 members: *Provided*, That no meeting of the board shall
84 be required if the total amount of tax credits available for
85 the fiscal year have been allotted.

86 (3) Board members shall be reimbursed by the West
87 Virginia development office for sums necessary to carry
88 out responsibilities of the board and for reasonable travel
89 expenses to attend board meetings.

90 (f) *Annual report.* — The board shall make a report to
91 the governor and the Legislature within thirty days of the
92 close of each fiscal year. The report shall include summa-
93 ries of all meetings of the board, an analysis of the overall
94 progress of the program, fiscal concerns, the relative im-
95 pact the program is having on the state and any sugges-
96 tions and policy recommendations that the board may
97 have. The report shall be public information made avail-
98 able to the general public for examination and copying.
99 The board is authorized to publish the annual report,
100 should the board elect to do so.

101 (g) *Duties of the board.* —

102 (1) *Administrative duties.* — The board shall be re-
103 sponsible for advising the West Virginia development
104 office concerning the administrative obligations of the
105 program.

106 (2) *Project evaluation and approval; prohibition on*
107 *project promotion.* —

108 (A) The board shall select and approve projects, which
109 may then be certified by the director of the West Virginia

110 development office pursuant to section four of this article.

111 (B) Only projects sponsored by qualified charitable
112 organizations, as defined in section three of this article,
113 may be approved by the board or certified by the director
114 of the West Virginia development office. An applicant
115 that does not hold current status as a charitable organiza-
116 tion under Section 501(c)(3) of the Internal Revenue
117 Code may not receive project approval from the board, or
118 project certification from the director of the West Virginia
119 development office, for any proposed project. Failure of
120 any applicant to provide convincing documentation prov-
121 ing such status as a charitable organization under Section
122 501(c)(3) of the Internal Revenue Code shall result in
123 automatic denial of project approval and denial of project
124 certification under this article.

125 (3) *Criteria for evaluation.* — In evaluating projects
126 for approval, the board shall give priority to projects based
127 upon the following criteria. A proposed project shall be
128 favored if:

129 (A) The project is community based. A project is
130 community based if:

131 (i) The project is to be managed locally, without na-
132 tional, state, multi-state or international affiliations;

133 (ii) The project will benefit local citizens in the imme-
134 diate geographic area where the project is to operate; and

135 (iii) The sponsor of the project is a local entity, rather
136 than a statewide, national or international organization or
137 an affiliate of a statewide, national or international organi-
138 zation.

139 (B) The proposed project will primarily serve low
140 income persons.

141 (C) The proposed project will serve highly distressed
142 neighborhoods or communities.

143 (D) The project plan incorporates collaborative part-
144 nerships among nonprofit groups, businesses, government
145 organizations and other community organizations.

146 (E) The applicant or sponsor of the project has dem-

147 onstrated a proven capacity to deliver the proposed servic-
148 es.

149 (F) The applicant or sponsor of the project historically
150 maintains low administrative costs.

151 (G) The applicant produces a strong showing of need
152 for the services which the proposed project would provide,
153 and produces convincing documentation of that need.

154 (H) The proposed project is innovative, novel, creative
155 or unique in program approach.

156 (4) In the event that an applicant is directly or indi-
157 rectly affiliated with one or more board members, those
158 members may discuss the proposals with the board, but
159 may not have a vote when that project is considered for
160 final approval or disapproval.

161 (5) *Project approval by the board.* — Proposed pro-
162 jects shall be approved or denied approval by a majority
163 vote of the board after competitive comparison with pro-
164 posed projects of other applicants.

165 (h) *Project certification by the director of the West*
166 *Virginia development office.* —

167 (1) Upon issuance of approval for a project by the
168 board, the approved project shall be certified by the direc-
169 tor of the West Virginia development office: *Provided,*
170 That no certification may issue for any project, even
171 though the project may have been approved by the board,
172 if the issuance of certification for such project will cause
173 the aggregate amount of tax credits certified to exceed the
174 limitation set forth in this article. No certification may be
175 issued by the director of the West Virginia development
176 office for any project which has not been approved by the
177 board.

178 (2) The West Virginia development office shall
179 promptly notify applicants of the issuance of certification
180 for their projects, and shall issue tax credit vouchers to
181 certified project applicants in the amount of the tax credit
182 represented by the project.

183 (3) The West Virginia development office may pro-
184 vide incidental technical support and guidance to projects

185 certified under this article and may monitor the progress
186 of the projects. The West Virginia development office
187 shall make a quarterly report to the board on the progress
188 of certified projects and the program generally.

§11-13J-8. Total maximum aggregate tax credit amount.

1 (a) The amount of tax credits allowed under this arti-
2 cle may not exceed two million dollars in any state fiscal
3 year.

4 (b) Applications for project certification shall be filed
5 with the West Virginia development office. The West
6 Virginia development office shall record the date each
7 application is filed. All complete and valid applications
8 shall be considered for approval or disapproval in a timely
9 manner by the neighborhood assistance advisory board.
10 The board may, in its discretion, consider applications for
11 approval or disapproval at special or interim meetings for
12 expedited processing.

13 (c) When the total amount of tax credits certified un-
14 der this article equals the maximum amount of tax credits
15 allowed, as specified in subsection (a) of this section, in
16 any state fiscal year, no further certifications shall be is-
17 sued in that same fiscal year. Upon approval of a project
18 by the board, the director of the West Virginia develop-
19 ment office shall certify the approved project unless certif-
20 ication is prohibited by the limitations and requirements
21 set forth in this article.

22 (d) All applications filed in any state fiscal year and
23 not certified during the state fiscal year in which they are
24 filed shall be null and void by operation of law on the last
25 day of the state fiscal year in which they are filed, and all
26 applicants which elect to seek certification of a project
27 plan shall file anew on and after the first day of the suc-
28 ceeding state fiscal year.

§11-13J-11. Audits and examinations; information sharing.

1 (a) The tax commissioner may, at his or her discretion,
2 perform joint audits or examinations with the West Virgin-
3 ia development office or independently audit or examine
4 the books, records and other information, as appropriate,
5 of any taxpayer or of any person, organization or entity

6 which has filed an application for certification of a project
7 plan under this article, or of any taxpayer which has as-
8 serted this credit on a tax return, or of any person, organi-
9 zation or entity believed to have relevant information.

10 (b) For purposes of joint audits, or any administrative
11 or judicial proceeding or procedure relating to any tax
12 credit taken, asserted or sought under this article, the tax
13 commissioner may share such tax information as the tax
14 commissioner may deem appropriate with the West Vir-
15 ginia development office, notwithstanding the provisions
16 of section four-a, article one of this chapter or section
17 five-d, article ten of said chapter, or any other provision of
18 this code to the contrary.

**§11-13J-12. Program evaluation; expiration of credit; preser-
vation of entitlements.**

1 On or before the thirtieth day of September, one thou-
2 sand nine hundred ninety-eight, the board shall secure an
3 independent review of the neighborhood investment pro-
4 gram created by this article and present the findings to the
5 Legislature. Pursuant to this report, and any independent
6 evaluation that the Legislature or the joint committee on
7 government operations may wish to initiate, the joint com-
8 mittee on government operations shall issue a recommen-
9 dation to the Legislature, not later than the first day of
10 February, one thousand nine hundred ninety-nine, as to
11 whether the program should continue. Unless sooner
12 terminated by law, the neighborhood investment program
13 act shall terminate on the first day of July, one thousand
14 nine hundred ninety-nine. No entitlement to the tax credit
15 under this article shall result from any contribution made
16 to any certified project after the first day of July, one
17 thousand nine hundred ninety-nine, and no credit shall be
18 available to any taxpayer for any contribution made after
19 that date. Taxpayers which have gained entitlement to the
20 credit pursuant to eligible contributions made to certified
21 projects prior to the first day of July, one thousand nine
22 hundred ninety-nine, shall retain that entitlement and
23 apply the credit in due course pursuant to the require-
24 ments and limitations of this article.

CHAPTER 148

(H. B. 2776—By Delegates Douglas and Compton)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen, fifteen, sixteen, seventeen and eighteen, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section nine-a; to amend said chapter by adding thereto a new article, designated article five-d; to amend and reenact sections one, two, three, five and six, article five-e of said chapter; to further amend said article by adding thereto a new section, designated section one-a; and to amend and reenact article five-h of said chapter, all relating to the licensure of nursing homes, personal care homes and residential board and care homes; requiring the registration of and authorizing the inspection of legally unlicensed health care homes; stating the purposes; defining terms; specifying the powers and duties of the director of the division of health; authorizing administrative and inspection staff; authorizing the proposal of legislative rules and requiring rules establishing minimum standards of operation; requiring licenses; establishing fees; requiring cost disclosure and surety for residents' funds; investigating complaints; inspecting and reporting of inspections; requiring plans of correction; assessing penalties and attorneys' costs and using funds derived therefrom; providing the opportunity for hearings; limiting suspending and revoking licenses; banning admissions; continuing disciplinary proceedings; closing homes and transferring residents; appointing temporary management; assessing interest; collecting assessments; allowing administrative appeals and judicial review; providing legal counsel; specifying unlawful acts; providing for civil and criminal penalties, injunctions and private rights of action; making available inspection reports and records; making a registry of

service providers available to the public; continuing licenses and rules; and establishing requirements for accounting for residents' personal funds.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fourteen, fifteen, sixteen, seventeen and eighteen, article five-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section nine-a; that said chapter be further amended by adding thereto a new article, designated article five-d; that sections one, two, three, five and six, article five-e of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section one-a; and that article five-h of said chapter be amended and reenacted, all to read as follows:

Article

5C. Nursing Homes.

5D. Personal Care Homes.

5E. Registration and Inspection of Service Providers in Legally Unlicensed Health Care Homes.

5H. Residential Board and Care Homes.

ARTICLE 5C. NURSING HOMES.

- §16-5C-1. Purpose.
- §16-5C-2. Definitions.
- §16-5C-3. Powers, duties and rights of director.
- §16-5C-4. Administrative and inspection staff.
- §16-5C-5. Rules; minimum standards for nursing homes.
- §16-5C-6. License required; application; fees; duration; renewal.
- §16-5C-7. Cost disclosure; surety for resident funds.
- §16-5C-8. Investigation of complaints.
- §16-5C-9. Inspections.
- §16-5C-9a. Exemptions.
- §16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.
- §16-5C-11. License limitation, suspension, revocation; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; promulgation of rules to conform with federal requirements; hearings.

- §16-5C-12 Administrative appeals for civil assessments, license limitation, suspension or revocation.
- §16-5C-14. Legal counsel and services for the director.
- §16-5C-15. Unlawful acts; penalties; injunctions; private right of action.
- §16-5C-16. Availability of reports and records.
- §16-5C-17. Licenses and rules in force.
- §16-5C-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

§16-5C-1. Purpose.

1 It is the policy of this state to encourage and promote
2 the development and utilization of resources to ensure the
3 effective and financially efficient care and treatment of
4 persons who are convalescing or whose physical or mental
5 condition requires them to receive a degree of nursing or
6 related health care greater than that necessary for well
7 individuals. Such care and treatment require a living
8 environment for such persons which, to the extent
9 practicable, will approximate a normal home environment.
10 To this end, the guiding principle for administration of the
11 laws of the state is that such persons shall be encouraged
12 and assisted in securing necessary care and treatment in
13 noninstitutional surroundings. In recognition that for
14 many such persons effective care and treatment can only
15 be secured from proprietary, voluntary and governmental
16 nursing homes it is the policy of this state to encourage,
17 promote and require the maintenance of nursing homes so
18 as to ensure protection of the rights and dignity of those
19 using the services of such facilities.

20 The provisions of this article are hereby declared to be
21 remedial and shall be liberally construed to effectuate its
22 purposes and intents.

§16-5C-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) "Deficiency" means a nursing home's failure to
4 meet the requirements specified in article five-c, chapter
5 sixteen of this code and rules promulgated thereunder.

6 (b) "Director" means the secretary of the department
7 of health and human resources or his or her designee.

8 (c) "Household" means a private home or residence
9 which is separate from or unattached to a nursing home.

10 (d) "Immediate jeopardy" means a situation in which
11 the nursing home's noncompliance with one or more of
12 the provisions of this article or rules promulgated
13 thereunder has caused or is likely to cause serious harm,
14 impairment or death to a resident.

15 (e) "Nursing home" or "facility" means any
16 institution, residence or place, or any part or unit thereof,
17 however named, in this state which is advertised, offered,
18 maintained or operated by the ownership or management,
19 whether for a consideration or not, for the express or
20 implied purpose of providing accommodations and care,
21 for a period of more than twenty-four hours, for four or
22 more persons who are ill or otherwise incapacitated and in
23 need of extensive, ongoing nursing care due to physical or
24 mental impairment or which provides services for the
25 rehabilitation of persons who are convalescing from illness
26 or incapacitation.

27 The care or treatment in a household, whether for
28 compensation or not, of any person related by blood or
29 marriage, within the degree of consanguinity of second
30 cousin to the head of the household, or his or her spouse,
31 may not be deemed to constitute a nursing home within
32 the meaning of this article. Nothing contained in this
33 article applies to nursing homes operated by the federal
34 government; or extended care facilities operated in
35 conjunction with a hospital; or institutions operated for the
36 treatment and care of alcoholic patients; or offices of
37 physicians; or hotels, boarding homes or other similar
38 places that furnish to their guests only room and board; or
39 to homes or asylums operated by fraternal orders pursuant
40 to article three, chapter thirty-five of this code.

41 (f) "Nursing care" means those procedures
42 commonly employed in providing for the physical,
43 emotional and rehabilitational needs of the ill or otherwise
44 incapacitated which require technical skills and knowledge
45 beyond that which the untrained person possesses,
46 including, but not limited to, such procedures as:
47 Irrigations, catheterization, special procedure contributing

48 to rehabilitation, and administration of medication by any
49 method which involves a level of complexity and skill in
50 administration not possessed by the untrained person.

51 (g) "Resident" means an individual living in a
52 nursing home.

53 (h) "Review organization" means any committee or
54 organization engaging in peer review or quality assurance,
55 including, but not limited to, a medical audit committee, a
56 health insurance review committee, a professional health
57 service plan review committee or organization, a dental
58 review committee, a physician's advisory committee, a
59 podiatry advisory committee, a nursing advisory
60 committee, any committee or organization established
61 pursuant to a medical assistance program, any committee
62 or organization established or required under state or
63 federal statutes, rules or regulations, and any committee
64 established by one or more state or local professional
65 societies or institutes, to gather and review information
66 relating to the care and treatment of residents for the
67 purposes of: (1) Evaluating and improving the quality of
68 health care rendered; (2) reducing morbidity or mortality;
69 or (3) establishing and enforcing guidelines designed to
70 keep within reasonable bounds the cost of health care.

71 (i) "Sponsor" means the person or agency legally
72 responsible for the welfare and support of a resident.

73 (j) "Person" means an individual and every form of
74 organization, whether incorporated or unincorporated,
75 including any partnership, corporation, trust, association
76 or political subdivision of the state.

77 (k) "Substantial compliance" means a level of
78 compliance with the rules such that no deficiencies exist or
79 such that identified deficiencies pose no greater risk to
80 resident health or safety than the potential for causing
81 minimal harm.

82 The director may define in the rules any term used
83 herein which is not expressly defined.

§16-5C-3. Powers, duties and rights of director.

1 In the administration of this article, the director shall
2 have the following powers, duties and rights:

3 (a) To enforce rules and standards promulgated
4 hereunder for nursing homes;

5 (b) To exercise as sole authority all powers relating to
6 the issuance, suspension and revocation of licenses of
7 nursing homes;

8 (c) To enforce rules promulgated hereunder
9 governing the qualification of applicants for nursing
10 home licenses, including, but not limited to, educational
11 requirements, financial requirements, personal and ethical
12 requirements;

13 (d) To receive and disburse federal funds and to take
14 whatever action not contrary to law as may be proper and
15 necessary to comply with the requirements and conditions
16 for the receipt of such federal funds;

17 (e) To receive and disburse for authorized purposes
18 any moneys appropriated to the division of health by the
19 Legislature;

20 (f) To receive and disburse for purposes authorized by
21 this article, any funds that may come to the division of
22 health by gift, grant, donation, bequest or devise,
23 according to the terms thereof, as well as funds derived
24 from the division of health's operation, or otherwise;

25 (g) To make contracts, and to execute all instruments
26 necessary or convenient in carrying out the director's
27 functions and duties; and all such contracts, agreements
28 and instruments shall be executed by the director;

29 (h) To appoint officers, agents, employees and other
30 personnel and fix their compensation;

31 (i) To offer and sponsor educational and training
32 programs for nursing homes for clinical, administrative,
33 management and operational personnel;

34 (j) To undertake survey, research and planning
35 projects and programs relating to administration and

36 operation of nursing homes and to the health, care,
37 treatment and service in general of such homes;

38 (k) To assess civil penalties for violations of facility
39 standards, in accordance with section ten of this article;

40 (l) To inspect any nursing home and any records
41 maintained therein that are necessary to determine
42 compliance with licensure laws or medicare or medicaid
43 certification, subject to the provisions of section ten of this
44 article;

45 (m) To establish and implement procedures, including
46 informal conferences, investigations and hearings, subject
47 to applicable provisions of article three, chapter
48 twenty-nine-a of this code, and to enforce compliance with
49 the provisions of this article and with rules issued
50 hereunder;

51 (n) To subpoena witnesses and documents, administer
52 oaths and affirmations, and to examine witnesses under
53 oath for the conduct of any investigation or hearing.
54 Upon failure of a person without lawful excuse to obey a
55 subpoena to give testimony and upon reasonable notice to
56 all persons affected thereby, the director may apply to the
57 circuit court of the county in which the hearing is to be
58 held for an order compelling compliance;

59 (o) To make complaint or cause proceedings to be
60 instituted against any person or persons for the violation
61 of the provisions of this article or of rules issued
62 hereunder. Such action may be taken by the director
63 without the sanction of the prosecuting attorney of the
64 county in which proceedings are instituted, if the officer
65 fails or refuses to discharge his or her duty. The circuit
66 court of the county in which the conduct has occurred or,
67 if emergency circumstances require, the circuit court of
68 Kanawha County shall have jurisdiction in all civil
69 enforcement actions brought under this article and may
70 order equitable relief without bond. In no such case may
71 the director or any person acting under the director's
72 direction be required to give security for costs;

73 (p) To delegate authority to the director's employees
74 and agents to perform all functions of the director except
75 the making of final decisions in adjudications;

76 (q) To submit an annual report to the governor, the
77 Legislature and the public sixty days before the governor
78 is required to submit an annual budget report to the
79 Legislature. The report shall describe the licensing and
80 investigatory activities of the department during the year,
81 and the nature and status of other activities of the
82 department, and may include comment on the acts,
83 policies, practices or procedures of any public or private
84 agency that effect the rights, health or welfare of residents
85 of nursing homes. The annual report shall include a list
86 of all nursing homes in the state, whether such homes are
87 proprietary or nonproprietary; the name of the owner or
88 owners; the total number of beds; the number of private
89 and semiprivate rooms; the costs per diem for private
90 residents; the number of full-time employees and their
91 professions; recreational programs; services and programs
92 available as well as the costs thereof; and whether or not
93 those nursing homes listed accept medicare and medicaid
94 residents. The report shall also contain the department's
95 recommendations as to changes in law or policy which it
96 deems necessary or appropriate for the protection of the
97 rights, health or welfare of residents of nursing homes in
98 the state;

99 (r) To establish a formal process for licensed facilities
100 to file complaints about the survey process or surveyors;
101 and

102 (s) To establish a committee to study and make a
103 recommendation to the Legislature on a central reporting
104 system for allegations of abuse.

§16-5C-4. Administrative and inspection staff.

1 The director may, at such time or times as he or she
2 may deem necessary, employ such administrative
3 employees, inspectors, or other persons as may be
4 necessary to properly carry out the provisions of this
5 article. All employees of the department shall be
6 members of the state civil service system and surveyors

7 shall be trained to perform their assigned duties. Such
8 inspectors and other employees as may be duly designated
9 by the director shall act as the director's representatives
10 and, under the direction of the director, shall enforce the
11 provisions of this article and all duly promulgated
12 regulations and, in the discharge of official duties, shall
13 have the right of entry into any place maintained as a
14 nursing home.

§16-5C-5. Rules; minimum standards for nursing homes.

1 (a) All rules shall be proposed for legislative approval
2 in accordance with the provisions of article three, chapter
3 twenty-nine-a of this code. The director shall recommend
4 the adoption, amendment or repeal of such rules as may
5 be necessary or proper to carry out the purposes and
6 intent of this article.

7 (b) The director shall recommend rules establishing
8 minimum standards of operation of nursing homes
9 including, but not limited to, the following:

10 (1) Administrative policies, including: (A) An
11 affirmative statement of the right of access to nursing
12 homes by members of recognized community
13 organizations and community legal services programs
14 whose purposes include rendering assistance without
15 charge to residents, consistent with the right of residents to
16 privacy; and (B) a statement of the rights and
17 responsibilities of residents in nursing homes which
18 prescribe, as a minimum, such a statement of
19 residents' rights as included in the United States
20 department of health and human services regulations, in
21 force on the effective date of this article, governing
22 participation of nursing homes in the medicare and
23 medicaid programs pursuant to titles eighteen and
24 nineteen of the Social Security Act;

25 (2) Minimum numbers of administrators, medical
26 directors, nurses, aides and other personnel according to
27 the occupancy of the facility;

28 (3) Qualifications of facility's administrators, medical
29 directors, nurses, aides, and other personnel;

- 30 (4) Safety requirements;
- 31 (5) Sanitation requirements;
- 32 (6) Personal services to be provided;
- 33 (7) Dietary services to be provided;
- 34 (8) Medical records;
- 35 (9) Social and recreational activities to be made
36 available;
- 37 (10) Pharmacy services;
- 38 (11) Nursing services;
- 39 (12) Medical services;
- 40 (13) Physical facility;
- 41 (14) Resident rights; and
- 42 (15) Admission, transfer and discharge rights.

§16-5C-6. License required; application; fees; duration; renewal.

1 Subject to the provisions of section seventeen of this
2 article, no person may establish, operate, maintain, offer or
3 advertise a nursing home within this state unless and until
4 he or she obtains a valid license therefor as hereinafter
5 provided, which license remains unsuspended, unrevoked
6 and unexpired. No public official or employee may place
7 any person in, or recommend that any person be placed
8 in, or directly or indirectly cause any person to be placed
9 in, any nursing home, as defined in section two of this
10 article, which is being operated without a valid license
11 from the director. The procedure for obtaining a license
12 is as follows:

- 13 (a) The applicant shall submit an application to the
14 director on a form to be prescribed by the director,
15 containing such information as may be necessary to show
16 that the applicant is in compliance with the standards for
17 nursing homes, as established by this article and the rules

18 lawfully promulgated hereunder. The application and any
19 exhibits thereto shall provide the following information:

20 (1) The name and address of the applicant;

21 (2) The name, address and principal occupation: (A)
22 Of each person who, as a stockholder or otherwise, has a
23 proprietary interest of ten percent or more in the
24 applicant; (B) of each officer and director of a corporate
25 applicant; (C) of each trustee and beneficiary of an
26 applicant which is a trust; and (D) where a corporation has
27 a proprietary interest of twenty-five percent or more in an
28 applicant, the name, address and principal occupation of
29 each officer and director of the corporation;

30 (3) The name and address of the owner of the
31 premises of the nursing home or proposed nursing home,
32 if he or she is a different person from the applicant, and in
33 such case, the name and address: (A) Of each person who,
34 as a stockholder or otherwise, has a proprietary interest of
35 ten percent or more in the owner; (B) of each officer and
36 director of a corporate applicant; (C) of each trustee and
37 beneficiary of the owner if it is a trust; and (D) where a
38 corporation has a proprietary interest of twenty-five
39 percent or more in the owner, the name and address of
40 each officer and director of the corporation;

41 (4) Where the applicant is the lessee or the assignee of
42 the nursing home or the premises of the proposed nursing
43 home, a signed copy of the lease and any assignment
44 thereof;

45 (5) The name and address of the nursing home or the
46 premises of the proposed nursing home;

47 (6) A description of the nursing home to be operated;

48 (7) The bed quota of the nursing home as determined
49 by the health care cost review authority;

50 (8) (A) An organizational plan for the nursing home
51 indicating the number of persons employed or to be
52 employed and the positions and duties of all employees;
53 (B) the name and address of the individual who is to serve
54 as administrator; and (C) such evidence of compliance

55 with applicable laws, and rules governing zoning,
56 buildings, safety, fire prevention and sanitation as the
57 director may require;

58 (9) A listing of other states in which the applicant
59 owns, operates or manages a nursing home or long-term
60 care facility;

61 (10) Such additional information as the director may
62 require; and

63 (11) Assurances that the nursing home is in
64 compliance with the provisions of article two-d of this
65 chapter.

66 (b) Upon receipt and review of an application for
67 license made pursuant to subdivision (a) of this section,
68 and inspection of the applicant nursing home pursuant to
69 section ten of this article, the director shall issue a license
70 if he or she finds:

71 (1) That an individual applicant, and every partner,
72 trustee, officer, director and controlling person of an
73 applicant which is not an individual, is a person
74 responsible and suitable to operate or to direct or
75 participate in the operation of a nursing home by virtue of
76 financial capacity, appropriate business or professional
77 experience, a record of compliance with lawful orders of
78 the department, if any, and lack of revocation of a license
79 during the previous five years or consistent poor
80 performance in other states;

81 (2) That the facility is under the supervision of an
82 administrator who is licensed pursuant to the provisions of
83 article twenty-five, chapter thirty of this code; and

84 (3) That the facility is in substantial compliance with
85 standards established pursuant to section five of this
86 article, and such other requirements for a license as may
87 be established by rule under this article.

88 Any license granted by the director shall state the
89 maximum bed capacity for which it is granted, the date the
90 license was issued and the expiration date. Such licenses
91 shall be issued for a period not to exceed fifteen months

92 for nursing homes: *Provided*, That any license in effect
93 for which timely application for renewal, together with
94 payment of the proper fee has been made to the director
95 in conformance with the provisions of this article and the
96 rules issued thereunder, and prior to the expiration date of
97 the license, shall continue in effect until: (A) Six months
98 following the expiration date of the license; or (B) the date
99 of the revocation or suspension of the license pursuant to
100 the provisions of this article; or (C) the date of issuance of
101 a new license, whichever date first occurs. Each license
102 shall be issued only for the premises and persons named
103 in the application and is not transferable or assignable:
104 *Provided, however*, That in the case of the transfer of
105 ownership of a facility with an unexpired license, the
106 application by the proposed new owner shall be filed with
107 the director no later than thirty days before the proposed
108 date of transfer. Upon receipt of proof of the transfer of
109 ownership, the application shall have the effect of a license
110 for three months. The director shall issue or deny a
111 license within three months of the receipt of the proof of
112 the transfer of ownership. Every license shall be posted in
113 a conspicuous place in the nursing home for which it is
114 issued so as to be accessible to and in plain view of all
115 residents of and visitors to the nursing home.

116 (c) A license is renewable, conditioned upon the
117 licensee filing timely application for the extension of the
118 term of the license accompanied by the fee, and
119 contingent upon evidence of compliance with the
120 provisions of this article and rules promulgated hereunder.
121 Any application for renewal of a license shall include a
122 report by the licensee in such form and containing such
123 information as shall be prescribed by the director,
124 including the following:

125 (1) A balance sheet of the nursing home as of the end
126 of its fiscal year, setting forth assets and liabilities at such
127 date, including all capital, surplus, reserve, depreciation
128 and similar accounts;

129 (2) A statement of operations of the nursing home as
130 of the end of its fiscal year, setting forth all revenues,

131 expenses, taxes, extraordinary items and other credits or
132 charges; and

133 (3) If a nursing home is in compliance with the
134 requirements of the health care facility financial disclosure
135 act, as provided in article five-f, chapter sixteen of this
136 code, it will be considered to have met the requirements
137 established in subdivisions (1) and (2) of this subsection.

138 (4) A statement of any changes in the name, address,
139 management or ownership information on file with the
140 director. All holders of facility licenses as of the effective
141 date of this article shall include, in the first application for
142 renewal filed thereafter, such information as is required
143 for initial applicants under the provisions of subsection (a)
144 of this section.

145 (d) In the case of an application for a renewal license,
146 if all requirements of section five of this article are not
147 met, the director may at his or her discretion issue a
148 provisional license, provided that care given in the nursing
149 home is adequate for resident needs and the nursing
150 home has demonstrated improvement and evidences
151 potential for substantial compliance within the term of the
152 license: *Provided*, That a provisional license may not be
153 issued for a period greater than six months, may not be
154 renewed, and may not be issued to any nursing home that
155 is a poor performer.

156 (e) A nonrefundable application fee in the amount of
157 two hundred dollars for an original nursing home license
158 shall be paid at the time application is made for the
159 license. Direct costs of initial licensure inspections or
160 inspections for changes in licensed bed capacity shall be
161 borne by the applicant and shall be received by the
162 director prior to the issuance of an initial or amended
163 license. The license fee for renewal of a license shall be at
164 the rate of fifteen dollars per bed per year for nursing
165 homes, except the annual rate per bed may be assessed for
166 licenses issued for less than fifteen months. Annually, the
167 director may adjust the licensure fees for inflation based
168 upon the increase in the consumer price index during the
169 last twelve months. All such license fees shall be due and
170 payable to the director, annually, and in the manner set

171 forth in the rules promulgated hereunder. The fee and
172 application shall be submitted to the director who shall
173 retain both the application and fee pending final action on
174 the application. All fees received by the director under
175 the provisions of this article shall be deposited in
176 accordance with section thirteen, article one of this
177 chapter.

§16-5C-7. Cost disclosure; surety for resident funds.

1 (a) Each nursing home shall disclose in writing to all
2 residents at the time of admission a complete and accurate
3 list of all costs which may be incurred by them; and shall
4 notify the residents thirty days in advance of changes in
5 costs. The nursing home shall make available copies of
6 the list in the nursing home's business office for
7 inspection. Residents may not be liable for any cost not
8 so disclosed.

9 (b) If the nursing home handles any money for
10 residents within the facility, the licensee or his or her
11 authorized representative shall either: (1) Give a bond; or
12 (2) obtain and maintain commercial insurance with a
13 company licensed in this state in an amount consistent
14 with this subsection and with the surety as the director
15 shall approve. The bond or insurance shall be upon
16 condition that the licensee shall hold separately and in
17 trust all residents' funds deposited with the licensee, shall
18 administer the funds on behalf of the resident in the
19 manner directed by the depositor, shall render a true and
20 complete account to the depositor and the director when
21 requested, and at least quarterly to the resident, and upon
22 termination of the deposit, shall account for all funds
23 received, expended, and held on hand. The licensee shall
24 file a bond or obtain insurance in a sum at least one and
25 twenty-five one-hundredths the average amount of funds
26 deposited with the nursing home during the nursing
27 home's previous fiscal year.

28 This insurance policy shall specifically designate the
29 resident as the beneficiary or payee reimbursement of lost
30 funds. Regardless of the type of coverage established by
31 the facility, the facility shall reimburse, within thirty days,
32 the resident for any losses directly and seek

33 reimbursement through the bond or insurance itself.
34 Whenever the director determines that the amount of any
35 bond or insurance required pursuant to this subsection is
36 insufficient to adequately protect the money of residents
37 which is being handled, or whenever the amount of any
38 such bond or insurance is impaired by any recovery
39 against the bond or insurance, the director may require the
40 licensee to file an additional bond or insurance in such
41 amount as necessary to adequately protect the money of
42 residents being handled.

43 The provisions of this subsection do not apply if the
44 licensee handles less than thirty-five dollars per resident
45 per month in the aggregate.

§16-5C-8. Investigation of complaints.

1 The director shall establish rules for prompt
2 investigation of all complaints of alleged violations by
3 nursing homes of applicable requirements of state law or
4 rules, except for such complaints that the director
5 determines are willfully intended to harass a licensee or
6 are without any reasonable basis. Such procedures shall
7 include provisions for ensuring the confidentiality of the
8 complainant and for promptly informing the complainant
9 and the nursing home involved of the results of the
10 investigation.

11 If, after its investigation, the director determines that
12 the complaint has merit, the director shall take appropriate
13 disciplinary action and shall advise any injured party of
14 the possibility of a civil remedy.

15 No nursing home may discharge or in any manner
16 discriminate against any resident, legal representative or
17 employee for the reason that the resident, legal
18 representative or employee has filed a complaint or
19 participated in any proceeding specified in this article.
20 Violation of this prohibition by any nursing home
21 constitutes ground for the suspension or revocation of the
22 license of the nursing home as provided in section eleven
23 of this article. Any type of discriminatory treatment of a
24 resident, legal representative or employee by whom, or
25 upon whose behalf, a complaint has been submitted to the

26 director, or any proceeding instituted under this article,
27 within one hundred twenty days of the filing of the
28 complaint or the institution of such action, shall raise a
29 rebuttable presumption that such action was taken by the
30 nursing home in retaliation for such complaint or action.

§16-5C-9. Inspections.

1 (a) The director and any duly designated employee or
2 agent shall have the right to enter upon and into the
3 premises of any nursing home at any time for which a
4 license has been issued, for which an application for
5 license has been filed with the director, or which the
6 director has reason to believe is being operated or
7 maintained as a nursing home without a license. If entry
8 is refused by the owner or person in charge of the nursing
9 home, the director may apply to the circuit court of the
10 county in which the nursing home is located or the circuit
11 court of Kanawha County for a warrant authorizing
12 inspection to conduct the following inspections:

13 (1) An initial inspection prior to the issuance of a
14 license pursuant to section six of this article;

15 (2) A license inspection for a nursing home, which
16 shall be conducted at least once every fifteen months, if
17 the nursing home has not applied for and received an
18 exemption from the requirement as provided for in this
19 section;

20 (3) The director, by the director's authorized
21 employees or agents, shall conduct at least one inspection
22 prior to issuance of a license pursuant to section six of this
23 article, and shall conduct periodic unannounced
24 inspections thereafter, to determine compliance by the
25 nursing home with applicable rules promulgated
26 thereunder. All facilities shall comply with regulations of
27 the state fire commission. The state fire marshal, by his
28 employees or authorized agents, shall make all fire, safety
29 and like inspections. The director may provide for such
30 other inspections as the director may deem necessary to
31 carry out the intent and purpose of this article. If after
32 investigating a complaint, the director determines that the
33 complaint is substantiated and that an immediate and

34 serious threat to a consumer's health or safety exists, the
35 director may invoke any remedies available pursuant to
36 section eleven of this article. Any nursing home
37 aggrieved by a determination or assessment made
38 pursuant to this section, shall have the right to an
39 administrative appeal as set forth in section twelve of this
40 article;

41 (4) A complaint inspection based on a complaint
42 received by the director. If, after investigation of a
43 complaint, the director determines that the complaint is
44 substantiated, the director may invoke any applicable
45 remedies available pursuant to section eleven of this
46 article.

§16-5C-9a. Exemptions.

1 (a) The director may grant an exemption from a
2 license inspection if a nursing home was found to be in
3 substantial compliance with the provisions of this chapter
4 at its most recent inspection and there have been no
5 substantiated complaints thereafter. The director may not
6 grant more than one exemption in any two-year period.

7 (b) The director may grant an exemption to the extent
8 allowable by federal law from a standard survey, only if
9 the nursing home was found to be in substantial
10 compliance with certification participation requirements at
11 its previous standard survey and there have been no
12 substantiated complaints thereafter.

13 (c) The director may grant an exemption from
14 periodic license inspections if a nursing home receives
15 accreditation by an accrediting body approved by the
16 director and submits a complete copy of the accreditation
17 report. The accrediting body shall identify quality of care
18 measures that assure continued quality care of residents.
19 The director may not grant more than one exemption in
20 any two-year period.

21 (d) If a complaint is substantiated, the director has the
22 authority to immediately remove the exemption.

§16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

1 (a) Reports of all inspections made pursuant to section
2 nine of this article shall be in writing and filed with the
3 director, and shall list all deficiencies in the nursing
4 home's compliance with the provisions of this article and
5 the rules adopted hereunder. The director shall send a
6 copy of such report to the nursing home and shall specify
7 a time within which the nursing home shall submit a plan
8 for correction of such deficiencies. The plan shall be
9 approved, rejected or modified by the director. The
10 surveyors or the nursing home shall allow audio taping of
11 the exit conference with the expense to be paid by the
12 requesting party.

13 (b) With regard to a nursing home with deficiencies
14 and upon its failure to submit a plan of correction which is
15 approved by the director, or to correct any deficiency
16 within the time specified in an approved plan of
17 correction, the director may assess civil penalties as
18 hereinafter provided or may initiate any other legal or
19 disciplinary action as provided by this article: *Provided,*
20 That any action by the director shall be stayed until
21 federal proceedings arising from the same deficiencies are
22 concluded.

23 (c) Nothing in this section may be construed to
24 prohibit the director from enforcing a rule,
25 administratively or in court, without first affording formal
26 opportunity to make correction under this section, where,
27 in the opinion of the director, the violation of the rule
28 jeopardizes the health or safety of residents, or where the
29 violation of the rule is the second or subsequent such
30 violation occurring during a period of twelve full months.

31 (d) Civil penalties assessed against nursing homes
32 shall not be less than fifty nor more than eight thousand
33 dollars: *Provided,* That the director may not assess a
34 penalty under state licensure for the same deficiency or
35 violation cited under federal law and may not assess a
36 penalty against a nursing home if the nursing home
37 corrects the deficiency within twenty days of receipt of

38 written notice of the deficiency unless it is a repeat
39 deficiency or the nursing home is a poor performer.

40 (e) In determining whether to assess a penalty, and the
41 amount of penalty to be assessed, the director shall
42 consider:

43 (1) How serious the noncompliance is in relation to
44 direct resident care and safety;

45 (2) The number of residents the noncompliance is
46 likely to affect;

47 (3) Whether the noncompliance was noncompliance
48 during a previous inspection;

49 (4) The opportunity the nursing home has had to
50 correct the noncompliance; and

51 (5) Any additional factors that may be relevant.

52 (f) The range of civil penalties shall be as follows:

53 (1) For a deficiency which presents immediate
54 jeopardy to the health, safety or welfare of one or more
55 residents, the director may impose a civil penalty of not
56 less than three thousand nor more than eight thousand
57 dollars;

58 (2) For a deficiency which actually harms one or more
59 residents, the director may impose a civil penalty of not
60 less than one thousand nor more than three thousand
61 dollars;

62 (3) For a deficiency which has the potential to harm
63 one or more residents, the director may impose a civil
64 penalty of not less than fifty nor more than one thousand
65 dollars;

66 (4) For a repeated deficiency, the director may impose
67 a civil penalty of up to one hundred fifty percent of the
68 penalties provided in subdivisions (1), (2) and (3) of this
69 subsection; and

70 (5) If no plan of correction is submitted as established
71 in this rule, a penalty may be assessed in the amount of

72 one hundred dollars a day unless a reasonable explanation
73 has been provided and accepted by the director.

74 (g) The director shall assess a civil penalty of not more
75 than one thousand dollars against an individual who
76 willfully and knowingly certifies a material and false
77 statement in a resident assessment. Such penalty shall be
78 imposed with respect to each such resident assessment.
79 The director shall impose a civil penalty of not more than
80 five thousand dollars against an individual who willfully
81 and knowingly causes another individual to certify a
82 material and false statement in a resident assessment. Such
83 penalty shall be imposed with respect to each such resident
84 assessment.

85 (h) The director shall assess a civil penalty of not more
86 than two thousand dollars against any individual who
87 notifies, or causes to be notified, a nursing home of the
88 time or date on which an inspection is scheduled to be
89 conducted under this article or under titles eighteen or
90 nineteen of the federal Social Security Act.

91 (i) If the director assesses a penalty under this section,
92 the director shall cause delivery of notice of such penalty
93 by personal service or by certified mail. Said notice shall
94 state the amount of the penalty, the action or circumstance
95 for which the penalty is assessed, the requirement that the
96 action or circumstance violates, and the basis upon which
97 the director assessed the penalty and selected the amount
98 of the penalty.

99 (j) The director shall, in a civil judicial proceeding,
100 recover any unpaid assessment which has not been
101 contested under section twelve of this article within thirty
102 days of receipt of notice of such assessment, or which has
103 been affirmed under the provisions of that section and not
104 appealed within thirty days of receipt of the director's final
105 order, or which has been affirmed on judicial review, as
106 provided in section thirteen of this article. All money
107 collected by assessments of civil penalties or interest shall
108 be paid into a special resident benefit account and shall be
109 applied by the director for: (1) The protection of the
110 health or property of facility residents; (2) long-term care
111 educational activities; (3) the costs arising from the

112 relocation of residents to other nursing homes when no
113 other funds are available; and (4) in an emergency
114 situation in which there are no other funds available, the
115 operation of a facility pending correction of deficiencies
116 or closure.

117 (k) The opportunity for a hearing on an action taken
118 under this section shall be as provided in section twelve of
119 this article.

§16-5C-11. License limitation, suspension, revocation; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; promulgation of rules to conform with federal requirements; hearings.

1 (a) The director may reduce the bed quota of the
2 nursing home or impose a ban on new admissions, where
3 he or she finds upon inspection of the nursing home that
4 the licensee is not providing adequate care under the
5 nursing home's existing bed quota, and that reduction in
6 quota or ban on new admissions, or both, would place the
7 licensee in a position to render adequate care. A
8 reduction in bed quota or a ban on new admissions, or
9 both, may remain in effect until the nursing home is
10 determined by the director to be in substantial compliance
11 with the rules. In addition, the director shall determine
12 that the facility has the management capability to ensure
13 continued substantial compliance with all applicable
14 requirements. The director shall evaluate the continuation
15 of the admissions ban or reduction in bed quota on a
16 continuing basis, and may make a partial lifting of the
17 admissions ban or reduction in bed quota consistent with
18 the purposes of this section. If the residents of the facility
19 are in immediate jeopardy of their health, safety, welfare
20 or rights, the director may seek an order to transfer
21 residents out of the nursing home as provided for in
22 subsection (e) of this section. Any notice to a licensee of
23 reduction in bed quota or a ban on new admissions shall
24 include the terms of such order, the reasons therefor, and a
25 date set for compliance.

26 (b) The director may suspend or revoke a license
27 issued under this article or take other action as set forth in
28 this section, if he or she finds upon inspection that there
29 has been a substantial failure to comply with the
30 provisions of this article or the standards or rules
31 promulgated pursuant hereto.

32 (c) Whenever a license is limited, suspended or
33 revoked pursuant to this section or the director imposes
34 other action set forth in this section, the director shall file a
35 complaint stating facts constituting a ground or grounds
36 for such limitation, suspension or revocation or other
37 action. Upon the filing of the complaint, the director shall
38 notify the licensee in writing of the filing of the complaint
39 within twenty days of exit conference, enclosing a copy of
40 the complaint, and shall advise the licensee of the
41 availability of a hearing pursuant to section twelve of this
42 article. Such notice and copy of the complaint shall be
43 served on such licensee by certified mail, return receipt
44 requested.

45 (d) The suspension, expiration, forfeiture or
46 cancellation by operation of law or order of the director
47 of a license issued by the director, or the withdrawal of an
48 application for a license after it has been filed with the
49 director, may not deprive the director of the director's
50 authority to institute or continue a disciplinary
51 proceeding, or a proceeding for the denial of a license
52 application, against the licensee or applicant upon any
53 ground provided by law or to enter an order denying the
54 license application or suspending or revoking the license
55 or otherwise taking disciplinary action on any such
56 ground.

57 (e) In addition to other remedies provided in this
58 article, upon petition from the director, a circuit court in
59 the county in which a facility is located, or in Kanawha
60 County if emergency circumstances occur, may
61 determine that a nursing home's deficiencies under this
62 article, or under titles eighteen or nineteen of the federal
63 Social Security Act, if applicable, constitute an emergency
64 immediately jeopardizing the health, safety, welfare or
65 rights of its residents, and issue an order to:

- 66 (1) Close the nursing home;
- 67 (2) Transfer residents in the nursing home to other
68 nursing homes; or
- 69 (3) Appoint temporary management to oversee the
70 operation of the facility and to assure the health, safety,
71 welfare and rights of the nursing home's residents, where
72 there is a need for temporary management while:
- 73 (A) There is an orderly closure of the facility; or
- 74 (B) Improvements are made in order to bring the
75 nursing home into compliance with all the applicable
76 requirements of this article and, if applicable, titles
77 eighteen and nineteen of the federal Social Security Act.

78 If the director petitions a circuit court for the closure
79 of a nursing home, the transfer of residents, or the
80 appointment of temporary management, the circuit court
81 shall hold a hearing no later than seven days thereafter, at
82 which time the director and the licensee or operator of the
83 nursing home may participate and present evidence. The
84 burden of proof is on the director.

85 A circuit court may divest the licensee or operator of
86 possession and control of a nursing home in favor of
87 temporary management. The temporary management
88 shall be responsible to the court and shall have such
89 powers and duties as the court may grant to direct all acts
90 necessary or appropriate to conserve the property and
91 promote the health, safety, welfare and rights of the
92 residents of the nursing home, including, but not limited
93 to, the replacement of management and staff, the hiring of
94 consultants, the making of any necessary expenditures to
95 close the nursing home or to repair or improve the
96 nursing home so as to return it to compliance with
97 applicable requirements, and the power to receive,
98 conserve and expend funds, including medicare, medicaid
99 and other payments on behalf of the licensee or operator
100 of the nursing home. Priority shall be given to
101 expenditures for current direct resident care or the transfer
102 of residents. Expenditures other than normal operating

103 expenses totaling more than twenty thousand dollars shall
104 be approved by the circuit court.

105 The person charged with temporary management shall
106 be an officer of the court, is not liable for conditions at the
107 nursing home which existed or originated prior to his or
108 her appointment and is not personally liable, except for
109 his or her own gross negligence and intentional acts which
110 result in injuries to persons or damage to property at the
111 nursing home during his or her temporary management.
112 All compensation and per diem costs of the temporary
113 manager shall be paid by the nursing home. The costs for
114 the temporary manager for any thirty-day period may not
115 exceed the seventy-fifth percentile of the allowable
116 administrators salary as reported on the most recent cost
117 report for the nursing home's peer group as determined
118 by the director. The temporary manager shall bill the
119 nursing home for compensation and per diem costs.
120 Within fifteen days of receipt of the bill, the nursing home
121 shall pay the bill or contest the costs for which it was billed
122 to the court. Such costs shall be recoverable through
123 recoupment from future reimbursement from the state
124 medicaid agency in the same fashion as a benefits
125 overpayment.

126 The temporary management shall promptly employ
127 at least one person who is licensed as a nursing home
128 administrator in West Virginia.

129 A temporary management established for the purpose
130 of making improvements in order to bring a nursing
131 home into compliance with applicable requirements may
132 not be terminated until the court has determined that the
133 nursing home has the management capability to ensure
134 continued compliance with all applicable requirements,
135 except if the court has not made such determination within
136 six months of the establishment of the temporary
137 management, the temporary management terminates by
138 operation of law at that time, and the nursing home shall
139 be closed. After the termination of the temporary
140 management, the person who was responsible for the
141 temporary management shall make an accounting to the
142 court, and after deducting from receipts the costs of the

143 temporary management, expenditures and civil penalties
144 and interest no longer subject to appeal, in that order, any
145 excess shall be paid to the licensee or operator of the
146 nursing home.

147 (f) The assessments for penalties and for costs of
148 actions taken under this article shall have interest assessed
149 at five percent per annum beginning thirty days after
150 receipt of notice of such assessment or thirty days after
151 receipt of the director's final order following a hearing,
152 whichever is later. All such assessments against a nursing
153 home that are unpaid shall be added to the nursing
154 home's licensure fee and may be filed as a lien against the
155 property of the licensee or operator of the nursing home.
156 Funds received from such assessments shall be deposited
157 as funds received in section ten of this article.

158 (g) The director may propose additional rules and
159 emergency rules that expand the power of the director in
160 excess of that provided in this article to the extent required
161 to comply with federal requirements, but any such rules
162 shall expand the power of the director to the minimum
163 extent required by federal requirements. Such rules are
164 subject to the provisions of article three, chapter
165 twenty-nine-a of this code.

166 (h) The opportunity for a hearing on an action by the
167 director taken under this section shall be as provided in
168 section twelve of this article.

**§16-5C-12. Administrative appeals for civil assessments,
license limitation, suspension or revocation.**

1 (a) Any licensee or applicant aggrieved by an order
2 issued pursuant to sections five, six, ten or eleven of this
3 article shall have the opportunity to request an informal
4 and formal hearing at which the licensee or applicant may
5 contest such order as contrary to law or unwarranted by
6 the facts or both. All of the pertinent provisions of article
7 five, chapter twenty-nine-a of this code shall apply to and
8 govern such hearing and the administrative procedures in
9 connection with any formal hearing.

10 The director may impose the following prior to or
11 during the pendency of a hearing:

12 (1) A reduction in the bed quota pursuant to section
13 eleven of this article;

14 (2) Transfer of residents and a ban on new admissions
15 pursuant to section eleven of this article.

16 (b) Informal hearings shall be held within twenty
17 working days of the director's receipt of timely request
18 for appeal, unless the licensee or applicant aggrieved by
19 the order consents to a postponement or continuance. In
20 no event may the informal hearing occur more than thirty
21 business days after the director receives timely request for
22 appeal. At the informal hearing, neither the licensee or
23 applicant nor the director may be represented by an
24 attorney. Within ten days of the conclusion of the
25 informal hearing, the director shall issue an informal
26 hearing order, including a basis for the decision.

27 (c) If the applicant or licensee requested a formal
28 hearing only, the director and the licensee shall proceed in
29 accordance with the provisions of the department of health
30 rules of procedure for contested case hearings and
31 declaratory rulings. If the applicant or licensee also
32 requested an informal hearing and if the order is not
33 favorable to the applicant or licensee, the director shall
34 notify the administrative hearing examiner of the request
35 for an appeal within five business days of issuing the
36 informal hearing order.

§16-5C-14. Legal counsel and services for the director.

1 (a) Legal counsel and services for the director in all
2 administrative hearings may be provided by the attorney
3 general or a staff attorney and all proceedings in any
4 circuit court and the supreme court of appeals shall be
5 provided by the attorney general, or his or her assistants,
6 or an attorney employed by the director in proceedings in
7 any circuit court by the prosecuting attorney of the
8 county as well, all without additional compensation.

9 (b) The governor may appoint counsel for the
10 director, who shall perform such legal services in

11 representing the interests of residents in nursing homes in
12 matters under the jurisdiction of the director as the
13 governor shall direct. It shall be the duty of such counsel
14 to appear for the residents in all cases where they are not
15 represented by counsel. The compensation of such
16 counsel shall be fixed by the governor.

**§16-5C-15. Unlawful acts; penalties; injunctions; private right
of action.**

1 (a) Whoever advertises, announces, establishes or
2 maintains, or is engaged in establishing or maintaining a
3 nursing home without a license granted under section six
4 of this article, or who prevents, interferes with or impedes
5 in any way the lawful enforcement of this article shall be
6 guilty of a misdemeanor and, upon conviction thereof,
7 shall be punished for the first offense by a fine of not
8 more than one hundred dollars, or by imprisonment in the
9 county or regional jail for a period of not more than
10 ninety days, or by both such fine and imprisonment, at the
11 discretion of the court. For each subsequent offense, the
12 fine may be increased to not more than two hundred fifty
13 dollars, with imprisonment in the county or regional jail
14 for a period of not more than ninety days, or by both such
15 fine and imprisonment, at the discretion of the court.
16 Each day of a continuing violation after conviction shall
17 be considered a separate offense.

18 (b) The director may in his or her discretion bring an
19 action to enforce compliance with this article or any rule
20 or order hereunder whenever it shall appear to the director
21 that any person has engaged in, or is engaging in, an act
22 or practice in violation of this article or any rule or order
23 hereunder, or whenever it shall appear to the director that
24 any person has aided, abetted or caused, or is aiding,
25 abetting or causing such an act or practice. Upon
26 application by the director, the circuit court of the county
27 in which the conduct has occurred or is occurring, or if
28 emergency circumstances occur, the circuit court of
29 Kanawha County, shall have jurisdiction to grant without
30 bond a permanent or temporary injunction, decree or
31 restraining order.

32 Whenever the director shall have refused to grant or
33 renew a license, or shall have revoked a license required
34 by law to operate or conduct a nursing home, or shall have
35 ordered a person to refrain from conduct violating the
36 rules of the director, and the person deeming himself or
37 herself aggrieved by such refusal or revocation or order
38 shall have appealed the action of the director, the court
39 may, during pendency of such appeal, issue a restraining
40 order or injunction upon proof that the operation of the
41 nursing home or its failure to comply with the order of the
42 director adversely affects the well-being or safety of the
43 residents of the nursing home. Should a person who is
44 refused a license or the renewal of a license to operate or
45 conduct a nursing home or whose license to operate is
46 revoked or who has been ordered to refrain from conduct
47 or activity which violates the rules of the director, fail to
48 appeal or should such appeal be decided favorably to the
49 director, then the court shall issue a permanent injunction
50 upon proof that the person is operating or conducting a
51 nursing home without a license as required by law, or has
52 continued to violate the rules of the director.

53 (c) Any nursing home that deprives a resident of any
54 right or benefit created or established for the well-being of
55 this resident by the terms of any contract, by any state
56 statute or rule, or by any applicable federal statute or
57 regulation, shall be liable to the resident for injuries
58 suffered as a result of such deprivation. Upon a finding
59 that a resident has been deprived of such a right or benefit,
60 and that the resident has been injured as a result of such
61 deprivation, and unless there is a finding that the nursing
62 home exercised all care reasonably necessary to prevent
63 and limit the deprivation and injury to the resident,
64 compensatory damages shall be assessed in an amount
65 sufficient to compensate the resident for such injury. In
66 addition, where the deprivation of any such right or
67 benefit is found to have been willful or in reckless
68 disregard of the lawful rights of the resident, punitive
69 damages may be assessed. A resident may also maintain
70 an action pursuant to this section for any other type of
71 relief, including injunctive and declaratory relief,
72 permitted by law. Exhaustion of any available

73 administrative remedies may not be required prior to
74 commencement of suit hereunder.

75 The amount of damages recovered by a resident, in an
76 action brought pursuant to this section, shall be exempt
77 for purposes of determining initial or continuing
78 eligibility for medical assistance under article four, chapter
79 nine of this code, and may neither be taken into
80 consideration nor required to be applied toward the
81 payment or part payment of the cost of medical care or
82 services available under said article.

83 Any waiver by a resident or his or her legal
84 representative of the right to commence an action under
85 this section, whether oral or in writing, shall be null and
86 void as contrary to public policy.

87 (d) The penalties and remedies provided in this section
88 are cumulative and shall be in addition to all other
89 penalties and remedies provided by law.

§16-5C-16. Availability of reports and records.

1 The director shall make available for public inspection
2 and at a nominal cost provide copies of all inspections and
3 other reports of nursing homes filed with or issued by the
4 director. Nothing contained in this section may be
5 construed or deemed to allow the public disclosure of
6 confidential medical, social, personal or financial records
7 of any resident. The director shall adopt such rules as may
8 be necessary to give effect to the provisions of this section
9 and to preserve the confidentiality of medical, social,
10 personal or financial records of residents.

§16-5C-17. Licenses and rules in force.

1 All licenses for nursing homes which are in force on
2 the first day of July, one thousand nine hundred ninety-
3 five, shall continue in full force and effect during the
4 period for which issued unless sooner revoked as provided
5 in this article.

6 All rules in effect on the first day of July, one
7 thousand nine hundred ninety-five, which were adopted
8 by the director relating to licensing nursing homes shall

9 remain in full force and effect until altered, amended or
10 repealed by the director.

**§16-5C-18. Separate accounts for residents' personal funds;
consent for use; records; penalties.**

1 (a) Each nursing home subject to the provisions of this
2 article shall hold in a separate account and in trust each
3 resident's personal funds deposited with the nursing
4 home.

5 (b) No person may use or cause to be used for any
6 purpose the personal funds of any resident admitted to
7 any such nursing home unless consent for the use thereof
8 has been obtained from the resident or from a committee
9 or guardian or relative.

10 (c) Each nursing home shall maintain a true and
11 complete record of all receipts for any disbursements
12 from the personal funds account of each resident in the
13 nursing home, including the purpose and payee of each
14 disbursement, and shall render a true account of such
15 record to the resident or his or her representative upon
16 demand and upon termination of the resident's stay in the
17 nursing home.

18 (d) Any person or corporation who violates any
19 subsection of this section is guilty of a misdemeanor and,
20 upon conviction thereof, shall be fined not more than one
21 thousand dollars, or imprisoned in jail not more than one
22 year, or both fined and imprisoned.

23 (e) Reports provided to review organizations are
24 confidential unless inaccessibility of information interferes
25 with the director's ability to perform his or her oversight
26 function as mandated by federal regulations and this
27 section.

ARTICLE 5D. PERSONAL CARE HOMES.

§16-5D-1. Purpose.

§16-5D-2. Definitions.

§16-5D-3. Powers, duties and rights of director.

§16-5D-4. Administrative and inspection staff.

§16-5D-5. Rules; minimum standards for personal care homes.

§16-5D-6. License required; application; fees; duration; renewal.

- §16-5D-7. Cost disclosure; surety for residents' funds.
- §16-5D-8. Investigation of complaints.
- §16-5D-9. Inspections.
- §16-5D-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.
- §16-5D-11. License limitation, suspension, revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearings.
- §16-5D-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.
- §16-5D-13. Judicial review.
- §16-5D-14. Legal counsel and services for the director.
- §16-5D-15. Unlawful acts; penalties; injunctions; private right of action.
- §16-5D-16. Availability of reports and records.
- §16-5D-17. Licenses and rules in force.
- §16-5D-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

§16-5D-1. Purpose.

1 It is the policy of this state to encourage and promote
2 the development and utilization of resources to ensure the
3 effective care and treatment of persons who are dependent
4 upon the services of others by reason of physical or
5 mental impairment who may require limited and
6 intermittent nursing care, including those individuals who
7 qualify for and are receiving services coordinated by a
8 licensed hospice. Such care and treatment requires a
9 living environment for such persons which, to the extent
10 practicable, will approximate a normal home environment.
11 To this end, the guiding principle for administration of the
12 laws of the state is that such persons shall be encouraged
13 and assisted in securing necessary care and treatment in
14 noninstitutional surroundings. In recognition that for
15 many such persons effective care and treatment can only
16 be secured from proprietary, voluntary and governmental
17 personal care homes it is the policy of this state to
18 encourage, promote and require the maintenance of
19 personal care homes so as to ensure protection of the
20 rights and dignity of those using the services of personal
21 care homes.

22 The provisions of this article are hereby declared to be
23 remedial and shall be liberally construed to effectuate its
24 purposes and intents.

§16-5D-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) "Deficiency" means a statement of the rule and
4 the fact that compliance has not been established and the
5 reasons therefor;

6 (b) "Department" means the state department of
7 health and human resources;

8 (c) "Director" means the secretary of the department
9 of health and human resources or his or her designee;

10 (d) "Division" means the bureau for public health of
11 the state department of health and human resources;

12 (e) "Limited and intermittent nursing care" means
13 direct hands on nursing care of an individual who needs
14 no more than two hours of nursing care per day for a
15 period of time no longer than ninety consecutive days per
16 episode. This care may only be provided when the need
17 for such care meets these factors: (1) The resident
18 requests to remain in the personal care home; (2) the
19 resident is advised of the availability of other specialized
20 health care facilities to treat his or her condition; and (3)
21 the need for such care is the result of a medical pathology
22 or a result of the normal aging process. Limited and
23 intermittent nursing care may only be provided by or
24 under the supervision of a registered professional nurse
25 and in accordance with rules proposed by the secretary for
26 legislative approval in accordance with the provisions of
27 article three, chapter twenty-nine-a of this code;

28 (f) "Nursing care" means those procedures
29 commonly employed in providing for the physical,
30 emotional and rehabilitational needs of the ill or otherwise
31 incapacitated which require technical skills and knowledge
32 beyond that which the untrained person possesses,
33 including, but not limited to, such procedures as:

34 Irrigations, catheterization, special procedures contributing
35 to rehabilitation and administration of medication by any
36 method which involves a level of complexity and skill in
37 administration not possessed by the untrained person;

38 (g) "Person" means an individual and every form of
39 organization, whether incorporated or unincorporated,
40 including any partnership, corporation, trust, association
41 or political subdivision of the state;

42 (h) "Personal assistance" means personal services,
43 including, but not limited to, the following: Help in
44 walking, bathing, dressing, feeding or getting in or out of
45 bed, or supervision required because of the age or mental
46 impairment of the resident;

47 (i) "Personal care home" means any institution,
48 residence or place, or any part or unit thereof, however
49 named, in this state which is advertised, offered,
50 maintained or operated by the ownership or management,
51 whether for a consideration or not, for the express or
52 implied purpose of providing accommodations and
53 personal assistance and supervision, for a period of more
54 than twenty-four hours, to four or more persons who are
55 dependent upon the services of others by reason of
56 physical or mental impairment who may require limited
57 and intermittent nursing care, including those individuals
58 who qualify for and are receiving services coordinated by
59 a licensed hospice: *Provided*, That services utilizing
60 equipment which requires auxiliary electrical power in the
61 event of a power failure may not be used unless the
62 personal care home has a backup power generator:
63 *Provided, however*, That the care or treatment in a
64 household, whether for compensation or not, of any
65 person related by blood or marriage, within the degree of
66 consanguinity of second cousin to the head of the
67 household, or his or her spouse, may not be deemed to
68 constitute a personal care home within the meaning of this
69 article. Nothing contained in this article applies to
70 hospitals, as defined under section one, article five-b of
71 this chapter; or state institutions, as defined under section
72 three, article one, chapter twenty-five of this code or
73 section six, article one, chapter twenty-seven of this code;

74 or personal care homes operated by the federal
75 government or the state; or institutions operated for the
76 treatment and care of alcoholic patients; or offices of
77 physicians; or hotels, boarding homes or other similar
78 places that furnish to their guests only room and board; or
79 to homes or asylums operated by fraternal orders pursuant
80 to article three, chapter thirty-five of this code;

81 (j) "Resident" means an individual living in a
82 personal care home for the purpose of receiving personal
83 assistance or limited and intermittent nursing services from
84 the home;

85 (k) "Secretary" means the secretary of the state
86 department of health and human resources or his or her
87 designee; and

88 (l) "Substantial compliance" means a level of
89 compliance with the rules such that identified deficiencies
90 pose no greater risk to resident health or safety than the
91 potential for causing minimal harm.

92 The secretary may define in rules any term used herein
93 which is not expressly defined.

§16-5D-3. Powers, duties and rights of director.

1 In the administration of this article, the director has the
2 following powers, duties and rights:

3 (a) To enforce rules and standards for personal care
4 homes; which are adopted, promulgated, amended or
5 modified by the secretary;

6 (b) To exercise as sole authority all powers relating to
7 the issuance, suspension and revocation of licenses of
8 personal care homes;

9 (c) To enforce rules adopted, promulgated, amended
10 or modified by the secretary governing the qualification
11 of applicants for personal care home licenses, including,
12 but not limited to, educational requirements, financial
13 requirements, personal and ethical requirements;

14 (d) To receive and disburse federal funds and to take
15 whatever action not contrary to law as may be proper and

16 necessary to comply with the requirements and conditions
17 for the receipt of federal funds;

18 (e) To receive and disburse for authorized purposes
19 any moneys appropriated for the division by the
20 Legislature;

21 (f) To receive and disburse for purposes authorized by
22 this article, any funds that may come to the division by
23 gift, grant, donation, bequest or devise, according to the
24 terms thereof, as well as funds derived from the division's
25 operation, or otherwise;

26 (g) To make contracts, and to execute all instruments
27 necessary or convenient in carrying out the director's
28 functions and duties; and all such contracts, agreements
29 and instruments shall be executed by the director;

30 (h) To appoint officers, agents, employees and other
31 personnel and fix their compensation;

32 (i) To offer and sponsor educational and training
33 programs for personal care homes' administrative,
34 management and operational personnel;

35 (j) To undertake survey, research and planning
36 projects and programs relating to administration and
37 operation of personal care homes and to the health, care,
38 treatment and service in general of residents of such
39 homes;

40 (k) To assess civil penalties for violations of personal
41 care home standards, in accordance with section ten of this
42 article;

43 (l) To inspect any personal care home and any records
44 maintained therein, subject to the provisions of section ten
45 of this article;

46 (m) To establish and implement procedures, including
47 informal conferences, investigations and hearings, subject
48 to applicable provisions of article three, chapter
49 twenty-nine-a of this code, and to enforce compliance with
50 the provisions of this article and with rules issued
51 hereunder, by the secretary;

52 (n) To subpoena witnesses and documents, administer
53 oaths and affirmations, and to examine witnesses under
54 oath for the conduct of any investigation or hearing.
55 Upon failure of a person without lawful excuse to obey a
56 subpoena to give testimony and upon reasonable notice to
57 all persons affected thereby, the director may apply to the
58 circuit court of the county in which the hearing is to be
59 held or to the circuit court of Kanawha County for an
60 order compelling compliance;

61 (o) To make complaint or cause proceedings to be
62 instituted against any person for the violation of the
63 provisions of this article or of rules issued hereunder, by
64 the secretary. Such action may be taken by the director
65 without the sanction of the prosecuting attorney of the
66 county in which proceedings are instituted, if the
67 prosecuting attorney fails or refuses to discharge his or
68 her duty. The circuit court of Kanawha County or the
69 circuit court of the county in which the conduct has
70 occurred shall have jurisdiction in all civil enforcement
71 actions brought under this article and may order equitable
72 relief without bond. In no such case may the director or
73 any person acting under the director's direction be
74 required to give security for costs;

75 (p) To delegate authority to the director's employees
76 and agents to perform all functions of the director except
77 the making of final decisions in adjudications; and

78 (q) To submit an annual report to the governor, the
79 Legislature and the public. The report shall describe the
80 personal care home licensing and investigatory activities
81 of the division during the year, and the nature and status
82 of other activities of the division, and may include
83 comment on the acts, policies, practices or procedures of
84 any public or private agency that affect the rights, health
85 or welfare of residents of personal care homes. The
86 annual report shall include a list of all personal care
87 homes in the state and such of the following information
88 as the director determines to apply: Whether the homes
89 are proprietary or nonproprietary; the classification of
90 each home; the name of the owner or owners; the total
91 number of beds; the number of private and semi-private

92 rooms; the costs per diem for private residents; the
93 number of full-time employees and their professions;
94 recreational programs; services and programs available as
95 well as the costs thereof; and whether or not those personal
96 care homes listed accept medicare and medicaid residents.
97 The report shall also contain the division's
98 recommendations as to changes in law or policy which it
99 deems necessary or appropriate for the protection of the
100 rights, health or welfare of residents of personal care
101 homes in the state.

§16-5D-4. Administrative and inspection staff.

1 The director may, as he or she determines necessary,
2 employ administrative employees, inspectors or other
3 persons as may be necessary to properly carry out the
4 provisions of this article. All employees of the division
5 shall be members of the state civil service system. Such
6 inspectors and other employees as may be duly designated
7 by the director shall act as the director's representatives
8 and, under the direction of the director, shall enforce the
9 provisions of this article and all duly promulgated rules of
10 the secretary and, in the discharge of official duties, shall
11 have the right of entry into any place maintained as a
12 personal care home at any time.

§16-5D-5. Rules; minimum standards for personal care homes.

1 (a) All rules shall be approved by the secretary and
2 proposed in the manner provided by the provisions of
3 article three, chapter twenty-nine-a of this code. The
4 secretary shall adopt, amend or repeal such rules as may
5 be necessary or proper to carry out the purposes and
6 intent of this article and to enable the director to exercise
7 the powers and perform the duties conferred upon the
8 director by this article.

9 (b) The secretary shall propose rules establishing
10 minimum standards of operation of personal care homes
11 including, but not limited to, the following:

12 (1) Administrative policies, including: (A) An
13 affirmative statement of the right of access to personal
14 care homes by members of recognized community

15 organizations and community legal services programs
16 whose purposes include rendering assistance without
17 charge to residents, consistent with the right of residents to
18 privacy; and (B) a statement of the rights and
19 responsibilities of residents;

20 (2) Minimum numbers and qualifications of personnel,
21 including management, medical and nursing, aides,
22 orderlies and support personnel, according to the size and
23 classification of the personal care home;

24 (3) Safety requirements;

25 (4) Sanitation requirements;

26 (5) Protective and personal services to be provided;

27 (6) Dietary services to be provided;

28 (7) Maintenance of health records;

29 (8) Social and recreational activities to be made
30 available;

31 (9) Physical facilities;

32 (10) Requirements related to provision of limited and
33 intermittent nursing; and

34 (11) Such other categories as the secretary determines
35 to be appropriate to ensure resident's health, safety and
36 welfare.

37 (c) The secretary shall include in rules detailed
38 standards for each of the categories of standards
39 established pursuant to subsections (b) and (d) of this
40 section, and shall classify such standards as follows: (1)
41 Class I standards are standards the violation of which, as
42 the secretary determines, would present either an imminent
43 danger to the health, safety or welfare of any resident or a
44 substantial probability that death or serious physical harm
45 would result; (2) Class II standards are standards which the
46 secretary determines have a direct or immediate
47 relationship to the health, safety or welfare of any resident,
48 but which do not create imminent danger; (3) Class III
49 standards are standards which the secretary determines

50 have an indirect or a potential impact on the health, safety
51 or welfare of any resident.

52 (d) A personal care home must attain substantial
53 compliance with standards established pursuant to section
54 five of this article, and such other requirements for a
55 license as may be established by rule under this article.

**§16-5D-6. License required; application; fees; duration;
renewal.**

1 Subject to the provisions of section seventeen of this
2 article, no person may establish, operate, maintain, offer or
3 advertise a personal care home within this state unless and
4 until he or she obtains a valid license therefor as provided
5 in this article, which license remains unsuspended,
6 unrevoked and unexpired. No public official or
7 employee may place any person in, or recommend that
8 any person be placed in, or directly or indirectly cause
9 any person to be placed in, any personal care home, as
10 defined in section two of this article, which is being
11 operated without a valid license from the director. The
12 procedure for obtaining a license shall be as follows:

13 (a) The applicant shall submit an application to the
14 director on a form to be prescribed by the director,
15 containing such information as may be necessary to show
16 that the applicant is in compliance with the standards for
17 personal care homes as established by this article and the
18 rules lawfully promulgated by the secretary hereunder.
19 The application and any exhibits thereto shall provide the
20 following information:

21 (1) The name and address of the applicant;

22 (2) The name, address and principal occupation: (A)
23 Of each person who, as a stockholder or otherwise, has a
24 proprietary interest of ten percent or more in the
25 applicant; (B) of each officer and director of a corporate
26 applicant; (C) of each trustee and beneficiary of an
27 applicant which is a trust; and (D) where a corporation has
28 a proprietary interest of twenty-five percent or more in an
29 applicant, the name, address and principal occupation of
30 each officer and director of the corporation;

31 (3) The name and address of the owner of the premises
32 of the personal care home or proposed personal care
33 home, if he or she is a different person from the applicant,
34 and in such case, the name and address: (A) Of each
35 person who, as a stockholder or otherwise, has a
36 proprietary interest of ten percent or more in the owner;
37 (B) of each officer and director of a corporate applicant;
38 (C) of each trustee and beneficiary of the owner if it is a
39 trust; and (D) where a corporation has a proprietary
40 interest of twenty-five percent or more in the owner, the
41 name and address of each officer and director of the
42 corporation;

43 (4) Where the applicant is the lessee or the assignee of
44 the personal care home or the premises of the proposed
45 personal care home, a signed copy of the lease and any
46 assignment thereof;

47 (5) The name and address of the personal care home
48 or the premises of the proposed personal care home;

49 (6) The proposed bed quota of the personal care home
50 and the proposed bed quota of each unit thereof;

51 (7) (A) An organizational plan for the personal care
52 home indicating the number of persons employed or to be
53 employed, the positions and duties of all employees; (B)
54 the name and address of the individual who is to serve as
55 administrator; and (C) such evidence of compliance with
56 applicable laws and rules governing zoning, buildings,
57 safety, fire prevention and sanitation as the director may
58 require; and

59 (8) Such additional information as the director may
60 require.

61 (b) Upon receipt and review of an application for
62 license made pursuant to subsection (a) of this section, and
63 inspection of the applicant personal care home pursuant to
64 section ten of this article, the director shall issue a license
65 if he or she finds:

66 (1) That an individual applicant, and every partner,
67 trustee, officer, director and controlling person of an
68 applicant which is not an individual, is a person

69 responsible and suitable to operate or to direct or
70 participate in the operation of a personal care home by
71 virtue of financial capacity, appropriate business or
72 professional experience, a record of compliance with
73 lawful orders of the department, if any, and lack of
74 revocation of a license during the previous five years;

75 (2) That the personal care home is under the
76 supervision of an administrator who is qualified by
77 training and experience; or

78 (3) That the personal care home is in substantial
79 compliance with standards established pursuant to section
80 five of this article, and such other requirements for a
81 license as the secretary may establish by rule under this
82 article.

83 The director may deny an initial or renewal license if
84 the information provided in an application or report is
85 known by the applicant to be false, or the applicant fails to
86 report required information, or for any other reason
87 permitted by law or rules promulgated pursuant to this
88 article.

89 Any license granted by the director shall state the
90 maximum bed capacity for which it is granted, the date the
91 license was issued, and the expiration date. Licenses shall
92 be issued for a period not to exceed one year for personal
93 care homes: *Provided*, That any such license in effect for
94 which timely application for renewal, together with
95 payment of the proper fee has been made to the state
96 division of health in conformance with the provisions of
97 this article and the rules issued thereunder, and prior to the
98 expiration date of the license, shall continue in effect until:
99 (A) One year following the expiration date of the license;
100 or (B) the date of the revocation or suspension of the
101 license pursuant to the provisions of this article; or (C) the
102 date of issuance of a new license, whichever date first
103 occurs. Each license shall be issued only for the premises
104 and persons named in the application and is not
105 transferable or assignable: *Provided, however*, That in the
106 case of the transfer of ownership of a personal care home
107 with an unexpired license, the application of the new
108 owner for a license shall have the effect of a license for a

109 period of three months when filed with the director.
110 Every license shall be posted in a conspicuous place in the
111 personal care home for which it is issued so as to be
112 accessible to and in plain view of all residents and visitors
113 of the personal care home.

114 (c) An original license shall be renewable, conditioned
115 upon the licensee filing timely application for the
116 extension of the term of the license accompanied by the
117 fee, and contingent upon evidence of compliance with the
118 provisions of this article and rules promulgated by the
119 secretary hereunder; the application shall be accompanied
120 by the information required in subdivisions (1), (2) and
121 (3) of this subsection.

122 (1) A balance sheet of the personal care home as of the
123 end of its fiscal year, setting forth assets and liabilities at
124 such date, including all capital, surplus, reserve,
125 depreciation and similar accounts;

126 (2) A statement of operations of the personal care
127 home as of the end of its fiscal year, setting forth all
128 revenues, expenses, taxes, extraordinary items and other
129 credits or charges; and

130 (3) A statement of any changes in the name, address,
131 management or ownership information on file with the
132 director.

133 (d) In the case of an application for a renewal license,
134 if all requirements of section five of this article are not
135 met, the director may in his or her discretion issue a
136 provisional license, provided that care given in the
137 personal care home is adequate for resident needs and the
138 personal care home has demonstrated improvement and
139 evidences potential for substantial compliance within the
140 term of the license: *Provided*, That a provisional renewal
141 may not be issued for a period greater than one year, may
142 not be renewed, and may not be issued to any personal
143 care home with uncorrected violations of any Class I
144 standard, as defined in subsection (c), section five of this
145 article.

146 (e) A nonrefundable application fee in the amount of
147 sixty-five dollars for an original personal care home
148 license shall be paid at the time application is made for the
149 license. An average cost of all direct costs for the initial
150 licensure for the preceding ten facilities based on the size
151 of the facility's licensed bed capacity shall be borne by
152 the applicant and shall be received by the director prior to
153 the issuance of an initial or amended license. The license
154 fee for renewal of a license shall be at the rate of six
155 dollars per bed per year for personal care homes, except
156 the annual rate per bed may be assessed for licenses issued
157 for less than one year. The director may annually adjust
158 the licensure fees for inflation based upon the consumer
159 price index. The bed capacity for the holder of each
160 license shall be determined by the director. All license
161 fees shall be due and payable to the director, annually, and
162 in the manner set forth in the rules promulgated by the
163 secretary. The fee and application shall be submitted to
164 the director who shall retain both the application and fee
165 pending final action on the application. All fees received
166 by the director under the provisions of this article shall be
167 deposited in accordance with section thirteen, article one
168 of this chapter.

§16-5D-7. Cost disclosure; surety for residents' funds.

1 (a) Each personal care home shall disclose in writing to
2 all prospective residents a complete and accurate list of all
3 costs which may be incurred by them. Residents are not
4 liable for any cost not so disclosed.

5 (b) If the personal care home handles any money for
6 residents within the personal care home, the licensee or his
7 or her authorized representative shall give a bond in an
8 amount consistent with this subsection and with such
9 surety as the director shall approve. The bond shall be
10 upon condition that the licensee shall hold separately and
11 in trust all residents' funds deposited with the licensee,
12 shall administer the funds on behalf of the resident in the
13 manner directed by the depositor, shall render a true and
14 complete account to the depositor and the director when
15 requested, and at least quarterly to the resident, and upon
16 termination of the deposit, shall account for all funds

17 received, expended, and held on hand. The licensee shall
18 file a bond in a sum to be fixed by the director based
19 upon the magnitude of the operations of the applicant, but
20 which sum may not be less than two thousand five
21 hundred dollars.

22 Every person injured as a result of any improper or
23 unlawful handling of the money of a resident of a
24 personal care home may bring an action in a proper court
25 on the bond required to be posted by the licensee
26 pursuant to this subsection for the amount of damage
27 suffered as a result thereof to the extent covered by the
28 bond. Whenever the director determines that the amount
29 of any bond which is filed pursuant to this subsection is
30 insufficient to adequately protect the money of residents
31 which is being handled, or whenever the amount of any
32 bond is impaired by any recovery against the bond, the
33 director may require the licensee to file an additional
34 bond in such amount as necessary to adequately protect
35 the money of residents being handled.

36 The provisions of this subsection do not apply if the
37 licensee handles less than twenty-five dollars per resident
38 and less than five hundred dollars for all residents in any
39 month.

§16-5D-8. Investigation of complaints.

1 The secretary shall establish by rule procedures for
2 prompt investigation of all complaints of alleged
3 violations by personal care homes of applicable
4 requirements of state law or rules, except for such
5 complaints that the director determines are willfully
6 intended to harass a licensee or are without any reasonable
7 basis. Such procedures shall include provisions for
8 ensuring the confidentiality of the complainant and of any
9 other person so named in the complaint, and for promptly
10 informing the complainant and the personal care home
11 involved of the results of the investigation.

12 If, after its investigation, the director determines that
13 the complaint has merit, the director shall take appropriate
14 disciplinary action and shall advise any injured party of
15 the possibility of a civil remedy under this article.

16 No personal care home may discharge or in any
17 manner discriminate against any resident or employee for
18 the reason that the resident or employee has filed a
19 complaint or participated in any proceeding specified in
20 this article. Violation of this prohibition by any personal
21 care home constitutes ground for the suspension or
22 revocation of the license of the personal care home as
23 provided in section eleven of this article. Any type of
24 discriminatory treatment of a resident or employee by
25 whom, or upon whose behalf, a complaint has been
26 submitted to the director, or any proceeding instituted
27 under this article, within one hundred twenty days of the
28 filing of the complaint or the institution of the action, shall
29 raise a rebuttable presumption that the action was taken by
30 the personal care home in retaliation for the complaint or
31 action.

§16-5D-9. Inspections.

1 The director and any duly designated employee or
2 agent thereof shall have the right to enter upon and into
3 the premises of any personal care home at any time for
4 which a license has been issued, for which an application
5 for license has been filed with the director, or which the
6 director has reason to believe is being operated or
7 maintained as a personal care home without a license. If
8 entry is refused by the owner or person in charge of the
9 personal care home, the director shall apply to the circuit
10 court of the county in which the personal care home is
11 located or the circuit court of Kanawha County for an
12 order authorizing inspection, and the court shall issue an
13 appropriate order if it finds good cause.

14 The director, by the director's authorized employees
15 or agents, shall conduct at least one inspection prior to
16 issuance of a license pursuant to section six of this article,
17 and shall conduct periodic unannounced inspections
18 thereafter, to determine compliance by the personal care
19 home with applicable statutes and rules promulgated
20 thereunder. All personal care homes shall comply with
21 rules of the state fire commission. The state fire marshal,
22 by his or her employees or authorized agents, shall make
23 all fire, safety and like inspections. The director may

24 provide for such other inspections as the director may
25 deem necessary to carry out the intent and purpose of this
26 article. If after investigating a complaint, the director
27 determines that the complaint is substantiated and that an
28 immediate and serious threat to a resident's health or
29 safety exists, the director may invoke any remedies
30 available pursuant to section eleven of this article. Any
31 personal care home aggrieved by a determination or
32 assessment made pursuant to this section shall have the
33 right to an administrative appeal as set forth in section
34 twelve of this article.

**§16-5D-10. Reports of inspections; plans of correction;
assessment of penalties and use of funds derived
therefrom; hearings.**

1 (a) Reports of all inspections made pursuant to section
2 nine of this article shall be in writing and filed with the
3 director, and shall list all deficiencies in the personal care
4 home's compliance with the provisions of this article and
5 the rules adopted by the secretary hereunder. The
6 director shall send a copy of the report to the personal
7 care home by certified mail, return receipt requested, and
8 shall specify a time within which the personal care home
9 shall submit a plan for correction of deficiencies, which
10 plan shall be approved, rejected or modified by the
11 director. The surveyors shall allow audio taping of the
12 exit conference for licensure inspections with all costs
13 directly associated with the taping to be paid by the
14 personal care home provided that an original tape is
15 provided to surveyors at the end of taping.

16 (b) Upon a personal care home's failure to submit a
17 plan of correction which is approved by the director, or to
18 correct any deficiency within the time specified in an
19 approved plan of correction, the director may assess civil
20 penalties as hereinafter provided or may initiate any other
21 legal or disciplinary action as provided by this article.

22 (c) Nothing in this section may be construed to
23 prohibit the director from enforcing a rule,
24 administratively or in court, without first affording formal
25 opportunity to make correction under this section, where,
26 in the opinion of the director, the violation of the rule

27 jeopardizes the health or safety of residents or where the
28 violation of the rule is the second or subsequent violation
29 occurring during a period of twelve full months.

30 (d) Civil penalties assessed against personal care homes
31 shall be classified according to the nature of the violation
32 as defined in subsection (c), section five of this article and
33 rules promulgated thereunder by the secretary, as follows:
34 For each violation of a Class I standard, a civil penalty of
35 not less than fifty nor more than five hundred dollars shall
36 be imposed; for each violation of a Class II standard, a
37 civil penalty of not less than twenty-five nor more than
38 fifty dollars shall be imposed; for each violation of a Class
39 III standard, a civil penalty of not less than ten nor more
40 than twenty-five dollars shall be imposed. Each day a
41 violation continues, after the date of citation, shall
42 constitute a separate violation. The date of citation is the
43 date the facility receives the written statement of
44 deficiencies.

45 (e) The director shall assess a civil penalty not to
46 exceed two thousand dollars against any individual who
47 notifies, or causes to be notified, a personal care home of
48 the time or date on which an inspection is scheduled to be
49 conducted under this article.

50 (f) If the director assesses a penalty under this section,
51 the director shall cause delivery of notice of the penalty
52 by personal service or by certified mail. The notice shall
53 state the amount of the penalty, the action or circumstance
54 for which the penalty is assessed, the requirement that the
55 action or circumstance violates, and the basis upon which
56 the director assessed the penalty and selected the amount
57 of the penalty.

58 (g) The director shall, in a civil judicial proceeding,
59 recover any unpaid assessment which has not been
60 contested under section twelve of this article within thirty
61 days of receipt of notice of the assessment, or which has
62 been affirmed under the provisions of that section and not
63 appealed within thirty days of receipt of the director's final
64 order, or which has been affirmed on judicial review, as
65 provided in section thirteen of this article. All money
66 collected by assessments of civil penalties or interest shall

67 be paid into a special resident benefit account and shall be
68 applied by the director only for the protection of the
69 health or property of residents of personal care homes
70 operated within the state that the director finds to be
71 deficient, including payment for the costs of relocation of
72 residents to other facilities, operation of a personal care
73 home pending correction of deficiencies or closure, and
74 reimbursement of residents for personal funds lost.

75 (h) The opportunity for a hearing on an action taken
76 under this section shall be as provided in section twelve of
77 this article. In addition to any other rights of appeal
78 conferred upon a personal care home pursuant to this
79 section, a personal care home shall have the right to
80 request a hearing and seek judicial review pursuant to
81 sections twelve and thirteen of this article to contest the
82 citing by the director of a deficiency on an inspection
83 report, irrespective of whether the deficiency results in the
84 imposition of a civil penalty.

§16-5D-11. License limitation, suspension, revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearings.

1 (a) The director shall by order, impose a ban on the
2 admission of residents or reduce the bed quota of the
3 personal care home, or any combination thereof, where he
4 or she finds upon inspection of the personal care home
5 that the licensee is not providing adequate care under the
6 personal care home's existing bed quota, and that
7 reduction in quota or imposition of a ban on admissions,
8 or any combination thereof, would place the licensee in a
9 position to render adequate care. Any notice to a licensee
10 of reduction in quota or ban on new admissions shall
11 include the terms of the order, the reasons therefor, and
12 the date set for compliance.

13 (b) The director may suspend or revoke a license
14 issued under this article if he or she finds upon inspection
15 that there has been a substantial failure to comply with the
16 provisions of this article or the standards or rules
17 promulgated pursuant hereto.

18 (c) Whenever a license is limited, suspended or revoked
19 pursuant to this section, the director shall file an
20 administrative complaint stating facts constituting a
21 ground or grounds for the limitation, suspension or
22 revocation. Upon the filing of the administrative
23 complaint, the director shall notify the licensee in writing
24 of the filing of the administrative complaint, enclosing a
25 copy of the complaint, and shall advise the licensee of the
26 availability of a hearing pursuant to section twelve of this
27 article. The notice and copy of the administrative
28 complaint shall be served on the licensee by certified mail,
29 return receipt requested.

30 (d) The suspension, expiration, forfeiture or
31 cancellation by operation of law or order of the director
32 of a license issued by the director, or the withdrawal of an
33 application for a license after it has been filed with the
34 director, may not deprive the director of the director's
35 authority to institute or continue a disciplinary
36 proceeding, or a proceeding for the denial of a license
37 application, against the licensee or applicant upon any
38 ground provided by law or to enter an order denying the
39 license application or suspending or revoking the license
40 or otherwise taking disciplinary action on any such
41 ground.

42 (e) In addition to other remedies provided in this
43 article, upon petition from the director, the circuit court of
44 the county in which the conduct has occurred or is
45 occurring, or the circuit court of Kanawha County, may
46 determine that a personal care home's deficiencies under
47 this article constitute an emergency immediately
48 jeopardizing the health, safety, welfare, or rights of its
49 residents, and issue an order to:

50 (1) Close the personal care home;

51 (2) Transfer residents in the personal care home to
52 other facilities; or

53 (3) Appoint temporary management to oversee the
54 operation of the personal care home and to assure the
55 health, safety, welfare and rights of the personal care

56 home's residents, where there is a need for temporary
57 management while:

58 (A) There is an orderly closure of the personal care
59 home; or

60 (B) Improvements are made in order to bring the
61 personal care home into compliance with all the applicable
62 requirements of this article.

63 If the director petitions a circuit court for the closure
64 of a personal care home, the transfer of residents, or the
65 appointment of a temporary management, the circuit court
66 shall hold a hearing no later than seven days thereafter, at
67 which time the director and the licensee or operator of the
68 personal care home may participate and present evidence.

69 A circuit court may divest the licensee or operator of
70 possession and control of a personal care home in favor of
71 temporary management. The temporary management
72 shall be responsible to the court and shall have such
73 powers and duties as the court may grant to direct all acts
74 necessary or appropriate to conserve the property and
75 promote the health, safety, welfare and rights of the
76 residents of the personal care home, including, but not
77 limited to, the replacement of management and staff, the
78 hiring of consultants, the making of any necessary
79 expenditures to close the personal care home or to repair
80 or improve the personal care home so as to return it to
81 compliance with applicable requirements, and the power to
82 receive, conserve and expend funds, including payments
83 on behalf of the licensee or operator of the personal care
84 home. Priority shall be given to expenditures for current
85 direct resident care or the transfer of residents.

86 The person charged with temporary management: (i)
87 Shall be an officer of the court; (ii) shall be paid by the
88 licensee; (iii) is not liable for conditions at the personal
89 care home which existed or originated prior to his or her
90 or her appointment; (iv) is not personally liable, except for
91 his or her or her own gross negligence and intentional acts
92 which result in injuries to persons or damage to property
93 at the personal care home during his or her temporary
94 management.

95 No person may impede the operation of temporary
96 management. There shall be an automatic stay for a
97 ninety-day period subsequent to the establishment of
98 temporary management of any action that would interfere
99 with the functioning of the personal care home, including,
100 but not limited to, cancellation of insurance policies,
101 termination of utility services, attachments to working
102 capital accounts, foreclosures, evictions and repossessions
103 of equipment used in the personal care home.

104 A temporary management established for the purpose
105 of making improvements in order to bring a personal care
106 home into compliance with applicable requirements may
107 not be terminated until the court has determined that the
108 personal care home has the management capability to
109 ensure continued compliance with all applicable
110 requirements, except if the court has not made such
111 determination within six months of the establishment of
112 the temporary management, the temporary management
113 terminates by operation of law at that time, and the
114 personal care home shall be closed. After the termination
115 of the temporary management, the person who was
116 responsible for the temporary management shall make an
117 accounting to the court, and after deducting from receipts
118 the costs of the temporary management, expenditures and
119 civil penalties and interest no longer subject to appeal, in
120 that order, any excess shall be paid to the licensee or
121 operator of the personal care home.

122 (f) The assessments for penalties and for costs of
123 actions taken under this article shall have interest assessed
124 at five percent per annum beginning thirty days after
125 receipt of notice of the assessment or thirty days after
126 receipt of the director's final order following a hearing,
127 whichever is later. All assessments against a personal care
128 home that are unpaid shall be added to the personal care
129 home's licensure fee and may be filed as a lien against the
130 property of the licensee or operator of the personal care
131 home. Funds received from assessments shall be
132 deposited as funds received as provided in section ten of
133 this article.

134 (g) The secretary shall have the power to promulgate
135 emergency rules that expand the power of the director in
136 excess of that provided in this article to the extent required
137 to comply with federal requirements, but any such rules
138 shall expand the power of the director to the minimum
139 extent required by federal requirements. The rules are
140 subject to the provisions of article three, chapter
141 twenty-nine-a of this code.

142 (h) The opportunity for a hearing on an action by the
143 director taken under this section shall be as provided in
144 section twelve of this article.

**§16-5D-12. Administrative appeals for civil assessments,
license limitation, suspension or revocation.**

1 (a) Any licensee or applicant aggrieved by an order
2 issued pursuant to sections five, six, ten or eleven of this
3 article shall, upon timely written request, have the
4 opportunity for a hearing by the director at which he or
5 she may contest the order as contrary to law or
6 unwarranted by the facts or both. All of the pertinent
7 provisions of article five, chapter twenty-nine-a of this
8 code shall apply to and govern the hearing and the
9 administrative procedures in connection with the hearing.
10 The licensee or applicant may also request an informal
11 meeting with the director before the hearing.

12 Following the hearing the director shall make and
13 enter a written order either dismissing the complaint or
14 taking such action as is authorized in this article. The
15 written order of the director shall be accompanied by
16 findings of fact and conclusions of law as specified in
17 section three, article five, chapter twenty-nine-a of this
18 code, and a copy of the order and accompanying findings
19 and conclusions shall be served upon the licensee and his
20 or her attorney of record, if any, by certified mail, return
21 receipt requested. If the director suspends a personal care
22 home's license, it shall also specify the conditions giving
23 rise to the suspension, to be corrected by the licensee
24 during the period of suspension in order to entitle the
25 licensee to reinstatement of the license. If the director
26 revokes a license, the director may stay the effective date
27 of revocation by not more than ninety days upon a

28 showing that the delay is necessary to assure appropriate
29 placement of residents. The order of the director shall be
30 final unless vacated or modified upon judicial review
31 thereof in accordance with the provisions of section
32 thirteen of this article.

33 (b) In addition to all other powers granted by this
34 chapter, the director may hold the case under advisement
35 and make a recommendation as to requirements to be met
36 by the licensee in order to avoid either suspension or
37 revocation. In such a case, the director shall enter an
38 order accordingly and so notify the licensee and his or her
39 attorney of record, if any, by certified mail, return receipt
40 requested. If the licensee meets the requirements of the
41 order, the director shall enter an order showing
42 satisfactory compliance and dismissing the complaint and
43 shall so notify the licensee and the licensee's attorney of
44 record, if any, by certified mail, return receipt requested.

§16-5D-13. Judicial review.

1 Any licensee adversely affected by an order of the
2 director rendered after a hearing held in accordance with
3 the provisions of section twelve of this article is entitled to
4 judicial review thereof. All of the pertinent provisions of
5 section four, article five, chapter twenty-nine-a of this code
6 shall apply to and govern with like effect as if the
7 provisions of said section four were set forth in extenso in
8 this section.

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of
12 section one, article six, chapter twenty-nine-a of this code.

§16-5D-14. Legal counsel and services for the director.

1 (a) Legal counsel and services for the director in all
2 administrative hearings and all proceedings in any circuit
3 court and the supreme court of appeals shall be provided
4 by the attorney general, his or her assistants, or an attorney
5 employed by the director, in proceedings in any circuit
6 court by the prosecuting attorney of the county as well, all
7 without additional compensation.

8 (b) The governor may appoint counsel for the director,
9 who shall perform such legal services in representing the
10 interests of residents in personal care homes in matters
11 under the jurisdiction of the director as the governor shall
12 direct. It shall be the duty of such counsel to appear for
13 the residents in all cases where they are not represented by
14 counsel. The compensation of such counsel shall be fixed
15 by the governor.

**§16-5D-15. Unlawful acts; penalties; injunctions; private right
of action.**

1 (a) Whoever advertises, announces, establishes or
2 maintains, or is engaged in establishing or maintaining a
3 personal care home without a license granted under
4 section six of this article, or who prevents, interferes with
5 or impedes in any way the lawful enforcement of this
6 article shall be guilty of a misdemeanor and, upon
7 conviction thereof, shall be punished for the first offense
8 by a fine of not more than one hundred dollars, or by
9 imprisonment in jail for a period of not more than ninety
10 days, or by both such fine and imprisonment, at the
11 discretion of the court. For each subsequent offense, the
12 fine may be increased to not more than two hundred fifty
13 dollars, with imprisonment in jail for a period of not more
14 than ninety days, or both such fine and imprisonment at
15 the discretion of the court. Each day of a continuing
16 violation after conviction shall be considered a separate
17 offense.

18 (b) The director may in his or her discretion bring an
19 action to enforce compliance with this article or any rule,
20 or order hereunder, whenever it appears to the director
21 that any person has engaged in, or is engaging in, an act
22 or practice in violation of this article or any rule or order
23 hereunder, or whenever it appears to the director that any
24 person has aided, abetted or caused, or is aiding, abetting
25 or causing such an act or practice. Upon application by
26 the director, the circuit court of the county in which the
27 conduct has occurred or is occurring shall have
28 jurisdiction to grant without bond a permanent or
29 temporary injunction, decree or restraining order.

30 Whenever the director refuses to grant or renew a
31 license, or revokes a license required by law to operate or
32 conduct a personal care home, or orders a person to
33 refrain from conduct violating the rules of the secretary,
34 and the person deeming himself aggrieved by the refusal,
35 revocation or order appeals the action of the director, the
36 court may, during pendency of the appeal, issue a
37 restraining order or injunction upon proof that the
38 operation of the personal care home or its failure to
39 comply with the order of the director adversely affects the
40 well-being or safety of the residents of the personal care
41 home. Should a person who is refused a license or the
42 renewal of a license to operate or conduct a personal care
43 home or whose license to operate is revoked or who has
44 been ordered to refrain from conduct or activity which
45 violates the rules of the secretary, fail to appeal or should
46 such appeal be decided favorably to the director, then the
47 court shall issue a permanent injunction upon proof that
48 the person is operating or conducting a personal care
49 home without a license as required by law, or has
50 continued to violate the rules of the secretary.

51 (c) Any personal care home that deprives a resident of
52 any right or benefit created or established for the well-
53 being of the resident by the terms of any contract, by any
54 state statute or rule, or by any applicable federal statute or
55 regulation, shall be liable to the resident for injuries
56 suffered as a result of the deprivation. Upon a finding
57 that a resident has been deprived of such a right or benefit,
58 and that the resident has been injured as a result of the
59 deprivation, and unless there is a finding that the personal
60 care home exercised all care reasonably necessary to
61 prevent and limit the deprivation and injury to the
62 resident, compensatory damages shall be assessed in an
63 amount sufficient to compensate the resident for the
64 injury. In addition, where the deprivation of any right or
65 benefit is found to have been willful or in reckless
66 disregard of the lawful rights of the resident, punitive
67 damages may be assessed. A resident may also maintain
68 an action pursuant to this section for any other type of
69 relief, including injunctive and declaratory relief,
70 permitted by law. Exhaustion of any available

71 administrative remedies may not be required prior to
72 commencement of suit hereunder.

73 The amount of damages recovered by a resident, in an
74 action brought pursuant to this section, are exempt for
75 purposes of determining initial or continuing eligibility
76 for medical assistance under article four, chapter nine of
77 this code, and may neither be taken into consideration nor
78 required to be applied toward the payment or part
79 payment of the cost of medical care or services available
80 under said article.

81 Any waiver by a resident or his or her legal
82 representative of the right to commence an action under
83 this section, whether oral or in writing, shall be null and
84 void as contrary to public policy.

85 (d) The penalties and remedies provided in this section
86 are cumulative and shall be in addition to all other
87 penalties and remedies provided by law.

§16-5D-16. Availability of reports and records.

1 The director shall make available for public inspection
2 and at a nominal cost provide copies of all inspections and
3 other reports of personal care homes filed with or issued
4 by the director. Nothing contained in this section may be
5 construed or deemed to allow the public disclosure of
6 confidential medical, social, personal or financial records
7 of any resident. The secretary shall propose rules for
8 legislative approval in accordance with the provisions of
9 article three, chapter twenty-nine-a of this code as may be
10 necessary to give effect to the provisions of this section
11 and to preserve the confidentiality of medical, social,
12 personal or financial records of residents.

§16-5D-17. Licenses and rules in force.

1 (a) All licenses for personal care homes which are in
2 force on the first day of July, one thousand nine hundred
3 ninety-seven, shall continue in full force and effect during
4 the period for which issued unless sooner revoked as
5 provided in this article.

6 (b) All rules in effect on the first day of July, one
7 thousand nine hundred ninety-seven, which were adopted
8 by the secretary relating to licensing personal care homes,
9 shall remain in full force and effect until altered, amended
10 or repealed by the secretary.

**§16-5D-18. Separate accounts for residents' personal funds;
consent for use; records; penalties.**

1 (a) Each personal care home subject to the provisions
2 of this article shall hold in a separate account and in trust
3 each resident's personal funds deposited with the personal
4 care home.

5 (b) No person may use or cause to be used for any
6 purpose the personal funds of any resident admitted to
7 any personal care home unless consent for the use thereof
8 has been obtained from the resident or from a committee
9 or guardian or relative.

10 (c) Each personal care home shall maintain a true and
11 complete record of all receipts for any disbursements
12 from the personal funds account of each resident in the
13 personal care home, including the purpose and payee of
14 each disbursement, and shall render a true account of the
15 record to the resident or his or her representative upon
16 demand and upon termination of the resident's stay in the
17 personal care home.

18 (d) Any person or corporation who violates any
19 provision of this section is guilty of a misdemeanor and,
20 upon conviction thereof, shall be fined not more than one
21 thousand dollars, or imprisoned in jail not more than one
22 year, or both fined and imprisoned.

**ARTICLE 5E. REGISTRATION AND INSPECTION OF SERVICE
PROVIDERS IN LEGALLY UNLICENSED
HEALTH CARE HOMES.**

§16-5E-1. Purpose.

§16-5E-1a. Powers, rights and duties of the director.

§16-5E-2. Definitions.

§16-5E-3. Registration of service providers required; form of registration;
information to be provided.

§16-5E-5. Inspections; right of entry.

§16-5E-6. Enforcement; criminal penalties.

§16-5E-1. Purpose.

1 It is the policy of this state to encourage the availability
2 of appropriate noninstitutional surroundings for the
3 elderly and for the care of persons in need limited and
4 intermittent of nursing care or personal assistance. The
5 registration of providers of services to such residents in
6 unlicensed homes will help to identify where the services
7 are available and to ensure that individuals in unlicensed
8 homes are receiving care appropriate to their needs.

§16-5E-1a. Powers, rights and duties of the director.

1 In the administration of this article, the director shall
2 have the following powers, duties and rights:

3 (a) To promulgate and enforce rules governing
4 complaint investigations within the homes of legally
5 unlicensed health care providers registered under this
6 article. Such rules shall include the minimum health,
7 safety and welfare standards in the following areas:

8 (1) Physical environment;

9 (2) Nutrition;

10 (3) Requirements related to limited and intermittent
11 nursing care;

12 (4) Medication administration;

13 (5) Protective and personal services to be provided;

14 (6) Treatment;

15 (7) Such other categories as the director determines to
16 be appropriate to ensure residents' health, safety and
17 welfare.

18 (b) To exercise as sole authority all powers relating to
19 issuance, suspension and revocation of registration of
20 legally unlicensed homes providing health care;

21 (c) To issue directed plans of correction for
22 deficiencies identified during complaint investigations;

23 (d) To order closure of any home for failure to
24 comply with a directed plan of corrections;

25 (e) To take all actions required under the provisions of
26 sections three, four, five, and six of this article; and

27 (f) To deny registration to any operator of a legally
28 unlicensed home who is listed on the state abuse registry.

§16-5E-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) "Director" means the secretary of the department
4 of health and human resources or his or her designee.

5 (b) "Limited and intermittent nursing care" means
6 direct hands on nursing care of an individual who needs
7 no more than two hours of nursing care per day for a
8 period of no longer than ninety consecutive days per
9 episode, which may only be provided when the need for
10 such care meets the following factors: (1) The resident
11 requests to remain in the home; (2) the resident is advised
12 of the availability of other specialized health care facilities
13 to treat his or her condition; and (3) the need for such
14 care is the result of a medical pathology or a result of
15 normal aging process. Limited and intermittent nursing
16 care shall be provided under the supervision of a
17 registered professional nurse and in accordance with rules
18 promulgated by the director.

19 (c) "Nursing care" means those procedures com-
20 monly employed in providing for the physical, emotional
21 and rehabilitational needs of the ill or otherwise in-
22 capacitated which require technical skills and knowledge
23 beyond that which the untrained person possesses,
24 including, but not limited to, such procedures as:
25 Irrigations; catheterization; special procedures contribut-
26 ing to rehabilitation; and administration of medication by
27 any method prescribed by a physician which involves a
28 level of complexity and skill in administration not
29 possessed by the untrained person.

30 (d) "Personal assistance" means personal services,
31 including, but not limited to, the following: Help in
32 walking, bathing, dressing, feeding or getting in or out of
33 bed, or supervision required because of the age or
34 physical or mental impairment of the resident.

35 (e) "Resident" means an individual who is provided
36 services, whether or not for a fee, by a service provider, but
37 resident does not include a person receiving services
38 provided by another who is related to him or her or the
39 spouse thereof by blood or marriage, within the degree of
40 consanguinity of the second cousin. Residents, who are
41 incapable of self-preservation, shall be housed only on a
42 ground floor level of the home with direct egress to the
43 outside. A registered unlicensed health care home shall:
44 (1) Provide residents at the time of admission with the
45 name, address and telephone number of the offices of
46 health facility licensure and certification, the state long-
47 term care ombudsman, and adult protective services, all
48 within the department of health and human resources; and
49 (2) advise residents both orally and in writing of their
50 right to file a complaint with the aforementioned entities.

51 (f) "Self-preservation" means that a person is at least
52 capable of removing him or her self from situations
53 involving imminent danger, such as fire.

54 (g) "Service provider" means the individual ad-
55 ministratively responsible for providing to consumers for
56 a period of more than twenty-four hours, whether for
57 compensation or not, services of personal assistance for
58 one to three residents and who may require limited and
59 intermittent nursing care, including those individuals who
60 qualify for and are receiving services coordinated by a
61 licensed hospice: *Provided*, That services utilizing
62 equipment which requires auxiliary electrical power in the
63 event of a power failure may not be used unless the home
64 has a backup power generator.

**§16-5E-3. Registration of service providers required; form of
registration; information to be provided.**

- 1 (a) Service providers shall register with the director.
2 No fee may be charged for registration. Registration

3 information shall be provided on a registration form or
4 may be verbally communicated to the director for
5 placement by the director on the form, but no provision of
6 information may be deemed to meet the registration
7 requirement until the signature of the service provider is
8 recorded on the registration form.

9 (b) Information required for registration shall include
10 the following:

11 (1) Name, address and telephone number of the service
12 provider;

13 (2) Address and telephone numbers where services are
14 provided to residents and the number of residents
15 provided service;

16 (3) The services, such as nursing care or personal
17 assistance, provided to residents; and

18 (4) Other information required by rules promulgated
19 by the director.

20 (c) The director may deny registration if the
21 information provided in an application is known by the
22 applicant to be false or the applicant fails to report
23 required information.

24 (d) A legally unlicensed provider may operate no
25 more than one legally unlicensed home.

§16-5E-5. Inspections; right of entry.

1 The director may employ inspectors to enforce the
2 provisions of this article. These inspectors shall have the
3 right of entry into any place where services are provided
4 by a service provider, to determine the number of
5 residents therein and the adequacy of services being
6 provided to them. The director may obtain a search
7 warrant to inspect those premises that the director has
8 reason to believe are being used to provide services. The
9 inspectors shall have access to all parts of the home and
10 grounds, including, but not limited to, all areas of all
11 buildings on the grounds of a home, food supplies,
12 resident medications and resident medical records.

13 Inspectors shall also be permitted to conduct private
14 interviews with all residents and staff of a home.

15 If after investigating a complaint, the director
16 determines that the complaint is substantiated and that an
17 immediate and serious threat to a resident's health or
18 safety exists, the director may petition the circuit court for
19 an injunction, order of abatement or other appropriate
20 action or proceeding to: (1) Close the home; (2) transfer
21 residents in the home to other facilities; or (3) appoint
22 temporary management to oversee the operation of the
23 home to assure the health, safety, welfare and rights of the
24 home's residents where there is a need for temporary
25 management to ensure compliance with the court's order.
26 Any home aggrieved by a determination or assessment
27 made pursuant to this section shall have the right to an
28 administrative appeal as set forth in section twelve, article
29 five-c of this chapter.

§16-5E-6. Enforcement; criminal penalties.

1 (a) Any service provider who fails to register with the
2 director shall be guilty of a misdemeanor and, upon
3 conviction thereof, shall be fined not less than five
4 hundred dollars or more than twenty-five hundred dollars
5 or imprisoned in jail not less than ten days, or more than
6 thirty days after notice by certified mail by the director to
7 such service provider of the requirements of this article.

8 (b) Any person who interferes with or impedes in any
9 way the lawful enforcement of the provisions of this article
10 is guilty of a misdemeanor and, upon conviction thereof,
11 shall be fined not less than five hundred dollars or more
12 than twenty-five hundred dollars or imprisoned in the jail
13 not less than ten days, or more than thirty: *Provided*, That
14 prior to the first day of July, one thousand nine hundred
15 eighty-nine, no such penalty may be imposed upon a
16 service provider until thirty days after notice by certified
17 mail by the director to the service provider at the
18 requirements of this article.

19 (c) If after investigating a complaint, the director
20 determines that the home is housing more than three
21 residents, the director shall assess a civil penalty of fifty

22 dollars per day per the number of residents exceeding
23 three. Each day the violation continues, after the date of
24 citation shall constitute a separate violation. The date of
25 citation is the date the facility receives the written
26 statement of deficiencies.

27 (d) The director may in his or her discretion bring an
28 action to enforce compliance with the provisions of this
29 article.

30 (e) The circuit court of Kanawha County or the circuit
31 court of the county in which the conduct occurred shall
32 have jurisdiction in all civil enforcement actions brought
33 under this article and may order equitable relief without
34 bond.

ARTICLE 5H. RESIDENTIAL BOARD AND CARE HOMES.

- §16-5H-1. Purpose.
- §16-5H-2. Definitions.
- §16-5H-3. Powers, duties and rights of director.
- §16-5H-4. Administrative and inspection staff.
- §16-5H-5. Rules; minimum standards for residential board and care homes.
- §16-5H-6. License required; application; fees; duration; renewal.
- §16-5H-7. Cost disclosure; surety for residents' funds.
- §16-5H-8. Investigation of complaints.
- §16-5H-9. Inspections.
- §16-5H-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.
- §16-5H-11. License limitation, suspension, revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearings.
- §16-5H-12. Administrative appeals for civil assessments, license limitation, suspension or revocation.
- §16-5H-13. Judicial review.
- §16-5H-14. Legal counsel and services for the director.
- §16-5H-15. Unlawful acts; penalties; injunctions; private right of action.
- §16-5H-16. Availability of reports and records.
- §16-5H-17. Licenses and rules in force.
- §16-5H-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

§16-5H-1. Purpose.

1 It is the policy of this state to encourage and promote
2 the development and utilization of resources to ensure the
3 effective care and treatment of persons who are dependent
4 upon the services of others by reason of physical or
5 mental impairment or who may require limited and
6 intermittent nursing care but who are capable of self-
7 preservation and are not bedfast, including those
8 individuals who qualify for and are receiving services
9 coordinated by a licensed hospice. Such care and
10 treatment requires a living environment for such persons
11 which, to the extent practicable, will approximate a normal
12 home environment. To this end, the guiding principle for
13 administration of the laws of the state is that such persons
14 shall be encouraged and assisted in securing necessary
15 care and treatment in noninstitutional surroundings. In
16 recognition that for many such persons effective care and
17 treatment can only be secured from proprietary and
18 voluntary residential board and care homes, it is the policy
19 of this state to encourage, promote and require the
20 maintenance of residential board and care homes so as to
21 ensure protection of the rights and dignity of those using
22 the services of such residential board and care homes.

23 The provisions of this article are hereby declared to be
24 remedial and shall be liberally construed to effectuate its
25 purposes and intents.

§16-5H-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) "Deficiency" means a statement of the rule and
4 the fact that compliance has not been established and the
5 reasons therefor;

6 (b) "Department" means the state department of
7 health and human resources;

8 (c) "Director" means the secretary of the department
9 of health and human resources or his or her designee;

10 (d) "Division" means the division of health of the
11 state department of health and human resources;

12 (e) "Limited and intermittent nursing care" means
13 direct hands on nursing care of an individual who needs
14 no more than two hours of nursing care per day for a
15 period of time no longer than ninety consecutive days per
16 episode which may only be provided when the need for
17 such care meets these factors: (1) The resident requests to
18 remain in the residential board and care home; (2) the
19 resident is advised of the availability of other specialized
20 health care facilities to treat his or her condition; and (3)
21 the need for such care is the result of a medical pathology
22 or a result of the normal aging process. Limited and
23 intermittent nursing care may only be provided by or
24 under the supervision of a registered professional nurse
25 and in accordance with rules promulgated by the
26 secretary;

27 (f) "Nursing care" means those procedures
28 commonly employed in providing for the physical,
29 emotional and rehabilitational needs of the ill or otherwise
30 incapacitated which require technical skills and knowledge
31 beyond that which the untrained person possesses,
32 including, but not limited to, such procedures as:
33 Irrigations, catheterization, special procedures contributing
34 to rehabilitation and administration of medication by any
35 method which involves a level of complexity and skill in
36 administration not possessed by the untrained person;

37 (g) "Person" means an individual and every form of
38 organization, whether incorporated or unincorporated,
39 including any partnership, corporation, trust, association
40 or political subdivision of the state;

41 (h) "Personal assistance" means personal services,
42 including, but not limited to, the following: Help in
43 walking, bathing, dressing, feeding or getting in or out of
44 bed, or supervision required because of the age or mental
45 impairment of the resident;

46 (i) "Resident" means an individual living in a
47 residential board and care home for the purpose of
48 receiving personal assistance or limited and intermittent
49 nursing services from the home;

50 (j) "Residential board and care home" means any
51 residence or place or any part or unit thereof, however
52 named, in this state which is advertised, offered,
53 maintained or operated by the ownership or management,
54 whether for a consideration or not, for the express or
55 implied purpose of providing accommodations, personal
56 assistance and supervision, for a period of more than
57 twenty-four hours, to four or more persons who are
58 dependent upon the services of others by reason of
59 physical or mental impairment or who may require limited
60 and intermittent nursing care but who are capable of self-
61 preservation, as certified in consultation with a licensed
62 health care professional, and are not bedfast, including
63 those individuals who qualify for and are receiving
64 services coordinated by a licensed hospice: *Provided,*
65 That services utilizing equipment which requires auxiliary
66 electrical power in the event of a power failure may not be
67 used unless the residential board and care home has a
68 backup power generator: *Provided, however,* That the
69 care or treatment in a household, whether for
70 compensation or not, of any person related by blood or
71 marriage, within the degree of consanguinity of second
72 cousin to the head of the household, or his or her spouse,
73 may not be deemed to constitute a residential board and
74 care home within the meaning of this article. Nothing
75 contained in this article applies to hospitals, as defined
76 under section one, article five-b of this chapter; or state
77 institutions, as defined under section three, article one,
78 chapter twenty-five of this code or section six, article one,
79 chapter twenty-seven of this code; or residential board and
80 care homes operated by the federal government or the
81 state; or institutions operated for the treatment and care of
82 alcoholic patients; or offices of physicians; or hotels,
83 boarding homes or other similar places that furnish to
84 their guests only room and board; or to homes or asylums
85 operated by fraternal orders pursuant to article three,
86 chapter thirty-five of this code;

87 (k) "Secretary" means the secretary of the state
88 department of health and human resources or his or her
89 designee;

90 (l) "Self-preservation" means that a person is, at least,
91 capable of removing his or her physical self from
92 situations involving imminent danger, such as fire; and

93 (m) "Substantial compliance" means a level of
94 compliance with the rules such that identified deficiencies
95 pose no greater risk to resident health or safety than the
96 potential for causing minimal harm.

97 The secretary may define in rules any term used herein
98 which is not expressly defined.

§16-5H-3. Powers, duties and rights of director.

1 In the administration of this article, the director shall
2 have the following powers, duties and rights:

3 (a) To enforce rules and standards for residential
4 board and care homes which are adopted, promulgated,
5 amended or modified by the secretary;

6 (b) To exercise as sole authority all powers relating to
7 the issuance, suspension and revocation of licenses of
8 residential board and care homes;

9 (c) To enforce rules adopted, promulgated, amended
10 or modified by the secretary governing the qualification
11 of applicants for residential board and care home licenses,
12 including, but not limited to, educational requirements,
13 financial requirements, personal and ethical requirements;

14 (d) To receive and disburse federal funds and to take
15 whatever action not contrary to law as may be proper and
16 necessary to comply with the requirements and conditions
17 for the receipt of federal funds;

18 (e) To receive and disburse for authorized purposes
19 any moneys appropriated for the division by the
20 Legislature;

21 (f) To receive and disburse for purposes authorized by
22 this article, any funds that may come to the division by
23 gift, grant, donation, bequest or devise, according to the
24 terms thereof, as well as funds derived from the division's
25 operation, or otherwise;

26 (g) To make contracts, and to execute all instruments
27 necessary or convenient in carrying out the director's
28 functions and duties; and all contracts, agreements and
29 instruments shall be executed by the director;

30 (h) To appoint officers, agents, employees and other
31 personnel and fix their compensation;

32 (i) To offer and sponsor educational and training
33 programs for residential board and care homes'
34 administrative, management and operational personnel;

35 (j) To undertake survey, research and planning
36 projects and programs relating to administration and
37 operation of residential board and care homes and to the
38 health, care, treatment and service in general of residents
39 of such homes;

40 (k) To assess civil penalties for violations of residential
41 board and care home standards, in accordance with section
42 ten of this article;

43 (l) To inspect any residential board and care home and
44 any records maintained therein, subject to the provisions
45 of section ten of this article;

46 (m) To establish and implement procedures, including
47 informal conferences, investigations and hearings, subject
48 to applicable provisions of article three, chapter
49 twenty-nine-a of this code, and to enforce compliance with
50 the provisions of this article and with rules issued
51 hereunder, by the secretary;

52 (n) To subpoena witnesses and documents, administer
53 oaths and affirmations, and to examine witnesses under
54 oath for the conduct of any investigation or hearing.
55 Upon failure of a person without lawful excuse to obey a
56 subpoena to give testimony and upon reasonable notice to
57 all persons affected thereby, the director may apply to the
58 circuit court of the county in which the hearing is to be
59 held or to the circuit court of Kanawha County for an
60 order compelling compliance;

61 (o) To make complaint or cause proceedings to be
62 instituted against any person or persons for the violation

63 of the provisions of this article or of rules issued
64 hereunder, by the secretary. Such action may be taken by
65 the director without the sanction of the prosecuting
66 attorney of the county in which proceedings are instituted,
67 if the officer fails or refuses to discharge his or her duty.
68 The circuit court of Kanawha County or the circuit court
69 of the county in which the conduct has occurred shall
70 have jurisdiction in all civil enforcement actions brought
71 under this article and may order equitable relief without
72 bond. In no such case may the director or any person
73 acting under the director's direction be required to give
74 security for costs;

75 (p) To delegate authority to the director's employees
76 and agents to perform all functions of the director except
77 the making of final decisions in adjudications; and

78 (q) To submit a report to the governor, the Legislature
79 and the public, on or before the first day of December,
80 one thousand nine hundred ninety-seven, and annually
81 thereafter. The report shall describe the residential board
82 and care home licensing and investigatory activities of the
83 division during the year, and the nature and status of other
84 activities of the division, and may include comment on the
85 acts, policies, practices or procedures of any public or
86 private agency that affect the rights, health or welfare of
87 residents of residential board and care homes. The annual
88 report shall include a list of all residential board and care
89 homes in the state and such of the following information
90 as the director determines to apply: Whether the homes are
91 proprietary or nonproprietary, the classification of each
92 home; the name of the owner or owners; the total number
93 of beds; the number of private and semiprivate rooms; the
94 costs per diem for private residents; the number of
95 full-time employees and their professions; recreational
96 programs; services and programs available as well as the
97 costs thereof, and whether or not those residential board
98 and care homes listed accept medicare and medicaid
99 residents. The report shall also contain the division's
100 recommendations as to changes in law or policy which it
101 deems necessary or appropriate for the protection of the
102 rights, health or welfare of residents of residential board
103 and care homes in the state.

§16-5H-4. Administrative and inspection staff.

1 The director may, at such time or times as he or she
2 may deem necessary, employ such administrative
3 employees, inspectors, or other persons as may be
4 necessary to properly carry out the provisions of this
5 article. All employees of the division shall be members of
6 the state civil service system. Such inspectors and other
7 employees as may be duly designated by the director shall
8 act as the director's representatives and, under the
9 direction of the director, shall enforce the provisions of
10 this article and all duly promulgated rules of the secretary
11 and, in the discharge of official duties, shall have the right
12 of entry into any place maintained as a residential board
13 and care home.

§16-5H-5. Rules; minimum standards for residential board and care homes.

1 (a) All rules shall be approved by the secretary and
2 promulgated in the manner provided by the provisions of
3 article three, chapter twenty-nine-a of this code. The
4 secretary shall adopt, amend or repeal such rules as may
5 be necessary or proper to carry out the purposes and
6 intent of this article and to enable the director to exercise
7 the powers and perform the duties conferred upon the
8 director by this article.

9 (b) The secretary shall promulgate rules establishing
10 minimum standards of operation of residential board and
11 care homes including, but not limited to, the following:

12 (1) Administrative policies, including: (A) An
13 affirmative statement of the right of access to residential
14 board and care homes by members of recognized
15 community organizations and community legal services
16 programs whose purposes include rendering assistance
17 without charge to residents, consistent with the right of
18 residents to privacy; and (B) a statement of the rights and
19 responsibilities of residents;

20 (2) Minimum numbers and qualifications of personnel,
21 including management, medical and nursing, aides,

22 orderlies and support personnel, according to the size and
23 classification of the residential board and care home;

24 (3) Safety requirements;

25 (4) Sanitation requirements;

26 (5) Protective and personal services to be provided;

27 (6) Dietary services to be provided;

28 (7) Maintenance of health records;

29 (8) Social and recreational activities to be made
30 available;

31 (9) Physical facilities;

32 (10) Requirements related to limited and intermittent
33 nursing care; and

34 (11) Such other categories as the secretary determines
35 to be appropriate to ensure resident's health, safety and
36 welfare.

37 (c) The secretary shall include in rules detailed
38 standards for each of the categories of standards
39 established pursuant to subsections (b) and (d) of this
40 section, and shall classify such standards as follows: Class I
41 standards are standards the violation of which, the
42 secretary determines, would present either an imminent
43 danger to the health, safety or welfare of any resident or a
44 substantial probability that death or serious physical harm
45 would result; Class II standards are standards which the
46 secretary determines have a direct or immediate
47 relationship to the health, safety or welfare of any resident,
48 but which do not create imminent danger; Class III
49 standards are standards which the secretary determines
50 have an indirect or a potential impact on the health, safety
51 or welfare of any resident.

52 (d) A residential board and care home shall attain
53 substantial compliance with standards established pursuant
54 to section five of this article, and such other requirements
55 for a license as may be established by rule under this
56 article.

§16-5H-6. License required; application; fees; duration; renewal.

1 Subject to the provisions of section seventeen of this
2 article, no person may establish, operate, maintain, offer or
3 advertise a residential board and care home within this
4 state unless and until he or she obtains a valid license
5 therefor as hereinafter provided, which license remains
6 unsuspended, unrevoked and unexpired. No public
7 official or employee may place any person in, or
8 recommend that any person be placed in, or directly or
9 indirectly cause any person to be placed in, any residential
10 board and care home, as defined in section two of this
11 article, which is being operated without a valid license
12 from the director. The procedure for obtaining a license
13 shall be as follows:

14 (a) The applicant shall submit an application to the
15 director on a form to be prescribed by the director,
16 containing such information as may be necessary to show
17 that the applicant is in compliance with the standards for
18 residential board and care homes as established by this
19 article and the rules lawfully promulgated by the secretary
20 hereunder. The application and any exhibits thereto shall
21 provide the following information:

22 (1) The name and address of the applicant;

23 (2) The name, address and principal occupation: (A)
24 Of each person who, as a stockholder or otherwise, has a
25 proprietary interest of ten percent or more in the
26 applicant; (B) of each officer and director of a corporate
27 applicant; (C) of each trustee and beneficiary of an
28 applicant which is a trust; and (D) where a corporation has
29 a proprietary interest of twenty-five percent or more in an
30 applicant, the name, address and principal occupation of
31 each officer and director of such corporation;

32 (3) The name and address of the owner of the premises
33 of the residential board and care home or proposed
34 residential board and care home, if he or she is a different
35 person from the applicant, and in such case, the name and
36 address: (A) Of each person who, as a stockholder or
37 otherwise, has a proprietary interest of ten percent or more

38 in such owner; (B) of each officer and director of a
39 corporate applicant; (C) of each trustee and beneficiary of
40 such owner if he or she is a trust; and (D) where a
41 corporation has a proprietary interest of twenty-five
42 percent or more in such owner, the name and address of
43 each officer and director of such corporation;

44 (4) Where the applicant is the lessee or the assignee of
45 the residential board and care home or the premises of the
46 proposed residential board and care home, a signed copy
47 of the lease and any assignment thereof;

48 (5) The name and address of the residential board and
49 care home or the premises of the proposed residential
50 board and care home;

51 (6) The proposed bed quota of the residential board
52 and care home and the proposed bed quota of each unit
53 thereof;

54 (7) (A) An organizational plan for the residential
55 board and care home indicating the number of persons
56 employed or to be employed, the positions and duties of
57 all employees; (B) the name and address of the individual
58 who is to serve as administrator; and (C) such evidence of
59 compliance with applicable laws and rules governing
60 zoning, buildings, safety, fire prevention and sanitation as
61 the director may require; and

62 (8) Such additional information as the director may
63 require.

64 (b) Upon receipt and review of an application for
65 license made pursuant to subsection (a) of this section, and
66 inspection of the applicant residential board and care
67 home pursuant to section ten of this article, the director
68 shall issue a license if he or she finds:

69 (1) That an individual applicant, and any partner,
70 trustee, officer, director and controlling person of an
71 applicant which is not an individual, is a person
72 responsible and suitable to operate or to direct or
73 participate in the operation of a residential board and care
74 home by virtue of financial capacity, appropriate business
75 or professional experience, a record of compliance with

76 lawful orders of the department, if any, and lack of
77 revocation of a license during the previous five years;

78 (2) That the residential board and care home be under
79 the supervision of an administrator who is qualified by
80 training and experience; or

81 (3) That the residential board and care home is in
82 substantial compliance with standards established pursuant
83 to section five of this article, and such other requirements
84 for a license as the secretary may establish by rule under
85 this article.

86 The director may deny an initial or renewal license if
87 the information provided in an application or report is
88 known by the applicant to be false or the applicant fails to
89 report required information.

90 Any license granted by the director shall state the
91 maximum bed capacity for which it is granted, the date the
92 license was issued, and the expiration date. Such licenses
93 shall be issued for a period not to exceed one year for
94 residential board and care homes: *Provided*, That any
95 such license in effect for which timely application for
96 renewal, together with payment of the proper fee has been
97 made to the state division of health in conformance with
98 the provisions of this article and the rules issued
99 thereunder, and prior to the expiration date of such
100 license, shall continue in effect until: (A) One year
101 following the expiration date of such license; or (B) the
102 date of the revocation or suspension of such license
103 pursuant to the provisions of this article; or (C) the date of
104 issuance of a new license, whichever date first occurs.
105 Each license shall be issued only for the premises and
106 persons named in the application and is not transferable or
107 assignable: *Provided, however*, That in the case of the
108 transfer of ownership of a residential board and care home
109 with an unexpired license, the application of the new
110 owner for a license shall have the effect of a license for a
111 period of three months when filed with the director.
112 Every license shall be displayed in a conspicuous place in
113 the residential board and care home for which it is issued
114 so as to be accessible to and in plain view of all residents
115 and visitors of the residential board and care home.

116 (c) An original license shall be renewable, conditioned
117 upon the licensee filing timely application for the
118 extension of the term of the license accompanied by the
119 fee, and contingent upon evidence of compliance with the
120 provisions of this article and rules promulgated by the
121 secretary hereunder. The application shall be
122 accompanied by the information required in subdivisions
123 (1), (2) and (3) of this subsection.

124 (1) A balance sheet of the residential board and care
125 home as of the end of its fiscal year, setting forth assets
126 and liabilities at such date, including all capital, surplus,
127 reserve, depreciation and similar accounts;

128 (2) A statement of operations of the residential board
129 and care home as of the end of its fiscal year, setting forth
130 all revenues, expenses, taxes, extraordinary items and other
131 credits or charges; and

132 (3) A statement of any changes in the name, address,
133 management or ownership information on file with the
134 director.

135 (d) In the case of an application for a renewal license,
136 if all requirements of section five of this article are not
137 met, the director may in his or her discretion issue a
138 provisional license, provided that care given in the
139 residential board and care home is adequate for resident
140 needs and the residential board and care home has
141 demonstrated improvement and evidences potential for
142 substantial compliance within the term of said license:
143 *Provided*, That a provisional renewal may not be issued
144 for a period greater than one year, may not be renewed,
145 and may not be issued to any residential board and care
146 home with uncorrected violations of any Class I standard,
147 as defined in subsection (c), section five of this article.

148 (e) A nonrefundable application fee in the amount of
149 sixty-five dollars for an original residential board and care
150 home license shall be paid at the time application is made
151 for such license. The average cost of all direct costs for
152 the initial licensure inspections of all such homes for the
153 preceding ten facilities shall be borne by the applicant and
154 shall be received by the director prior to the issuance of an

155 initial or amended license. The license fee for renewal of
156 a license shall be at the rate of four dollars per bed per
157 year for residential board and care homes, except the
158 annual rate per bed may be assessed for licenses issued for
159 less than one year. The director may annually adjust the
160 licensure fees for inflation based upon the consumer price
161 index. The bed capacity for the holder of each license
162 shall be determined by the director. All such license fees
163 shall be due and payable to the director, annually, and in
164 such manner set forth in the rules promulgated by the
165 secretary. Such fee and application shall be submitted to
166 the director who shall retain both the application and fee
167 pending final action on the application. All fees received
168 by the director under the provisions of this article shall be
169 deposited in accordance with section thirteen, article one
170 of this chapter.

§16-5H-7. Cost disclosure; surety for residents' funds.

1 (a) Each residential board and care home shall disclose
2 in writing to all prospective residents a complete and
3 accurate list of all costs which may be incurred by them.
4 Residents are not liable for any cost not so disclosed.

5 (b) If the residential board and care home handles any
6 money for residents within the residential board and care
7 home, the licensee or his or her authorized representative
8 shall give a bond in an amount consistent with this
9 subsection and with such surety as the director shall
10 approve. Such bond shall be upon condition that the
11 licensee shall hold separately and in trust all residents'
12 funds deposited with the licensee, shall administer the
13 funds on behalf of the resident in the manner directed by
14 the depositor, shall render a true and complete account to
15 the depositor and the director when requested, and at least
16 quarterly to the resident, and upon termination of the
17 deposit, shall account for all funds received, expended,
18 and held on hand. The licensee shall file a bond in a sum
19 to be fixed by the director based upon the magnitude of
20 the operations of the applicant, but which sum may not be
21 less than two thousand five hundred dollars.

22 (c) Every person injured as a result of any improper or
23 unlawful handling of the money of a resident of a

24 residential board and care home may bring an action in a
25 proper court on the bond required to be posted by the
26 licensee pursuant to this subsection for the amount of
27 damage suffered as a result thereof to the extent covered
28 by the bond. Whenever the director determines that the
29 amount of any bond which is filed pursuant to this
30 subsection is insufficient to adequately protect the money
31 of residents which is being handled, or whenever the
32 amount of any such bond is impaired by any recovery
33 against the bond, the director may require the licensee to
34 file an additional bond in such amount as necessary to
35 adequately protect the money of residents being handled.

36 (d) The provisions of this subsection do not apply if
37 the licensee handles less than twenty-five dollars per
38 resident and less than five hundred dollars for all residents
39 in any month.

§16-5H-8. Investigation of complaints.

1 The secretary shall establish by rule procedures for
2 prompt investigation of all complaints of alleged
3 violations by residential board and care homes of
4 applicable requirements of state law or rules, except for
5 such complaints that the director determines are willfully
6 intended to harass a licensee or are without any reasonable
7 basis. Such procedures shall include provisions for
8 ensuring the confidentiality of the complainant and of any
9 other person so named in the complaint, and for promptly
10 informing the complainant and the residential board and
11 care home involved of the results of the investigation.

12 If, after its investigation, the director determines that
13 the complaint has merit, the director shall take appropriate
14 disciplinary action and shall advise any injured party of
15 the possibility of a civil remedy under this article.

16 No residential board and care home may discharge or
17 in any manner discriminate against any resident or
18 employee for the reason that such resident or employee
19 has filed a complaint or participated in any proceeding
20 specified in this article. Violation of this prohibition by
21 any residential board and care home constitutes ground
22 for the suspension or revocation of the license of the

23 residential board and care home as provided in section
24 eleven of this article. Any type of discriminatory
25 treatment of a resident by whom, or upon whose behalf, a
26 complaint has been submitted to the director, or any
27 proceeding instituted under this article, within one
28 hundred twenty days of the filing of the complaint or the
29 institution of such action, shall raise a rebuttable
30 presumption that such action was taken by the residential
31 board and care home in retaliation for such complaint or
32 action.

§16-5H-9. Inspections.

1 The director and any duly designated employee or
2 agent thereof shall have the right to enter upon and into
3 the premises of any residential board and care home for
4 which a license has been issued, for which an application
5 for license has been filed with the director, or which the
6 director has reason to believe is being operated or
7 maintained as a residential board and care home without a
8 license. If such entry is refused by the owner or person in
9 charge of any such residential board and care home, the
10 director shall apply to the circuit court of the county in
11 which the residential board and care home is located or
12 the circuit court of Kanawha County for an order
13 authorizing inspection, and such court shall issue an
14 appropriate order if it finds good cause.

15 The director, by the director's authorized employees
16 or agents, shall conduct at least one inspection prior to
17 issuance of a license pursuant to section six of this article,
18 and shall conduct periodic unannounced inspections
19 thereafter, to determine compliance by the residential
20 board and care home with applicable statutes and rules
21 promulgated thereunder. All residential board and care
22 homes shall comply with rules of the state fire
23 commission. The state fire marshal, by his or her
24 employees or authorized agents, shall make all fire, safety
25 and like inspections. The director may provide for such
26 other inspections as the director may deem necessary to
27 carry out the intent and purpose of this article. If after
28 investigating a complaint, the director determines that the
29 complaint is substantiated and that an immediate and

30 serious threat to a consumer's health or safety exists, the
31 director may invoke any remedies available pursuant to
32 section eleven of this article. Any residential board and
33 care home aggrieved by a determination or assessment
34 made pursuant to this section shall have the right to an
35 administrative appeal as set forth in section twelve of this
36 article.

**§16-5H-10. Reports of inspections; plans of correction;
assessment of penalties and use of funds derived
therefrom; hearings.**

1 (a) Reports of all inspections made pursuant to section
2 nine of this article shall be in writing and filed with the
3 director, and shall list all deficiencies in the residential
4 board and care home's compliance with the provisions of
5 this article and the rules adopted by the secretary
6 hereunder. The director shall send a copy of such report
7 to the residential board and care home by certified mail,
8 return receipt requested, and shall specify a time within
9 which the residential board and care home shall submit a
10 plan for correction of such deficiencies, which plan shall
11 be approved, rejected or modified by the director. The
12 surveyors shall allow audio taping of the exit conference
13 for both licensure and certification inspections with all
14 costs directly associated with such taping to be paid by the
15 residential board and care home provided that an original
16 tape is provided to surveyors at the end of taping.

17 (b) Upon a residential board and care home's failure to
18 submit a plan of correction which is approved by the
19 director, or to correct any deficiency within the time
20 specified in an approved plan of correction, the director
21 may assess civil penalties as hereinafter provided or may
22 initiate any other legal or disciplinary action as provided
23 by this article.

24 (c) Nothing in this section may be construed to
25 prohibit the director from enforcing a rule,
26 administratively or in court, without first affording formal
27 opportunity to make correction under this section, where,
28 in the opinion of the director, the violation of such rule
29 jeopardizes the health or safety of residents or where the

30 violation of such rule is the second or subsequent such
31 violation occurring during a period of twelve full months.

32 (d) Civil penalties assessed against residential board
33 and care homes shall be classified according to the nature
34 of the violation as defined in subsection (c), section five of
35 this article and rules promulgated thereunder by the
36 secretary, as follows: For each violation of a Class I
37 standard, a civil penalty of not less than fifty nor more
38 than five hundred dollars shall be imposed; for each
39 violation of a Class II standard, a civil penalty of not less
40 than twenty-five nor more than fifty dollars shall be
41 imposed; for each violation of a Class III standard, a civil
42 penalty of not less than ten nor more than twenty-five
43 dollars shall be imposed. Each day a violation continues,
44 after the date of citation, shall constitute a separate
45 violation. The date of citation is the date the facility
46 receives the written statement of deficiencies.

47 (e) The director shall assess a civil penalty not to
48 exceed two thousand dollars against any individual who
49 notifies, or causes to be notified, a residential board and
50 care home of the time or date on which an inspection is
51 scheduled to be conducted under this article.

52 (f) If the director assesses a penalty under this section,
53 the director shall cause delivery of notice of such penalty
54 by personal service or by certified mail. Said notice shall
55 state the amount of the penalty, the action or circumstance
56 for which the penalty is assessed, the requirement that the
57 action or circumstance violates, and the basis upon which
58 the director assessed the penalty and selected the amount
59 of the penalty.

60 (g) The director shall, in a civil judicial proceeding,
61 recover any unpaid assessment which has not been
62 contested under section twelve of this article within thirty
63 days of receipt of notice of such assessment, or which has
64 been affirmed under the provisions of that section and not
65 appealed within thirty days of receipt of the director's
66 final order, or which has been affirmed on judicial review,
67 as provided in section thirteen of this article. All money
68 collected by assessments of civil penalties or interest shall
69 be paid into a special resident benefit account and shall be

70 applied by the director only for the protection of the
71 health or property of residents of residential board and
72 care homes operated within the state that the director finds
73 to be deficient, including payment for the costs of
74 relocation of residents to other facilities, operation of a
75 residential board and care home pending correction of
76 deficiencies or closure, and reimbursement of residents for
77 personal funds lost.

78 (h) The opportunity for a hearing on an action taken
79 under this section shall be as provided in section twelve of
80 this article. In addition to any other rights of appeal
81 conferred upon a residential board and care home
82 pursuant to this section, a residential board and care home
83 shall have the right to request a hearing and seek judicial
84 review pursuant to sections twelve and thirteen of this
85 article to contest the citing by the director of a deficiency
86 on an inspection report, irrespective of whether the
87 deficiency results in the imposition of a civil penalty.

§16-5H-11. License limitation, suspension, revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearings.

1 (a) The director shall by order, impose a ban on the
2 admission of residents or reduce the bed quota of the
3 residential board and care home, or any combination
4 thereof, where he or she finds upon inspection of the
5 residential board and care home that the licensee is not
6 providing adequate care under the residential board and
7 care home's existing quota, and that, reduction in quota or
8 imposition of a ban on admissions, or any combination
9 thereof, would place the licensee in a position to render
10 adequate care. Any notice to a licensee of reduction in
11 quota or ban on admissions shall include the terms of such
12 order, the reasons therefor, and the date set for
13 compliance.

14 (b) The director may suspend or revoke a license
15 issued under this article if he or she finds upon inspection
16 that there has been a substantial failure to comply with the

17 provisions of this article or the standards or rules
18 promulgated pursuant hereto.

19 (c) Whenever a license is limited, suspended or revoked
20 pursuant to this section, the director shall file an
21 administrative complaint stating facts constituting a
22 ground or grounds for such limitation, suspension or
23 revocation. Upon the filing of the administrative
24 complaint, the director shall notify the licensee in writing
25 of the filing of the administrative complaint, enclosing a
26 copy of the administrative complaint, and shall advise the
27 licensee of the availability of a hearing pursuant to section
28 twelve of this article. Such notice and copy of the
29 complaint shall be served on such licensee by certified
30 mail, return receipt requested.

31 (d) The suspension, expiration, forfeiture or
32 cancellation by operation of law or order of the director
33 of a license issued by the director, or the withdrawal of an
34 application for a license after it has been filed with the
35 director, may not deprive the director of the director's
36 authority to institute or continue a disciplinary
37 proceeding, or a proceeding for the denial of a license
38 application, against the licensee or applicant upon any
39 ground provided by law or to enter an order denying the
40 license application or suspending or revoking the license
41 or otherwise taking disciplinary action on any such
42 ground.

43 (e) In addition to other remedies provided in this
44 article, upon petition from the director, the circuit court of
45 the county in which the conduct has occurred or is
46 occurring, or the circuit court of Kanawha County, may
47 determine that a residential board and care home's
48 deficiencies under this article constitute an emergency
49 immediately jeopardizing the health, safety, welfare, or
50 rights of its residents, and issue an order to:

51 (1) Close the residential board and care home;

52 (2) Transfer residents in the residential board and care
53 home to other facilities; or

54 (3) Appoint temporary management to oversee the
55 operation of the residential board and care home and to
56 assure the health, safety, welfare and rights of the
57 residential board and care home's residents, where there is
58 a need for temporary management while:

59 (A) There is an orderly closure of the residential board
60 and care home; or

61 (B) Improvements are made in order to bring the
62 residential board and care home into compliance with all
63 the applicable requirements of this article.

64 If the director petitions a circuit court for the closure
65 of a residential board and care home, the transfer of
66 residents, or the appointment of temporary management,
67 the circuit court shall hold a hearing no later than seven
68 days thereafter, at which time the director and the licensee
69 or operator of the residential board and care home may
70 participate and present evidence.

71 A circuit court may divest the licensee or operator of
72 possession and control of a residential board and care
73 home in favor of temporary management. The temporary
74 management shall be responsible to the court and shall
75 have such powers and duties as the court may grant to
76 direct all acts necessary or appropriate to conserve the
77 property and promote the health, safety, welfare and rights
78 of the residents of the residential board and care home,
79 including, but not limited to, the replacement of
80 management and staff, the hiring of consultants, the
81 making of any necessary expenditures to close the
82 residential board and care home or to repair or improve
83 the residential board and care home so as to return it to
84 compliance with applicable requirements, and the power to
85 receive, conserve and expend funds, including payments
86 on behalf of the licensee or operator of the residential
87 board and care home. Priority shall be given to
88 expenditures for current direct resident care or the transfer
89 of residents.

90 The person charged with temporary management shall
91 be an officer of the court, shall be paid by the residential
92 board and care home when resources are available, is not

93 liable for conditions at the residential board and care
94 home which existed or originated prior to his or her
95 appointment, and is not personally liable, except for his
96 or her own gross negligence and intentional acts which
97 result in injuries to persons or damage to property at the
98 residential board and care home during his or her
99 temporary management.

100 No person may impede the operation of a temporary
101 management. There shall be an automatic stay for a
102 ninety-day period subsequent to the establishment of a
103 temporary management of any action that would interfere
104 with the functioning of the residential board and care
105 home, including, but not limited to, cancellation of
106 insurance policies, termination of utility services,
107 attachments to working capital accounts, foreclosures,
108 evictions and repossessions of equipment used in the
109 residential board and care home.

110 A temporary management established for the purpose
111 of making improvements in order to bring a residential
112 board and care home into compliance with applicable
113 requirements may not be terminated until the court has
114 determined that the residential board and care home has
115 the management capability to ensure continued
116 compliance with all applicable requirements, except if the
117 court has not made such determination within six months
118 of the establishment of the temporary management, the
119 temporary management terminates by operation of law at
120 that time, and the residential board and care home shall be
121 closed. After the termination of the temporary
122 management, the person who was responsible for the
123 temporary management shall make an accounting to the
124 court, and after deducting from receipts the costs of the
125 temporary management, expenditures and civil penalties
126 and interest no longer subject to appeal, in that order, any
127 excess shall be paid to the licensee or operator of the
128 residential board and care home.

129 (f) The assessments for penalties and for costs of
130 actions taken under this article shall have interest assessed
131 at five percent per annum beginning thirty days after
132 receipt of notice of such assessment or thirty days after

133 receipt of the director's final order following a hearing,
134 whichever is later. All such assessments against a
135 residential board and care home that are unpaid shall be
136 added to the residential board and care home's licensure
137 fee and may be filed as a lien against the property of the
138 licensee or operator of the residential board and care
139 home. Funds received from such assessments shall be
140 deposited as funds received, as provided, in section ten of
141 this article.

142 (g) The secretary shall have the power to promulgate
143 emergency rules that expand the power of the director in
144 excess of that provided in this article to the extent required
145 to comply with federal requirements, but any such rules
146 shall expand the power of the director to the minimum
147 extent required by federal requirements. Such rules are
148 subject to the provisions of article three, chapter
149 twenty-nine-a of this code.

150 (h) The opportunity for a hearing on an action by the
151 director taken under this section shall be as provided in
152 section twelve of this article.

**§16-5H-12. Administrative appeals for civil assessments,
license limitation, suspension or revocation.**

1 (a) Any licensee or applicant aggrieved by an order
2 issued pursuant to sections five, six, ten or eleven of this
3 article shall, upon timely written request, have the
4 opportunity for a hearing by the director at which he or
5 she may contest such order as contrary to law or
6 unwarranted by the facts or both. All of the pertinent
7 provisions of article five, chapter twenty-nine-a of this
8 code shall apply to and govern such hearing and the
9 administrative procedures in connection with such
10 hearing. Such licensee or applicant may also request an
11 informal meeting with the director before such hearing.

12 Following such hearing the director shall make and
13 enter a written order either dismissing the complaint or
14 taking such action as is authorized in this article. The
15 written order of the director shall be accompanied by
16 findings of fact and conclusions of law as specified in
17 section three, article five, chapter twenty-nine-a of this

18 code, and a copy of such order and accompanying
19 findings and conclusions shall be served upon the licensee
20 and his or her attorney of record, if any, by certified mail,
21 return receipt requested. If the director suspends a
22 residential board and care home's license, it shall also
23 specify the conditions giving rise to such suspension, to be
24 corrected by the licensee during the period of suspension
25 in order to entitle the licensee to reinstatement of the
26 license. If the director revokes a license, the director may
27 stay the effective date of revocation by not more than
28 ninety days upon a showing that such delay is necessary to
29 assure appropriate placement of residents. The order of
30 the director shall be final unless vacated or modified upon
31 judicial review thereof in accordance with the provisions
32 of section thirteen of this article.

33 (b) In addition to all other powers granted by this
34 chapter, the director may hold the case under advisement
35 and make a recommendation as to requirements to be met
36 by the licensee in order to avoid either suspension or
37 revocation. In such a case, the director shall enter an
38 order accordingly and so notify the licensee and his or her
39 attorney of record, if any, by certified mail, return receipt
40 requested. If the licensee meets the requirements of such
41 order, the director shall enter an order showing
42 satisfactory compliance and dismissing the complaint and
43 shall so notify the licensee and the licensee's attorney of
44 record, if any, by certified mail, return receipt requested.

§16-5H-13. Judicial review.

1 Any licensee adversely affected by an order of the
2 director rendered after a hearing held in accordance with
3 the provisions of section twelve of this article is entitled to
4 judicial review thereof. All of the pertinent provisions of
5 section four, article five, chapter twenty-nine-a of this code
6 shall apply to and govern with like effect as if the
7 provisions of said section four were set forth in extenso in
8 this section.

9 The judgment of the circuit court shall be final unless
10 reversed, vacated or modified on appeal to the supreme
11 court of appeals in accordance with the provisions of
12 section one, article six, chapter twenty-nine-a of this code.

§16-5H-14. Legal counsel and services for the director.

1 (a) Legal counsel and services for the director in all
2 administrative hearings and all proceedings in any circuit
3 court and the supreme court of appeals shall be provided
4 by the attorney general, his or her assistants or an attorney
5 employed by the director, in proceedings in any circuit
6 court by the prosecuting attorney of the county as well, all
7 without additional compensation.

8 (b) The governor may appoint counsel for the director,
9 who shall perform such legal services in representing the
10 interests of residents in residential board and care homes
11 in matters under the jurisdiction of the director as the
12 governor shall direct. It shall be the duty of such counsel
13 to appear for the residents in all cases where they are not
14 represented by counsel. The compensation of such
15 counsel shall be fixed by the governor.

§16-5H-15. Unlawful acts; penalties; injunctions; private right of action.

1 (a) Whoever advertises, announces, establishes or
2 maintains, or is engaged in establishing or maintaining a
3 residential board and care home without a license granted
4 under section six of this article, or who prevents, interferes
5 with or impedes in any way the lawful enforcement of this
6 article shall be guilty of a misdemeanor and, upon
7 conviction thereof, shall be punished for the first offense
8 by a fine of not more than one hundred dollars, or by
9 imprisonment in jail for a period of not more than ninety
10 days, or by both such fine and imprisonment, at the
11 discretion of the court. For each subsequent offense, the
12 fine may be increased to not more than two hundred fifty
13 dollars, with imprisonment in jail for a period of not more
14 than ninety days, or both such fine and imprisonment at
15 the discretion of the court. Each day of a continuing
16 violation after conviction shall be considered a separate
17 offense.

18 (b) The director may in his or her discretion bring an
19 action to enforce compliance with this article or any rule,
20 or order hereunder, whenever it shall appear to the
21 director that any person has engaged in, or is engaging in,

22 an act or practice in violation of this article or any rule, or
23 order hereunder, or whenever it shall appear to the
24 director that any person has aided, abetted or caused, or is
25 aiding, abetting or causing such an act or practice. Upon
26 application by the director, the circuit court of the county
27 in which the conduct has occurred or is occurring, or if
28 emergency circumstances occur, the circuit court of
29 Kanawha County, shall have jurisdiction to grant without
30 bond a permanent or temporary injunction, decree or
31 restraining order.

32 Whenever the director shall have refused to grant or
33 renew a license, or shall have revoked a license required
34 by law to operate or conduct a residential board and care
35 home, or shall have ordered a person to refrain from
36 conduct violating the rules of the secretary, and the person
37 deeming himself or herself aggrieved by such refusal or
38 revocation or order shall have appealed the action of the
39 director, the court may, during pendency of such appeal,
40 issue a restraining order or injunction upon proof that the
41 operation of the residential board and care home or its
42 failure to comply with the order of the director adversely
43 affects the well-being or safety of the residents of the
44 residential board and care home. Should a person who is
45 refused a license or the renewal of a license to operate or
46 conduct a residential board and care home or whose
47 license to operate is revoked or who has been ordered to
48 refrain from conduct or activity which violates the rules of
49 the secretary, fail to appeal or should such appeal be
50 decided favorably to the director, then the court shall issue
51 a permanent injunction upon proof that the person is
52 operating or conducting a residential board and care
53 home without a license as required by law, or has
54 continued to violate the rules of the secretary.

55 (c) Any residential board and care home that deprives
56 a resident of any right or benefit created or established for
57 the well-being of the resident by the terms of any contract,
58 by any state statute or rule, or by any applicable federal
59 statute or regulation, shall be liable to the resident for
60 injuries suffered as a result of such deprivation. Upon a
61 finding that a resident has been deprived of such a right or
62 benefit, and that the resident has been injured as a result of

63 such deprivation, and unless there is a finding that the
64 residential board and care home exercised all care
65 reasonably necessary to prevent and limit the deprivation
66 and injury to the resident, compensatory damages shall be
67 assessed in an amount sufficient to compensate such
68 resident for such injury. In addition, where the
69 deprivation of any such right or benefit is found to have
70 been willful or in reckless disregard of the lawful rights of
71 the resident, punitive damages may be assessed. A
72 resident may also maintain an action pursuant to this
73 section for any other type of relief, including injunctive
74 and declaratory relief, permitted by law. Exhaustion of
75 any available administrative remedies is not required prior
76 to commencement of suit hereunder.

77 The amount of damages recovered by a resident, in an
78 action brought pursuant to this section, shall be exempt
79 for purposes of determining initial or continuing
80 eligibility for medical assistance under article four, chapter
81 nine of this code, and shall neither be taken into
82 consideration nor required to be applied toward the
83 payment or part payment of the cost of medical care or
84 services available under said article.

85 Any waiver by a resident or his or her legal
86 representative of the right to commence an action under
87 this section, whether oral or in writing, shall be null and
88 void as contrary to public policy.

89 (d) The penalties and remedies provided in this section
90 are cumulative and shall be in addition to all other
91 penalties and remedies provided by law.

§16-5H-16. Availability of reports and records.

1 The director shall make available for public inspection
2 and at a nominal cost provide copies of all inspections and
3 other reports of residential board and care homes filed
4 with or issued by the director. Nothing contained in this
5 section may be construed or deemed to allow the public
6 disclosure of confidential medical, social, personal or
7 financial records of any resident. The secretary shall
8 propose rules for legislative approval in accordance with
9 the provisions of article three, chapter twenty-nine-a of
10 this code as may be necessary to give effect to the
11 provisions of this section and to preserve the

12 confidentiality of medical, social, personal or financial
13 records of residents.

§16-5H-17. Licenses and rules in force.

1 All licenses for residential board and care homes which
2 are in force on the first day of July, one thousand nine
3 hundred ninety-seven, shall continue in full force and
4 effect during the period for which issued unless sooner
5 revoked as provided in this article.

6 All rules in effect on the first day of July, one
7 thousand nine hundred ninety-seven, which were adopted
8 by the secretary relating to licensing residential board and
9 care homes, shall remain in full force and effect until
10 altered, amended or repealed by the secretary.

**§16-5H-18. Separate accounts for residents' personal funds;
consent for use; records; penalties.**

1 (a) Each residential board and care home subject to the
2 provisions of this article shall hold in a separate account
3 and in trust each resident's personal funds deposited with
4 the residential board and care home.

5 (b) No person may use or cause to be used for any
6 purpose the personal funds of any resident admitted to
7 any such residential board and care home unless consent
8 for the use thereof has been obtained from the resident or
9 from a committee or guardian or relative.

10 (c) Each residential board and care home shall
11 maintain a true and complete record of all receipts for any
12 disbursements from the personal funds account of each
13 resident in the residential board and care home, including
14 the purpose and payee of each disbursement, and shall
15 render a true account of such record to the resident or his
16 or her representative upon demand and upon termination
17 of the resident's stay in the residential board and care
18 home.

19 (d) Any person or corporation who violates any
20 subsection of this section is guilty of a misdemeanor and,
21 upon conviction thereof, shall be fined not more than one
22 thousand dollars, or imprisoned in jail not more than one
23 year, or both fined and imprisoned.

CHAPTER 149

(Com. Sub. for S. B. 139—By Senators Craigo, Dittmar, Deem, Sharpe, Scott, Schoonover, Buckalew, Bailey, Snyder and Dugan)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the powers and duties of the director of the division of natural resources; allowing campsites to be reserved two days in advance when space is available; providing for credit card reservations at state parks and recreational areas; and requiring the director to develop a plan for a centralized computer reservation system and to implement the plan when funding becomes available.

Be it enacted by the Legislature of West Virginia:

That section two, article five, 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 5. PARKS AND RECREATION.

§20-5-2. Powers of the director with respect to the section of parks and recreation.

1 The director of the division of natural resources is
2 responsible for the execution and administration of the
3 provisions in this article as an integral part of the parks
4 and recreation program of the state and shall organize and
5 staff the section of parks and recreation for the orderly,
6 efficient and economical accomplishment of these ends.
7 The authority granted in the year one thousand nine
8 hundred ninety-four to the director of the division of
9 natural resources to employ up to six additional

10 unclassified personnel to carry out the parks functions of
11 the division of natural resources is continued.

12 The director of the division of natural resources shall:

13 (a) Establish, manage and maintain the state's parks
14 and recreation system for the benefit of the people of this
15 state and do all things necessary and incidental to the
16 development and administration of the state's parks and
17 recreation system;

18 (b) Acquire property for the state in the name of the
19 division of natural resources by purchase, lease or
20 agreement; retain, employ and contract with legal advisors
21 and consultants; or accept or reject for the state, in the
22 name of the division, gifts, donations, contributions,
23 bequests or devises of money, security or property, both
24 real and personal, and any interest in the property,
25 including lands and waters, for state park or recreational
26 areas for the purpose of providing public recreation:
27 *Provided*, That the provisions of section twenty, article one
28 of this chapter are specifically made applicable to any
29 acquisitions of land: *Provided, however*, That any sale,
30 exchange or transfer of property for the purposes of
31 completing land acquisitions or providing improved
32 recreational opportunities to the citizens of the state is
33 subject to the procedures of article one-a of this chapter:
34 *Provided further*, That no sale of any park or recreational
35 area property, including lands and waters, used for
36 purposes of providing public recreation on the effective
37 date of this article and no privatization of any park may
38 occur without statutory authority;

39 (c) Approve and direct the use of all revenue derived
40 from the operation of the state parks and public recreation
41 system for the operation, maintenance and improvement
42 of the system, individual projects of the system or for the
43 retirement of park development revenue bonds;

44 (d) Approve the use of no less than twenty percent of
45 the: (i) Funds appropriated for purposes of advertising
46 and marketing expenses related to the promotion and

47 development of tourism, pursuant to subsection (j), section
48 eighteen, article twenty-two, chapter twenty-nine of this
49 code; and (ii) funds authorized for expenditure from the
50 tourism promotion fund for purposes of direct advertising,
51 pursuant to section twelve, article two, chapter five-b of
52 this code and section ten, article twenty-two-a, chapter
53 twenty-nine of this code, to effectively promote and
54 market the state's parks, state forests, state recreation areas
55 and wildlife recreational resources;

56 (e) Issue park development revenue bonds as provided
57 in this article;

58 (f) Provide for the construction and operation of
59 cabins, lodges, resorts, restaurants and other developed
60 recreational service facilities, subject to the provisions of
61 section fifteen of this article and section twenty, article one
62 of this chapter;

63 (g) Propose rules to control uses of the parks, subject
64 to the provisions of chapter twenty-nine-a of this code:
65 *Provided*, That the director may not permit public
66 hunting, the exploitation of minerals or the harvesting of
67 timber for commercial purposes in any state park;

68 (h) Exempt designated state parks from the
69 requirement that all payments must be deposited in a bank
70 within twenty-four hours for amounts less than two
71 hundred fifty dollars notwithstanding any other provision
72 of this code to the contrary;

73 (i) Waive the use fee normally charged to an
74 individual or group for one day's use of a picnic shelter or
75 one week's use of a cabin in a state recreation area when
76 the individual or group donates the materials and labor for
77 the construction of the picnic shelter or cabin: *Provided*,
78 That the individual or group was authorized by the
79 director to construct the picnic shelter or cabin and that it
80 was constructed in accordance with the authorization
81 granted and the standards and requirements of the division
82 pertaining to the construction. The individual or group to
83 whom the waiver is granted may use the picnic shelter for

84 one reserved day or the cabin for one reserved week
85 during each calendar year until the amount of the
86 donation equals the amount of the loss of revenue from
87 the waiver or until the individual dies or the group ceases
88 to exist, whichever first occurs. The waiver is not
89 transferable. The director shall permit free use of picnic
90 shelters or cabins to individuals or groups who have
91 contributed materials and labor for construction of picnic
92 shelters or cabins prior to the effective date of this section.
93 The director shall propose a legislative rule for
94 promulgation in accordance with the provisions of article
95 three, chapter twenty-nine-a of this code governing the
96 free use of picnic shelters or cabins provided for in this
97 section, the eligibility for free use, the determination of the
98 value of the donations of labor and materials, the
99 appropriate definitions of a group and the maximum time
100 limit for the use;

101 (j) Provide within the parks a market for West Virginia
102 arts, crafts and products, which shall permit gift shops
103 within the parks to offer for sale items purchased on the
104 open market from local artists, artisans, craftsmen and
105 suppliers and local or regional crafts cooperatives;

106 (k) Provide that reservations for reservable campsites
107 may be made, upon two days advance notice, for any date
108 for which space is available within a state park or
109 recreational area managed by the parks and recreation
110 section;

111 (l) Provide that reservations for all state parks and
112 recreational areas managed by the parks and recreation
113 section of the division may be made by use of a valid
114 credit card; and

115 (m) Develop a plan to establish a centralized computer
116 reservation system for all state parks and recreational areas
117 managed by the parks and recreation section and to
118 implement the plan as funds become available.

CHAPTER 150

(Com. Sub. for S. B. 105—By Senators Ball, Anderson, Love, Bowman,
Schoonover, Ross and Helmick)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article twelve, chapter sixty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to notification of parole hearings; victims' right to be heard; and notification of parole release dates.

Be it enacted by the Legislature of West Virginia:

That section twenty-three, 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.

§62-12-23. Notification of parole hearing; victim's right to be heard; notification of release on parole.

1 (a) Following the sentencing of a person who has been
2 convicted of murder, aggravated robbery, sexual assault in
3 the first or second degree, kidnapping, child abuse
4 resulting in injury, child neglect resulting in injury, arson
5 or a sexual offense against a minor, the prosecuting
6 attorney who prosecuted the offender shall prepare a
7 "Parole Hearing Notification Form". This form shall
8 contain the following information:

9 (1) The name of the county in which the offender was
10 prosecuted and sentenced;

11 (2) The name of the court in which the offender was
12 prosecuted and sentenced;

13 (3) The name of the prosecuting attorney or assistant
14 prosecuting attorney who prosecuted the offender;

15 (4) The name of the judge who presided over the
16 criminal case and who sentenced the offender;

17 (5) The names of the law-enforcement agencies and
18 officers who were primarily involved with the investigation
19 of the crime for which the offender was sentenced; and

20 (6) The names, addresses and telephone numbers of
21 the victims of the crime for which the offender was
22 sentenced or the names, addresses and telephone numbers
23 of the immediate family members of each victim of the
24 crime, including, but not limited to, each victim's spouse,
25 father, mother, brothers and sisters.

26 (b) The prosecuting attorney shall retain the original
27 of the "Parole Hearing Notification Form", and shall
28 provide copies of it to the circuit court which sentenced
29 the offender, the parole board, the commissioner of
30 corrections and to all persons whose names and addresses
31 are listed on the "Parole Hearing Notification Form".

32 (c) At least forty-five days prior to the date of a parole
33 hearing, the parole board shall notify all persons who are
34 listed on the "Parole Hearing Notification Form" of the
35 date, time and place at which a parole hearing will be held.
36 Such notice shall be sent by certified mail, return receipt
37 requested. The notice shall state that the victims of the
38 crime have the right to submit a written statement to the
39 parole board and to attend the parole hearing to be heard
40 regarding the propriety of granting parole to the prisoner.
41 The notice shall also state that only the victims may submit
42 written statements and speak at the parole hearing unless a
43 victim is deceased, is a minor or is otherwise incapacitated.

44 (d) The parole board shall inquire during the parole
45 hearing as to whether the victims of the crime or their
46 representatives, as provided in this section, are present. If
47 so, the parole board shall permit those persons to speak at
48 the hearing regarding the propriety of granting parole for
49 the prisoner.

50 (e) If the parole board grants parole, it shall
51 immediately set a date on which the prisoner will be
52 released. Such date shall be no earlier than thirty days

53 after the date on which parole is granted. On the date on
54 which parole is granted, the parole board shall notify all
55 persons listed on the "Parole Hearing Notification Form"
56 that parole has been granted and that the prisoner will be
57 released on a particular date. A written statement of
58 reasons for releasing the prisoner, prepared pursuant to
59 subdivision (4), subsection (d), section thirteen of this
60 article, shall be provided upon request to all persons listed
61 on the "Parole Hearing Notification Form."

CHAPTER 151

(Com. Sub. for H. B. 2795—By Delegates Laird, Staton, Stemple and Thomas)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, three and five, article fourteen-a, chapter eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to investigation and interrogation rights of police officers and firefighters; defining certain terms, including "accused officer", for purposes of the article; providing for composition of hearing board in civil service and noncivil service jurisdictions; and providing for appeal rights both for officers and department chiefs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 14A. MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS; PROCEDURE FOR INVESTIGATION.

§8-14A-1. Definitions.

§8-14A-3. Hearing.

§8-14A-5. Appeal.

§8-14A-1. Definitions.

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

3 (1) "Accused officer" means any police officer or
4 firefighter who is the subject of an investigation or
5 interrogation which results in a recommendation of
6 punitive action against him or her.

7 (2) "Civil service," when followed by the terms
8 "department," "officer" or "accused officer", means
9 any department, officer or accused officer who is subject
10 to the civil service provisions of article fourteen, chapter
11 eight of this code or article fifteen, chapter eight of this
12 code.

13 (3) "Hearing" means any meeting in the course of an
14 investigatory proceeding, other than an interrogation at
15 which no testimony is taken under oath, conducted by a
16 hearing board for the purpose of taking or inducing
17 testimony or receiving evidence.

18 (4) "Hearing board" means a board appointed to hold
19 a hearing on a complaint against an accused officer. The
20 hearing board shall consist of three members to be
21 appointed pursuant to paragraphs (a), (b) or (c) of this
22 subdivision. Hearing board members appointed under
23 paragraphs (b) or (c) of this subdivision may be removed
24 from office as provided under paragraph (d) of this
25 subdivision.

26 (a) For civil service departments, the department chief
27 shall appoint the first member, the members of the
28 accused officer's department shall appoint the second
29 member, and the first and second members shall appoint
30 the third member by agreement. Should the first and
31 second members fail to agree on the appointment of the
32 third member within five days, they shall submit to the
33 department's civil service commission a list of four
34 qualified candidates from which list the commission shall
35 appoint the third member. The appointment of members
36 under this paragraph shall be subject to the following
37 qualifications and limitations:

38 (1) No member shall have had any part in the
39 investigation or interrogation of the accused officer;

40 (2) Each member shall be a police officer or
41 firefighter within the accused officer's department, or,
42 with the department chief's approval, a law-enforcement
43 officer or firefighter from another law-enforcement
44 agency or fire department;

45 (3) At least one member shall be of the same rank as
46 the accused officer; and

47 (4) If there are fewer than three persons who meet the
48 qualifications described in subparagraphs (1), (2) and (3)
49 of this paragraph, then the department's civil service
50 commission shall appoint as many citizens of the
51 municipality in which the department is located as may be
52 necessary to constitute the board.

53 (b) For noncivil service police departments, the
54 hearing board shall be a standing hearing board. The
55 department chief shall appoint the first member, the local
56 fraternal order of police shall appoint the second member,
57 and the local chamber of commerce or local
58 businessmen's association shall appoint the third member.
59 If there is no local fraternal order of police, the state
60 fraternal order of police shall appoint the second member.
61 If there is no local chamber of commerce or local
62 businessmen's association, the first and second members
63 shall appoint the third member by agreement. Of the
64 three original appointments in each police department, the
65 first member shall serve for six years from the date of his
66 or her appointment; the second member shall serve four
67 years from the date of his or her appointment; and the
68 third member shall serve for two years from the date of his
69 or her appointment. After the original appointments, all
70 appointments shall be made for periods of four years each
71 by the designated appointing authority. In the event that
72 any member shall cease to be a member due to death,
73 resignation, final removal or other cause, a new member
74 shall be appointed within thirty days of the date the ex-
75 member ceased to be a member. This appointment shall
76 be made by the officer or body who in the first instance
77 appointed the member who is no longer a member. When
78 the hearing board is appointed, the three members shall

79 elect one of their number to act as president of the board,
80 who shall serve as president for one year. In the event that
81 a member has had a part in the investigation or
82 interrogation of an accused officer or is related by
83 consanguinity or affinity to an accused officer, that
84 member shall be recused from participation in the accused
85 officer's hearing. In such an instance, the officer or body
86 who in the first instance appointed the recused member
87 shall appoint another person for sole purpose of the
88 accused's officer hearing. No member shall hold any
89 other office (other than the office of notary public) under
90 the United States, this state, or any municipality, county or
91 other political subdivision thereof; nor shall any member
92 serve on any political committee or take any active part in
93 the management of any political campaign.

94 (c) For noncivil service fire departments, the hearing
95 board shall be a standing hearing board. The department
96 chief shall appoint the first member, the local international
97 association of firefighters shall appoint the second
98 member, and the local chamber of commerce or local
99 businessmen's association shall appoint the third member.
100 If there is no local international association of firefighters
101 in the municipality, the local central body of the West
102 Virginia Federation of Labor AFL-CIO shall appoint the
103 second member. If there is no local central body of the
104 West Virginia Federation of Labor AFL-CIO in the
105 municipality, the West Virginia Federation of Labor AFL-
106 CIO shall appoint the second member. If there is no local
107 chamber of commerce or local businessmen's association,
108 the first and second members shall appoint the third
109 member by agreement. Of the three original
110 appointments in each fire department, the first member
111 shall serve for six years from the date of his or her
112 appointment; the second member shall serve four years
113 from the date of his or her appointment; and the third
114 member shall serve for two years from the date of his or
115 her appointment. After the original appointments, all
116 appointments shall be made for periods of four years each
117 by the designated appointing authority. In the event that
118 any member shall cease to be a member due to death,
119 resignation, final removal or other cause, a new member
120 shall be appointed within thirty days of the date the ex-
121 member ceased to be a member. This appointment shall

122 be made by the officer or body who in the first instance
123 appointed the member who is no longer a member. Each
124 of the three members shall elect one of their number to act
125 as president of the board, who shall serve as president for
126 one year. In the event that a member has had a part in the
127 investigation or interrogation of an accused officer or is
128 related by consanguinity or affinity to an accused officer,
129 that member shall be recused from participation in the
130 accused officer's hearing. In such an instance, the officer
131 or body who in the first instance appointed the recused
132 member shall appoint another person for the sole purpose
133 of the accused officer's hearing. No member shall hold
134 any other office (other than the office of notary public)
135 under the United States, this state, or any municipality,
136 county or other political subdivision thereof; nor shall any
137 member serve on any political committee or take any
138 active part in the management of any political campaign.

139 (d) Any member of a hearing board appointed under
140 paragraphs (b) or (c) of this subdivision may be removed
141 as provided in this paragraph.

142 The mayor of the municipality may, at any time,
143 remove any hearing board member for good cause, which
144 shall be stated in writing and made a part of the records of
145 the hearing board. However, within ten days of removing
146 any member, the mayor shall file in the circuit clerk's
147 office of the county in which the municipality is located a
148 petition setting forth in full the reason for the removal and
149 seeking the circuit court's confirmation of the mayor's
150 removal of the member. The mayor shall file a copy of
151 the petition with the removed member at the same time it
152 is filed with the circuit clerk. The petition shall have
153 precedence on the circuit court's docket and shall be
154 heard as soon as practicable on the request of the removed
155 member. All rights vested in a circuit court by this
156 subsection may be exercised by the judge thereof in
157 vacation. In the event that no term of the circuit court is
158 being held at the time the petition is filed, and the judge
159 thereof cannot be reached in the county in which the
160 petition was filed, the petition shall be heard at the next
161 succeeding circuit court term, whether regular or special,
162 and the removed member shall remain removed until a
163 hearing is held on the petition. The court or the judge

164 thereof in vacation shall hear and decide the issues
165 presented by the petition. The party affected adversely by
166 the court's or judge's decision shall have the right to
167 petition the supreme court of appeals for a review of the
168 decision as in other civil cases. If the mayor fails to file
169 the petition with the circuit clerk's office within ten days
170 as provided above, the removed member shall immediately
171 resume his or her position as a hearing board member.

172 Any resident of the municipality shall have the right at
173 any time to seek the removal of any hearing board
174 member. To do so, the resident shall file a petition in the
175 circuit clerk's office of the county where the municipality
176 is located. The resident shall also serve a copy of the
177 petition on the member sought to be removed. The
178 petition shall be matured for hearing and heard by the
179 circuit court or the judge thereof in vacation in the same
180 manner as civil proceedings in the circuit courts of this
181 state are heard. Any party adversely affected by the
182 circuit court's or judge's decision shall have the right to
183 petition the supreme court of appeals for a review of the
184 decision as in other civil cases.

185 (5) "Noncivil service," when followed by the terms
186 "department," "officer" or "accused officer", means
187 any department, officer or accused officer who is not
188 subject to the civil service provisions of article fourteen,
189 chapter eight of this code or article fifteen, chapter eight
190 of this code.

191 (6) "Police officer or firefighter" or "officer" means
192 any police officer or firefighter of a police or fire
193 department employed by the city or municipality, but
194 shall not include (a) the highest ranking officer of the
195 police or fire department or (b) any noncivil service
196 officer who has not completed the probationary period
197 established by the department by which he or she is
198 employed.

199 (7) "Punitive action" means any action which may
200 lead to dismissal, demotion, suspension, reduction in
201 salary, written reprimand or transfer for purposes of
202 punishment.

203 (8) "Under investigation" or "under interrogation"
204 means any situation in which any police officer or

205 firefighter becomes the focus of inquiry regarding any
206 matter which may result in punitive action.

§8-14A-3. Hearing.

1 (a) Before taking any punitive action against an
2 accused officer, the police or fire department shall give
3 notice to the accused officer that he or she is entitled to a
4 hearing on the issues by a hearing board or the applicable
5 civil service commission. The notice shall state the time
6 and place of the hearing and the issues involved and shall
7 be delivered to the accused officer no later than ten days
8 prior to the hearing.

9 (b) When a civil service accused officer faces a
10 recommended punitive action of discharge, suspension or
11 reduction in rank or pay, but before such punitive action
12 is taken, a hearing board must be appointed and must
13 afford the accused civil service officer a hearing
14 conducted pursuant to the provisions of article fourteen,
15 section twenty, or article fifteen, section twenty-five of this
16 chapter: *Provided*, That the punitive action may be taken
17 before the hearing board conducts the hearing if exigent
18 circumstances exist which require it.

19 (c) When a civil service accused officer faces a
20 recommended punitive action of written reprimand or
21 transfer for the purpose of punishment, or when a non-
22 civil service accused officer faces any recommended
23 punitive action, the applicable hearing board shall conduct
24 hearing pursuant to the provisions of subsection (d) of this
25 section.

26 (d) The following requirements shall govern the
27 operation conduct of a hearing board under subsection (c)
28 of this section:

29 (1) The hearing board shall keep an official record of
30 each hearing it conducts. The official record shall include
31 the testimony offered and exhibits introduced at the
32 hearing.

33 (2) Both the police or fire department and the accused
34 officer shall be given ample opportunity to present
35 evidence and argument with respect to any issue raised at
36 the hearing.

37 (3) The hearing board may subpoena witnesses and
38 administer oaths or affirmations and examine any
39 individual under oath, and may require and compel the
40 production of records, books, papers, contracts and other
41 documents, in connection with any issue raised at the
42 hearing.

43 (4) The hearing board shall prepare a written order
44 detailing any decision or action it takes as a result of the
45 hearing. The written order shall include written findings
46 of fact setting forth a concise statement of the hearing
47 board's factual findings and conclusions on each issue
48 raised at the hearing. The hearing board shall hand-deliver
49 or promptly mail a copy of the written order to the
50 accused officer or his attorney of record.

51 (e) A hearing board's order is binding on all parties
52 involved unless it is overturned in the appeal process
53 described in section five of this article.

§8-14A-5. Appeal.

1 (a) For civil service departments, a hearing board's
2 decision rendered under subsections (b) or (c), section
3 three of this article may be appealed by the police officer
4 or firefighter adversely affected by the order or by the
5 department chief if he or she believes that the department
6 would be adversely affected by the hearing board's order.
7 An appeal under this subsection shall be made to the
8 applicable civil service commission. Any party aggrieved
9 by the civil service commission's ruling on the appeal
10 may further appeal the civil service commission's ruling
11 pursuant to the provisions of subsection (b), section
12 twenty, article fourteen of this chapter or subsection (b),
13 section twenty-five, article fifteen of this chapter.

14 (b) For noncivil service departments, a hearing
15 board's decision rendered under subsection (c), section
16 three of this article may be appealed by the police officer
17 or firefighter adversely affected by the order or by the
18 department chief if he or she believes that the department
19 would be adversely affected by the hearing board's order.
20 An appeal under this subsection shall be made to the
21 circuit court of the county in which the police officer or
22 firefighter resides.

CHAPTER 152

(H. B. 2524—By Delegates Facemyer, Jenkins, Capito and Beach)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article three, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to expanding the definition of "practice of podiatry" by including the ankle; and restricting surgical procedures on ankles by podiatrists only upon being granted privileges to do so by a hospital's medical staff credentialing committee.

Be it enacted by the Legislature of West Virginia:

That section four, 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.

§30-3-4. Definitions.

As used in this article:

1 (1) "Board" means the West Virginia board of
2 medicine established in section five of this article.
3 Whenever any other provision of this code refers to the
4 "medical licensing board of West Virginia", the reference
5 shall be construed to mean and refer to the "West Virginia
6 board of medicine" as created and established in this
7 article.

8 (2) "Medical peer review committee" means a
9 committee of, or appointed by, a state or local professional
10 medical society, or a committee of, or appointed by, a
11 medical staff of a licensed hospital, long-term care facility
12 or other health care facility, or any health care peer review
13 organization as defined in section one, article three-c of
14 this chapter, or any other organization of professionals in
15 this state formed pursuant to state or federal law and
16 authorized to evaluate medical and health care services.

17 (3) "Practice of medicine and surgery" means the
18 diagnosis or treatment of, or operation or prescription for,
19 any human disease, pain, injury, deformity or other
20 physical or mental condition.

21 (4) "Practice of podiatry" means the examination,
22 diagnosis, treatment, prevention and care of conditions
23 and functions of the human foot and ankle by medical,
24 surgical and other scientific knowledge and methods; with
25 surgical treatment of the ankle authorized only when a
26 podiatrist has been granted privileges to perform ankle
27 surgery by a hospital's medical staff credentialing
28 committee based on the training and experience of the
29 podiatrist; and medical and surgical treatment of warts and
30 other dermatological lesions of the hand which similarly
31 occur in the foot. When a podiatrist uses other than local
32 anesthesia, in surgical treatment of the foot, the anesthesia
33 must be administered by, or under the direction of, an
34 anesthesiologist or certified registered nurse anesthetist
35 authorized under the state of West Virginia to administer
36 anesthesia. A medical evaluation shall be made by a
37 physician of every patient prior to the administration of
38 other than local anesthesia.

39 (5) "State director of health" means the state director
40 of health or his or her designee, which designee shall act
41 as secretary of the board and shall carry out any and all
42 responsibilities assigned in this article to the secretary of
43 the board.

CHAPTER 153

(Com. Sub. for S. B. 524—By Senators Bailey, Chafin and Deem)

[Passed April 8, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections two-a and two-b, relating to expanding the prescriptive authority for optometrists; formulary of drugs to be prescribed; eligibility and certification for prescriptive

authority; fees and administration; and proposal of legislative rules.

Be it enacted by the Legislature of West Virginia:

That article eight, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections two-a and two-b, to read as follows:

ARTICLE 8. OPTOMETRISTS.

§30-8-2a. Prescriptive authority.

§30-8-2b. Expanded prescriptive authority.

§30-8-2a. Prescriptive authority.

1 Notwithstanding the provisions of section two of this
2 article, the board of optometry may grant qualified
3 optometrists prescriptive authority for oral antibiotics, oral
4 non-steroidal anti-inflammatory drugs, and oral carbonic
5 anhydrase inhibitors: *Provided*, That the board has
6 proposed rules for legislative approval in accordance with
7 the provisions of article three, chapter twenty-nine-a of
8 this code, defining a certification process for individual
9 optometrists that provide standards for education, training
10 and adequate insurance coverage determined by the board
11 to be conditions precedent to certification authorizing the
12 individual optometrist to prescribe drugs excluded
13 pursuant to the provisions of section two of this article but
14 authorized by this section, and the optometrist desiring to
15 employ the use of these pharmaceutical agents has met the
16 necessary qualifications as established by rule.

§30-8-2b. Expanded prescriptive authority.

1 Notwithstanding the provisions of section two of this
2 article, on or before the thirty-first day of December, one
3 thousand nine hundred ninety-seven, the board of
4 optometry shall propose rules for legislative approval in
5 accordance with the provisions of article three, chapter
6 twenty-nine-a of this code, defining a certification process
7 and drug formulary which is authorized by this section,
8 except that no emergency rules may be proposed. The
9 board shall provide a formulary classifying those

10 categories of oral drugs rational to the diagnosis and
11 treatment of conditions or diseases of the human eye and
12 its appendages, which may be prescribed by optometrists
13 from Schedules III, IV and V of the Uniform Controlled
14 Substances Act, article two, chapter sixty-a of this code.
15 The board shall consult with other appropriate boards,
16 including the board of pharmacy, in the development of
17 the formulary. The rules shall further provide for
18 individual certification of optometrists for this expanded
19 scope of prescriptive authority. The rules shall provide
20 standards for education and training determined by the
21 board to be conditions precedent to individual
22 certification authorizing an optometrist to prescribe drugs
23 excluded pursuant to the provisions of section two of this
24 article and included in a drug formulary to be adopted by
25 the board; procedures for certification by the board of
26 education and training courses; procedure standards for
27 certification and recertification of individual optometrists
28 for an expanded scope of practice prescriptive authority,
29 which shall include a continuing education requirement;
30 administrative fees necessary for the certification and
31 recertification; procedures and standards for certification
32 and training courses; procedures and standards for
33 determining successful completion of education and
34 training; and standards to ensure adequate insurance
35 coverage, as well as compliance with the provisions of this
36 section.

CHAPTER 154

(S. B. 511—By Senators Plymale, Helmick, Ross, Minear and Anderson)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven, article nineteen, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to raising the board of foresters annual license renewal fee.

Be it enacted by the Legislature of West Virginia:

That section seven, article nineteen, 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 19. FORESTERS.

§30-19-7. Expiration and renewal of license; fee.

1 Licenses shall expire on the last day of the month of
2 June following their issuance or renewal and shall become
3 invalid on that date unless renewed. It shall be the duty of
4 the secretary of the board to notify every person
5 registered under this article, at his or her last registered
6 address, of the date of the expiration of his or her license
7 and the amount of the fee that shall be required for its
8 renewal for one year; such notice shall be mailed at least
9 sixty days in advance of the date of the expiration of said
10 license. On the first day of July, one thousand nine
11 hundred ninety-seven, the annual fee for renewal of a
12 license is fifteen dollars per year. Thereafter the board
13 may increase the annual renewal fee in increments of five
14 dollars per year, up to a maximum annual renewal fee of
15 forty dollars.

CHAPTER 155

(Com. Sub. for H. B. 2566—By Delegates Anderson, Border,
Beane, Stalnaker, Leach, Mezzatesta and Douglas)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section eleven, article thirty-four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to respiratory care practitioners; and terminating the temporary license for respiratory care practitioners on the thirty-first day of December, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

That section eleven, article thirty-four, 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 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

§30-34-11. Examination requirement; termination of temporary licenses.

1 (a) After the establishment of the board of
2 respiratory care, a license shall be issued to applicants who,
3 on the effective date of this article, have passed the
4 National Board of Respiratory Care, Inc., entry-level or
5 registry examinations, or their equivalent as approved by
6 the board.

7 (b) Applicants who have not passed either of these
8 national examinations or their equivalent and who,
9 through written evidence verified by oath, demonstrate
10 that they have been functioning for two years in the
11 capacity of a respiratory care provider as defined by this
12 article shall be issued a temporary license to practice
13 respiratory care. A temporary license shall be valid until
14 the thirty-first day of December, one thousand nine
15 hundred ninety-seven. Persons holding a temporary
16 license shall be issued a license to practice only after
17 achieving a passing score on a licensure exam
18 administered or approved by the board. After the thirty-
19 first day of December, one thousand nine hundred
20 ninety-seven, persons who have not passed either of these
21 national examinations or their equivalent shall not be
22 licensed to practice respiratory care until they have
23 achieved a passing score on a licensure exam administered
24 or approved by the board.

25 (c) Any person issued a license pursuant to this
26 section shall be required to pay the license or renewal fees
27 established in section seven of this article.

CHAPTER 156

(Com. Sub. for H. B. 2609—By Delegates Fleischauer, Yeager, Staton,
Varner, Hutchins, Fragale and Dalton)

[Passed April 11, 1997; in effect July 1, 1997. 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-seven, relating to licensing massage therapists; license required after the thirtieth day of June, one thousand nine hundred ninety-eight; definitions; creating the West Virginia massage therapy licensure board; appointment and terms of members of board; meetings of board; reimbursement of members' expenses; establishment of massage therapy licensure board fund; powers of board; requirements for licensure; authority of board to enforce provisions of article; proceedings for the revocation, suspension or nonrenewal of licenses; criminal penalties for violations of provisions; persons and activities exempt from provisions of article; and termination of the board.

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-seven, to read as follows:

ARTICLE 37. MASSAGE THERAPISTS.

- §30-37-1. License required to practice.
- §30-37-2. Definitions.
- §30-37-3. Board established; membership; terms.
- §30-37-4. Quorum meetings; officers; reimbursement; staff.
- §30-37-5. Massage therapy board fund; fees; expenses; disposition of funds.
- §30-37-6. Duties of board; authorization to propose rules and fees.
- §30-37-7. Requirements for licensure.
- §30-37-8. Enforcement.
- §30-37-9. Hearing for revocation, suspension, nonrenewal.

§30-37-10. Prohibitions and penalties.

§30-37-11. Exemptions.

§30-37-12. Termination of board.

§30-37-1. License required to practice.

1 To protect the health, safety and welfare of the public
2 and to ensure standards of competency, it is necessary to
3 require licensure of those engaged in the practice of
4 massage therapy. After the thirtieth day of June, one
5 thousand nine hundred ninety-eight, it shall be unlawful
6 for any person not licensed under the provisions of this
7 article to practice massage therapy in this state, or to use
8 the initials LMT, C.M.T., or the words "licensed massage
9 therapist," "masseur," or "masseuse," or any other
10 words or titles which imply or represent that the person,
11 corporation or association is engaging in the practice of
12 massage therapy, or employ any person, not duly licensed,
13 who is engaging in the practice of massage therapy or who
14 is using such words or titles to imply or represent that he
15 or she is engaging in the practice of massage therapy.

§30-37-2. Definitions.

1 (a) "Board" means the West Virginia massage
2 therapy licensure board.

3 (b) "Massage therapist" means a person licensed to
4 practice the health care service of massage therapy under
5 this article who practices or administers massage therapy
6 to a client of either gender for compensation. No person
7 licensed by the massage therapy licensure board may be
8 referred to as a primary care provider nor be permitted to
9 use such designation.

10 (c) "Massage therapy" means a health care service
11 which is a scientific and skillful manipulation of soft tissue
12 for therapeutic or remedial purposes, specifically for
13 improving muscle tone, circulation, promoting health and
14 physical well-being. Massage therapy includes massage,
15 myotherapy, massotherapy, bodywork, bodywork therapy,
16 or therapeutic massage including hydrotherapy,
17 superficial hot and cold applications, vibration and topical
18 applications or other therapies which involve manipulation
19 of the muscle and connective tissue of the body, for the
20 purpose of enhancing health, reducing stress, improving

21 circulation, aiding muscle relaxation, increasing range of
22 motion, or relieving neuro-muscular pain. Massage
23 therapy does not include diagnosis or service which
24 requires a license to practice medicine or surgery,
25 osteopathic medicine, chiropractic, or podiatry, and does
26 not include service performed by nurses, occupational
27 therapists, or physical therapists who act under their own
28 professional license, certificate or registration.

29 (d) "Massage establishment" means a place of
30 business wherein massage therapy is practiced.

§30-37-3. Board established; membership; terms.

1 There is hereby created the West Virginia massage
2 therapy licensure board. The board shall consist of five
3 members who shall be appointed by the governor with the
4 advice and consent of the Senate. Three members of the
5 board shall be massage therapists, chosen from a list of not
6 less than five names submitted by the West Virginia
7 chapter of the American massage therapy association.
8 One member of the board shall be an osteopathic
9 physician or chiropractor who is knowledgeable of
10 modalities which are included in massage therapy, and one
11 member of the board shall be a lay person who is not a
12 massage therapist or other health care professional.

13 The terms of board members shall be staggered
14 initially from the first day of July, one thousand nine
15 hundred ninety-seven. The governor shall appoint
16 initially three members for a term of one year and two
17 members for a term of two years. Subsequent
18 appointments shall be for a term of two years. Each
19 member shall serve until that member's successor is
20 appointed and qualified, unless the board member is no
21 longer competently performing the duties of office. Any
22 vacancy on the board shall be filled by the governor for
23 the balance of the unexpired term. The governor may
24 remove members of the board from office for cause.

§30-37-4. Quorum meetings; officers; reimbursement; staff.

1 (a) A majority of the full authorized membership of
2 the board constitutes a quorum.

3 (b) The board shall meet at least twice a year, at the
4 times and places that it determines.

5 (c) The board shall annually elect a chairperson and a
6 secretary/treasurer.

7 (d) Each member of the board is entitled to
8 reimbursement of travel and other necessary expenses
9 actually incurred while engaging in board activities. All
10 reimbursement of expenses shall be paid out of the
11 massage therapy board fund created by the provisions of
12 this article.

13 (e) The board may employ staff as necessary to
14 perform the functions of the board, including an
15 administrative secretary, and pay all personnel out of the
16 massage therapy board fund created by the provisions of
17 this article.

18 (f) The board may contract with other state boards or
19 state agencies to share offices, personnel, and other
20 administrative functions as authorized under this article.

**§30-37-5. Massage therapy board fund; fees; expenses;
disposition of funds.**

1 (a) There is hereby established a massage therapy
2 licensure board fund in the state treasurer's office.

3 (b) The board may set reasonable fees for the issuance
4 or renewal of licenses and its other services. All funds to
5 cover the compensation and expenses of the board
6 members shall be generated by the fees set under this
7 subsection.

8 (c) The disposition of all funds received by the board
9 shall be governed by the provisions of section ten, article
10 one, chapter thirty of this code.

**§30-37-6. Duties of board; authorization to propose rules and
fees.**

1 (a) The board shall be responsible for licensure and
2 continuing education requirements, standards of practice
3 and professional ethics, disciplinary actions, and other
4 issues of concern.

5 (b) The board shall propose rules for legislative
6 approval in accordance with the provisions of article three,
7 chapter twenty-nine-a of this code as are necessary to
8 implement the provisions of this article.

9 (c) The board shall adopt reasonable rules regarding
10 personal cleanliness of massage therapists and the sanitary
11 conditions of towels, linens, creams, lotions and other
12 materials, facilities, and equipment used in the practice of
13 massage therapy.

14 (d) All fees for licensure, renewal of licensure, and all
15 other related matters shall be set by the board.

§30-37-7. Requirements for licensure.

1 (a) The board shall propose rules establishing a
2 procedure for licensing of massage therapists. License
3 requirements shall include the following:

4 (1) Completion of a curriculum of massage education
5 at a school approved by the commission on massage
6 training accreditation approval or the West Virginia state
7 college system board. This school shall require a diploma
8 from an accredited high school, or the equivalent, and
9 require completion of at least five hundred hours of
10 supervised academic instruction. This requirement may
11 be waived for those practitioners who were practicing
12 massage therapy prior to the first day of December, one
13 thousand nine hundred ninety-four;

14 (2) Successful completion of the national certification
15 for therapeutic massage and body work (NCTMB)
16 examination; except that any person who is currently
17 practicing massage therapy and who completed the
18 American massage therapy association educational and
19 testing requirements prior to the first day of December,
20 one thousand nine hundred ninety-four, may be granted a
21 two year provisional license without having successfully
22 completed the national certification for therapeutic
23 massage and body work examination. Any such
24 provisional license granted under this exception shall
25 expire in two years if the national certification for
26 therapeutic massage and body work examination is not
27 successfully completed within that time; and

28 (3) Payment of a reasonable fee annually required by
29 the board which shall compensate and be retained by the
30 board for the costs of administration.

31 (b) In addition to provisions for licensure, the rules
32 shall include the following:

33 (1) Requirements for completion of continuing
34 education hours conforming to NCTMB guidelines; and

35 (2) Requirements for issuance of a reciprocal license
36 to licensees of states with requirements including the
37 successful completion of the NCTMB examination.

38 (c) A massage therapist who is licensed by the board
39 shall be issued a certificate and a license number. The
40 current, valid license certificate must be publicly displayed
41 and available for inspection by the board and the public at
42 a massage therapist's work site.

§30-37-8. Enforcement.

1 (a) The board has the power and authority to enter
2 into any court of this state having proper jurisdiction to
3 seek an injunction against any person, corporation or
4 association not in compliance with the provisions of this
5 article, and is further empowered to enter into any court to
6 enforce the provisions of this article to ensure compliance
7 with such provisions.

8 (b) The board may suspend, revoke, or impose
9 probationary conditions upon a license issued pursuant to
10 rules adopted in accordance with this article concerning
11 board requirements for licensure. The following are
12 grounds for revocation, suspension, or annulment when a
13 person, corporation or association is:

14 (1) Guilty of fraud in practice of massage, or fraud or
15 deceit in the licensee's application for licensure;

16 (2) Engaged in practice under a false or assumed
17 name, or impersonating another practitioner of a like or
18 different name;

19 (3) Addicted to the habitual use of drugs, alcohol or
20 stimulants to an extent as to incapacitate that person's
21 performance of professional duties;

22 (4) Guilty of fraudulent, false, misleading or deceptive
23 advertising, or for prescribing medicines or drugs, or
24 practicing any licensed profession without legal authority.
25 The licensee may not diagnose, or imply or advertise in
26 any way a service for a condition that would require
27 diagnosis;

28 (5) Grossly negligent in the practice of massage or
29 guilty of employing, allowing or permitting an unlicensed
30 person to perform massage in the licensee's work site.

31 (6) Practicing massage or bodywork with a license
32 from another state or jurisdiction that has been canceled,
33 revoked, suspended or otherwise restricted;

34 (7) Incapacitated by a physical or mental disability
35 which is determined by a physician to render further
36 practice by the licensee inconsistent with competency and
37 ethics requirements;

38 (8) Convicted of sexual misconduct, assignation or the
39 solicitation or attempt thereof; or

40 (9) In violation of any of the provisions of this article
41 or any substantive rule adopted under the authority of this
42 article.

§30-37-9. Hearing for revocation, suspension, nonrenewal.

1 All proceedings for the revocation, suspension or
2 nonrenewal of licenses issued under the authority of this
3 chapter shall be governed by the provisions of section
4 eight, article one, chapter thirty of this code.

§30-37-10. Prohibitions and penalties.

1 (a) After the thirtieth day of June, one thousand nine
2 hundred ninety-eight, a person, corporation or association
3 who is not licensed pursuant to the provisions of this
4 article may not engage in the practice of massage therapy
5 and may not use the initials LMT, C.M.T., or the words
6 "licensed massage therapist," "masseur," or
7 "masseur," or any other words or titles which imply or
8 represent that the person, corporation or association is
9 engaging in the practice of massage therapy, nor may a
10 person, corporation or association employ any person, not
11 duly licensed, who is engaging in the practice of massage
12 therapy or who is using such words or titles to imply or
13 represent that he or she is engaging in the practice of
14 massage therapy.

15 (b) Any person, corporation or association who
16 violates the provisions of subsection (a) of this section is

17 guilty of a misdemeanor and, upon conviction thereof,
18 shall be fined not less than one hundred dollars nor more
19 than five hundred dollars, or confined in the county or
20 regional jail not more than one year, or both fined and
21 imprisoned.

§30-37-11. Exemptions.

1 Nothing in this article may be construed to prohibit or
2 otherwise limit:

3 (1) The practice of a profession by persons who are
4 licensed, certified or registered under the laws of this state
5 and who are performing services within their authorized
6 scope of practice. Persons exempted under this
7 subdivision include, but are not limited to, those licensed,
8 certified or registered to practice within the scope of any
9 branch of medicine, nursing, osteopathy, chiropractic and
10 podiatry, as well as licensed, certified or registered barbers,
11 cosmetologists, athletic trainers, physical and occupational
12 therapists; and any student of a West Virginia state college
13 system certified or authorized massage therapy school,
14 provided that the student does not hold himself or herself
15 out as a licensed massage therapist; and

16 (2) The activities of any resort spa that has been
17 operating on a continuing basis since the first day of
18 January, one thousand nine hundred seventy-five, or any
19 employees thereof. The exemption set forth in this
20 subsection does not extend to any person, corporation or
21 association providing escort services, nude dancing, or
22 other sexually oriented services not falling within the
23 scope of massage therapy as defined in this article,
24 irrespective of how long the person, corporation or
25 association has been in operation.

§30-37-12. Termination of board.

1 The massage therapy licensure board shall be
2 terminated pursuant to the provisions of article ten,
3 chapter four of this code, on the first day of July, two
4 thousand one, unless sooner terminated, continued or
5 reestablished pursuant to the provisions of such article.

CHAPTER 157

(S. B. 544—By Senators Plymale, Prezioso, Fanning, Walker, Jackson, Sprouse and Kimble)

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two, fourteen, seventeen and eighteen, article ten, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to the public employees retirement system; removing mental health centers from the public employees retirement system except for the purpose of continuing participation by current members; giving current members optional withdrawal without losing service credit; requiring mental health centers now participating in the public employees retirement system to provide private pension plans for current employees at their option and for future employees within a time certain; requiring mental health centers to provide to current members notice of their option to withdraw including comparative actuarial projections of individual accounts; clarifying calculation of retirement service credit for legislative employees; and purchase of retroactive service credit by legislative employees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

- §5-10-2. Definitions.
- §5-10-14. Service credit.
- §5-10-17. Retirement system membership.
- §5-10-18. Termination of membership; reentry.

§5-10-2. Definitions.

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

4 (1) "State" means the state of West Virginia;

5 (2) "Retirement system" or "system" means the
6 West Virginia public employees retirement system created
7 and established by this article;

8 (3) "Board of trustees" or "board" means the board
9 of trustees of the West Virginia public employees
10 retirement system;

11 (4) "Political subdivision" means the state of West
12 Virginia, a county, city or town in the state; a school
13 corporation or corporate unit; any separate corporation or
14 instrumentality established by one or more counties, cities
15 or towns, as permitted by law; any corporation or
16 instrumentality supported in most part by counties, cities
17 or towns; any public corporation charged by law with the
18 performance of a governmental function and whose
19 jurisdiction is coextensive with one or more counties, cities
20 or towns: *Provided*, That any mental health agency
21 participating in the public employees retirement system
22 before the first day of July, one thousand nine hundred
23 ninety-seven, is considered a political subdivision solely
24 for the purpose of permitting those employees who are
25 members of the public employees retirement system to
26 remain members and continue to participate in the
27 retirement system at their option after the first day of July,
28 one thousand nine hundred ninety-seven;

29 (5) "Participating public employer" means the state
30 of West Virginia, any board, commission, department,
31 institution or spending unit, and includes any agency
32 created by rule of the supreme court of appeals having
33 full-time employees, which for the purposes of this article
34 is considered a department of state government; and any
35 political subdivision in the state which has elected to cover
36 its employees, as defined in this article, under the West
37 Virginia public employees retirement system;

38 (6) "Employee" means any person who serves
39 regularly as an officer or employee, full time, on a salary
40 basis, whose tenure is not restricted as to temporary or
41 provisional appointment, in the service of, and whose
42 compensation is payable, in whole or in part, by any
43 political subdivision, or an officer or employee whose
44 compensation is calculated on a daily basis and paid
45 monthly or on completion of assignment, including
46 technicians and other personnel employed by the West
47 Virginia national guard whose compensation, in whole or
48 in part, is paid by the federal government: *Provided*, That
49 members of the state Legislature, the clerk of the House of
50 Delegates, the clerk of the state Senate, employees of the
51 state Legislature whose term of employment is otherwise
52 classified as temporary and who are employed to perform
53 services required by the Legislature for its regular sessions
54 or during the interim between regular sessions and who
55 have been or are employed during regular sessions or
56 during the interim between regular sessions in seven
57 consecutive calendar years, as certified by the clerk of the
58 house in which the employee served, members of the
59 legislative body of any political subdivision and judges of
60 the state court of claims are considered to be employees,
61 anything contained in this article to the contrary
62 notwithstanding. In any case of doubt as to who is an
63 employee within the meaning of this article the board of
64 trustees shall decide the question;

65 (7) "Member" means any person who is included in
66 the membership of the retirement system;

67 (8) "Retirant" means any member who retires with an
68 annuity payable by the retirement system;

69 (9) "Beneficiary" means any person, except a
70 retirant, who is entitled to, or will be entitled to, an annuity
71 or other benefit payable by the retirement system;

72 (10) "Service" means personal service rendered to a
73 participating public employer by an employee, as defined
74 in this article, of a participating public employer;

75 (11) "Prior service" means service rendered prior to
76 the first day of July, one thousand nine hundred sixty-one,
77 to the extent credited a member as provided in this article;

78 (12) "Contributing service" means service rendered
79 by a member within this state and for which the member
80 made contributions to a public retirement system account
81 of this state, to the extent credited him or her as provided
82 by this article. This revised definition is retroactive and
83 applicable to the first day of April, one thousand nine
84 hundred eighty-eight, and thereafter;

85 (13) "Credited service" means the sum of a
86 member's prior service credit and contributing service
87 credit standing to his or her credit as provided in this
88 article;

89 (14) "Compensation" means the remuneration paid a
90 member by a participating public employer for personal
91 services rendered by him or her to the participating public
92 employer. In the event a member's remuneration is not
93 all paid in money, his or her participating public employer
94 shall fix the value of the portion of his or her
95 remuneration which is not paid in money;

96 (15) "Final average salary" means either: (a) The
97 average of the highest annual compensation received by a
98 member (including a member of the Legislature who
99 participates in the retirement system in the year one
100 thousand nine hundred seventy-one or thereafter) during
101 any period of three consecutive years of his credited
102 service contained within his or her ten years of credited
103 service immediately preceding the date his or her
104 employment with a participating public employer last
105 terminated; or (b) if he or she has less than five years of
106 credited service, the average of the annual rate of
107 compensation received by him or her during his or her
108 total years of credited service; and in determining the
109 annual compensation, under either (a) or (b) of this
110 subdivision, of a member of the Legislature who
111 participates in the retirement system as a member of the
112 Legislature in the year one thousand nine hundred
113 seventy-one or in any year thereafter, his or her actual
114 legislative compensation (the total of all compensation

115 paid under sections two, three, four and five, article two-a,
116 chapter four of this code) in the year one thousand nine
117 hundred seventy-one or in any year thereafter, plus any
118 other compensation he or she receives in any such year
119 from any other participating public employer including
120 the state of West Virginia, without any multiple in excess
121 of one times his or her actual legislative compensation and
122 other compensation, shall be used: *Provided*, That "final
123 average salary" for any former member of the Legislature
124 or for any member of the Legislature in the year one
125 thousand nine hundred seventy-one who, in either event,
126 was a member of the Legislature on the thirtieth day of
127 November, one thousand nine hundred sixty-eight, or the
128 thirtieth day of November, one thousand nine hundred
129 sixty-nine, or the thirtieth day of November, one thousand
130 nine hundred seventy, or on the thirtieth day of November
131 in any one or more of those three years, and who
132 participated in the retirement system as a member of the
133 Legislature in any one or more of those years means: (i)
134 Either (notwithstanding the provisions of this subdivision
135 preceding this proviso) one thousand five hundred dollars
136 multiplied by eight, plus the highest other compensation
137 the former member or member received in any one of the
138 three years from any other participating public employer
139 including the state of West Virginia; or (ii) "final average
140 salary" determined in accordance with (a) or (b) of this
141 subdivision, whichever computation shall produce the
142 higher final average salary (and in determining the annual
143 compensation under (ii) of this proviso, the legislative
144 compensation of the former member shall be computed
145 on the basis of one thousand five hundred dollars
146 multiplied by eight, and the legislative compensation of
147 the member shall be computed on the basis set forth in the
148 provisions of this subdivision immediately preceding this
149 proviso or on the basis of one thousand five hundred
150 dollars multiplied by eight, whichever computation as to
151 the member produces the higher annual compensation);

152 (16) "Accumulated contributions" means the sum of
153 all amounts deducted from the compensations of a
154 member and credited to his or her individual account in

155 the members' deposit fund, together with regular interest
156 on the contributions;

157 (17) "Regular interest" means the rate or rates of
158 interest per annum, compounded annually, as the board of
159 trustees adopts from time to time;

160 (18) "Annuity" means an annual amount payable by
161 the retirement system throughout the life of a person. All
162 annuities shall be paid in equal monthly installments,
163 using the upper cent for any fraction of a cent;

164 (19) "Annuity reserve" means the present value of all
165 payments to be made to a retirant or beneficiary of a
166 retirant on account of any annuity, computed upon the
167 basis of such mortality and other tables of experience, and
168 regular interest, as the board of trustees adopts from time
169 to time;

170 (20) "Retirement" means a member's withdrawal
171 from the employ of a participating public employer with
172 an annuity payable by the retirement system; and

173 (21) "Actuarial equivalent" means a benefit of equal
174 value computed upon the basis of such mortality table and
175 regular interest as the board of trustees adopts from time
176 to time.

§5-10-14. Service credit.

1 (a) The board of trustees shall credit each member
2 with the prior service and contributing service to which he
3 or she is entitled based upon such rules as the board of
4 trustees shall from time to time adopt and based upon the
5 following:

6 (1) Ten or more days of service rendered by a
7 member in any calendar month shall be credited as a
8 month of service: *Provided*, That for employees of the
9 state Legislature whose term of employment is otherwise
10 classified as temporary and who are employed to perform
11 services required by the Legislature for its regular sessions
12 or during the interim between regular sessions and who
13 have been or are so employed during regular sessions or
14 during the interim between regular sessions in seven

15 consecutive calendar years, service credit of one month
16 shall be awarded for all or any part of each calendar
17 month encompassed within a regular legislative session,
18 notwithstanding that the actual number of days served in
19 any one month of the regular session is less than ten days,
20 and service credit of one month shall be awarded for each
21 ten days served during the interim between regular
22 sessions, which interim days shall be cumulatively
23 calculated so that any ten days, regardless of calendar
24 month or year, shall be calculated toward any award of
25 one month of service credit;

26 (2) Ten or more months of service rendered in any
27 calendar year shall be credited as a year of service;

28 (3) No more than one year of service may be credited
29 to any member for all service rendered by him or her in
30 any calendar year; and

31 (4) Service may be credited to a member who was
32 employed by a political subdivision if his or her
33 employment occurred within a period of thirty years
34 immediately preceding the date the political subdivision
35 became a participating public employer.

36 (b) The board of trustees shall grant service credit to
37 employees of boards of health, the clerk of the House of
38 Delegates and the clerk of the state Senate, or to any
39 former and present member of the state teachers
40 retirement system who have been contributing members
41 for more than three years, for service previously credited
42 by the state teachers retirement system and shall require
43 the transfer of the member's contributions to the system
44 and shall also require a deposit, with interest, of any
45 withdrawals of contributions any time prior to the
46 member's retirement. Repayment of withdrawals shall be
47 as directed by the board of trustees.

48 (c) Court reporters who are acting in an official
49 capacity, although paid by funds other than the county
50 commission or state auditor, may receive prior service
51 credit for time served in that capacity.

52 (d) Employees of the state Legislature whose term of
53 employment is otherwise classified as temporary and who
54 are employed to perform services required by the
55 Legislature for its regular sessions or during the interim
56 between regular sessions may receive service credit for the
57 time served in that capacity in accordance with the
58 following. Employees of the state Legislature whose term
59 of employment is otherwise classified as temporary and
60 who are employed to perform services required by the
61 Legislature for its regular sessions or during the interim
62 between regular sessions and who have been or are
63 employed during regular sessions or during the interim
64 between regular sessions in seven consecutive calendar
65 years, as certified by the clerk of the house in which the
66 employee served, shall receive service credit of six months
67 for each regular session served as certified by the clerk of
68 the house in which the employee served, and shall receive
69 service credit of one month for each ten days served
70 during the interim between regular sessions, which interim
71 days shall be cumulatively calculated so that any ten days,
72 regardless of calendar month or year, shall be calculated
73 toward any award of one month of service credit. Service
74 credit awarded for legislative employment pursuant to this
75 subsection shall be used for the purpose of calculating that
76 member's retirement annuity only, pursuant to section
77 twenty-two of this article, and notwithstanding any other
78 provision of this section. Service credit awarded for
79 legislative service pursuant to this subsection shall not be
80 used to determine when an employment period begins or
81 ends, or to determine when the period of eligibility or
82 filing for retirement begins to run. Certification of
83 employment for a complete legislative session and for
84 days of interim sessions shall be determined by the clerk
85 of the house in which the employee served, based upon
86 employment records. Service of fifty-five days of a
87 regular session constitutes a presumption of service for a
88 complete legislative session.

89 Any employee may purchase retroactive service credit
90 for periods of employment in which contributions were
91 not deducted from the employee's pay. In the purchase
92 of service credit for employment prior to the year one

93 thousand nine hundred eighty-nine in any department,
94 including the Legislature, which operated from the general
95 revenue fund and which was not expressly excluded from
96 budget appropriations in which blanket appropriations
97 were made for the state's share of public employees'
98 retirement coverage in the years prior to the year one
99 thousand nine hundred eighty-nine, the employee shall
100 pay the employee's share. Other employees shall pay the
101 state's share and the employee's share to purchase
102 retroactive service credit. Where an employee purchases
103 service credit for employment which occurred after the
104 year one thousand nine hundred eighty-eight, that
105 employee shall pay for the employee's share and the
106 employer shall pay its share for the purchase of retroactive
107 service credit: *Provided*, That no legislative employee
108 may be required to pay any interest or penalty upon the
109 purchase of retroactive service credit in accordance with
110 the provisions of this section where the employee was not
111 eligible to become a member during the years he or she is
112 purchasing retroactive credit for or had the employee
113 attempted to contribute to the system during the years he
114 or she is purchasing retroactive service credit for and such
115 contributions would have been refused by the board:
116 *Provided, however*, That a legislative employee
117 purchasing retroactive credit under this section does so
118 within twenty-four months of becoming a member of the
119 system or no later than the last day of December, one
120 thousand nine hundred ninety-nine, whichever occurs last:
121 *Provided further*, That once a legislative employee
122 becomes a member of the retirement system, he or she
123 may purchase retroactive service credit for any time he or
124 she was employed by the Legislature and did not receive
125 service credit.

§5-10-17. Retirement system membership.

1 The membership of the retirement system consists of
2 the following persons:

3 (a) All employees, as defined in section two of this
4 article, who are in the employ of a political subdivision the
5 day preceding the date it becomes a participating public
6 employer and who continue in the employ of the

7 participating public employer on and after that date shall
8 become members of the retirement system; and all persons
9 who become employees of a participating public
10 employer on or after that date shall thereupon become
11 members of the system; except as provided in subdivisions
12 (b) and (c) of this section.

13 (b) The membership of the retirement system shall not
14 include any person who is a member of, or who has been
15 retired by, the state teachers retirement system, the judges
16 retirement system, the retirement system of the division of
17 public safety, or any municipal retirement system for
18 either, or both, policemen or firemen; and the bureau of
19 employment programs, by the commissioner of the
20 bureau, may elect whether its employees will accept
21 coverage under this article or be covered under the
22 authorization of a separate enactment: *Provided*, That the
23 exclusions of membership shall not apply to any member
24 of the state Legislature, the clerk of the House of
25 Delegates, the clerk of the state Senate or to any member
26 of the legislative body of any political subdivision
27 provided he or she once becomes a contributing member
28 of the retirement system: *Provided, however*, That any
29 retired member of the retirement system of the division of
30 public safety, and any retired member of any municipal
31 retirement system for either, or both, policemen or
32 firemen may on and after the effective date of this section
33 become a member of the retirement system as provided in
34 this article, without receiving credit for prior service as a
35 municipal policeman or fireman or as a member of the
36 division of public safety: *Provided further*, That the
37 membership of the retirement system does not include any
38 person who becomes employed by the Pretera center for
39 mental health services, valley comprehensive mental health
40 center, Westbrook health services or eastern panhandle
41 mental health center on or after the first day of July, one
42 thousand nine hundred ninety-seven.

43 (c) Any member of the state Legislature, the clerk of
44 the House of Delegates, the clerk of the state Senate and
45 any employee of the state Legislature whose employment
46 is otherwise classified as temporary and who is employed
47 to perform services required by the Legislature for its
48 regular sessions or during the interim between regular

49 sessions and who has been or is so employed during
50 regular sessions or during the interim between sessions in
51 seven consecutive calendar years, as certified by the clerk
52 of the house in which the employee served, or any
53 member of the legislative body of any other political
54 subdivision shall become a member of the retirement
55 system provided he or she notifies the retirement system in
56 writing of his or her intention to be a member of the
57 system and files a membership enrollment form as
58 prescribed by the board of trustees, and each person, upon
59 filing his or her written notice to participate in the
60 retirement system, shall by that act authorize the clerk of
61 the House of Delegates or the clerk of the state Senate or
62 such person or legislative agency as the legislative body of
63 any other political subdivision shall designate to deduct
64 the member's contribution, as provided in subsection (b),
65 section twenty-nine of this article, and after the deductions
66 have been made from the member's compensation, the
67 deductions shall be forwarded to the retirement system.

68 (d) If question arises regarding the membership status
69 of any employee, the board of trustees has the final power
70 to decide the question.

§5-10-18. Termination of membership; reentry.

1 (a) When a member of the retirement system retires or
2 dies, he or she ceases to be a member. When a member
3 leaves the employ of a participating public employer for
4 any other reason, he or she ceases to be a member and
5 forfeits service credited to him or her at that time. If he or
6 she becomes reemployed by a participating public
7 employer he or she shall be reinstated as a member of the
8 retirement system and his or her credited service last
9 forfeited by him or her shall be restored to his or her
10 credit: *Provided*, That he or she must be reemployed for
11 a period of one year or longer to have the service restored:
12 *Provided, however*, That he or she returns to the members'
13 deposit fund the amount, if any, he or she withdrew from
14 the fund, together with regular interest on the withdrawn
15 amount from the date of withdrawal to the date of
16 repayment, and that the repayment begins within two years
17 of the return to employment and that the full amount is
18 repaid within five years of the return to employment.

19 (b) Effective on the first day of July, one thousand
20 nine hundred ninety-seven, and continuing through the
21 first day of July, one thousand nine hundred ninety-eight,
22 any employee of the Prestera center for mental health
23 services, valley comprehensive mental health center,
24 Westbrook health services and eastern panhandle mental
25 health center who is a member of the retirement system
26 may elect to withdraw from membership without forfeiting
27 service credited to him or her.

28 (c) The Prestera center for mental health services,
29 valley comprehensive mental health center, Westbrook
30 health services and eastern panhandle mental health center,
31 and their successors in interest, shall provide for their
32 employees a pension plan in lieu of the public employees
33 retirement system on or before the first day of July, one
34 thousand nine hundred ninety-seven, and continuing
35 thereafter during the existence of the named mental health
36 centers and their successors in interest.

37 (d) The administrative bodies of the Prestera center
38 for mental health services, valley comprehensive mental
39 health center, Westbrook health services and eastern
40 panhandle mental health center shall, on or before the first
41 day of May, one thousand nine hundred ninety-seven,
42 give written notice to each employee who is a member of
43 the public employees retirement system of the option to
44 withdraw from or remain in the system. The notice shall
45 include a copy of this section and a statement explaining
46 the member's options regarding membership. The notice
47 shall include a statement in plain language giving a full
48 explanation and actuarial projection figures in support of
49 the explanation regarding the individual member's
50 current account balance, vested and nonvested, and his or
51 her projected return upon remaining in the public
52 employees retirement system until retirement, disability or
53 death, in comparison with the projected return upon
54 withdrawing from the public employees retirement system
55 and joining a private pension plan provided by the
56 community mental health center and remaining therein
57 until retirement, disability or death. The administrative
58 bodies shall keep in their respective records a permanent
59 record of each employee's signature confirming receipt
60 of the notice.

CHAPTER 158

(H. B. 2715—By Delegates Kominar, Shelton and Warner)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the public service commission; removing from economic regulation jurisdiction motor vehicles preempted by federal statute.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES, DEFINITIONS AND EXEMPTIONS.

§24A-1-3. Exemptions from chapter.

1 The provisions of this chapter, except where
2 specifically otherwise provided, shall not apply to:

3 (1) Motor vehicles operated exclusively in the
4 transportation of United States mail or in the
5 transportation of newspapers: *Provided*, That such
6 vehicles and their operators shall be subject to the safety
7 rules promulgated by the commission;

8 (2) Motor vehicles owned and operated by the United
9 States of America, the state of West Virginia or any
10 county, municipality or county board of education, urban
11 mass transportation authority established and maintained
12 pursuant to article twenty-seven, chapter eight of this code,
13 or by any department thereof, and any motor vehicles
14 operated under a contract with a county board of
15 education exclusively for the transportation of children to
16 and from school or other legitimate transportation for the
17 schools as the commission may specifically authorize;

18 (3) Motor vehicles used exclusively in the
19 transportation of agricultural or horticultural products,

20 livestock, poultry and dairy products from the farm or
21 orchard on which they are raised or produced to markets,
22 processing plants, packing houses, canneries, railway
23 shipping points and cold storage plants, and in the
24 transportation of agricultural or horticultural supplies to
25 farms or orchards to be used thereon;

26 (4) Motor vehicles used exclusively in the
27 transportation of human or animal excreta;

28 (5) Motor vehicles used exclusively in ambulance
29 service or duly chartered rescue squad service;

30 (6) Motor vehicles used exclusively for volunteer fire
31 department service;

32 (7) Motor vehicles used exclusively in the
33 transportation of coal from mining operations to loading
34 facilities for further shipment by rail or water carriers:
35 *Provided*, That the vehicles and their operators shall be
36 subject to the safety rules promulgated by the
37 commission;

38 (8) Motor vehicles used by petroleum commission
39 agents and oil distributors solely for the transportation of
40 petroleum products and related automotive products when
41 the transportation is incidental to the business of selling
42 said products: *Provided*, That the vehicles and their
43 operators shall be subject to the safety rules promulgated
44 by the commission;

45 (9) Motor vehicles owned, leased by or leased to any
46 person and used exclusively for the transportation of
47 processed source-separated recycled materials, generated
48 by commercial, institutional and industrial customers,
49 transported free of charge from such customers to a
50 facility for further processing: *Provided*, That the vehicles
51 and their operators shall be subject to the safety rules
52 promulgated by the commission; and

53 (10) Motor vehicles specifically preempted from state
54 economic regulation of intrastate motor carrier operations
55 by the provisions of the Federal Aviation Administration
56 Authorization Act of 1994 (Pub. L. 103-305 §601 108
57 Stat. 1605 (1994)): *Provided*, That the vehicles and their
58 operators shall be subject to the safety rules promulgated
59 by the commission.

CHAPTER 159

(Com. Sub. for S. B. 266—By Senator Tomblin, Mr. President)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, seven and twenty-five, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the public service commission; allowing for the appointment of five public service district board members in consolidated or merged public service districts; requiring public service districts to notify the public service commission when a new board member is appointed; authorizing the county commission to determine public service district board members' compensation for regular and special board meetings; requiring public service districts to notify the public service commission if the district changes its corporate name; raising the amount of allowable expenditure before having to advertise for bids from five thousand dollars to ten thousand dollars for public service districts; and providing for a waiver of public service commission approval of contracts for engineering, design or feasibility studies under certain conditions.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER,
SEWERAGE AND GAS SERVICES.**

- §16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.
- §16-13A-4. Board chairman; members' compensation; procedure; district name.
- §16-13A-7. Acquisition and operation of district properties.
- §16-13A-25. Borrowing and bond issuance; procedure.

§16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

1 From and after the date of the adoption of the order
2 creating any public service district, it is a public
3 corporation and political subdivision of the state, but
4 without any power to levy or collect ad valorem taxes.
5 Each district may acquire, own and hold property, both
6 real and personal, in its corporate name, and may sue, may
7 be sued, may adopt an official seal and may enter into
8 contracts necessary or incidental to its purposes, including
9 contracts with any city, incorporated town or other
10 municipal corporation located within or without its
11 boundaries for furnishing wholesale supply of water for
12 the distribution system of the city, town or other municipal
13 corporation, and contract for the operation, maintenance,
14 servicing, repair and extension of any properties owned by
15 it or for the operation and improvement or extension by
16 the district of all or any part of the existing municipally
17 owned public service properties of any city, incorporated
18 town or other municipal corporation included within the
19 district: *Provided*, That no contract shall extend beyond a
20 maximum of forty years, but provisions may be included
21 therein for a renewal or successive renewals thereof and
22 shall conform to and comply with the rights of the holders
23 of any outstanding bonds issued by the municipalities for
24 the public service properties.

25 The powers of each public service district shall be
26 vested in and exercised by a public service board
27 consisting of not less than three members, who shall be
28 persons residing within the district, who possess certain
29 educational, business or work experience which will be
30 conducive to operating a public service district. Each
31 board member shall, within six months of taking office,
32 successfully complete the training program to be
33 established and administered by the public service
34 commission in conjunction with the division of
35 environmental protection and the bureau of public health.
36 Board members shall not be or become pecuniarily
37 interested, directly or indirectly, in the proceeds of any
38 contract or service, or in furnishing any supplies or

39 materials to the district nor shall a former board member
40 be hired by the district in any capacity within a minimum
41 of twelve months after board member's term has expired
42 or such board member has resigned from the district
43 board. The members shall be appointed in the following
44 manner:

45 Each city, incorporated town or other municipal
46 corporation having a population of more than three
47 thousand but less than eighteen thousand is entitled to
48 appoint one member of the board, and each city,
49 incorporated town or other municipal corporation having
50 a population in excess of eighteen thousand shall be
51 entitled to appoint one additional member of the board
52 for each additional eighteen thousand population. The
53 members of the board representing such cities,
54 incorporated towns or other municipal corporations shall
55 be residents thereof and shall be appointed by a resolution
56 of the governing bodies thereof and upon the filing of a
57 certified copy or copies of the resolution or resolutions in
58 the office of the clerk of the county commission which
59 entered the order creating the district, the persons so
60 appointed become members of the board without any
61 further act or proceedings. If the number of members of
62 the board so appointed by the governing bodies of cities,
63 incorporated towns or other municipal corporations
64 included in the district equals or exceeds three, then no
65 further members shall be appointed to the board and the
66 members so appointed are the board of the district except
67 in cases of merger or consolidation where the number of
68 board members may equal five.

69 If no city, incorporated town or other municipal
70 corporation having a population of more than three
71 thousand is included within the district, then the county
72 commission which entered the order creating the district
73 shall appoint three members of the board, who are persons
74 residing within the district and residing within the state of
75 West Virginia, which three members become members of
76 the board of the district without any further act or
77 proceedings except in cases of merger or consolidation
78 where the number of board members may equal five.

79 If the number of members of the board appointed by
80 the governing bodies of cities, incorporated towns or other
81 municipal corporations included within the district is less
82 than three, then the county commission which entered the
83 order creating the district shall appoint such additional
84 member or members of the board, who are persons
85 residing within the district, as is necessary to make the
86 number of members of the board equal three except in
87 cases of merger or consolidation where the number of
88 board members may equal five, and the member or
89 members appointed by the governing bodies of the cities,
90 incorporated towns or other municipal corporations
91 included within the district and the additional member or
92 members appointed by the county commission as
93 aforesaid, are the board of the district. A person may
94 serve as a member of the board in one or more public
95 service districts.

96 The population of any city, incorporated town or
97 other municipal corporation, for the purpose of
98 determining the number of members of the board, if any,
99 to be appointed by the governing body or bodies thereof,
100 is the population stated for such city, incorporated town or
101 other municipal corporation in the last official federal
102 census.

103 Notwithstanding any provision of this code to the
104 contrary, whenever a district is consolidated or merged
105 pursuant to section two of this article, the terms of office
106 of the existing board members shall end on the effective
107 date of the merger or consolidation. The county
108 commission shall appoint a new board according to rules
109 promulgated by the public service commission. Whenever
110 districts are consolidated or merged no provision of this
111 code prohibits the expansion of membership on the new
112 board to five.

113 The respective terms of office of the members of the
114 first board shall be fixed by the county commission and
115 shall be as equally divided as may be, that is
116 approximately one third of the members for a term of two
117 years, a like number for a term of four years, the term of
118 the remaining member or members for six years, from the

119 first day of the month during which the appointments are
120 made. The first members of the board appointed as
121 aforesaid shall meet at the office of the clerk of the county
122 commission which entered the order creating the district as
123 soon as practicable after the appointments and shall
124 qualify by taking an oath of office: *Provided*, That any
125 member or members of the board may be removed from
126 their respective office as provided in section three-a of this
127 article.

128 Any vacancy shall be filled for the unexpired term
129 within thirty days, otherwise successor members of the
130 board shall be appointed for terms of six years and the
131 terms of office shall continue until successors have been
132 appointed and qualified. All successor members shall be
133 appointed in the same manner as the member succeeded
134 was appointed. The district shall provide to the public
135 service commission, within thirty days of the appointment,
136 the following information: The new board member's
137 name, home address, home and office phone numbers,
138 date of appointment, length of term, who the new member
139 replaces and if the new appointee has previously served on
140 the board. The public service commission shall notify
141 each new board member of the legal obligation to attend
142 training as prescribed in this section.

143 The board shall organize within thirty days following
144 the first appointments and annually thereafter at its first
145 meeting after the first day of January of each year by
146 selecting one of its members to serve as chair and by
147 appointing a secretary and a treasurer who need not be
148 members of the board. The secretary shall keep a record
149 of all proceedings of the board which shall be available
150 for inspection as other public records. Duplicate records
151 shall be filed with the county commission and shall
152 include the minutes of all board meetings. The treasurer
153 is lawful custodian of all funds of the public service
154 district and shall pay same out on orders authorized or
155 approved by the board. The secretary and treasurer shall
156 perform other duties appertaining to the affairs of the
157 district and shall receive salaries as shall be prescribed by
158 the board. The treasurer shall furnish bond in an amount

159 to be fixed by the board for the use and benefit of the
160 district.

161 The members of the board, and the chair, secretary
162 and treasurer thereof, shall make available to the county
163 commission, at all times, all of its books and records
164 pertaining to the district's operation, finances and affairs,
165 for inspection and audit. The board shall meet at least
166 monthly.

§16-13A-4. Board chairman; members' compensation; procedure; district name.

1 The chairman shall preside at all meetings of the
2 board and may vote as any other members of the board
3 but if he should be absent from any meeting, the
4 remaining members may select a temporary chairman and
5 if the member selected as chairman resigns as such or
6 ceases for any reason to be a member of the board, the
7 board shall select one of its members as chairman to serve
8 until the next annual organization meeting. Salaries of
9 each of its board members shall be as follows: For
10 districts with fewer than six hundred customers, each
11 board member may receive seventy-five dollars per
12 attendance at regular monthly meetings and fifty dollars
13 per attendance at additional special meetings, total salary
14 not to exceed fifteen hundred dollars per annum; for
15 districts with six hundred customers or more but fewer
16 than two thousand customers, each board member may
17 receive one hundred dollars per attendance at regular
18 monthly meetings and seventy-five dollars per attendance
19 at additional special meetings, total salary not to exceed
20 two thousand five hundred fifty dollars per annum; for
21 districts with two thousand customers or more, each board
22 member may receive one hundred twenty-five dollars per
23 attendance at regular monthly meetings and seventy-five
24 dollars per attendance at additional special meetings, total
25 salary not to exceed three thousand seven hundred fifty
26 dollars per annum; and for districts with four thousand or
27 more customers, each board member may receive one
28 hundred fifty dollars per attendance at regular monthly
29 meetings and one hundred dollars per attendance at
30 additional special meetings, total salary not to exceed five

31 thousand four hundred dollars per annum. The public
32 service district shall certify the number of customers
33 served to the public service commission beginning on the
34 first day of July, one thousand nine hundred eighty-six,
35 and continue each fiscal year thereafter. Board members
36 may be reimbursed for all reasonable and necessary
37 expenses actually incurred in the performance of their
38 duties as provided for by the rules of the board. The
39 board shall by resolution determine its own rules of
40 procedure, fix the time and place of its meetings and the
41 manner in which special meetings may be called. Public
42 notice of meetings shall be given in accordance with
43 section three, article nine-a, chapter six of this code.
44 Emergency meetings may be called as provided by said
45 section. A majority of the members constituting the board
46 also constitute a quorum to do business. The members of
47 the board are not personally liable or responsible for any
48 obligations of the district or the board but are answerable
49 only for willful misconduct in the performance of their
50 duties. At any time prior to the issuance of bonds as
51 hereinafter provided, the board may by resolution change
52 the official or corporate name of the public service district
53 and such change shall be effective from and after filing an
54 authenticated copy of such resolution with the clerk of the
55 county commission of each county in which the territory
56 embraced within such district or any part thereof is located
57 and with the public service commission. The official
58 name of any district created under the provisions of this
59 article may contain the name or names of any city,
60 incorporated town or other municipal corporation
61 included therein or the name of any county or counties in
62 which it is located.

§16-13A-7. Acquisition and operation of district properties.

1 The board of such districts shall have the supervision
2 and control of all public service properties acquired or
3 constructed by the district, and shall have the power, and it
4 shall be its duty, to maintain, operate, extend and improve
5 the same. All contracts involving the expenditure by the
6 district of more than fifteen thousand dollars for
7 construction work or for the purchase of equipment and
8 improvements, extensions or replacements, shall be

9 entered into only after notice inviting bids shall have been
10 published as a Class I legal advertisement in compliance
11 with the provision of article three, chapter fifty-nine of this
12 code, and the publication area for such publication shall
13 be as specified in section two of this article in the county
14 or counties in which the district is located. The
15 publication shall not be less than ten days prior to the
16 making of any such contract. To the extent allowed by
17 law, in-state contractors shall be given first priority in
18 awarding public service district contracts. It shall be the
19 duty of the board to ensure that local in-state labor shall
20 be utilized to the greatest extent possible when hiring
21 laborers for public service district construction or
22 maintenance repair jobs. It shall further be the duty of the
23 board to encourage contractors to use American made
24 products in their construction to the extent possible. Any
25 obligations incurred of any kind or character shall not in
26 any event constitute or be deemed an indebtedness within
27 the meaning of any of the provisions or limitations of the
28 constitution, but all such obligations shall be payable
29 solely and only out of revenues derived from the
30 operation of the public service properties of the district or
31 from proceeds of bonds issued as hereinafter provided.
32 No continuing contract for the purchase of materials or
33 supplies or for furnishing the district with electrical energy
34 or power shall be entered into for a longer period than
35 fifteen years.

§16-13A-25. Borrowing and bond issuance; procedure.

1 Notwithstanding any other provisions of this article to
2 the contrary, a public service district shall not borrow
3 money, enter into contracts for the provision of
4 engineering, design or feasibility studies, issue or contract
5 to issue revenue bonds or exercise any of the powers
6 conferred by the provisions of section thirteen, twenty or
7 twenty-four of this article, without the prior consent and
8 approval of the public service commission. The public
9 service commission may waive the provision of prior
10 consent and approval for entering into contracts for
11 engineering, design or feasibility studies pursuant to this
12 section for good cause shown which is evidenced by the
13 public service district filing a request for waiver of this

14 section stated in a letter directed to the commission with a
15 brief description of the project, evidence of compliance
16 with chapter five-g of this code, and further explanation of
17 ability to evaluate their own engineering contract,
18 including, but not limited to: (1) Experience with the same
19 engineering firm in the past two years requiring
20 engineering services; or (2) completion of a construction
21 project within the past two years requiring engineering
22 services. The district shall also forward an executed copy
23 of the engineering contract to the commission after
24 receiving approval of the waiver. Unless the properties to
25 be constructed or acquired represent ordinary extensions
26 or repairs of existing systems in the usual course of
27 business, a public service district must first obtain a
28 certificate of public convenience and necessity from the
29 public service commission in accordance with the
30 provisions of chapter twenty-four of this code, when a
31 public service district is seeking to acquire or construct
32 public service property.

33 Thirty days prior to making formal application for the
34 certificate, the public service district shall prefile with the
35 public service commission its plans and supporting
36 information for the project and shall publish a Class II
37 legal advertisement in a newspaper or newspapers of
38 general circulation in each city, incorporated town or
39 municipal corporation if available in the public service
40 district, which legal advertisement shall state:

41 (a) The amount of money to be borrowed, or the
42 amount of revenue bonds to be issued: *Provided*, That if
43 the amount is an estimate, the notice may be stated in
44 terms of an amount "not to exceed" a specific amount;

45 (b) The interest rate and terms of the loan or bonds:
46 *Provided*, That if the interest rate is an estimate, the notice
47 may be stated in terms of a rate "not to exceed" a specific
48 rate;

49 (c) The public service properties to be acquired or
50 constructed, and the cost of the public service properties;

51 (d) The anticipated rates which will be charged by the
52 public service district: *Provided*, That if the rates are an

53 estimate, the notice may be stated in terms of rates "not to
54 exceed" a specific rate; and

55 (e) The date that the formal application for a
56 certificate of public convenience and necessity is to be
57 filed with the public service commission. The public
58 service commission may grant its consent and approval for
59 the certificate, or any other request for approval under this
60 section, subject to such terms and conditions as may be
61 necessary for the protection of the public interest,
62 pursuant to the provisions of chapter twenty-four of this
63 code, or may withhold such consent and approval for the
64 protection of the public interest.

65 In the event of disapproval, the reasons for the
66 disapproval shall be assigned in writing by the
67 commission.



CHAPTER 160

(Com. Sub. for S. B. 256—By Senators Anderson, Ross, Love, Snyder, Buckalew,
Bailey, Dittmar, Bowman, Walker and Schoonover)



[Passed April 10, 1997; in effect ninety days from passage. Approved by the Governor.]



AN ACT to amend and reenact section eighteen-a, article thirteen-a, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the sale, lease or rental of water, sewer or gas systems by public service districts; requiring the approval of a majority of not less than sixty percent of the members of a public service board as a condition to the sale, lease or rental of any water, sewer or gas system owned by the public service district; publication of notice of a hearing as a Class I legal advertisement; and approval by county commission and public service commission.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.

1 In any case where a public service district owns a
2 water, sewer or gas system, and a majority of not less than
3 sixty percent of the members of the public service board
4 thereof deem it for the best interests of the district to sell,
5 lease or rent such water, sewer or gas system to any
6 municipality or privately-owned water, sewer or gas
7 system, or to any water, sewer or gas system owned by an
8 adjacent public service district, the board may so sell, lease
9 or rent such water, sewer or gas system upon such terms
10 and conditions as said board, in its discretion, considers in
11 the best interests of the district: *Provided*, That such sale,
12 leasing or rental may be made only upon: (1) The
13 publication of notice of a hearing before the board of the
14 public service district, as a Class I legal advertisement in
15 compliance with the provisions of article three, chapter
16 fifty-nine of this code, in a newspaper published and of
17 general circulation in the county or counties wherein the
18 district is located, such publication to be made not earlier
19 than twenty days and not later than seven days prior to the
20 hearing; (2) approval by the county commission or
21 commissions of the county or counties in which the
22 district operates; and (3) approval by the public service
23 commission of West Virginia.

24 In the event of any such sale, the proceeds thereof, if
25 any, remaining after payment of all outstanding bonds
26 and other obligations of the district, shall be ratably
27 distributed to any persons who have made contributions in
28 aid of construction of such water, sewer or gas system,
29 such distribution not to exceed the actual amount of any
30 such contribution, without interest, and any balance of
31 funds thereafter remaining shall be paid to the county
32 commission of the county in which the major portion of
33 such water, sewer or gas system is located to be placed in
34 the general funds of such county commission.

CHAPTER 161

(Com. Sub. for H. B. 2793—By Delegates Staton, Fleischauer and Trump)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article two, chapter fifty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to limitation of actions and suits for liens reserved by any conveyance of real estate or created by any trust deed or mortgage on real estate; changing the expiration of any such lien obligation where the final maturity date is ascertainable; providing an expiration for any lien obligation where the final maturity date is not ascertainable; providing certain exceptions thereto; changing the expiration of any affidavit or extension agreement of such a lien obligation where the final maturity date is ascertainable; providing an expiration for any affidavit or extension agreement of such a lien obligation where the final maturity date is not ascertainable; providing requirements for future affidavits or extension agreements filed and method of recordation by the clerk of the county commission; providing that where a lien instrument secures an obligation in installments the time runs from the date of the final installment; providing a grace period for enforcement or recordation of liens reserved or created and in effect on the effective date; providing that the time shall be extended only as provided in this section; and providing that this section applies to all such liens, existing and hereafter reserved or created.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. LIMITATION OF ACTIONS AND SUITS.

§55-2-5. Enforcement of liens reserved by conveyance or created by deed of trust or mortgage on real estate.

1 (a) Any lien reserved by any conveyance of real
2 estate or created by any deed of trust or mortgage on real
3 estate expires after the following periods of time, unless
4 suit to enforce the lien is instituted prior to expiration of
5 the time period or unless the lien is extended as specified
6 in subsections (b) or (e) of this section:

7 (1) If the final maturity date of the lien obligation is
8 ascertainable from the record instrument, the lien expires
9 five years after that date.

10 (2) If the final maturity date of the lien obligation is
11 not ascertainable from the record instrument, the lien
12 expires thirty-five years after the date of the lien
13 instrument. However, if the lienholder rerecords the lien
14 instrument prior to thirty-five years from the date of the
15 lien and includes a copy of the obligation secured by the
16 lien so that the final maturity is ascertainable, the lien
17 expires five years after the date of maturity.

18 (b) If an affidavit or extension agreement executed
19 by the secured party and the grantor or mortgagor to the
20 lien obligation is recorded prior to expiration of the
21 original period of limitation, as specified in subsection (a)
22 of this section, the time is extended as follows:

23 (1) If the final maturity date of the lien obligation, as
24 extended, secured by the lien is ascertainable from the
25 record of the affidavit or extension agreement, the lien
26 expires five years after the date of final maturity of the
27 obligation, as extended.

28 (2) If the final maturity date of the lien obligation, as
29 extended, secured by the lien is not ascertainable from the
30 record of the affidavit or extension agreement, the lien
31 expires thirty-five years after the date of the lien
32 instrument. However, if the lienholder rerecords the lien
33 instrument prior to thirty-five years from the date of the
34 lien and includes a copy of the obligation secured by the
35 lien so that the final maturity is ascertainable, the lien
36 expires five years after the date of maturity.

37 (c) Any affidavit or extension agreement filed
38 pursuant to subsection (b) of this section after the effective
39 date of this section, shall include, but is not limited to, the
40 following:

41 (1) The unpaid balance of the debt and interest
42 secured by the lien instrument;

43 (2) The final maturity date of the obligation of the
44 lien, as extended; and

45 (3) The book and page of recordation of the original
46 lien instrument.

47 The clerk of the county commission shall record and
48 index any affidavit or extension agreement in the same
49 manner as the original lien instrument and note that filing
50 on the margin of the page where the original lien
51 instrument is recorded.

52 (d) If the record instrument of the lien obligation
53 shows that it secures an obligation payable in installments
54 and the maturity date of the final installment of the
55 obligation is ascertainable from the lien instrument, the
56 time runs from the maturity date of the final installment.

57 (e) Nothing in this section extinguishes any lien
58 obligation which was reserved or created and in effect
59 prior to the effective date of this section: *Provided*, That
60 if any such lien should be extinguished by this section,
61 then any action to enforce such liens shall be brought or
62 recordation of any extended lien obligation pursuant to
63 subsection (b) of this section shall be made before the first
64 day of July, one thousand nine hundred ninety-eight.

65 (f) The time shall be extended only as provided in
66 this section and shall not be extended by any other
67 method or by operation of law.

68 (g) Subject to the provisions of subsection (e) of this
69 section, the provisions of this section apply with like effect
70 to every such lien now existing as well as to every such
71 lien hereafter reserved or created.

CHAPTER 162

(S. B. 299—By Senators Love, Schoonover and Anderson)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-two, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to duties of the clerk of the county commission; declaring consideration or value; filing sales listing form; disposition and use of proceeds; and eliminating the requirement that the assessor note liens on the landbooks.

Be it enacted by the Legislature of West Virginia:

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

**ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING
REAL PROPERTY.**

**§11-22-6. Duties of clerk; declaration of consideration or
value; filing of sales listing form for tax
commissioner; disposition and use of proceeds.**

1 When any instrument on which the tax as herein
2 provided is imposed is offered for recordation, the clerk
3 of the county commission shall ascertain and compute the
4 amount of the tax due thereon and shall ascertain if
5 stamps in the proper amount are attached thereto as a
6 prerequisite to acceptance of the instrument for
7 recordation.

8 When offered for recording, each instrument subject
9 to the tax as herein provided shall have appended on the
10 face or at the end thereof a statement or declaration signed
11 by the grantor, grantee or other responsible party familiar
12 with the transaction therein involved declaring the
13 consideration paid for or the value of the property thereby

14 conveyed. The declaration may be in the following
15 language:

16 "DECLARATION OF CONSIDERATION OR VALUE

17 I hereby declare:

18 (a) The total consideration paid for the property
19 conveyed by the document to which this declaration is
20 appended is \$_____; or

21 (b) The true and actual value of the property
22 transferred by the document to which this declaration is
23 appended is, to the best of my knowledge and belief
24 \$_____; or

25 (c) The proportion of all the property included in the
26 document to which this declaration is appended which is
27 real property located in West Virginia is _____%; the
28 value of all the property \$_____; the value of real
29 estate in West Virginia is \$_____; or

30 (d) This deed conveys real estate located in more than
31 one county in West Virginia; the total consideration paid
32 for, or actual cash value of, all the real estate located in
33 West Virginia conveyed by this document is \$_____;
34 and documentary stamps showing payment of all of the
35 excise tax on all of said real estate are attached to an
36 executed counterpart of this deed recorded in
37 _____ County.

38 Given under my hand this ___ day of _____,
39 19__.

40 Signed _____ (Indicate
41 whether grantor, grantee, or other interest in conveyance).
42 _____ Address"

43 The declaration shall be considered by the clerk in
44 ascertaining the correct number of stamps required, and if
45 declaration (d) above is used, no stamps may be required
46 on the duplicate deed to which it is attached and the
47 duplicate deed shall be admitted to record, and when
48 recorded shall have the same effect for all purposes as if
49 stamps were attached thereto.

50 On or after the first day of July, one thousand nine
51 hundred ninety-six, the clerk may not record any
52 document with or without stamps affixed unless there is
53 tendered with the document a completed and verified sales
54 listing form for the benefit and use of the state tax
55 commissioner. Preprinted forms for this purpose shall be
56 provided to each clerk by the tax commissioner.

57 The forms shall require the following information:
58 (1) If the last deed in the chain of title represents the last
59 transfer of the property, the names of the grantor and
60 grantee and the deedbook and page number; or (2) if the
61 last transfer was not made by deed, the source of the
62 grantor's title, if known; or (3) if the source of the
63 grantor's title is unknown, a description of the property
64 and the name of the person to whom real property taxes
65 are assessed as set forth in the landbook prepared by the
66 assessor. In all cases the forms shall require the tax map
67 and parcel number of the property, the district or
68 municipality in which the real property or the greater
69 portion thereof lies, the address of the property, the
70 consideration or value in money, including any other
71 valuable goods or services, upon which the buyer and
72 seller agree to consummate the sale, and any other
73 financing arrangements affecting value. The sales listing
74 form required by this paragraph is to be completed in
75 addition to, and not in lieu of, the declaration required by
76 this section: *Provided*, That the tax commissioner may
77 design and provide a form which combines into one form
78 the contents of the declaration and the sales listing form
79 required herein and recordation and filing of that form
80 may be used as an alternative to filing the sales listing
81 form required herein: *Provided, however*, That the filing
82 with the clerk of a duplicate deed containing the sales
83 listing form information required by this section shall also
84 satisfy the requirements of this section regarding the sales
85 listing form. The clerk shall, at the end of the month, pay
86 all of the proceeds collected from the sale of stamps for
87 the county excise tax into the county general fund for use
88 of the county.

89 On or before the tenth day of each month the clerk
90 shall deliver to the tax commissioner, or a person

91 designated by the tax commissioner, the sales listing forms
92 or other alternative forms as may be authorized by this
93 section for documents recorded during the preceding
94 month.

95 The sales listing form required by this section shall
96 also include a portion thereof for the information required
97 of a person claiming a lien against the real property
98 described in the document who desires to file a statement
99 pursuant to the provisions of subsection (a), section three,
100 article three, chapter eleven-a of this code. Upon receipt
101 of the form, the clerk shall, no later than the end of the
102 business day upon which it was received, provide a copy
103 of the statement to the assessor and a copy thereof to the
104 sheriff. The assessor shall note any new owner of the real
105 property indicated on the sales listing form upon the
106 landbooks. The sheriff shall promptly compare the
107 information contained in the sales listing form with his or
108 her records and shall:

109 (1) Provide the lienholder such notice as the
110 lienholder would thereafter otherwise be entitled to receive
111 pursuant to the provisions of chapter eleven-a of this code
112 had the lienholder provided the information in the form
113 of a statement as permitted by the provisions of section
114 three, article three of said chapter;

115 (2) Provide any other person listed on the sales listing
116 form such notice as the person would thereafter otherwise
117 be entitled to receive pursuant to the provisions of chapter
118 eleven-a of this code as a result of the person's interest in
119 the real property;

120 (3) Deliver to any person listed on the sales listing
121 form as the new owner of the real property described in
122 the document a copy of any subsequently issued tax ticket
123 required to be sent by the provisions of section eight,
124 article one, chapter eleven-a of this code; and

125 (4) Promptly notify any person listed on the sales
126 listing form as the lienholder or the new owner of the real
127 property of any due and unpaid taxes assessed against the
128 property.

CHAPTER 163

(Com. Sub. for S. B. 349—Originating in the Committee on
Health and Human Resources)

[Passed April 10, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five-n, relating to establishing a new licensure category for residential care communities; stating public policy; defining terms; setting forth powers and duties of the director of the division of health with regard to residential care communities; providing for administrative and inspection staff; authorizing and directing proposal of legislative rules; establishing minimum standards for residential care communities; requiring a license for operation; providing for application procedures and fees; providing for license expiration, renewal, revocation, suspension and limitation; requiring cost disclosure to potential residents; limiting liability for costs not disclosed; prohibiting management of residents' personal funds; requiring compliance with fire code; setting forth provisions for inspections; prohibiting retaliation; requiring reports and plans of correction; classifying types of violations; providing for notice of violation or noncompliance; authorizing assessment of civil penalties, interest, attorneys fees and costs; providing for hearings of contested cases; providing for administrative appeals; providing for judicial review; providing for collection of unpaid penalties; authorizing judicial appointment of temporary management and specifying scope of authority; providing for automatic stay of certain actions; authorizing certain emergency rules; providing for legal counsel to the director; specifying unlawful acts; authorizing injunctive relief and private causes of action; setting forth damages which may be recovered; requiring that certain reports and records be made available; and providing for confidentiality of residents' records.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5N. RESIDENTIAL CARE COMMUNITIES.

- §16-5N-1. Purpose.
- §16-5N-2. Definitions.
- §16-5N-3. Powers, duties and rights of director.
- §16-5N-4. Administrative and inspection staff.
- §16-5N-5. Rules; minimum standards for residential care communities.
- §16-5N-6. License required; application; fees; duration; renewal.
- §16-5N-7. Cost disclosure; residents' funds; nursing care; fire code.
- §16-5N-8. Investigation of complaints.
- §16-5N-9. Inspections.
- §16-5N-10. Reports of inspections; plans of correction; assessment of penalties, fees and costs; use of funds derived therefrom; hearings.
- §16-5N-11. License limitation, suspension and revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearing.
- §16-5N-12. Administrative appeals from civil penalty assessment, license limitation, suspension or revocation.
- §16-5N-13. Judicial review.
- §16-5N-14. Legal counsel and services for the director.
- §16-5N-15. Unlawful acts; penalties; injunctions; private right of action.
- §16-5N-16. Availability of reports and records.

§16-5N-1. Purpose.

1 It is the policy of this state to encourage and promote
2 the development and utilization of quality residential
3 communities for persons who desire to live independently
4 in an apartment, who are or may be dependent upon the
5 services of others by reason of physical or mental
6 impairment, and who may require limited and intermittent
7 nursing care and who are capable of self-preservation and
8 are not bedfast. Individuals may not be disqualified for
9 residency solely because they qualify for or receive
10 services coordinated by a licensed hospice. This care and
11 treatment requires a living environment for these persons
12 which, to the extent practicable, approximates a normal
13 home environment. To this end, it is the policy of this

14 state to encourage and promote the development and
15 maintenance of residential care communities.

16 The provisions of this article are remedial and shall be
17 liberally construed to effectuate its purposes and intents.
18 This article is intended to apply only to residential
19 communities in which apartments are rented on a month-
20 to-month basis. All residential care community rental
21 contracts shall specify in bold-faced type, under the
22 conspicuous caption "NOTICE TO RESIDENT", that
23 residents of the residential community must be capable of
24 self-preservation, or substantially similar words clearly
25 conveying the same meaning. This article may not be
26 construed to require that any person be required to vacate
27 any property in which that person has an ownership or a
28 leasehold interest, except for a month-to-month tenancy,
29 because that person is disabled and incapable of self-
30 preservation. Nothing in this article is intended to
31 supersede the provisions of article eleven-a, chapter five of
32 this code.

§16-5N-2. Definitions.

1 As used in this article, unless a different meaning
2 appears from the context:

3 (a) "Capable of self-preservation" means that a
4 person is, at a minimum, physically capable of removing
5 himself or herself from situations involving imminent
6 danger such as fire;

7 (b) "Deficiency" means a statement of the rule and
8 the fact that compliance has not been established and the
9 reasons therefor;

10 (c) "Department" means the state department of
11 health and human resources;

12 (d) "Director" means the director of the division of
13 health;

14 (e) "Division" means the division of health of the
15 state department of health and human resources;

16 (f) "Limited and intermittent nursing care" means
17 direct hands-on nursing care of a resident who needs no

18 more than two hours of nursing care per day for a period
19 of time no longer than ninety consecutive days per
20 episode, which care may be provided only when the need
21 for it meets these requirements: (1) The resident requests
22 that he or she remain in the residential care community;
23 (2) the resident is advised of the availability of other
24 specialized health care facilities to treat his or her
25 condition; and (3) the need for care results from a medical
26 pathology or the normal aging process. Limited and
27 intermittent nursing care may be provided only by or
28 under the supervision of a registered professional nurse
29 and in accordance with legislative rules proposed by the
30 secretary;

31 (g) "Nursing care" means those procedures
32 commonly employed in providing for the physical,
33 emotional and rehabilitation needs of the ill or otherwise
34 incapacitated and which require technical skills and
35 knowledge beyond those that untrained persons possess,
36 including, irrigations, catheterizations, special procedures
37 that contribute to rehabilitation and administration of
38 medication by any method involving a level of complexity
39 and skill not possessed by untrained persons;

40 (h) "Person" means a natural person and every form
41 of organization, whether incorporated or unincorporated,
42 including partnerships, corporations, trusts, associations
43 and political subdivisions of the state;

44 (i) "Personal assistance" means services of a personal
45 nature, including help in walking, bathing, dressing,
46 toileting, getting in or out of bed and supervision that is
47 required because of the age or mental impairment of a
48 resident;

49 (j) "Resident" means an individual who lives in a
50 residential care community for the purpose of receiving
51 personal assistance or limited and intermittent nursing
52 services from the community;

53 (k) "Residential care community" means any group
54 of seventeen or more residential apartments, however
55 named, which are part of a larger independent living
56 community and which are advertised, offered, maintained

57 or operated by an owner or manager, regardless of
58 consideration or the absence thereof, for the express or
59 implied purpose of providing residential accommodations,
60 personal assistance and supervision on a monthly basis to
61 seventeen or more persons who are or may be dependent
62 upon the services of others by reason of physical or
63 mental impairment or who may require limited and
64 intermittent nursing care but who are capable of self-
65 preservation and are not bedfast. Individuals may not be
66 disqualified for residency solely because they qualify for
67 or receive services coordinated by a licensed hospice.
68 Each apartment in a residential care community shall be at
69 least three hundred square feet in size, have doors capable
70 of being locked and contain at least: (1) One bedroom;
71 (2) one kitchenette that includes a sink and a refrigerator;
72 and (3) one full bathroom that includes a bathing area,
73 toilet and sink. Services utilizing equipment which
74 requires auxiliary electrical power in the event of a power
75 failure may not be used unless the residential care
76 community has a backup power generator. Nothing
77 contained in this article applies to hospitals, as defined
78 under section one, article five-b of this chapter, state
79 institutions, as defined under section three, article one,
80 chapter twenty-five of this code or section six, article one,
81 chapter twenty-seven of this code, residential care
82 communities operated as continuing care retirement
83 communities or housing programs operated under rules of
84 the federal department of housing and urban development
85 and/or the office of rural economic development,
86 residential care communities operated by the federal
87 government or the state government, institutions operated
88 for the treatment and care of alcoholic patients, offices of
89 physicians, hotels, boarding homes or other similar places
90 that furnish only room and board, or to homes or asylums
91 operated by fraternal orders pursuant to article three,
92 chapter thirty-five of this code;

93 (l) "Secretary" means the secretary of the state
94 department of health and human resources or his or her
95 designee; and

96 (m) "Substantial compliance" means a level of
97 compliance with the rules promulgated hereunder that

98 identified deficiencies pose a risk to resident health or
99 safety no greater than a potential for causing minimal
100 harm.

101 The secretary may by rule define terms pertinent to
102 this article which are not defined herein.

§16-5N-3. Powers, duties and rights of director.

1 In the administration of this article, the director has the
2 following powers, duties and rights:

3 (a) To enforce rules and standards for residential care
4 communities as adopted, proposed, amended or modified
5 by the secretary;

6 (b) To exercise all powers granted herein relating to
7 the issuance, suspension and revocation of licenses of
8 residential care communities;

9 (c) To enforce rules governing the qualification of
10 applicants for residential care community licenses,
11 including, but not limited to, educational, financial,
12 personal and ethical requirements, as adopted, proposed,
13 amended or modified by the secretary;

14 (d) To receive and disburse federal funds and to take
15 any lawful action that is necessary or appropriate to
16 comply with the requirements and conditions for the
17 receipt or expenditure of federal funds;

18 (e) To receive and disburse funds appropriated by the
19 Legislature to the division for any authorized purpose;

20 (f) To receive and disburse funds obtained by the
21 division by way of gift, grant, donation, bequest or devise,
22 according to the terms thereof, funds derived from the
23 division's operation, and funds from any other source, no
24 matter how derived, for any authorized purpose;

25 (g) To negotiate and enter into contracts, and to
26 execute all instruments necessary or convenient in
27 carrying out the functions and duties of the position of
28 director; and all of these contracts, agreements and
29 instruments shall be executed by the director;

30 (h) To appoint officers, agents, employees and other
31 personnel and establish the duties and fix the
32 compensation thereof;

33 (i) To offer and sponsor education and training
34 programs for residential care communities' administrative,
35 managerial and operations personnel;

36 (j) To undertake survey, research and planning
37 projects and programs relating to the administration and
38 operation of residential care communities and to the
39 health, care, treatment and service in general of residents
40 of these communities;

41 (k) To establish by legislative rule in accordance with
42 section ten of this article and to assess reasonable civil
43 penalties for violations of residential care community
44 standards;

45 (l) To inspect any residential care community and any
46 of the records maintained therein, subject to the provisions
47 of section ten of this article;

48 (m) To establish legislative rules in accordance with
49 article three, chapter twenty-nine-a of this code, setting
50 forth procedures for implementing the provisions of this
51 article, including informal conferences, investigations and
52 hearings, and for enforcing compliance with the
53 provisions of this article and the rules promulgated
54 hereunder;

55 (n) To subpoena witnesses and documents, administer
56 oaths and affirmations and examine witnesses. Upon the
57 failure of any person without lawful excuse to obey a
58 subpoena to give testimony and upon reasonable notice to
59 all persons affected thereby, the director may apply to the
60 circuit court of the county in which the hearing is to be
61 held or to the circuit court of Kanawha County for an
62 order compelling compliance;

63 (o) To make a complaint or cause proceedings to be
64 instituted against any person or persons for the violation
65 of the provisions of this article or of the rules promulgated
66 hereunder. An action may be taken by the director in the
67 absence of concurrence or participation by the

68 prosecuting attorney of the county in which the
69 proceedings are instituted. The circuit court of Kanawha
70 County or the circuit court of the county in which the
71 violation has occurred has jurisdiction in any civil
72 enforcement action brought pursuant to this article and
73 may order equitable relief. In these cases, the court may
74 not require that a bond be posted, nor may the director or
75 any person acting under his or her authority be required
76 to give security for costs;

77 (p) To delegate authority to his or her employees and
78 agents in the performance of any power or duty granted
79 in this article, except the issuance of final decisions in any
80 adjudicatory matter; and

81 (q) To submit a report to the governor and the
82 Legislature on or before the first day of December, one
83 thousand nine hundred ninety-seven, and annually
84 thereafter, which report shall review the residential care
85 community licensing and investigatory activities of the
86 division during the preceding year and the nature, scope
87 and status of any other activities of the division. This
88 report may include comment on the actions, policies,
89 practices or procedures of any public or private agency
90 that may affect the rights, health or welfare of residents of
91 residential care communities. These annual reports shall
92 also include a listing of all licensed residential care
93 communities in the state together with the following
94 information: Whether a community is proprietary or
95 nonproprietary; how the community is or should be
96 classified; the name of the owner or owners; the total
97 number of apartments contained therein; the monthly
98 costs for residents; the number and profession of full-time
99 employees; the number and types of recreational
100 programs available to residents; and other services and
101 programs available to residents, and the costs thereof; and
102 whether the residential care community listed accepted
103 medicare or medicaid residents. These reports shall also
104 contain the division's recommendations with regard to
105 changes in law or policy which it considers necessary or
106 proper for the protection of the rights, health or welfare of
107 the residents of residential care communities within the
108 state.

§16-5N-4. Administrative and inspection staff.

1 The director may, at any time he or she considers
2 necessary, employ administrative employees, inspectors or
3 other persons to properly implement the provisions of this
4 article. Employees of the division shall be members of the
5 state civil service system and shall enforce the provisions
6 of this article and the rules promulgated hereunder. In
7 discharging their official duties, employees of the division
8 have the right of entry into any place maintained as a
9 residential care community.

§16-5N-5. Rules; minimum standards for residential care communities.

1 (a) The secretary shall, by the first day of July, one
2 thousand nine hundred ninety-eight, propose all rules that
3 may be necessary or proper to implement or effectuate the
4 purposes and intent of this article and to enable the
5 director to exercise the powers and perform the duties
6 conferred herein. All rules authorized or required
7 pursuant to this article shall be proposed by the secretary
8 and promulgated in accordance with the provisions
9 governing legislative rules, contained in article three,
10 chapter twenty-nine-a of this code.

11 (b) The secretary shall propose rules establishing
12 minimum standards for the operation of residential care
13 communities, including, but not limited to, the following:

14 (1) Administrative policies, including: (i) An
15 affirmative statement of the right of access to residential
16 care communities by members of recognized community
17 organizations and community legal services programs
18 whose purposes include rendering assistance without
19 charge to residents, consistent with the right of residents to
20 privacy; and (ii) a statement of the rights and
21 responsibilities of residents;

22 (2) Minimum numbers and qualifications of
23 residential care community personnel according to the
24 size, classification and health care needs of the residential
25 care community;

26 (3) Safety requirements, except for those fire and life
27 safety requirements under the jurisdiction of the state fire
28 marshal;

29 (4) Sanitation requirements;

30 (5) Protective and personal services required to be
31 provided;

32 (6) Dietary services required to be provided;

33 (7) Maintenance of health records, including
34 confidentiality;

35 (8) Social and recreational activities required to be
36 made available;

37 (9) Physical facilities;

38 (10) Requirements related to limited and intermittent
39 nursing care; and

40 (11) Other items or considerations that the secretary
41 considers appropriate to ensure the health, safety and
42 welfare of residents of residential care communities.

43 (c) The secretary shall propose rules that include
44 detailed specifications for each category of standards
45 required under subsections (b) and (d) of this section, and
46 shall classify these standards as follows:

47 (1) Class I standards, the violation of which presents
48 either an imminent danger to the health, safety or welfare
49 of a resident or a substantial probability that death or
50 serious physical harm may result;

51 (2) Class II standards, the violation of which directly
52 implicates the health, safety or welfare of a resident, but
53 which does not present imminent danger thereto; and

54 (3) Class III standards, the violation of which has an
55 indirect or potential impact on the health, safety or welfare
56 of any resident.

57 (d) A residential care community shall attain
58 substantial compliance in every category of standard
59 enumerated in this section in order to be considered as

60 being in substantial compliance with the requirements of
61 this article and the rules promulgated hereunder.

62 (e) Until such time as the secretary proposes rules
63 governing residential care communities under this section,
64 existing rules governing residential board and care homes
65 shall apply to residential care communities and shall be
66 construed so as to conform with the provisions of this
67 article in their application to residential care communities:
68 *Provided*, That to the extent any provisions of the rule
69 governing residential board and care homes conflict with
70 the provisions of this article, the provisions of this article
71 shall govern.

**§16-5N-6. License required; application; fees; duration;
renewal.**

1 No person may establish, operate, maintain, offer or
2 advertise a residential care community within this state
3 unless he or she first obtains a license therefor as provided
4 in this article, which license remains unsuspending,
5 unrevoked and unexpired. No public official or
6 employee may place any person in, or recommend that
7 any person be placed in, or directly or indirectly cause
8 any person to be placed in, any residential care
9 community which is being operated without a valid license
10 from the director. The procedure for obtaining a license
11 is as follows:

12 (a) The applicant shall submit an application to the
13 director on a form prescribed by the director, containing
14 information as may be necessary to show that the
15 applicant is in compliance with the standards for
16 residential care communities as established by this article
17 and the rules promulgated hereunder. The application
18 and any exhibits thereto shall provide the following
19 information:

20 (1) The name and address of the applicant;

21 (2) The name, address and principal occupation: (i)
22 Of each person who, as a stockholder or otherwise, has a
23 proprietary interest of ten percent or more in the
24 applicant; (ii) of each officer and director of a corporate

25 applicant; (iii) of each trustee and beneficiary of an
26 applicant which is a trust; and (iv) where a corporation has
27 a proprietary interest of twenty-five percent or more in an
28 applicant, the name, address and principal occupation of
29 each officer and director of the corporation;

30 (3) The name and address of the owner of the
31 premises of the residential care community or proposed
32 residential care community, if different from the applicant,
33 and if so, the name and address: (i) Of each person who,
34 as a stockholder or otherwise, has a proprietary interest of
35 ten percent or more in the owner of the premises; (ii) of
36 each officer and director of a corporate applicant; (iii) of
37 each trustee and beneficiary of the owner if it is a trust;
38 and (iv) where a corporation has a proprietary interest of
39 twenty-five percent or more in the owner, the name and
40 address of each officer and director of the corporation;

41 (4) Where the applicant is the lessee or the assignee of
42 the residential care community or the premises of the
43 proposed residential care community, a signed copy of the
44 lease and any assignment thereof;

45 (5) The name and address of the residential care
46 community or the premises of the proposed residential
47 care community;

48 (6) The proposed number of apartments in the
49 residential care community;

50 (7) (A) An organizational plan for the residential care
51 community indicating the number of persons employed
52 or to be employed, and the positions and duties of all
53 employees; (B) the name and address of the individual
54 who is to serve as administrator; and (C) evidence of
55 compliance with applicable laws and rules governing
56 zoning, building, safety, fire prevention and sanitation, as
57 the director may require; and

58 (8) Additional information as the director may
59 require.

60 (b) Upon receipt and review of an application for
61 license made pursuant to subdivision (a) of this section
62 and inspection of the applicant pursuant to section ten of

63 this article, the director shall issue a license if he or she
64 finds:

65 (1) That an applicant which is an individual and every
66 partner, trustee, officer, director and person with a
67 controlling interest of an applicant which is not an
68 individual, is a person responsible and suitable to operate
69 or to direct or participate in the operation of a residential
70 care community by virtue of financial capacity,
71 appropriate business or professional experience, a record
72 of compliance with lawful orders of the department (if
73 any) and a history of nonrevocation of a license during
74 the five years immediately preceding the application;

75 (2) That the residential care community is under the
76 supervision of an administrator qualified for that position
77 by training and experience;

78 (3) That the residential care community is in
79 substantial compliance with standards established pursuant
80 to section five of this article, and other requirements as the
81 secretary may establish by rule under this article.

82 Any license granted by the director shall state the
83 maximum number of apartments for which it is granted,
84 the date of issuance and the date of expiration.
85 Residential care community licenses shall be issued for a
86 period not to exceed one year: *Provided*, That any license
87 which is unexpired, for which timely application for
88 renewal has been made, together with payment of the
89 proper fee, as required by the provisions of this article and
90 the rules promulgated hereunder, continues in effect until:
91 (i) One year after the original expiration date of the
92 license; (ii) the date that the license is revoked or
93 suspended pursuant to the provisions of this article; or (iii)
94 the date of issuance of a new license, whichever date first
95 occurs. Each license issued is only for the premises and
96 applicant named in the application and may not be
97 transferred or assigned: *Provided, however*, That if the
98 ownership of a residential care community with an
99 unexpired license is transferred, the filing of an
100 application for a license with the director by the new
101 owner shall have the effect of licensing the operation of
102 the residential care community under the new owner for a

103 period not to exceed three months. Every residential care
104 community license shall be displayed in a conspicuous
105 place at the facility for which it is issued so as to be
106 accessible to and in plain view of residents and visitors.

107 (c) An original license may be renewed upon the
108 timely filing of an application therefor, accompanied by
109 the required fee and contingent upon the licensee's
110 submission of evidence satisfactorily demonstrating
111 compliance with the provisions of this article and the rules
112 promulgated hereunder together with the following:

113 (1) A balance sheet as of the end of the residential
114 care community's fiscal year, setting forth its assets and
115 liabilities as of that date, including all capital, surplus,
116 reserve, depreciation and similar accounts;

117 (2) A statement of operations of the residential care
118 community as of the end of its fiscal year, setting forth all
119 revenues, expenses, taxes, extraordinary items and other
120 credits or charges; and

121 (3) A statement of any changes in the name, address,
122 management or ownership information on file with the
123 director.

124 (d) In the case of an application for license renewal, if
125 all the requirements of section five of this article are not
126 met, the director may issue a provisional license, provided
127 that care given in the residential care community is
128 adequate for resident needs and the residential care
129 community has demonstrated improvement and evidences
130 potential for substantial compliance during the term of the
131 provisional license: *Provided*, That a provisional license is
132 effective for a period not to exceed one year, may not be
133 renewed, and may not be issued to any residential care
134 community with uncorrected violations of any Class I
135 standard, as defined in subsection (c), section five of this
136 article.

137 (e) A nonrefundable application fee in the amount of
138 sixty-five dollars for an original residential care
139 community license shall be paid at the time an application
140 for license is made. The average cost of all direct costs for

141 initial licensure inspections of all residential care
142 communities for the preceding year shall be assessed
143 against and paid by the applicant to the director before an
144 initial or amended license may be issued. The fee for
145 license renewal shall be computed at the rate of four
146 dollars per apartment in the community per year:
147 *Provided*, That the rate per apartment may be assessed
148 against applicants for whom a license is issued for a period
149 of less than one year. The director may annually adjust
150 licensure fees for inflation, based upon the consumer price
151 index. All license fees are due and payable to the director,
152 annually, in the manner set forth in the rules promulgated
153 hereunder. The director shall retain each application and
154 licensure fee pending final action on the application. All
155 fees received by the director under the provisions of this
156 article shall be deposited in accordance with section
157 thirteen, article one of this chapter.

§16-5N-7. Cost disclosure; residents' funds; nursing care; fire code.

- 1 (a) Each residential care community shall disclose in
2 writing to all prospective residents a complete and accurate
3 list of all costs which may be incurred by them as residents
4 of the community. Residents may not be held liable for
5 any cost that was not disclosed.
- 6 (b) Residential care communities may not manage the
7 personal finances or funds of its residents.
- 8 (c) A residential care community may be required to
9 have registered nurses on its staff to the extent that it
10 provides limited and intermittent nursing care.
- 11 (d) Residential care communities shall comply with the
12 applicable provisions of the current edition of the life
13 safety code as promulgated by the national fire protection
14 association and adopted by the state fire commission.

§16-5N-8. Investigation of complaints.

- 1 The secretary shall by rule establish procedures for the
2 prompt investigation of all complaints of alleged
3 violations of applicable requirements of state law or rules
4 by residential care communities, except those complaints

5 that the director determines are without any reasonable
6 basis or are made with the sole intention to willfully harass
7 a licensee. These procedures shall include provisions for
8 ensuring the confidentiality of the complainant and of any
9 other person named in the complaint, and for promptly
10 informing the complainant and the residential care
11 community involved of the results of the investigation.

12 If, after its investigation, the director determines that
13 the complaint has merit, the director shall take appropriate
14 disciplinary action and shall advise any injured party of
15 the possibility of a civil remedy under this article.

16 No residential care community may discharge or in
17 any manner discriminate or retaliate against any employee
18 or resident for filing a complaint or participating in any
19 proceeding provided for in this article. Violation of this
20 prohibition by any residential care community constitutes
21 grounds for the suspension or revocation of its license as
22 provided in section eleven of this article. Any type of
23 adverse action taken by a residential care community
24 against a resident who has submitted a complaint to the
25 director or upon whose behalf a complaint has been
26 submitted or who has instituted any proceeding under this
27 article, if taken within one hundred twenty days of the
28 filing of the complaint or the institution of the proceeding,
29 shall raise a rebuttable presumption that the adverse action
30 was taken in retaliation for filing the complaint or
31 instituting the proceeding.

§16-5N-9. Inspections.

1 The director and any duly designated employee or
2 agent thereof is authorized to enter upon and into the
3 premises of any residential care community for which a
4 license has been issued, for which an application for
5 license has been filed, or which the director has reason to
6 believe is being operated or maintained as a residential
7 care community without a license. If entry is refused by
8 the owner or person in charge of the residential care
9 community, the director shall apply to the circuit court of
10 the county in which the residential care community is
11 located or the circuit court of Kanawha County for an

12 order authorizing inspection, and the court shall issue an
13 appropriate order if it finds good cause for inspection.

14 The director, by and through his or her agents or
15 employees, shall conduct at least one inspection of a
16 residential care community before issuing a license to it
17 and shall conduct periodic unannounced inspections
18 thereafter to determine if it is in compliance with all
19 applicable statutory requirements and rules. All
20 residential care communities shall comply with applicable
21 rules of the state fire commission. The state fire marshal,
22 by and through his or her agents or employees, shall make
23 all fire, safety and similar inspections of residential care
24 communities. The director may provide for other
25 inspections he or she considers necessary to effectuate the
26 intent and purpose of this article. If the director
27 determines upon investigation that a complaint is
28 substantiated and that an immediate and serious threat to
29 health or safety exists at a residential care community, he
30 or she may invoke any remedy available pursuant to
31 section eleven of this article. Any residential care
32 community aggrieved by a determination or assessment
33 made pursuant to this section shall have the right to an
34 administrative appeal as set forth in section twelve of this
35 article.

**§16-5N-10. Reports of inspections; plans of correction;
assessment of penalties, fees and costs; use of
funds derived therefrom; hearings.**

1 (a) Reports of all inspections made pursuant to section
2 nine of this article shall be in writing and filed with the
3 director, and shall list all deficiencies in the residential care
4 community's compliance with the provisions of this article
5 and the rules promulgated hereunder. The director shall
6 send a copy of the report to the residential care
7 community and shall specify a time within which the
8 residential care community shall submit a plan for
9 correction of any listed deficiencies, which plan shall be
10 approved, rejected or modified by the director. Inspectors
11 shall allow audio taping of the exit conference that follows
12 a licensure or certification inspection, with all costs
13 incurred as a result of the taping to be paid by the

14 residential care community. A copy of the audio tape
15 shall be provided to the inspector.

16 (b) Upon the failure of a residential care community
17 to submit a plan of correction as required or to correct
18 any deficiency within the time specified, the director may
19 assess a civil penalty or initiate other appropriate legal or
20 disciplinary action, as provided by this article.

21 (c) Nothing in this section may be construed to
22 require the director to afford a formal opportunity for a
23 residential care community to correct a deficiency before
24 initiating an enforcement action in either an administrative
25 or judicial forum, where, in the opinion of the director, the
26 deficiency jeopardizes the health or safety of the
27 community's residents or where the deficiency is the
28 second or subsequent violation to occur within a twelve-
29 month period.

30 (d) Civil penalties assessed against residential care
31 communities shall be classified according to the nature of
32 the violation, as provided in subsection (c), section five of
33 this article and rules promulgated thereunder, consistent
34 with the following: For each violation of a Class I
35 standard, the civil penalty imposed shall be not less than
36 fifty nor more than five hundred dollars; for each
37 violation of a Class II standard, the civil penalty imposed
38 shall be not less than twenty-five nor more than fifty
39 dollars; for each violation of a Class III standard, the civil
40 penalty imposed shall be not less than ten nor more than
41 twenty-five dollars. Each day that a violation continues
42 after the date of citation constitutes a separate violation.
43 The date of the citation is the date the facility receives the
44 written statement of deficiencies.

45 (e) The director shall assess a civil penalty not to
46 exceed two thousand dollars against any individual who
47 notifies a residential care community, or causes it to be
48 notified, in advance, of the time or date on which an
49 inspection is scheduled to be conducted under this article.

50 (f) If the director assesses a penalty under this section,
51 he or she shall cause a notice of penalty to be delivered to
52 the residential care community by personal service or by

53 certified mail. This notice shall state the amount of the
54 penalty, the action, deficiency or other circumstance for
55 which the penalty is assessed, the statutory requirement or
56 rule which has been violated and the basis upon which the
57 director determined the amount of the penalty.

58 (g) The director shall recover in a judicial proceeding
59 any civil penalty which: (i) Remains uncontested and
60 unpaid for thirty days after its receipt; or (ii) if contested,
61 has been affirmed by the director and remains unappealed
62 for thirty days after receipt of the director's final order; or
63 (iii) if appealed, has been affirmed upon judicial review of
64 the director's final order. All funds received in the form
65 of civil penalties or interest thereon pursuant to this article
66 shall be deposited in a special resident benefit account
67 which is hereby established and applied by the director
68 exclusively for the protection of the health or property of
69 residents of residential care communities operated within
70 this state that the director determines to be deficient, which
71 may include payment of costs to relocate residents of a
72 deficient residential care community to other facilities,
73 operation costs of a residential care community pending
74 correction of deficiencies or closure and reimbursement
75 of residents for personal funds lost.

76 (h) The opportunity for a hearing on any action taken
77 under this section is as provided in section twelve of this
78 article. In addition to any other rights of appeal conferred
79 upon a residential care community under this section, it
80 may also request a hearing and seek judicial review
81 pursuant to sections twelve and thirteen of this article to
82 contest the director's citing of a deficiency in an
83 inspection report, irrespective of whether the deficiency
84 results in the imposition of a civil penalty.

§16-5N-11. License limitation, suspension and revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearing.

1 (a) The director shall by order impose a ban on the
2 admission of additional residents or reduce the number of
3 apartments permitted in a residential care community, or

4 any combination thereof, where it is determined upon
5 inspection that a licensee is not providing adequate care to
6 its residents under its existing quota and, further, that a
7 reduction in the quota or the imposition of a ban on
8 additional admissions, or a combination thereof, would
9 enable the licensee to render adequate care to its residents.
10 A notice to a licensee of a reduction in its quota or a ban
11 on additional admissions shall include the terms of the
12 order, the reasons therefor, and the date by which it must
13 comply.

14 (b) The director may suspend or revoke a license
15 issued under this article if it is determined upon inspection
16 that there has been a substantial failure to comply with the
17 provisions of this article or the standards or rules
18 promulgated hereunder.

19 (c) Whenever a license is limited, suspended or
20 revoked pursuant to this section, the director shall file an
21 administrative complaint stating facts constituting the
22 grounds therefor. Upon the filing of this administrative
23 complaint, the director shall notify the licensee in writing,
24 enclose a copy of the administrative complaint, and advise
25 the licensee of its opportunity for a hearing pursuant to
26 section twelve of this article. The notice and copy of the
27 administrative complaint shall be served on the licensee by
28 certified mail, return receipt requested.

29 (d) The suspension, revocation or expiration of a
30 license, or the withdrawal of an application for a license
31 after it has been filed with the director, may not deprive
32 the director of his or her authority to institute or continue
33 a disciplinary proceeding or to deny an application for a
34 license.

35 (e) In addition to other remedies provided in this
36 article, upon petition from the director, a circuit court may
37 determine that a residential care community's deficiencies
38 under this article constitute an emergency immediately
39 jeopardizing the health, safety, welfare or rights of its
40 residents, and issue an order to:

41 (1) Close the residential care community;

42 (2) Transfer residents of the residential care
43 community to other facilities; or

44 (3) Appoint a temporary manager to oversee the
45 operation of the residential care community and to assure
46 the health, safety, welfare and rights of the residential care
47 community's residents, where there is a need for
48 temporary management while:

49 (A) There is an orderly closure of the residential care
50 community; or

51 (B) Corrections are made in order to bring the
52 residential care community into compliance with all
53 applicable requirements of this article and the rules
54 promulgated hereunder.

55 If the director petitions a circuit court for the closure
56 of a residential care community, for the transfer of
57 residents, or for the appointment of a temporary manager,
58 the circuit court shall hold a hearing no later than seven
59 days thereafter, at which time the director and the licensee
60 or operator of the residential care community may
61 participate and present evidence.

62 A circuit court may divest the licensee or operator of
63 possession and control of a residential care community in
64 favor of temporary management. The temporary
65 management is accountable to the court and has those
66 powers and duties that the court may grant to direct all
67 acts necessary or appropriate to conserve the property and
68 promote the health, safety, welfare and rights of the
69 residents, including, but not limited to, replacing
70 managerial and other staff, hiring consultants, making
71 necessary expenditures to close the residential care
72 community or to repair or improve the residential care
73 community so as to return it to compliance with applicable
74 requirements, and receiving, conserving and expending
75 funds, including making payments on behalf of the
76 licensee or operator. Priority in making payments shall be
77 given to expenditures for current direct resident care and
78 the transfer of residents, if necessary.

79 The person charged with temporary management shall
80 be an officer of the court and paid by the residential care
81 community if resources are available; he or she may not
82 be held liable in any capacity for conditions at the
83 residential care community that originated or existed
84 before his or her appointment nor may he or she be held
85 personally liable for any act or omission, except those
86 constituting gross negligence or intentional acts that result
87 in injuries to persons or damage to property during his or
88 her tenure as temporary manager.

89 It is unlawful for any person to impede the operation
90 of temporary management as appointed by the court. For
91 ninety days after the appointment of temporary
92 management at a residential care community, any legal
93 action that would interfere with its functioning or
94 operation shall be automatically stayed. These actions
95 include, but are not limited to, cancellation of insurance
96 policies, termination of utility services, attachments to
97 working capital accounts, foreclosures, evictions and
98 repossessions of equipment used in the residential care
99 community.

100 Temporary management appointed by the court for
101 purposes of making improvements to bring a residential
102 care community into compliance with applicable
103 requirements may not be terminated until the court has
104 determined that the residential care community has the
105 management capability to ensure continued compliance
106 with all applicable requirements: *Provided*, That if the
107 court does not make such a determination within six
108 months of the appointment of the temporary management,
109 the temporary management terminates by operation of law
110 at that time, and the residential care community shall be
111 closed. After the termination of the temporary
112 management, the person who was appointed as the
113 temporary management shall make an accounting to the
114 court, and after deducting the costs of the temporary
115 management, expenditures and civil penalties and interest
116 no longer subject to appeal, in that order, from receipts,
117 the remainder, if any, shall be paid to the licensee or
118 operator of the residential care community.

119 (f) Assessments for civil penalties and costs of actions
120 taken under this article, including attorney fees, shall
121 accrue interest at the rate of five percent per annum,
122 beginning on the thirtieth day after receipt of notice of the
123 assessment or the thirtieth day after receipt of the
124 director's final order following a hearing, whichever later
125 occurs. All assessments against a residential care
126 community that remain unpaid shall be added to its
127 licensure fee next due and may be filed as a lien against
128 the property of the licensee or operator of the residential
129 care community. Funds received from these assessments
130 shall be deposited in the same manner as are funds
131 received pursuant to section ten of this article.

132 (g) The secretary is authorized to propose emergency
133 rules, if necessary, to expand the powers of the director
134 beyond those provided in this article, to the extent
135 required to comply with federal requirements: *Provided,*
136 That the director's powers may be expanded only to the
137 extent required by federal requirements. Emergency rules
138 proposed pursuant to this subsection are subject to the
139 provisions governing legislative rules contained in article
140 three, chapter twenty-nine-a of this code.

141 (h) The opportunity for a hearing on any action taken
142 by the director under this section is as provided in section
143 twelve of this article.

**§16-5N-12. Administrative appeals from civil penalty assess-
ment, license limitation, suspension or revoca-
tion.**

1 (a) Any licensee or applicant aggrieved by an order
2 issued pursuant to section five, six, ten or eleven of this
3 article shall, upon timely written request, be afforded an
4 opportunity for a hearing by the director at which the
5 order may be contested as contrary to law, unwarranted by
6 the facts, or both. The provisions of article five, chapter
7 twenty-nine-a of this code governing contested cases
8 apply to and govern hearings conducted pursuant to this
9 section and the administrative procedures in connection
10 therewith. A licensee or applicant may also request an
11 informal meeting with the director before requesting a
12 hearing.

13 After a hearing conducted pursuant to this section, the
14 director shall make and enter a written order either
15 dismissing the complaint or taking whatever action is
16 authorized and appropriate pursuant to this article. This
17 written order shall be served upon the licensee and his or
18 her attorney of record, if any, by certified mail, return
19 receipt requested, accompanied by the director's findings
20 of fact and conclusions of law as specified in section three,
21 article five, chapter twenty-nine-a of this code. If the
22 director suspends a residential care community's license,
23 the order directing the suspension shall specify the
24 grounds for the suspension and the time by which the
25 conditions or circumstances giving rise to the suspension
26 must be corrected in order for the licensee to be entitled to
27 reinstatement of its license. If the director revokes a
28 license, he or she may stay the effective date of the
29 revocation upon a showing that a delay is necessary to
30 assure appropriate placement of the licensee's residents:
31 *Provided*, That the effective date of revocation may not be
32 stayed for more than ninety days. The director's order is
33 final unless it is vacated, reversed or modified by the court
34 upon judicial review in accordance with the provisions of
35 section thirteen of this article.

36 (b) In addition to all other powers granted by this
37 chapter, the director may take a case under advisement
38 and make a recommendation as to requirements to be met
39 by a licensee in order to avoid suspension or revocation of
40 its license. In these cases, the director shall enter an
41 appropriate order and notify the licensee and its attorney
42 of record, if any, by certified mail, return receipt
43 requested. If the licensee meets the requirements of this
44 order, the director shall enter a subsequent order taking
45 notice of the licensee's satisfactory compliance and
46 dismissing the complaint. This order shall also be
47 delivered to the licensee and its attorney of record, if any,
48 by certified mail, return receipt requested.

§16-5N-13. Judicial review.

1 Any licensee adversely affected by an order of the
2 director rendered after a hearing held in accordance with
3 the provisions of section twelve of this article is entitled to

4 judicial review thereof. All of the pertinent provisions of
5 section four, article five, chapter twenty-nine-a of this code
6 apply to and govern these proceedings with like effect as
7 if those provisions were set forth in extenso herein.

8 The judgment of the circuit court is final unless
9 reversed, vacated or modified on appeal to the supreme
10 court of appeals in accordance with the provisions of
11 section one, article six, chapter twenty-nine-a of this code.

§16-5N-14. Legal counsel and services for the director.

1 (a) Legal counsel and legal services for the director in
2 all administrative hearings and all proceedings in any
3 circuit court and the supreme court of appeals shall be
4 provided by the attorney general or his or her assistants,
5 an attorney employed by the director or, in proceedings in
6 any circuit court, by the prosecuting attorney of the
7 county wherein the action is instituted, all without
8 additional compensation.

9 (b) The governor may appoint counsel for the
10 director, who shall perform legal services in representing
11 the interests of residents in residential care communities in
12 matters under the jurisdiction of the director, as the
13 governor shall direct. It is the duty of counsel so
14 appointed to appear for the residents in all cases where
15 they are not represented by counsel. The compensation
16 of counsel so appointed shall be fixed by the governor.

**§16-5N-15. Unlawful acts; penalties; injunctions; private right
of action.**

1 (a) Whoever advertises, announces, establishes or
2 maintains, or is engaged in establishing or maintaining a
3 residential care community without a license granted
4 under section six of this article, or who prevents, interferes
5 with or impedes in any way the lawful enforcement of this
6 article is guilty of a misdemeanor and, upon conviction
7 thereof, shall be punished for the first offense by a fine of
8 not more than one hundred dollars, or by confinement in
9 the regional or county jail for a period of not more than
10 ninety days, or both, in the discretion of the court. For a
11 second or subsequent offense, the fine may be increased
12 to not more than two hundred fifty dollars, with

13 confinement in the regional or county jail for a period of
14 not more than ninety days, or both, in the discretion of the
15 court. Each day that a violation continues after conviction
16 therefor constitutes a separate offense.

17 (b) The director may bring an action to enforce
18 compliance with this article, any rule promulgated
19 hereunder, or order issued hereunder, whenever it appears
20 to the director that a person has engaged in or is engaging
21 in an act or practice in violation of this article or any rule
22 or order hereunder, or whenever it appears to the director
23 that a person has aided, abetted or caused, or is aiding,
24 abetting or causing such an act or practice. Upon
25 application by the director, the circuit court of the county
26 in which the conduct has occurred or is occurring has
27 jurisdiction to grant without bond a permanent or
28 temporary injunction, decree or restraining order.

29 Whenever the director has refused to grant or renew a
30 license, revoked a license that is required to operate a
31 residential care community, or ordered a person to refrain
32 from actions that violate the rules promulgated pursuant to
33 this article, and the person has appealed the action of the
34 director, the court may, during the pendency of the
35 appeal, issue a restraining order or injunction upon proof
36 that the operation of the residential care community or its
37 failure to comply with the order of the director adversely
38 affects the well-being or safety of the residents of the
39 residential care community. Should a person who appeals
40 an order of the director fail to appear or should the appeal
41 be decided in favor of the director, the court shall issue a
42 permanent injunction upon proof that the person is
43 operating or conducting a residential care community
44 without a license as required by law, or has continued to
45 violate the rules promulgated pursuant to this article.

46 (c) Any residential care community that deprives a
47 resident of any right or benefit created or established for
48 the well-being of the resident by the terms of any contract,
49 any state statute or rule, or by any applicable federal
50 statute or regulation, is liable to that resident in a civil
51 action for any injuries suffered as a result of the
52 deprivation. Upon a finding that a resident has been
53 deprived of a right or benefit and suffered an injury
54 thereby, compensatory damages shall be assessed in an

55 amount sufficient to compensate the resident for the
56 injury, unless there is a finding that the residential care
57 community exercised due care reasonably necessary to
58 prevent and limit the deprivation and injury to the
59 resident. In addition, if the deprivation by a residential
60 care community of a right or benefit is found to have
61 been willful or in reckless disregard, punitive damages
62 may be assessed. A resident may also maintain an action
63 pursuant to this section for any other type of relief,
64 including injunctive and declaratory relief, permitted by
65 law. Exhaustion of available administrative remedies may
66 not be required prior to commencing an action hereunder.

67 The amount of damages recovered by a resident in an
68 action brought pursuant to this section is exempt for
69 purposes of determining initial or continuing eligibility
70 for medical assistance under article four, chapter nine of
71 this code, and may not be taken into consideration or
72 required to be applied toward the payment or part
73 payment of the cost of medical care or services available
74 under that article.

75 Any waiver by a resident or his or her legal
76 representative of the right to commence an action under
77 this section, whether oral or in writing, is null and void as
78 contrary to public policy.

79 (d) The penalties and remedies provided in this section
80 are cumulative and are in addition to all other penalties
81 and remedies provided by law.

§16-5N-16. Availability of reports and records.

1 The director shall make available for public inspection
2 and provide copies at a nominal cost of all inspection
3 reports and other reports of residential care communities
4 filed with or issued by the director. Nothing contained in
5 this section may be construed to allow the public
6 disclosure of confidential medical, social, personal or
7 financial records of any resident. The secretary shall
8 adopt rules that are reasonably necessary to effectuate the
9 provisions of this section and preserve the confidentiality
10 of medical, social, personal or financial records of
11 residents.

CHAPTER 164

(H. B. 2200—By Mr. Speaker, Mr. Kiss, and
Delegates Varner and Martin)

[Passed March 31, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article twenty-three, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting relicensure upon transfer of existing salvage yards in certain circumstances.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 23. SALVAGE YARDS.

§17-23-4. Areas where establishment prohibited; screening requirements; existing licensed yards; approval permit required; issuance; county planning commission criteria satisfied; fee.

1 On and after the effective date of this article: (1) No
2 license shall be issued to establish a salvage yard or any
3 part thereof within one thousand feet of the nearest edge
4 of the right-of-way of any road within the state road
5 system designated and classified or redesignated and
6 reclassified as expressway, trunkline or feeder, or any road
7 within the state road system designated and classified or
8 redesignated and reclassified for purposes of allocation of
9 federal highway funds as part of the federal-aid interstate
10 or primary systems: *Provided*, That this limitation shall
11 not apply to landfills established and maintained by the
12 state or any county or municipality if such landfill is
13 effectively screened and obscured by natural objects,
14 plantings, fences or other appropriate means so as not to
15 be visible from the main traveled way of the system; and

16 (2) no license shall be issued to establish a salvage yard or
17 any part thereof within five hundred feet of the nearest
18 edge of the right-of-way of any state local service road,
19 unless the view thereof from such state local service road
20 shall be effectively screened and obscured by fences:
21 *Provided, however,* That this limitation shall not apply to
22 landfills established and maintained by the state or any
23 county or municipality if such landfill is effectively
24 screened and obscured by natural objects, plantings,
25 fences or other appropriate means so as not to be visible
26 from the main traveled way of the system; and (3) no
27 license may be issued allowing a salvage yard within one
28 thousand feet of the nearest occupied private residence,
29 unless waived by the owner of such residence, or within
30 five thousand feet of the nearest occupied private
31 residence which is part of a residential community. The
32 provisions of this paragraph, as amended, shall apply only
33 to salvage yards licensed after the first day of April, one
34 thousand nine hundred eighty-eight.

35 The license of any salvage yard duly issued under the
36 former provisions of this article, which salvage yard or any
37 part thereof on the effective date of this article, is: (1)
38 Within one thousand feet of the nearest edge of the right-
39 of-way of any road within the state road system designated
40 and classified or redesignated and reclassified as
41 expressway, trunkline or feeder, or any road within the
42 state road system designated and classified or redesignated
43 and reclassified for purposes of allocation of federal
44 highway funds as part of the federal-aid interstate or
45 primary systems; or is (2) within five hundred feet of the
46 nearest edge of the right-of-way of any state local service
47 road; or is (3) within one thousand feet of the nearest
48 occupied private residence or within five thousand feet of
49 the nearest occupied private residence which is part of a
50 residential community, may be renewed only if the view of
51 the said salvage yard and all parts thereof are effectively
52 screened from the adjacent road by natural objects,
53 plantings, fences or other appropriate means or a waiver is
54 obtained from the owner of an occupied private residence.
55 The provisions of this paragraph, as amended, shall apply

56 only to salvage yards licensed after the first day of April,
57 one thousand nine hundred eighty-eight.

58 Any salvage yard which, on the effective date of this
59 article, is duly licensed under the former provisions of this
60 article may be established or continue to be operated and
61 maintained without screening by natural objects, plantings,
62 fences or other appropriate means so long as any part of
63 such salvage yard is: (1) Not located within one thousand
64 feet of any road within the state road system designated
65 and classified or redesignated and reclassified as
66 expressway, trunkline or feeder, or any road within the
67 state road system designated and classified or redesignated
68 and reclassified for the purposes of allocation of federal
69 highway funds as part of the federal-aid interstate or
70 primary systems; or is (2) not located within five hundred
71 feet of the nearest edge of the right-of-way of any state
72 local service road; or is (3) not located within one
73 thousand feet of the nearest residence or within five
74 thousand feet of the nearest occupied private residence
75 which is part of a residential community. Notwithstanding
76 any other provision of this section to the contrary,
77 ownership of a salvage yard duly licensed under the
78 former provisions of this article and continuously
79 maintained and licensed since the first day of July, one
80 thousand nine hundred eighty-eight, may be sold or
81 otherwise transferred, and the salvage yard shall be eligible
82 for relicensure and may continue to be operated under the
83 same legal requirements that would have been applicable
84 had the change in ownership not occurred.

85 On or after the first day of July, one thousand nine
86 hundred eighty-four, any owner or operator establishing,
87 operating or maintaining a salvage yard for which a
88 license is required under the provisions of this article is
89 hereby required to first obtain an approval permit from
90 the county planning commission, or if the county does not
91 have a county planning commission, from an appropriate
92 office or agency designated by the county commission, in
93 which the salvage yard is located. The county planning
94 commission or designated agency or office shall
95 promulgate such reasonable rules including, but not
96 limited to, determining the effect of the proposed salvage

97 yard on residential, business or commercial property
98 investment and values, establishing a quota for the number
99 of salvage yards in the county, and the social, economic
100 and environmental impact on community growth and
101 development in utilities, health, education, recreation,
102 safety, welfare and convenience, if any, before issuing
103 such approval permit. These rules shall conform to
104 guidelines established in rules promulgated by the
105 commissioner. The fee for the approval permit shall be
106 twenty-five dollars, payable upon the filing of the
107 application on forms to be designated and approved by
108 the county planning commission or designated office or
109 agency.

110 Upon the granting of an approval permit by the
111 county planning commission, the owner or operator shall
112 then apply to the commissioner for a license to operate.
113 The commissioner may issue a license to the applicant, but
114 only after an approval permit has issued in the first
115 instance and the location of the salvage yard is in
116 compliance with the location requirements of section four
117 of this article. The approval permit requirement of this
118 section does not apply to any owner or operator who has
119 established, or is operating or maintaining, a salvage yard
120 prior to the first day of July, one thousand nine hundred
121 eighty-four.

CHAPTER 165

(Com. Sub. for H. B. 2671—By Delegate Michael)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section eight, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section five, article twelve-c, chapter eleven of said code; to amend and reenact section seventeen-c, article five, chapter

twenty-one-a of said code; to amend and reenact sections nine and fourteen, article nineteen, chapter twenty-nine of said code; to amend and reenact section seven, article two, chapter twenty-nine-a of said code; to amend and reenact sections three and six, article eighteen, chapter thirty of said code; to amend and reenact sections fifteen and fifty-six, article one, chapter thirty-one of said code; to amend and reenact section one hundred eleven, article one, chapter thirty-one-b of said code; to amend and reenact sections twelve and thirteen, article four, chapter thirty-three of said code; to amend and reenact section eight, article one-a, chapter thirty-eight of said code; to amend and reenact section five, article five-a of said chapter; to amend and reenact sections four hundred three, four hundred four, four hundred five, four hundred six and four hundred seven, article nine, chapter forty-six of said code; to amend and reenact section one hundred thirty-seven, article two, chapter forty-six-a of said code; to amend and reenact section four, article nine, chapter forty-seven of said code; to amend and reenact sections thirty-one and thirty-three, article three, chapter fifty-six of said code; and to amend and reenact section two, article one, chapter fifty-nine of said code, all relating generally to the secretary of state; fees and charges for services of the secretary of state, filing a change of officers for a corporation or other business entity and designation of the secretary of state as attorney in fact for service of process; providing for distribution of the rule monitor to subscribers of the code of state rules; and providing for an increase in fees.

Be it enacted by the Legislature of West Virginia:

That section eight, article five, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section five, article twelve-c, chapter eleven of said code be amended and reenacted; that section seventeen-c, article five, chapter twenty-one-a of said code be amended and reenacted; that sections nine and fourteen, article nineteen, chapter twenty-nine of said code be amended and reenacted; that section seven, article two, chapter twenty-nine-a of said code be amended and reenacted; that sections three and six, article eighteen, chapter thirty of said code be amended and reenacted; that sections fifteen and fifty-six, article

one, chapter thirty-one of said code be amended and reenacted; to amend and reenact section one hundred eleven, article one, chapter thirty-one-b of said code; that sections twelve and thirteen, article four, chapter thirty-three of said code be amended and reenacted; that section eight, article one-a, chapter thirty-eight of said code be amended and reenacted; that section five, article five-a of said chapter be amended and reenacted; that sections four hundred three, four hundred four, four hundred five, four hundred six and four hundred seven, article nine, chapter forty-six of said code be amended and reenacted; that section one hundred thirty-seven, article two, chapter forty-six-a of said code be amended and reenacted; that section four, article nine, chapter forty-seven of said code be amended and reenacted; that sections thirty-one and thirty-three, article three, chapter fifty-six of said code be amended and reenacted; and that section two, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

Chapter

- 3. Elections.**
- 11. Taxation.**
- 21A. Unemployment Compensation.**
- 29. Miscellaneous Boards and Officers.**
- 29A. State Administrative Procedures Act.**
- 30. Professions and Occupations.**
- 31. Corporations.**
- 31B. Uniform Limited Liability Company Act.**
- 33. Insurance.**
- 38. Liens.**
- 46. Uniform Commercial Code.**
- 46A. West Virginia Consumer Credit and Protection Act.**
- 47. Regulation of Trade.**
- 56. Pleading and Practice.**
- 59. Fees, Allowances and Costs; Newspapers; Legal Advertisements.**

CHAPTER 3. ELECTIONS.

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-8. Filing fees and their disposition.

1 Every person who becomes a candidate for nomination
2 for or election to office in any primary election, shall, at
3 the time of filing the certificate of announcement as
4 required in this article, pay a filing fee as follows:

5 (a) A candidate for president of the United States, for
6 vice president of the United States, for United States
7 senator, for member of the United States House of
8 Representatives, for governor and for all other state
9 elective offices shall pay a fee equivalent to one percent of
10 the annual salary of the office for which the candidate
11 announces;

12 (b) A candidate for the office of judge of a circuit
13 court and judge of any court of record of limited
14 jurisdiction shall pay a fee equivalent to one percent of the
15 total annual salary of the office for which the candidate
16 announces;

17 (c) A candidate for member of the House of Delegates
18 shall pay a fee of one-half percent of the total annual
19 salary of the office, and a candidate for state senator shall
20 pay a fee of one percent of the total annual salary of the
21 office;

22 (d) A candidate for sheriff, prosecuting attorney,
23 circuit clerk, county clerk, assessor, member of the county
24 commission and magistrate shall pay a fee equivalent to
25 one percent of the annual salary of the office for which
26 the candidate announces. A candidate for county board
27 of education shall pay a fee of twenty-five dollars. A
28 candidate for any other county office shall pay a fee of
29 ten dollars;

30 (e) Delegates to the national convention of any
31 political party shall pay the following filing fees:

32 A candidate for delegate-at-large shall pay a fee of
33 twenty dollars; and a candidate for delegate from a
34 congressional district shall pay a fee of ten dollars;

35 (f) Candidates for members of political executive
36 committees and other political committees shall pay the
37 following filing fees:

38 A candidate for member of a state executive committee
39 of any political party shall pay a fee of twenty dollars; a
40 candidate for member of a county executive committee of
41 any political party shall pay a fee of ten dollars; and a
42 candidate for member of a congressional, senatorial or
43 delegate district committee of any political party shall pay
44 a fee of five dollars.

45 Candidates filing for an office to be filled by the voters
46 of one county shall pay the filing fee to the clerk of the
47 circuit court, and candidates filing for an office to be
48 filled by the voters of more than one county shall pay the
49 filing fee to the secretary of state at the time of filing their
50 certificates of announcement, and no certificate of
51 announcement shall be received until the filing fee is paid.

52 All moneys received by such clerk from such fees shall
53 be credited to the general county fund. Moneys received
54 by the secretary of state from fees paid by candidates for
55 offices to be filled by all the voters of the state shall be
56 deposited in a special fund for that purpose and shall be
57 apportioned and paid by him to the several counties on
58 the basis of population, and that received from candidates
59 from a district or judicial circuit of more than one county
60 shall be apportioned to the counties comprising the district
61 or judicial circuit in like manner. When such moneys are
62 received by sheriffs, it shall be credited to the general
63 county fund.

CHAPTER 11. TAXATION.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-5. Annual fee of secretary of state as attorney-in-fact.

1 Every domestic and foreign corporation, and every
2 domestic and foreign limited partnership shall pay an
3 annual fee of ten dollars for the services of the secretary
4 of state as attorney-in-fact for such corporation or limited
5 partnership, which fee shall be due and payable at the
6 same time and with the same return, collected by the same
7 officers, and accounted for in the same way, as the annual
8 license tax imposed on corporations under this article.
9 The tax commissioner shall pay over to the secretary of

10 state all attorney-in-fact fees collected under this section,
11 and such fees shall be used to offset the costs of the
12 secretary of state for his or her services as attorney-in-fact.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 5. EMPLOYER COVERAGE AND RESPONSIBILITY.

§21A-5-17c. Service of process on nonresident employer.

1 If an employer is not a resident of West Virginia, was a
2 resident but has left the state of West Virginia or is a
3 corporation not authorized to do business in this state and
4 for which employer services are performed in insured
5 work within the state of West Virginia and liability for
6 payment of unemployment compensation contributions is
7 due and payable to this state under the provisions of the
8 West Virginia unemployment compensation law, such
9 employer shall be deemed to appoint the secretary of state
10 of West Virginia, or his successor in office, to be the
11 employer's true and lawful attorney upon whom may be
12 served all lawful process in any action or any proceeding
13 for all purposes under this chapter and when served as
14 hereinafter provided such service shall have the same
15 force, effect and validity as if said nonresident employer
16 were personally served with summons and complaint in
17 this state.

18 Service shall be made by leaving the original and two
19 copies of both the summons and complaint, and the fee
20 required by section two, article one, chapter fifty-nine of
21 this code, with the secretary of state, or in his office, and
22 said service shall be sufficient upon said nonresident. In
23 the event any such summons and complaint is so served
24 on the secretary of state he shall immediately cause one of
25 the copies of the summons and complaint to be sent by
26 registered or certified mail, return receipt requested, to the
27 employer at the latter's last known or reasonably
28 ascertainable address. The employer's return receipt or, if
29 such registered or certified mail is returned to the
30 secretary of state refused by the addressee or for any other
31 reason is undelivered, such mail showing thereon the
32 stamp of the post-office department that delivery has been
33 refused, or other reason for nondelivery, shall be

34 appended to the original summons and complaint, and
35 filed by the secretary of state in the clerk's office of the
36 court from which said process issued.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.

§29-19-14. Nonresident charitable organizations, professional fund-raising counsel and solicitors; designation of secretary of state as agent for service of process; notice of such service by attorney general.

§29-19-9. Registration of professional fund-raising counsel and professional solicitor; bonds; records; books.

1 (a) No person may act as a professional fund-raising
2 counsel or professional solicitor for a charitable
3 organization subject to the provisions of this article, unless
4 he or she has first registered with the secretary of state.
5 Applications for such registration shall be in writing under
6 oath or affirmation in the form prescribed by the secretary
7 of state and contain such information as he or she may
8 require. The application for registration by professional
9 fund-raising counsel or professional solicitor shall be
10 accompanied by an annual fee in the sum of one hundred
11 dollars. A partnership or corporation, which is a
12 professional fund-raising counsel or professional solicitor,
13 may register for and pay a single fee on behalf of all its
14 members, officers, agents and employees. However, the
15 names and addresses of all officers, agents and employees
16 of professional fund-raising counsel and all professional
17 solicitors, their officers, agents, servants or employees
18 employed to work under the direction of a professional
19 solicitor shall be listed in the application.

20 (b) The applicant shall, at the time of the making of an
21 application, file with and have approved by the secretary
22 of state a bond in which the applicant shall be the
23 principal obligor in the sum of ten thousand dollars and
24 which shall have one or more sureties satisfactory to the

25 secretary of state, whose liability in the aggregate as such
26 sureties will at least equal the said sum and maintain said
27 bond in effect so long as a registration is in effect. The
28 bond shall run to the state for the use of the secretary of
29 state and any person who may have a cause of action
30 against the obligor of said bonds for any losses resulting
31 from malfeasance, nonfeasance or misfeasance in the
32 conduct of solicitation activities. A partnership or
33 corporation which is a professional fund-raising counsel
34 or professional solicitor may file a consolidated bond on
35 behalf of all its members, officers and employees.

36 (c) Each registration shall be valid throughout the state
37 for a period of one year and may be renewed for
38 additional one-year periods upon written application
39 under oath in the form prescribed by the secretary of state
40 and the payment of the fee prescribed herein.

41 (d) The secretary of state or his or her designate shall
42 examine each application, and if he or she finds it to be in
43 conformity with the requirements of this article and all
44 relevant rules and regulations and the registrant has
45 complied with the requirements of this article and all
46 relevant rules and regulations, he or she shall approve the
47 registration.

§29-19-14. Nonresident charitable organizations, professional fund-raising counsel and solicitors; designation of secretary of state as agent for service of process; notice of such service by attorney general.

1 Any charitable organization or professional fund-
2 raising counsel or professional solicitor having its or his or
3 her principal place of business without the state, or
4 organized under and by virtue of the laws of a foreign
5 state, which or who shall solicit contributions from people
6 in this state, is subject to the provisions of this article and
7 shall be deemed to have irrevocably appointed the
8 secretary of state as its or his or her agent upon whom
9 may be served any summons, subpoena, subpoena duces
10 tecum or other process directed to such charitable
11 organization, professional fund-raising counsel or
12 professional solicitor or any partner, principal officer or

13 director thereof in any action or proceeding brought
14 under the provisions of this article. Service of such process
15 upon the secretary of state shall be made by personally
16 delivering to and leaving with him a copy thereof along
17 with the fee required by section two, article one, chapter
18 fifty-nine of this code, and such service shall be sufficient
19 service: *Provided*, That notice of such service and a copy
20 of such process are forthwith sent by the secretary of state
21 to such charitable organization or professional fund-
22 raising counsel or professional solicitor by registered or
23 certified mail with return receipt requested at its or his or
24 her office, as set forth in the registration form required to
25 be filed with the secretary of state pursuant to this article
26 or in default of the filing of such form, at the last address
27 known to the secretary of state.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 2. STATE REGISTER.

§29A-2-7. Publication of state register.

1 (a) The Legislature intends that the secretary of state
2 offer to the public convenient and efficient access to
3 copies of the state register or parts thereof desired by the
4 citizens. The provisions of this section are enacted in order
5 to provide a means of doing so pending any other means
6 provided by law or legislative rule.

7 (b) All materials filed in the state register shall be
8 indexed daily in chronological order of filing with a brief
9 description of the item filed and a columnar cross index to
10 (1) agency and (2) section, article and chapter of the code
11 to which it relates and by which it is filed in the state
12 register and (3) such other information in the description
13 or cross index as the secretary of state believes will aid a
14 citizen in using the chronological index.

15 (c) To give users of the code of state rules a means to
16 know whether the rule is being superseded by a version of
17 the rule that has become effective, but not yet been final-
18 filed, prepared, proofed and distributed, or may be
19 superseded by a rule which is being proposed and

20 promulgated pursuant to article three but not yet become
21 final, the secretary of state shall provide with each update
22 of the code of state rules, a copy of the rule monitor and
23 its cross index which shows the rules that have become
24 effective but not yet distributed and the rules which may
25 be superseded by a rule which is being proposed. The
26 copy of the rule monitor distributed with the updates of
27 the code of state rules shall state plainly that this version of
28 the rule monitor only shows the status of the promulgation
29 of rules as of the date of distribution of the update of the
30 code of state rules, and that to obtain the most recent status
31 of the rules, the user should consult the rule monitor in the
32 most recent publication of the state register. With the first
33 distribution to the loose leaf version of the code of state
34 rules the secretary of state shall also distribute a divider
35 where the current rule monitor shall be maintained. With
36 the first distribution, the secretary of state shall also
37 include instructions, with a copy for insertion in or on the
38 front of each volume of the loose-leaf versions of the code
39 of state rules, to users on how the rule monitor can be
40 utilized to determine whether the version of the rule in the
41 code of state rules is currently in effect. This subsection is
42 not to be construed to require that subscribers to the
43 updates of the code of state rules receive a subscription to
44 the state register.

45 (d) The secretary of state shall cause to be duplicated
46 in such number as shall be required, on white paper with
47 two punches suitable for fastening in two-ring binders, the
48 permanent biennial state register, the chronological index
49 and other materials filed in the register, or any part by
50 agency or section, article or chapter for subscription at a
51 cost including labor, paper and postage, sufficient in his
52 judgment to defray the expense of such duplication. The
53 secretary of state shall also offer, at least at monthly
54 intervals, supplements to the published materials listed
55 above. Any subscription for monthly supplements shall be
56 offered annually and shall include the chronological
57 index and materials related to such agency or agencies, or
58 section, article or chapter of the code as a person may
59 designate. A person may limit the request to notices only,

60 to notices and rules, or to notices and proposed rules, or
61 any combination thereof.

62 (e) Every two years, the secretary of state shall offer
63 for purchase succeeding biennial permanent state registers
64 which shall consist of all rules effective on the date of
65 publication selected by the secretary of state, which date
66 shall be at least two years from the last such publication
67 date, and materials filed in the state register relating
68 thereto. The cost of the succeeding biennial permanent
69 state register and for the portion relating to any agency or
70 any section, article or chapter of the code which may be
71 designated by a person purchasing the same shall be fixed
72 in the same manner specified in section eleven of this
73 article.

74 (f) The secretary of state may omit from any
75 duplication made pursuant to subsection (e) of this section
76 any rules the duplication of which would be unduly
77 cumbersome, expensive or otherwise inexpedient, if a
78 copy of such rules is made available from the original
79 filing of such rule, at a price not exceeding the cost of
80 duplication, and if the volume from which such rule is
81 omitted includes a notice in that portion of the publication
82 in which the rule would have been located, stating (1) the
83 general subject matter of the omitted rule, (2) each section,
84 article and chapter of this code to which the omitted rule
85 relates, and (3) the means by which a copy of the omitted
86 rule may be obtained.

87 (g) The secretary of state may propose changes to the
88 procedures outlined in the section above by proposing a
89 legislative rule under the provisions of section nine, article
90 three of this chapter, but may promulgate no rules
91 containing those changes unless authorized by the
92 Legislature pursuant to article three of this chapter.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 18. PRIVATE INVESTIGATIVE AND SECURITY SERVICES.

§30-18-3. Application requirements for a license to conduct the private investigation business.

§30-18-6. Application requirements for a license to conduct security guard business.

§30-18-3. Application requirements for a license to conduct the private investigation business.

1 (a) To be licensed to be a private detective, a private
2 investigator or to operate a private detective or
3 investigative firm, each applicant shall complete and file a
4 written application, under oath, with the secretary of state
5 and in such form as the secretary may prescribe.

6 (b) On the application each applicant shall provide the
7 following information: The applicant's name, birth date,
8 citizenship, physical description, military service, current
9 residence, residences for the preceding seven years,
10 qualifying education or experience, the location of each
11 of his or her offices in this state and any other information
12 requested by the secretary of state in order to comply with
13 the requirements of this article.

14 (c) In the case of a corporation that is seeking a firm
15 license, the application shall be signed by the president,
16 and verified by the secretary or treasurer of such
17 corporation and shall specify the name of the corporation,
18 the date and place of its incorporation, the names and titles
19 of all officers, the location of its principal place of
20 business, and the name of the city, town or village, stating
21 the street and number, and otherwise such apt description
22 as will reasonably indicate the location. If the corporation
23 has been incorporated in a state other than West Virginia, a
24 certificate of good standing from the state of
25 incorporation must accompany the application. This
26 information must be provided in addition to that required
27 to be provided by the applicant.

28 (d) The applicant shall provide:

29 (1) Information in the application about whether the
30 applicant has ever been arrested for or convicted of any
31 crime or wrongs, either done or threatened, against the
32 government of the United States;

33 (2) Information about offenses against the laws of West
34 Virginia or any state; and

35 (3) Any facts as may be required by the secretary of
36 state to show the good character, competency and integrity
37 of the applicant.

38 To qualify for a firm license, the applicant shall
39 provide such information for each person who will be
40 authorized to conduct the private investigation business
41 and for each officer, member or partner of the firm.

42 (e) As part of the application, each applicant shall give
43 the secretary of state permission to review the records held
44 by the division of public safety for any convictions that
45 may be on record for the applicant.

46 (f) For each applicant for a license and for each
47 officer, member and partner of the firm applying for a
48 license, the application shall be accompanied by one
49 recent full-face photograph and one complete set of the
50 person's fingerprints.

51 (g) For each applicant, the application shall be
52 accompanied by:

53 (1) Character references from at least five reputable
54 citizens. Each reference must have known the applicant
55 for at least five years preceding the application. No
56 reference may be connected to the applicant by blood or
57 marriage. All references must have been written for the
58 purpose of the application for a license to conduct the
59 private investigation business; and

60 (2) A nonrefundable application processing service
61 charge of fifty dollars, which shall be payable to the
62 secretary of state to offset the cost of license review and
63 criminal investigation background report from the
64 department of public safety, along with a license fee of
65 one hundred dollars if the applicant is an individual, or
66 two hundred dollars if the applicant is a firm, or five
67 hundred dollars if the applicant is a nonresident of West
68 Virginia or a foreign corporation or business entity. The
69 license fee shall be deposited to the general revenue fund,
70 and shall be refunded only if the license is denied.

71 (h) All applicants for private detective or private
72 investigator licenses or for private investigation firm

73 licenses shall file in the office of secretary of state a surety
74 bond. Such bond shall:

75 (1) Be in the sum of two thousand five hundred dollars
76 and conditioned upon the faithful and honest conduct of
77 such business by such applicant;

78 (2) Be written by a company recognized and approved
79 by the insurance commissioner of West Virginia and
80 approved by the attorney general of West Virginia with
81 respect to its form;

82 (3) Be in favor of the state of West Virginia for any
83 person who is damaged by any violation of this article.
84 The bond must also be in favor of any person damaged
85 by such a violation.

86 (i) Any person claiming against the bond required by
87 subsection (h) of this section for a violation of this article
88 may maintain an action at law against any licensed
89 individual or firm and against the surety. The surety shall
90 be liable only for damages awarded under section twelve
91 of this article and not the punitive damages permitted
92 under that section. The aggregate liability of the surety to
93 all persons damaged by a person or firm licensed under
94 this article may not exceed the amount of the bond.

**§30-18-6. Application requirements for a license to conduct
security guard business.**

1 (a) To be licensed as a security guard or to operate a
2 security guard firm, each applicant shall complete and file
3 a written application, under oath, with the secretary of state
4 and in such form as the secretary may prescribe.

5 (b) On the application, each applicant shall provide the
6 following information: The applicant's name, birth date,
7 citizenship, physical description, military service, current
8 residence, residences for the preceding seven years,
9 qualifying education or experience, the location of each
10 of his or her offices in this state and any other information
11 requested by the secretary of state in order to comply with
12 the requirements of this article.

13 (c) In the case of a corporation that is seeking a firm
14 license, the application shall be signed by the president,
15 and verified by the secretary or treasurer of such
16 corporation and shall specify the name of the corporation,
17 the date and place of its incorporation, the names and titles
18 of all officers, the location of its principal place of
19 business, and the name of the city, town or village, stating
20 the street and number, and otherwise such apt description
21 as will reasonably indicate the location. If the corporation
22 has been incorporated in a state other than West Virginia, a
23 certificate of good standing from the state of
24 incorporation must accompany the application. This
25 information shall be provided in addition to that required
26 to be provided the applicant.

27 (d) The applicant shall provide:

28 (1) Information in the application about whether the
29 applicant has ever been arrested for or convicted of any
30 crime or wrongs, either done or threatened, against the
31 government of the United States;

32 (2) Information about offenses against the laws of West
33 Virginia or any state; and

34 (3) Any facts as may be required by the secretary of
35 state to show the good character, competency and integrity
36 of the applicant.

37 To qualify for a firm license, the applicant shall
38 provide such information for each person who would be
39 authorized to conduct security guard business under the
40 applicant's firm license and for each officer, member or
41 partner in the firm.

42 (e) As part of the application, each applicant shall give
43 the secretary of state permission to review the records held
44 by the department of public safety for any convictions
45 that may be on record for the applicant.

46 (f) For each applicant for a license and for each
47 officer, member and partner of the firm applying for a
48 license, the application shall be accompanied by one
49 recent full-face photograph and one complete set of the
50 person's fingerprints.

51 (g) For each applicant, the application shall be
52 accompanied by:

53 (1) Character references from at least five reputable
54 citizens. Each reference must have known the applicant
55 for at least five years preceding the application. No
56 reference may be connected to the applicant by blood or
57 marriage. All references must have been written for the
58 purpose of the application for a license to conduct
59 security guard business; and

60 (2) A nonrefundable application processing service
61 charge of fifty dollars, which shall be payable to the
62 secretary of state to offset the cost of license review and
63 criminal investigation background report from the
64 department of public safety, along with a license fee of
65 one hundred dollars if the applicant is an individual, or
66 two hundred dollars if the applicant is a firm, or five
67 hundred dollars if the applicant is a nonresident of West
68 Virginia or a foreign corporation or business entity. The
69 license fee shall be deposited to the general revenue fund,
70 and shall be refunded only if the license is denied.

71 (h) All applicants for security guard licenses or
72 security guard firm licenses shall file in the office of
73 secretary of state a surety bond. Such bond shall:

74 (1) Be in the sum of two thousand five hundred dollars
75 and conditioned upon the faithful and honest conduct of
76 such business by such applicant;

77 (2) Be written by a company recognized and approved
78 by the insurance commissioner of West Virginia and
79 approved by the attorney general of West Virginia with
80 respect to its form;

81 (3) Be in favor of the state of West Virginia for any
82 person who is damaged by any violation of this article.
83 The bond must also be in favor of any person damaged
84 by such a violation.

85 (i) Any person claiming against the bond required by
86 subsection (h) of this section for a violation of this article
87 may maintain an action at law against any licensed
88 individual or firm and against the surety. The surety shall

89 be liable only for damages awarded under section twelve
90 of this article and not the punitive damages permitted
91 under that section. The aggregate liability of the surety to
92 all persons damaged by a person or firm licensed under
93 this article may not exceed the amount of the bond.

CHAPTER 31. CORPORATIONS.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-15. Secretary of state constituted attorney-in-fact for all corporations; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

§31-1-56. Appointment of person to whom notice or process may be sent by the secretary of state; change of principal office or name and address of person to receive notice or process.

§31-1-15. Secretary of state constituted attorney-in-fact for all corporations; manner of acceptance or service of notices and process upon secretary of state; what constitutes conducting affairs or doing or transacting business in this state for purposes of this section.

1 The secretary of state is hereby constituted the
2 attorney-in-fact for and on behalf of every corporation
3 created by virtue of the laws of this state and every foreign
4 corporation authorized to conduct affairs or do or transact
5 business herein pursuant to the provisions of this article,
6 with authority to accept service of notice and process on
7 behalf of every such corporation and upon whom service
8 of notice and process may be made in this state for and
9 upon every such corporation. No act of such corporation
10 appointing the secretary of state such attorney-in-fact shall
11 be necessary. Immediately after being served with or
12 accepting any such process or notice, of which process or
13 notice two copies for each defendant shall be furnished
14 the secretary of state with the original notice or process,
15 together with the fee required by section two, article one,
16 chapter fifty-nine of this code, the secretary of state shall
17 file in his office a copy of such process or notice, with a
18 note thereon endorsed of the time of service, or
19 acceptance, as the case may be, and transmit one copy of
20 such process or notice by registered or certified mail,

21 return receipt requested, to the person to whom notice and
22 process shall be sent, whose name and address were last
23 furnished to the state officer at the time authorized by
24 statute to accept service of notice and process and upon
25 whom notice and process may be served; and if no such
26 person has been named, to the principal office of the
27 corporation at the address last furnished to the state officer
28 at the time authorized by statute to accept service of
29 process and upon whom process may be served, as
30 required by law. No process or notice shall be served on
31 the secretary of state or accepted by him less than ten days
32 before the return day thereof. Such corporation shall pay
33 the annual fee prescribed by article twelve, chapter eleven
34 of this code for the services of the secretary of state as its
35 attorney-in-fact.

36 Any foreign corporation which shall conduct affairs or
37 do or transact business in this state without having been
38 authorized so to do pursuant to the provisions of this
39 article shall be conclusively presumed to have appointed
40 the secretary of state as its attorney-in-fact with authority
41 to accept service of notice and process on behalf of such
42 corporation and upon whom service of notice and process
43 may be made in this state for and upon every such
44 corporation in any action or proceeding described in the
45 next following paragraph of this section. No act of such
46 corporation appointing the secretary of state as such
47 attorney-in-fact shall be necessary. Immediately after
48 being served with or accepting any such process or notice,
49 of which process or notice two copies for each defendant
50 shall be furnished the secretary of state with the original
51 notice or process, together with the fee required by section
52 two, article one, chapter fifty-nine of this code, the
53 secretary of state shall file in his office a copy of such
54 process or notice, with a note thereon endorsed of the time
55 of service or acceptance, as the case may be, and transmit
56 one copy of such process or notice by registered or
57 certified mail, return receipt requested, to such corporation
58 at the address of its principal office, which address shall be
59 stated in such process or notice. Such service or
60 acceptance of such process or notice shall be sufficient if
61 such return receipt shall be signed by an agent or

62 employee of such corporation, or the registered or
63 certified mail so sent by the secretary of state is refused by
64 the addressee and the registered or certified mail is
65 returned to the secretary of state, or to his office, showing
66 thereon the stamp of the United States postal service that
67 delivery thereof has been refused, and such return receipt
68 or registered or certified mail is appended to the original
69 process or notice and filed therewith in the clerk's office
70 of the court from which such process or notice was issued.
71 No process or notice shall be served on the secretary of
72 state or accepted by him less than ten days before the
73 return date thereof. The court may order such
74 continuances as may be reasonable to afford each
75 defendant opportunity to defend the action or
76 proceedings.

77 For the purpose of this section, a foreign corporation
78 not authorized to conduct affairs or do or transact
79 business in this state pursuant to the provisions of this
80 article shall nevertheless be deemed to be conducting
81 affairs or doing or transacting business herein (a) if such
82 corporation makes a contract to be performed, in whole or
83 in part, by any party thereto, in this state, (b) if such
84 corporation commits a tort, in whole or in part, in this
85 state, or (c) if such corporation manufactures, sells, offers
86 for sale or supplies any product in a defective condition
87 and such product causes injury to any person or property
88 within this state notwithstanding the fact that such
89 corporation had no agents, servants or employees or
90 contacts within this state at the time of said injury. The
91 making of such contract, the committing of such tort or
92 the manufacture or sale, offer of sale or supply of such
93 defective product as hereinabove described shall be
94 deemed to be the agreement of such corporation that any
95 notice or process served upon, or accepted by, the
96 secretary of state pursuant to the next preceding
97 paragraph of this section in any action or proceeding
98 against such corporation arising from, or growing out of,
99 such contract, tort, or manufacture or sale, offer of sale or
100 supply of such defective product shall be of the same legal
101 force and validity as process duly served on such
102 corporation in this state.

§31-1-56. Appointment of person to whom notice or process may be sent by the secretary of state; change of principal office or name and address of person to receive notice or process.

1 (a) A corporation may at any time appoint a person
2 other than the corporation to whom notice or process
3 served upon the secretary of state or service of which is
4 accepted by the secretary of state may be sent, as required
5 by section fifteen of this article, by filing with the
6 secretary of state a statement setting forth:

7 (1) The name of the corporation and the state of its
8 incorporation.

9 (2) The present address of its principal office.

10 (3) Express appointment of and the name and address
11 of the person to whom notice or process shall be sent by
12 the secretary of state under section fifteen of this article.

13 (4) Express authority to the secretary of state to send
14 to such person at the address given, all notices and process
15 served upon the secretary of state or service of which is
16 accepted by the secretary of state.

17 (5) That such appointment was duly authorized by the
18 board of directors of the corporation.

19 Such statement shall be signed by the president or a
20 vice president or secretary or an assistant secretary, of the
21 corporation, verified by the signer and delivered to the
22 secretary of state, and upon receipt thereof shall be filed
23 by the secretary of state in his office.

24 (b) A corporation may at any time change the address
25 of its principal office; or the name and address, or the
26 address, of the person to whom shall be sent notice or
27 process served upon, or service of which is accepted by,
28 the secretary of state. Such change shall become effective
29 as the name and address or address last furnished to the
30 secretary of state for the purposes of section fifteen of this
31 article only when such corporation has filed in the office
32 of the secretary of state a statement setting forth:

33 (1) The name of the corporation.

- 34 (2) The state under whose laws it was incorporated.
- 35 (3) If the address of the principal office is changed,
36 then the address of the former or present principal office
37 and the address to which it is changed or to be changed.
- 38 (4) If the name and address or address only of the
39 person to whom notice or process is to be sent is to be
40 changed, then the name and address of such person to be
41 used from and after the filing of the statement required by
42 this section.
- 43 (5) That such change was duly authorized by the
44 board of directors.
- 45 (c) The corporation may file a record of the election
46 or appointment of new corporate officers, setting forth:
- 47 (1) The name and principal office address of the
48 corporation.
- 49 (2) The name, address and office of each new officer.
- 50 (3) That the officers were duly elected or appointed.
- 51 Such statement shall be signed by the president, vice
52 president, secretary or assistant secretary of the
53 corporation and verified by him. The fee for filing any
54 notice of a change of agent, officers and/or principal
55 office address shall be as required by section two, article
56 one, chapter fifty-nine of this code.

CHAPTER 31B. UNIFORM LIMITED LIABILITY COMPANY ACT.

ARTICLE 1. GENERAL PROVISIONS.

§31B-1-111. Service of process.

- 1 (a) An agent for service of process appointed by a
2 limited liability company or a foreign limited liability
3 company is an agent of the company for service of any
4 process, notice or demand required or permitted by law to
5 be served upon the company.
- 6 (b) If a limited liability company or foreign limited
7 liability company fails to appoint or maintain an agent for

8 service of process in this state or the agent for service of
9 process cannot with reasonable diligence be found at the
10 agent's address, the secretary of state is an agent of the
11 company upon whom process, notice or demand may be
12 served.

13 (c) Service of any process, notice or demand on the
14 secretary of state may be made by delivering to and
15 leaving with the secretary of state, the assistant secretary of
16 state or clerk having charge of the limited liability
17 company department of the secretary of state, the original
18 process, notice or demand and two copies thereof for each
19 defendant, along with the fee required by section two,
20 article one, chapter fifty-nine of this code. No process,
21 notice or demand may be served on or accepted by the
22 secretary of state less than ten days before the return day
23 thereof. If the process, notice or demand is served on the
24 secretary of state, the secretary of state shall forward one
25 of the copies by registered or certified mail, return receipt
26 requested, to the company at its designated office and
27 shall file in his or her office a copy of such process, notice
28 or demand, with a note thereon endorsed of the time of
29 service, or acceptance, as the case may be. Such service or
30 acceptance of such process, notice or demand is sufficient
31 if such return receipt is signed by an agent or employee of
32 such company, or the registered or certified mail so sent
33 by the secretary of state is refused by the addressee and
34 the registered or certified mail is returned to the secretary
35 of state, showing thereon the stamp of the United States
36 postal service that delivery thereof has been refused, and
37 such return receipt or registered or certified mail is
38 appended to the original process, notice or demand and
39 filed therewith in the clerk's office of the court from
40 which such process, notice or demand was issued.

41 (d) The secretary of state shall keep a record of all
42 processes, notices and demands served pursuant to this
43 section and record the time of and the action taken
44 regarding the service.

45 (e) This section does not affect the right to serve
46 process, notice or demand in any manner otherwise
47 provided by law.

CHAPTER 33. INSURANCE.**ARTICLE 4. GENERAL PROVISIONS.**

§33-4-12. Service of process on licensed insurers.

§33-4-13. Service of process on unlicensed insurers.

§33-4-12. Service of process on licensed insurers.

1 The secretary of state shall be, and is hereby
2 constituted, the attorney-in-fact of every licensed insurer,
3 domestic, foreign, or alien, transacting insurance in this
4 state, upon whom all legal process in any action, suit or
5 proceeding against it shall be served, and he may accept
6 service of such process. Such process shall be served
7 upon the secretary of state, or accepted by him, in the
8 same manner as provided for service of process upon
9 unlicensed insurers under subdivisions (2) and (3) of
10 subsection (b) of section thirteen of this article. Each
11 licensed insurer shall pay to the secretary of state an
12 annual fee of ten dollars for services as authorized agent
13 for service of process, which shall be used to offset the
14 costs of the secretary of state for his or her services as
15 attorney-in-fact.

§33-4-13. Service of process on unlicensed insurers.

1 (a) The purpose of this section is to subject certain
2 insurers to the jurisdiction of the courts of this state in
3 suits by or on behalf of insureds or beneficiaries under
4 certain insurance contracts and to subject said insurers to
5 the jurisdiction of the courts of this state in suits by or on
6 behalf of the insurance commissioner of West Virginia.
7 The Legislature declares that it is a subject of concern that
8 certain insurers, while not licensed to transact insurance in
9 this state, are soliciting the sale of insurance and selling
10 insurance to residents of this state, thus presenting the
11 insurance commissioner with the problem of resorting to
12 courts of foreign jurisdictions for the purpose of
13 enforcing the insurance laws of this state for the protection
14 of our citizens. The Legislature declares that it is also a
15 subject of concern that many residents of this state hold
16 policies of insurance issued or delivered in this state by
17 insurers not licensed to transact insurance in this state,

18 thus presenting to such residents the often insuperable
19 obstacle of resorting to distant fora for the purpose of
20 asserting legal rights under such policies. In furtherance
21 of such state interest, the Legislature herein provides a
22 method of substituted service of process upon such
23 insurers and declares that in so doing it exercises its
24 powers to protect its residents and to define, for the
25 purpose of this section, what constitutes transacting
26 insurance in this state, and also exercises powers and
27 privileges available to the state by virtue of public law
28 number fifteen, seventy-ninth Congress of the United
29 States, chapter twenty, first session, Senate number three
30 hundred forty, as amended, which declares that the
31 business of insurance and every person engaged therein
32 shall be subject to the laws of the several states.

33 (b) (1) Any of the following acts in this state, effected
34 by mail or otherwise, by an unlicensed foreign or alien
35 insurer: (i) The issuance or delivery of contracts of
36 insurance to residents of this state or to corporations
37 authorized to do business therein, (ii) the solicitation of
38 applications for such contracts, (iii) the collection of
39 premiums, membership fees, assessments or other
40 considerations for such contracts, or (iv) any other
41 transaction of business, is equivalent to and shall constitute
42 an appointment by such insurer of the secretary of state
43 and his or her successor in office, to be its true and lawful
44 attorney, upon whom may be served all lawful process in
45 any action, suit or proceeding instituted by or on behalf of
46 an insured or beneficiary arising out of any such contract
47 of insurance, and in any action, suit or proceeding which
48 may be instituted by the insurance commissioner in the
49 name of any such insured or beneficiary or in the name of
50 the state of West Virginia, and in any administrative
51 proceeding before the commissioner, and any such act
52 shall be signification of its agreement that such service of
53 process is of the same legal force and validity as personal
54 service of process in this state upon such insurer.

55 (2) Such service of process upon any such insurer or
56 upon an insurer pursuant to section twenty-two, article
57 three of this chapter in any such action or proceeding in
58 any court of competent jurisdiction of this state, or in any

59 administrative proceeding before the commissioner, may
60 be made by serving the secretary of state or his or her
61 chief clerk with two copies and an original thereof and the
62 payment to him or her of the fee required by section two,
63 article one, chapter fifty-nine of this code. The secretary
64 of state shall forward a copy of such process by registered
65 or certified mail to the defendant at its last-known
66 principal place of business and shall keep a record of all
67 process so served upon him or her. Such service of
68 process is sufficient, provided notice of such service and a
69 copy of the process are sent within ten days thereafter by
70 or on behalf of the plaintiff or moving party to the
71 defendant, or responding party, at its last-known principal
72 place of business by registered or certified mail with
73 return receipt requested. The plaintiff or moving party
74 shall file with the clerk of the court in which the action is
75 pending, or with the judge or magistrate of such court in
76 case there be no clerk, or in the official records of the
77 commissioner if an administrative proceeding before the
78 commissioner, an affidavit of compliance herewith, a copy
79 of the process and either a return receipt purporting to be
80 signed by the defendant or responding party or a person
81 qualified to receive its registered or certified mail in
82 accordance with the rules and customs of the post-office
83 department; or, if acceptance was refused by the defendant
84 or responding party or an agent thereof, the original
85 envelope bearing a notation by the postal authorities that
86 receipt was refused. Service of process so made shall be
87 deemed to have been made within the territorial
88 jurisdiction of any court in this state.

89 (3) Service of process in any such action, suit or
90 proceeding shall in addition to the manner provided in
91 subdivision (2) of this subsection (b) be valid if served
92 upon any person within this state who, in this state on
93 behalf of such insurer, is

94 (A) Soliciting insurance, or

95 (B) Making, issuing or delivering any contract of
96 insurance, or

97 (C) Collecting or receiving any premium, membership
98 fee, assessment or other consideration for insurance:

99 *Provided*, That notice of such service and a copy of such
100 process are sent within ten days thereafter, by or on behalf
101 of the plaintiff or moving party to the defendant or
102 responding party at the last-known principal place of
103 business of the defendant or responding party, by
104 registered or certified mail with return receipt requested.
105 The plaintiff or moving party shall file with the clerk of
106 the court in which the action is pending, or with the judge
107 or magistrate of such court in case there be no clerk, or in
108 the official records of the commissioner if an
109 administrative proceeding before the commissioner, an
110 affidavit of compliance herewith, a copy of the process
111 and either a return receipt purporting to be signed by the
112 defendant or responding party, or a person qualified to
113 receive its registered or certified mail in accordance with
114 the rules and customs of the post-office department; or, if
115 acceptance was refused by the defendant or responding
116 party, or an agent thereof, the original envelope bearing a
117 notation by the postal authorities that receipt was refused.

118 (4) The papers referred to in subdivisions (2) and (3)
119 of this subsection (b) shall be filed within thirty days after
120 the return receipt or other official proof of delivery or the
121 original envelope bearing a notation of refusal, as the case
122 may be, is received by the plaintiff or moving party.
123 Service of process shall be complete ten days after such
124 process and the accompanying papers are filed in
125 accordance with this section.

126 (5) Nothing in this section contained shall limit or
127 abridge the right to serve any process, notice or demand
128 upon any insurer in any other manner now or hereafter
129 permitted by law.

130 (c)(1) Before any unauthorized or unlicensed foreign
131 or alien insurer shall file or cause to be filed any pleading
132 in any action, suit or proceeding instituted against it, or
133 any notice, order, pleading or process in an administrative
134 proceeding before the commissioner instituted against
135 such insurer, such unauthorized or unlicensed insurer shall
136 either: (i) Deposit with the clerk of the court in which such
137 action, suit or proceeding is pending, or with the
138 commissioner in an administrative proceeding before the

139 commissioner, cash or securities or file with such clerk or
140 the commissioner a bond with good and sufficient sureties,
141 to be approved by the court or the commissioner, in an
142 amount to be fixed by the court or commissioner
143 sufficient to secure the payment of any final judgment
144 which may be rendered in such action or administrative
145 proceeding; *Provided*, That the court or the commissioner
146 may in its, his or her respective discretion make an order
147 dispensing with such deposit or bond where the auditor of
148 the state shall have certified to such court or commissioner
149 that such insurer maintains within this state funds or
150 securities in trust or otherwise sufficient and available to
151 satisfy any final judgment which may be entered in such
152 action, suit or proceeding; or (ii) procure a license to
153 transact insurance in this state.

154 (2) The court or the commissioner in any action, suit
155 or proceeding in which service is made in the manner
156 provided in subdivision (2) or (3), subsection (b) of this
157 section may, in its, his or her respective discretion, order
158 such postponement as may be necessary to afford the
159 defendant or responding party reasonable opportunity to
160 comply with the provisions of subdivision (1) of this
161 subsection (c) and to defend such action or proceeding.

162 (3) Nothing in subdivision (1) of this subsection (c) is
163 to be construed to prevent an unauthorized or unlicensed
164 foreign or alien insurer from filing a motion to set aside
165 service thereof made in the manner provided in
166 subdivision (2) or (3), subsection (b) of this section on the
167 grounds that such insurer has not done any of the acts
168 enumerated in subdivision (1), subsection (b) of this
169 section, or in section twenty-two, article three of this
170 chapter.

171 (d) In any action against an unauthorized or
172 unlicensed foreign or alien insurer upon a contract of
173 insurance issued or delivered in this state to a resident
174 thereof or to a corporation authorized to do business
175 therein, if the insurer has failed for thirty days after
176 demand prior to the commencement of the action to make
177 payment in accordance with the terms of the contract, and
178 it appears to the court that such refusal was vexatious and

179 without reasonable cause, the court may allow to the
180 plaintiff a reasonable attorney's fee and include such fee
181 in any judgment that may be rendered in such action.
182 Such fee shall not exceed twelve and one-half percent of
183 the amount which the court finds the plaintiff is entitled to
184 recover against the insurer, but in no event shall such fee
185 be less than twenty-five dollars. Failure of an insurer to
186 defend any such action shall be deemed prima facie
187 evidence that its failure to make payment was vexatious
188 and without reasonable cause.

CHAPTER 38. LIENS.

Article

1A. Trustees of Security Trusts.

5A. Suggestions of Salary and Wages of Persons Engaged in Private Employment.

ARTICLE 1A. TRUSTEES OF SECURITY TRUSTS.

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

1 Service of such process or notice shall be made by
2 mailing or delivering to the office of said secretary of state
3 three copies of such process or notice, with a notation
4 thereon of the residence address of the trustee upon whom
5 service is being had, as stated in the security trust; if the
6 address of the trustee be not stated in the security trust, the
7 notation shall state the address of the beneficiary of such
8 trust as given in the security trust; and service thereof shall
9 be complete upon the receipt in said office of such notice
10 or process bearing such notation and accompanied by the
11 fee required by section two, article one, chapter fifty-nine
12 of this code, which shall be taxed as costs in the suit, action
13 or proceeding. The secretary of state shall pay into the
14 state treasury all funds so coming into his hands, and shall
15 keep one copy of all such process and notices, with a
16 record of the day and hour of service thereof.

ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.

§38-5A-5. Service of suggestee execution upon suggestee; payments in satisfaction of execution; action for

failure or refusal to pay; payments to be made every ninety days.

1 (a) Service of a suggestee execution against salary or
2 wages may be made by the clerk of the circuit court or the
3 magistrate court clerk, as the case may be, by sending a
4 copy of the suggestee execution to the suggestee by
5 certified mail, return receipt requested, with delivery
6 restricted to the addressee. If the registered mail is
7 unclaimed, or otherwise is not accepted or is refused by
8 the suggestee, then service of the suggestee execution shall
9 be made in the same manner as a summons commencing
10 an action is served, in accordance with the rules of civil
11 procedure for trial courts of record: *Provided*, That if the
12 suggestee is located in a county other than the county
13 where the suggestee execution issues, the clerk may mail
14 the suggestee execution by first class mail to the sheriff of
15 the other county for such service. If the service is made on
16 a corporation, limited liability company, or other person
17 or entity through the secretary of state, it shall be
18 submitted along with the fee required by section two,
19 article one, chapter fifty-nine of this code.

20 (b) If the suggestee served with the execution is
21 indebted or will in the future become indebted to the
22 judgment debtor for salary or wages, then during the time
23 the execution remains a lien on any indebtedness for
24 salary and wages, the suggestee is required to pay over to
25 the officer serving the same or to the judgment creditor
26 the percentage of the indebtedness required by section
27 three of this article, until the execution is wholly satisfied.
28 The suggestee shall deduct the amounts paid from the
29 amounts payable to the judgment debtor as salary or
30 wages, and the deduction of these amounts is a bar to any
31 further action by the judgment creditor against the wages
32 or salary of the judgment debtor.

33 (c) Once every ninety days during the life of such
34 execution and any renewal execution, the suggestee upon
35 whom the execution or any renewal execution is served
36 shall pay over to the officer who served the same or to the
37 judgment creditor the full amount of money held or

38 retained pursuant to such execution or renewal execution
39 during the preceding ninety days.

40 If the suggestee upon whom the execution is served
41 fails or refuses to pay over to the officer serving the
42 execution or to the judgment creditor the required
43 percentage of the indebtedness, as aforesaid, he or she
44 shall be liable to an action therefor by the judgment
45 creditor named in the execution and the amount recovered
46 in the action shall be applied in satisfaction of the
47 execution.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPERS.

§46-9-403. What constitutes filing; duration of filing; effect of lapsed filing;
duties of filing officer.

§46-9-404. Termination statement.

§46-9-405. Assignment of security interest; duties of filing officer; fees.

§46-9-406. Release of collateral; duties of filing officer; fees.

§46-9-407. Information from filing officer; central indexing system for
recording security interest in farm products; contents.

§46-9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.

1 (1) Presentation for filing of a financing statement and
2 tender of the filing fee or acceptance of the statement by
3 the filing officer constitutes filing under this article.

4 (2) Except as provided in subsection (6) or in
5 subsection (8), a filed financing statement is effective for a
6 period of five years from the date of filing. The
7 effectiveness of a filed financing statement lapses on the
8 expiration of the five-year period, unless a continuation
9 statement is filed prior to the lapse. If a security interest
10 perfected by filing exists at the time insolvency
11 proceedings are commenced by or against the debtor, the
12 security interest remains perfected until termination of the
13 insolvency proceedings and thereafter for a period of
14 sixty days or until expiration of the five-year period,
15 whichever occurs later. Upon lapse the security interest
16 becomes unperfected, unless it is perfected without filing.
17 If the security interest becomes unperfected upon lapse, it

18 is deemed to have been unperfected as against a person
19 who became a purchaser or lien creditor before lapse.

20 (3) A continuation statement may be filed by the
21 secured party within six months prior to the expiration of
22 the five-year period specified in subsection (2). Any such
23 continuation statement must be signed by the secured
24 party, identify the original statement by file number and
25 state that the original statement is still effective. A
26 continuation statement signed by a person other than the
27 secured party of record must be accompanied by a
28 separate written statement of assignment signed by the
29 secured party of record and complying with subsection
30 (2), section four hundred five of this article, including
31 payment of the required fee. Upon timely filing of the
32 continuation statement, the effectiveness of the original
33 statement is continued for five years after the last date to
34 which the filing was effective whereupon it lapses in the
35 same manner as provided in subsection (2) unless another
36 continuation statement is filed prior to such lapse.
37 Succeeding continuation statements may be filed in the
38 same manner to continue the effectiveness of the original
39 statement. Unless a statute on disposition of public
40 records provides otherwise, the filing officer may remove
41 a lapsed statement from the files and destroy it
42 immediately if he has retained a microfilm or other
43 photographic record, or in other cases after one year after
44 the lapse. The filing officer shall so arrange matters by
45 physical annexation of financing statements to
46 continuation statements or other related filings, or by
47 other means, that if he physically destroys the financing
48 statements of a period more than five years past, those
49 which have been continued by a continuation statement or
50 which are still effective under subsection (6) shall be
51 retained.

52 (4) Except as provided in subsection (7), a filing
53 officer shall mark each statement with a file number and
54 with the date and hour of filing and shall hold the
55 statement or a microfilm or other photographic copy
56 thereof for public inspection. In addition the filing
57 officer shall index the statements according to the name of
58 the debtor and shall note in the index the file number and
59 the address of the debtor given in the statement.

60 (5) The uniform fee for filing and indexing and for
61 stamping a copy furnished by the secured party to show
62 the date and place of filing for an original financing
63 statement or for a continuation statement shall be ten
64 dollars. The secured party may at his option show a trade
65 name for any person.

66 (6) If the debtor is a transmitting utility (subsection
67 (5), section four hundred one of this article) and a filed
68 financing statement so states, it is effective until a
69 termination statement is filed. A real estate mortgage
70 which is effective as a fixture filing under subsection (6),
71 section four hundred two of this article remains effective
72 as a fixture filing until the mortgage is released or satisfied
73 of record or its effectiveness otherwise terminates as to the
74 real estate.

75 (7) When a financing statement covers timber to be cut
76 or covers minerals or the like (including oil and gas) or
77 accounts subject to subsection (5), section one hundred
78 three of this article, or is filed as a fixture filing, it shall be
79 filed for record and the filing officer shall index it under
80 the names of the debtor and any owner of record shown
81 on the financing statement in the same fashion as if they
82 were the mortgagors in a mortgage of the real estate
83 described, and, to the extent that the law of this state
84 provides for indexing of mortgages under the name of the
85 mortgagee, under the name of the secured party as if he
86 were the mortgagee thereunder, or where indexing is by
87 description in the same fashion as if the financing
88 statement were a mortgage of the real estate described.

89 (8) Notwithstanding any provision of this code to the
90 contrary, a filed financing statement on public bond issues
91 of counties, municipalities or public service districts of this
92 state shall be effective for the life of such bond issues
93 without the need for filing continuation statements.

§46-9-404. Termination statement.

1 (1) If a financing statement covering consumer goods
2 is filed on or after the first day of July, 1975, then within
3 one month or within ten days following written demand
4 by the debtor after there is no outstanding secured
5 obligation and no commitment to make advances, incur

6 obligations or otherwise give value, the secured party must
7 file with each filing officer with whom the financing
8 statement was filed, a termination statement to the effect
9 that he no longer claims a security interest under the
10 financing statement, which shall be identified by file
11 number. In other cases whenever there is no outstanding
12 secured obligation and no commitment to make advances,
13 incur obligations or otherwise give value, the secured party
14 must on written demand by the debtor send the debtor, for
15 each filing officer with whom the financing statement was
16 filed, a termination statement to the effect that he no
17 longer claims a security interest under the financing
18 statement, which shall be identified by file number. A
19 termination statement signed by a person other than the
20 secured party of record must be accompanied by a
21 separate written statement of assignment signed by the
22 secured party of record complying with subsection (2),
23 section four hundred five of this article, including
24 payment of the required fee. If the affected secured party
25 fails to file such a termination statement as required by
26 this subsection, or to send such a termination statement
27 within ten days after proper demand therefor he shall be
28 liable to the debtor for one hundred dollars, and in
29 addition for any loss caused to the debtor by such failure.

30 (2) On presentation to the filing officer of such a
31 termination statement he must note it in the index. If he
32 has received the termination statement in duplicate, he
33 shall return one copy of the termination statement to the
34 secured party stamped to show the time of receipt thereof.
35 If the filing officer has a microfilm or other photographic
36 record of the financing statement, and of any related
37 continuation statement, statement of assignment and
38 statement of release, he may remove the originals from the
39 files at any time after receipt of the termination statement,
40 or if he has no such record, he may remove them from the
41 files at any time after one year after receipt of the
42 termination statement.

43 (3) The uniform fee for filing and indexing the
44 termination statement shall be ten dollars.

§46-9-405. Assignment of security interest; duties of filing officer; fees.

1 (1) A financing statement may disclose an assignment
2 of a security interest in the collateral described in the
3 financing statement by indication in the financing
4 statement of the name and address of the assignee or by
5 an assignment itself or a copy thereof on the face or back
6 of the statement. On presentation to the filing officer of
7 such a financing statement the filing officer shall mark the
8 same as provided in subsection (4), section four hundred
9 three of this article. The uniform fee for filing, indexing
10 and furnishing filing data for a financing statement so
11 indicating an assignment shall be ten dollars.

12 (2) A secured party may assign of record all or a part
13 of his rights under a financing statement by the filing in
14 the place where the original financing statement was filed
15 of a separate written statement of assignment signed by the
16 secured party of record and setting forth the name of the
17 secured party of record and the debtor, the file number
18 and the date of filing of the financing statement and the
19 name and address of the assignee and containing a
20 description of the collateral assigned. A copy of the
21 assignment is sufficient as a separate statement if it
22 complies with the preceding sentence. On presentation to
23 the filing officer of such a separate statement, the filing
24 officer shall mark such separate statement with the date
25 and hour of the filing. He shall note the assignment on
26 the index of the financing statement, or in the case of a
27 fixture filing, or a filing covering timber to be cut, or
28 covering minerals or the like (including oil and gas) or
29 accounts subject to subsection (5), section one hundred
30 three of this article, he shall index the assignment under
31 the name of the assignor as grantor and, to the extent that
32 the law of this state provides for indexing the assignment
33 of a mortgage under the name of the assignee, he shall
34 index the assignment of the financing statement under the
35 name of the assignee. The uniform fee for filing,
36 indexing and furnishing filing data about such a separate
37 statement of assignment shall be ten dollars.
38 Notwithstanding the provisions of this subsection, an
39 assignment of record of a security interest in a fixture
40 contained in a mortgage effective as a fixture filing

41 (subsection (6), section four hundred two of this article)
42 may be made only by an assignment of the mortgage in
43 the manner provided by the law of this state other than this
44 chapter.

45 (3) After the disclosure or filing of an assignment
46 under this section, the assignee is the secured party of
47 record.

§46-9-406. Release of collateral; duties of filing officer; fees.

1 A secured party of record may by his signed statement
2 release all or a part of any collateral described in a filed
3 financing statement. The statement of release is sufficient
4 if it contains a description of the collateral being released,
5 the name and address of the debtor, the name and address
6 of the secured party, and the file number of the financing
7 statement. A statement of release signed by a person other
8 than the secured party of record must be accompanied by
9 a separate written statement of assignment signed by the
10 secured party of record and complying with subsection
11 (2), section four hundred five of this article, including
12 payment of the required fee. Upon presentation of such a
13 statement of release to the filing officer he shall mark the
14 statement with the hour and date of filing and shall note
15 the same upon the margin of the index of the filing of the
16 financing statement. The uniform fee for filing and noting
17 such a statement of release shall be ten dollars.

§46-9-407. Information from filing officer; central indexing system for recording security interest in farm products; contents.

1 (1) If the person filing any financing statement,
2 termination statement, statement of assignment, or
3 statement of release, furnishes the filing officer a copy
4 thereof, the filing officer shall upon request note upon the
5 copy the file number and date and hour of the filing of
6 the original and deliver or send the copy to such person.

7 (2) Upon request of any person, the secretary of state
8 shall issue his certificate showing whether there is on file
9 in his office on the date and hour stated therein, any
10 presently effective financing statement naming a particular
11 debtor and any statement of assignment thereof and if

12 there is, giving the date and hour of filing of each such
13 statement and the names and addresses of each secured
14 party therein. The uniform fee for such a certificate shall
15 be five dollars plus fifty cents for each financing statement
16 and for each statement of assignment reported therein.
17 Upon request the filing officer shall furnish a copy of any
18 filed financing statement or statement of assignment for a
19 uniform fee of fifty cents per page.

20 (3) The secretary of state shall develop and implement
21 a central indexing system containing the information filed
22 with his office pursuant to subsection four, section three
23 hundred seven of this article. Under this system, the
24 secretary shall record the date and time of filing and
25 compile the information into a master list organized
26 according to farm products. The list shall be organized
27 within each farm product category in alphabetical order
28 according to the last name of the borrower, or in the case
29 of borrowers doing business other than as individuals, the
30 first word in the name of such borrower in numerical
31 order according to the social security or taxpayer
32 identification number of the borrower, geographically by
33 county and by crop year. The master list shall also contain
34 the name and address of the secured party, the name and
35 address of the borrower, a description of the farm
36 products, including amount where applicable, subject to
37 the security interest, and a reasonable description of the
38 real estate, including the county where or upon which the
39 farm products are located.

40 (4) The secretary of state shall maintain a list of all
41 buyers of farm products, commission merchants and
42 selling agents who register with the secretary of state
43 indicating an interest in receiving the lists described in
44 subsection (5) of this section.

45 (5) The secretary of state shall distribute on a regular
46 basis as determined by the secretary of state to each buyer,
47 commission merchant and selling agent registered under
48 subsection (4), a copy in written or printed form of those
49 portions of the master list which the buyer, commission
50 merchant or selling agent has indicated an interest in
51 receiving.

52 (6) Upon the request of any person, the secretary of
53 state shall provide within twenty-four hours an oral
54 confirmation of the filing of the form described in
55 subsection (4), section three hundred seven of this article,
56 followed by a written confirmation.

57 (7) All fees and moneys collected by the secretary of
58 state pursuant to the provisions of this article shall be
59 deposited by the secretary of state in a separate fund in the
60 state treasury and shall be expended solely for the
61 purposes of this article, unless otherwise provided by
62 appropriation or other action of the Legislature.

63 (8) The secretary of state shall, pursuant to the
64 provisions of article three, chapter twenty-nine-a of this
65 code, promulgate rules and set fees, not otherwise
66 provided for by general law, to carry out the duties
67 associated with this article.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-137. Service of process on certain nonresidents.

1 Any nonresident person, except a nonresident
2 corporation authorized to do business in this state
3 pursuant to the provisions of chapter thirty-one of this
4 code, who takes or holds any negotiable instrument,
5 nonnegotiable instrument, or contract or other writing,
6 arising from a consumer credit sale or consumer lease
7 which is subject to the provisions of this article, other than
8 a sale or lease primarily for an agricultural purpose, or
9 who is a lender subject to the provisions of section one
10 hundred three of this article, shall be conclusively
11 presumed to have appointed the secretary of state as his
12 attorney-in-fact with authority to accept service of notice
13 and process in any action or proceeding brought against
14 him arising out of such consumer credit sale, consumer
15 lease or consumer loan. A person shall be considered a
16 nonresident hereunder if he is a nonresident at the time
17 such service of notice and process is sought. No act of
18 such person appointing the secretary of state shall be

19 necessary. Immediately after being served with or
20 accepting any such process or notice, of which process or
21 notice two copies for each defendant shall be furnished
22 the secretary of state with the original notice or process,
23 together with the fee required by section two, article one,
24 chapter fifty-nine of this code, the secretary of state shall
25 file in his office a copy of such process or notice, with a
26 note thereon endorsed of the time of service or
27 acceptance, as the case may be, and transmit one copy of
28 such process or notice by registered or certified mail,
29 return receipt requested, to such person at his address,
30 which address shall be stated in such process or notice:
31 *Provided*, That such return receipt shall be signed by such
32 person or an agent or employee of such person if a
33 corporation, or the registered or certified mail so sent by
34 said secretary of state is refused by the addressee and the
35 registered or certified mail is returned to said secretary of
36 state, or to his office, showing thereon the stamp of the
37 United States postal service that delivery thereof has been
38 refused, and such return receipt or registered or certified
39 mail is appended to the original process or notice and
40 filed therewith in the clerk's office of the court from
41 which such process or notice was issued. But no process
42 or notice shall be served on the secretary of state or
43 accepted fewer than ten days before the return date
44 thereof. The court may order such continuances as may
45 be reasonable to afford each defendant opportunity to
46 defend the action or proceeding.

47 The provisions for service of process or notice herein
48 are cumulative and nothing herein contained shall be
49 construed as a bar to the plaintiff in any action from
50 having process or notice in such action served in any other
51 mode and manner provided by law.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-4. Secretary of state constituted attorney-in-fact for all limited partnerships; manner of acceptance or service of notice and process upon secretary of state; what constitutes conducting affairs or doing

or transacting business in this state for purposes of this section.

1 The secretary of state is hereby constituted the
2 attorney-in-fact for and on behalf of every limited
3 partnership created by virtue of the laws of this state and
4 every foreign limited partnership authorized to conduct
5 affairs or do or transact business herein pursuant to the
6 provisions of this article, with authority to accept service of
7 notice and process on behalf of every such limited
8 partnership and upon whom service of notice and process
9 may be made in this state for and upon every such limited
10 partnership. No act of such limited partnership appointing
11 the secretary of state such attorney-in-fact shall be
12 necessary. Immediately after being served with or
13 accepting any such process or notice, of which process or
14 notice two copies for each defendant shall be furnished
15 the secretary of state with the original notice or process,
16 together with the fee required by section two, article one,
17 chapter fifty-nine of this code, the secretary of state shall
18 file in his office a copy of such process or notice, with a
19 note thereon endorsed of the time of service or
20 acceptance, as the case may be, and transmit one copy of
21 such process or notice by registered or certified mail,
22 return receipt requested, to the person to whom notice and
23 process shall be sent, whose name and address were last
24 furnished to the state officer at the time authorized by
25 statute to accept service of notice and process and upon
26 whom notice and process may be served; and if no such
27 person has been named, to the principal office of the
28 limited partnership at the address last furnished to the state
29 officer at the time authorized by statute to accept service
30 of process and upon whom process may be served, as
31 required by law. No process or notice shall be served on
32 the secretary of state or accepted by him less than ten days
33 before the return day thereof. Such limited partnership
34 shall pay the annual fee prescribed by article twelve,
35 chapter eleven of this code for the services of the secretary
36 of state as its attorney-in-fact.

37 Any foreign limited partnership which shall conduct
38 affairs or do or transact business in this state without
39 having been authorized so to do pursuant to the provisions

40 of this article shall be conclusively presumed to have
41 appointed the secretary of state as its attorney-in-fact with
42 authority to accept service of notice and process on behalf
43 of such limited partnership and upon whom service of
44 notice and process may be made in this state for and upon
45 every such limited partnership in any action or proceeding
46 described in the next following paragraph of this section.
47 No act of such limited partnership appointing the
48 secretary of state as such attorney-in-fact shall be
49 necessary. Immediately after being served with or
50 accepting any such process or notice, of which process or
51 notice two copies for each defendant shall be furnished
52 the secretary of state with the original notice or process,
53 together with the fee required by section two, article one,
54 chapter fifty-nine of this code, the secretary of state shall
55 file in his office a copy of such process or notice, with a
56 note thereon endorsed of the time of service or
57 acceptance, as the case may be, and transmit one copy of
58 such process or notice by registered or certified mail,
59 return receipt requested, to such limited partnership at the
60 address of its principal office, which address shall be stated
61 in such process or notice. Such service or acceptance of
62 such process or notice shall be sufficient if such return
63 receipt shall be signed by an agent or employee of such
64 limited partnership, or the registered or certified mail so
65 sent by the secretary of state is refused by the addressee
66 and the registered or certified mail is returned to the
67 secretary of state, or to his office, showing thereon the
68 stamp of the United States postal service that delivery
69 thereof has been refused, and such return receipt or
70 registered or certified mail is appended to the original
71 process or notice and filed therewith in the clerk's office
72 of the court from which such process or notice was issued.
73 No process or notice shall be served on the secretary of
74 state or accepted by him less than ten days before the
75 return date thereof. The court may order such
76 continuances as may be reasonable to afford each
77 defendant opportunity to defend the action or
78 proceedings.

79 For the purpose of this section, a foreign limited
80 partnership not authorized to conduct affairs or do or

81 transact business in this state pursuant to the provisions of
82 this article shall nevertheless be deemed to be conducting
83 affairs or doing or transacting business herein (a) if such
84 limited partnership makes a contract to be performed, in
85 whole or in part, by any party thereto in this state, (b) if
86 such limited partnership commits a tort, in whole or in
87 part, in this state, or (c) if such limited partnership
88 manufactures, sells, offers for sale or supplies any product
89 in a defective condition and such product causes injury to
90 any person or property within this state notwithstanding
91 the fact that such limited partnership had no agents,
92 servants or employees or contacts within this state at the
93 time of said injury. The making of such contract, the
94 committing of such tort or the manufacture or sale, offer
95 of sale or supply of such defective product as hereinabove
96 described shall be deemed to be the agreement of such
97 limited partnership that any notice or process served upon,
98 or accepted by, the secretary of state pursuant to the next
99 preceding paragraph of this section in any action or
100 proceeding against such limited partnership arising from
101 or growing out of such contract, tort or manufacture or
102 sale, offer of sale or supply of such defective product shall
103 be of the same legal force and validity as process duly
104 served on such limited partnership in this state.

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 3. WRITS, PROCESS AND ORDER OF PUBLICATION.

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

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

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

1 (a) Every nonresident, for the privilege of operating a
2 motor vehicle on a public street, road or highway of this
3 state, either personally or through an agent, appoints the

4 secretary of state, or his or her successor in office, to be
5 his or her agent or attorney-in-fact upon whom may be
6 served all lawful process in any action or proceeding
7 against him or her in any court of record in this state
8 arising out of any accident or collision occurring in the
9 state of West Virginia in which such nonresident may be
10 involved: *Provided*, That in the event process against a
11 nonresident defendant cannot be effected through the
12 secretary of state, as provided by this section, for the
13 purpose only of service of process, such nonresident
14 motorist shall be deemed to have appointed as his or her
15 agent or attorney-in-fact any insurance company which
16 has a contract of automobile or liability insurance with
17 said nonresident defendant.

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

29 (c) A nonresident operating a motor vehicle in this
30 state, either personally or through an agent, is deemed to
31 acknowledge the appointment of the secretary of state, or,
32 as the case may be, his or her automobile insurance
33 company, as his or her agent or attorney-in-fact, or the
34 agent or attorney-in-fact of his or her administrator,
35 administratrix, executor or executrix in the event the
36 nonresident dies, and furthermore is deemed to agree that
37 any process against him or her or against his or her
38 administrator, administratrix, executor or executrix, which
39 is served in the manner hereinafter provided, shall be of
40 the same legal force and validity as though said
41 nonresident or his or her administrator, administratrix,
42 executor or executrix were personally served with a
43 summons and complaint within this state.

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

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

64 (e) Service of process upon a nonresident defendant
65 shall be made by leaving the original and two copies of
66 both the summons and complaint, together with the bond
67 certificate of the clerk, and the fee required by section two,
68 article one, chapter fifty-nine of this code with the
69 secretary of state, or in his or her office, and said service
70 shall be sufficient upon the nonresident defendant or, if a
71 natural person, his or her administrator, administratrix,
72 executor or executrix: *Provided*, That notice of service
73 and a copy of the summons and complaint shall be sent
74 by registered or certified mail, return receipt requested, by
75 the secretary of state to the nonresident defendant. The
76 return receipt signed by the defendant or his or her duly
77 authorized agent shall be attached to the original
78 summons and complaint and filed in the office of the
79 clerk of the court from which process is issued. In the
80 event the registered or certified mail sent by the secretary
81 of state is refused or unclaimed by the addressee or if the
82 addressee has moved without any forwarding address, the
83 registered or certified mail returned to the secretary of
84 state, or to his or her office, showing thereon the stamp of

85 the post-office department that delivery has been refused
86 or not claimed or that the addressee has moved without
87 any forwarding address, shall be appended to the original
88 summons and complaint and filed in the clerk's office of
89 the court from which process issued. The court may order
90 such continuances as may be reasonable to afford the
91 defendant opportunity to defend the action.

92 (f) The fee remitted to the secretary of state at the time
93 of service, shall be taxed in the costs of the proceeding
94 and the secretary of state shall pay into the state treasury
95 all funds so coming into his or her hands from such
96 service. The secretary of state shall keep a record in his or
97 her office of all service of process and the day and hour
98 of service thereof.

99 (g) In the event service of process upon a nonresident
100 defendant cannot be effected through the secretary of
101 state as provided by this section, service may be made
102 upon the defendant's insurance company. The plaintiff
103 must file with the clerk of the circuit court an affidavit
104 alleging that the defendant is not a resident of this state;
105 that process directed to the secretary of state was sent by
106 registered or certified mail, return receipt requested; that
107 the registered or certified mail was returned to the office
108 of the secretary of state showing the stamp of the post-
109 office department that delivery was refused or that the
110 notice was unclaimed or that the defendant addressee
111 moved without any forwarding address; and that the
112 secretary of state has complied with the provisions of
113 subsection (e) herein. Upon receipt of process the
114 insurance company may, within thirty days, file an answer
115 or other pleading and take any action allowed by law in
116 the name of the defendant.

117 (h) The following words and phrases, when used in this
118 article, shall, for the purpose of this article and unless a
119 different intent on the part of the Legislature is apparent
120 from the context, have the following meanings:

121 (1) "Duly authorized agent" means and includes,
122 among others, a person who operates a motor vehicle in
123 this state for a nonresident as defined in this section and
124 chapter, in pursuit of business, pleasure or otherwise, or

125 who comes into this state and operates a motor vehicle for,
126 or with the knowledge or acquiescence of, a nonresident;
127 and includes, among others, a member of the family of
128 such nonresident or a person who, at the residence, place
129 of business or post office of such nonresident, usually
130 receives and acknowledges receipt for mail addressed to
131 the nonresident.

132 (2) "Motor vehicle" means and includes any self-
133 propelled vehicle, including motorcycle, tractor and trailer,
134 not operated exclusively upon stationary tracks.

135 (3) "Nonresident" means any person who is not a
136 resident of this state or a resident who has moved from the
137 state subsequent to an accident or collision, and among
138 others includes a nonresident firm, partnership,
139 corporation or voluntary association, or a firm,
140 partnership, corporation or voluntary association that has
141 moved from the state subsequent to an accident or
142 collision.

143 (4) "Nonresident plaintiff or plaintiffs" means a
144 nonresident who institutes an action in a court in this state
145 having jurisdiction against a nonresident in pursuance of
146 the provisions of this article.

147 (5) "Nonresident defendant or defendants" means a
148 nonresident motorist who, either personally or through his
149 or her agent, operated a motor vehicle on a public street,
150 highway or road in this state and was involved in an
151 accident or collision which has given rise to a civil action
152 filed in any court in this state.

153 (6) "Street", "road" or "highway" means the entire
154 width between property lines of every way or place of
155 whatever nature when any part thereof is open to the use
156 of the public, as a matter of right, for purposes of
157 vehicular traffic.

158 (7) "Insurance company" means any firm,
159 corporation, partnership or other organization which
160 issues automobile insurance.

161 (i) The provision for service of process herein is
162 cumulative and nothing herein contained shall be

163 construed as a bar to the plaintiff in any action from
164 having process in such action served in any other mode
165 and manner provided by law.

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

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

18 (1) Transacting any business in this state;

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

21 (3) Causing tortious injury by an act or omission in
22 this state;

23 (4) Causing tortious injury in this state by an act or
24 omission outside this state if he regularly does or solicits
25 business, or engages in any other persistent course of
26 conduct, or derives substantial revenue from goods used
27 or consumed or services rendered in this state;

28 (5) Causing injury in this state to any person by breach
29 of warranty expressly or impliedly made in the sale of
30 goods outside this state when he might reasonably have

31 expected such person to use, consume or be affected by
32 the goods in this state: *Provided*, That he also regularly
33 does or solicits business, or engages in any other persistent
34 course of conduct, or derives substantial revenue from
35 goods used or consumed or services rendered in this state;

36 (6) Having an interest in, using or possessing real
37 property in this state; or

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

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

45 (c) At the time of filing a complaint and before a
46 summons is issued thereon, the plaintiff, or someone for
47 him, shall execute a bond in the sum of one hundred
48 dollars before the clerk of the court, with surety to be
49 approved by said clerk, conditioned that on failure of the
50 plaintiff to prevail in the action or proceeding that he will
51 reimburse the defendant, or cause him to be reimbursed,
52 the necessary taxable costs incurred by him in and about
53 the defense of the action or proceeding in this state, and
54 upon the issuance of a summons, the clerk shall certify
55 thereon that such bond has been given and approved.
56 Service shall be made by leaving the original and two
57 copies of both the summons and the complaint with the
58 certificate aforesaid of the clerk thereon, and the fee
59 required by section two, article one, chapter fifty-nine of
60 this code with the secretary of state, or in his office, and
61 such service shall be sufficient upon such nonresident:
62 *Provided*, That notice of such service and a copy of the
63 summons and complaint shall forthwith be sent by
64 registered or certified mail, return receipt requested, by the
65 secretary of state to the defendant and the defendant's
66 return receipt signed by himself or his duly authorized
67 agent or the registered or certified mail so sent by the
68 secretary of state which is refused by the addressee and
69 which registered or certified mail is returned to the
70 secretary of state, or to his office, showing thereon the

71 stamp of the post-office department that delivery has been
72 refused, shall be appended to the original summons and
73 complaint and filed therewith in the clerk's office of the
74 court from which process issued. If any defendant served
75 with summons and complaint fails to appear and defend
76 within thirty days of service, judgment by default may be
77 rendered against him at any time thereafter. The court
78 may order such continuances as may be reasonable to
79 afford the defendant opportunity to defend the action or
80 proceeding.

81 (d) The fee remitted to the secretary of state at the time
82 of service shall be taxed in the costs of the action or
83 proceeding and the secretary of state shall pay into the
84 state treasury all funds so coming into his hands from
85 such service. The secretary of state shall keep a record in
86 his office of all such process and the day and hour of
87 service thereof.

88 (e) The following words and phrases, when used in this
89 section, shall for the purpose of this section and unless a
90 different intent be apparent from the context, have the
91 following meanings:

92 (1) "Duly authorized agent" means and includes
93 among others a person who, at the direction of or with the
94 knowledge or acquiescence of a nonresident, engages in
95 such act or acts and includes among others a member of
96 the family of such nonresident or a person who, at the
97 residence, place of business or post office of such
98 nonresident, usually receives and receipts for mail
99 addressed to such nonresident.

100 (2) "Nonresident" means any person, other than
101 voluntary unincorporated associations, who is not a
102 resident of this state or a resident who has moved from this
103 state subsequent to engaging in such act or acts, and
104 among others includes a nonresident firm, partnership or
105 corporation or a firm, partnership or corporation which
106 has moved from this state subsequent to any of said such
107 act or acts.

108 (3) "Nonresident plaintiff or plaintiffs" means a
109 nonresident of this state who institutes an action or

110 proceeding in a circuit court in this state having
111 jurisdiction against a nonresident of this state pursuant to
112 the provisions of this section.

113 (f) The provision for service of process herein is
114 cumulative and nothing herein contained shall be
115 construed as a bar to the plaintiff in any action or
116 proceeding from having process in such action served in
117 any other mode or manner provided by the law of this
118 state or by the law of the place in which the service is
119 made for service in that place in an action in any of its
120 courts of general jurisdiction.

121 (g) This section shall not be retroactive and the
122 provisions hereof shall not be available to a plaintiff in a
123 cause of action arising from or growing out of any of said
124 acts occurring prior to the effective date of this section.

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

ARTICLE 1. FEES AND ALLOWANCES.

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

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

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

12	Articles of incorporation of for-profit	
13	corporation	50.00
14	Articles of incorporation of nonprofit	
15	corporation	25.00
16	Agreement of a general partnership	50.00

17	Certificate of a limited partnership	100.00
18	Agreement of a voluntary association	50.00
19	Articles of organization of a business trust	50.00
20	Amendment or correction of articles of incorporation,	
21	including change of name or increase of capital stock, in	
22	addition to any applicable	
23	license tax	25.00
24	Amendment or correction, including change of name,	
25	of articles of organization of business trust, limited	
26	liability partnership, limited liability company or	
27	professional limited liability company, or of certificate of	
28	limited partnership or agreement of	
29	voluntary association	25.00
30	Amendment and restatement of articles of	
31	incorporation, certificate of limited partnership, agreement	
32	of voluntary association, or articles of organization of	
33	limited liability partnership, limited liability company or	
34	professional limited liability company, or	
35	business trust	25.00
36	Registration of trade name, otherwise designated as a	
37	true name, fictitious name or D.B.A. (doing business as)	
38	name for any domestic business entity as	
39	permitted by law	25.00
40	Articles of merger of two corporations, limited	
41	partnerships, limited liability partnerships, limited liability	
42	companies or professional limited liability companies,	
43	voluntary associations, or business trusts	25.00
44	Plus for each additional party to the merger in excess	
45	of two	15.00
46	Statement of conversion, when permitted, from one	
47	business entity into another business entity, in addition to	
48	the cost of filing the appropriate documents to organize	
49	the surviving entity	25.00
50	Articles of dissolution of a corporation, voluntary	
51	association or business trust, or statement of dissolution of	
52	a general partnership	25.00

53	Revocation of voluntary dissolution of a corporation,	
54	voluntary association or business trust	15.00
55	Articles of termination of a limited liability company,	
56	cancellation of a limited partnership or statement of	
57	withdrawal of limited liability partnership	25.00
58	Reinstatement of a limited liability company or	
59	professional limited liability company after administrative	
60	dissolution	25.00
61	For filing, recording, indexing, preserving a record of	
62	and issuing a certificate relating to the registration,	
63	amendment, change of name, merger, consolidation,	
64	conversion, renewal, withdrawal or termination within this	
65	state of business entities organized in other states or	
66	countries, as follows:	
67	Certificate of authority of for-profit	
68	corporation	100.00
69	Certificate of authority of nonprofit	
70	corporation	50.00
71	Certificate of exemption from certificate	
72	of authority	25.00
73	Registration of a general partnership	50.00
74	Registration of a limited partnership	150.00
75	Registration of a limited liability partnership for two-	
76	year term	500.00
77	Registration of a voluntary association	50.00
78	Registration of a trust or business trust	50.00
79	Amendment or correction of certificate of authority of	
80	a foreign corporation, including change of name or	
81	increase of capital stock, in addition to any applicable	
82	license tax	25.00
83	Amendment or correction of certificate of limited	
84	partnership, limited liability partnership, limited liability	
85	company or professional limited liability company,	
86	voluntary association, or business trust	25.00

87	Registration of trade name, otherwise designated as a	
88	true name, fictitious name or D.B.A. (doing business as)	
89	name for any foreign business entity as	
90	permitted by law	25.00
91	Amendment and restatement of certificate of authority	
92	or of registration of a corporation, limited partnership,	
93	limited liability partnership, limited liability company or	
94	professional limited liability company, voluntary	
95	association, or business trust	25.00
96	Articles of merger of two corporations, limited	
97	partnerships, limited liability partnerships, limited liability	
98	companies or professional limited liability companies,	
99	voluntary associations, or business trusts	25.00
100	Plus for each additional party to the merger in excess	
101	of two	5.00
102	Statement of conversion, when permitted, from one	
103	business entity into another business entity, in addition to	
104	the cost of filing the appropriate articles or certificate to	
105	organize the surviving entity	25.00
106	Certificate of withdrawal or cancellation of a	
107	corporation, limited partnership, limited liability	
108	partnership, limited liability company, voluntary	
109	association or business trust	25.00
110	For receiving, filing and recording a change of the	
111	principal or designated office, change of the agent of	
112	process and/or change of officers, directors, partners,	
113	members or managers, as the case may be, of a	
114	corporation, limited partnership, limited liability	
115	partnership, limited liability company or other business	
116	entity as provided by law	15.00
117	For receiving, filing and preserving a reservation of a	
118	name for each 120 days or for any other period in excess	
119	of seven days prescribed by law for a corporation, limited	
120	partnership, limited liability partnership, or limited liability	
121	company	15.00
122	For issuing a certificate relating to a corporation or	
123	other business entity, as follows:	

124	Certificate of good standing of a domestic or foreign	
125	corporation	10.00
126	Certificate of existence of a domestic limited liability	
127	company, and certificate of authorization foreign limited	
128	liability company	10.00
129	Certificate of existence of any business entity,	
130	trademark or service mark registered with the secretary of	
131	state	10.00
132	Certified copy of corporate charter or comparable	
133	organizing documents for other business entities . .	15.00
134	Plus, for each additional amendment, restatement or	
135	other additional document	5.00
136	Certificate of registration of the name of a foreign	
137	corporation, limited liability company, limited partnership,	
138	or limited liability partnership	25.00
139	And for the annual renewal of the name	
140	registration	10.00
141	Any other certificate not herein specified	10.00
142	For issuing a certificate other than those relating to	
143	business entities as provided above, as follows:	
144	Certificate or apostille relating to the authority of	
145	certain public officers, including the membership of	
146	boards and commissions	10.00
147	Any other certificate not herein specified	10.00
148	For acceptance, indexing, recordation and execution	
149	of service of process by certified or registered mail upon	
150	any corporation, limited partnership, limited liability	
151	partnership, limited liability company, voluntary	
152	association, business trust, insurance company, person or	
153	other entity as permitted by law	15.00
154	For a search of records of the office conducted by	
155	employees of or at the expense of the secretary of state	
156	upon request, as follows:	
157	For any search of archival records maintained at sites	
158	other than the office of the secretary of state,	

- 159 no less than 10.00
- 160 For searches of archival records maintained at sites
161 other than the office of the secretary of state which require
162 more than one hour, for each hour or fraction thereof
163 consumed in making such search 10.00
- 164 For any search of records maintained on site for the
165 purpose of obtaining copies of documents or printouts of
166 data 5.00
- 167 For any search of records maintained in electronic
168 format which requires special programming to be
169 performed by the state information services agency or
170 other vendor, any actual cost, but not less than 25.00
- 171 The cost of the search shall be in addition to the cost
172 of any copies or printouts prepared or any certificate
173 issued pursuant thereto or based thereon.
- 174 For recording any paper for which no specific fee is
175 prescribed 5.00
- 176 For producing and providing photocopies or printouts
177 of electronic data of specific records upon request, as
178 follows:
- 179 For a copy of any paper or printout of electronic data,
180 if one sheet 1.00
- 181 For each sheet after the first50
- 182 For sending the copies or lists by fax
183 transmission 5.00
- 184 For producing and providing photocopies of lists,
185 reports, guidelines and other documents produced in
186 multiple copies for general public use, a publication price
187 to be established by the secretary of state at a rate
188 approximating 2.00 plus .10 per page, and rounded to the
189 nearest dollar.
- 190 For electronic copies of records obtained in data
191 format on disk, the cost of the record in the least
192 expensive available printed format, plus, for each required
193 disk, which shall be provided by the secretary of
194 state 5.00

195 The secretary of state may promulgate legislative rules
196 for charges for on-line electronic access to database
197 information or other information maintained by the
198 secretary of state.

199 For any other work or service not herein enumerated,
200 such fee as may be elsewhere prescribed.

201 The records maintained by the secretary of state are
202 prepared and indexed at the expense of the state, and
203 those records shall not be obtained for commercial resale
204 without the written agreement of the state to a contract
205 including reimbursement to the state for each instance of
206 resale.

207 The secretary of state may provide printed or
208 electronic information free of charge as he or she deems
209 necessary and efficient for the purpose of informing the
210 general public or the news media.

CHAPTER 166

(Com. Sub. for S. B. 317—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to repeal article fourteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two, chapter five-f of said code; and to amend chapter sixteen of said code by adding thereto a new article, designated article five-p, all relating to abolishing the state commission on aging and creating the bureau of senior services; making technical changes, deletions and corrections to the structure of the executive branch and listing of executive agencies; providing a purpose, short title and definitions; providing for appointment of a commissioner of the bureau and providing for qualifications, oath, offices, compensation and expenses; powers and duties of

commissioner; creating the council on aging; composition of council and terms of members; officers; meetings; expenses; providing programs and services for the aging; prevention of crimes against the elderly; designating the bureau as the state agency for handling federal programs; providing for donations, records, rules and reports; and continuation of bureau.

Be it enacted by the Legislature of West Virginia:

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

Chapter

5F. Reorganization of the Executive Branch of State Government.

16. Public Health.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

1 (a) The following agencies and boards, including all
2 of the allied, advisory, affiliated or related entities and
3 funds associated with any such agency or board, are
4 hereby transferred to and incorporated in and shall be
5 administered as a part of the department of administration:

6 (1) Building commission provided for in article six,
7 chapter five of this code;

8 (2) Public employees insurance agency and public
9 employees insurance agency advisory board provided for
10 in article sixteen, chapter five of this code;

11 (3) Governor's mansion advisory committee provided
12 for in article five, chapter five-a of this code;

13 (4) Commission on uniform state laws provided for in
14 article one-a, chapter twenty-nine of this code;

15 (5) Education and state employees grievance board
16 provided for in article twenty-nine, chapter eighteen of
17 this code and article six-a, chapter twenty-nine of this
18 code;

19 (6) Board of risk and insurance management provided
20 for in article twelve, chapter twenty-nine of this code;

21 (7) Boundary commission provided for in article
22 twenty-three, chapter twenty-nine of this code;

23 (8) Public defender services provided for in article
24 twenty-one, chapter twenty-nine of this code;

25 (9) Division of personnel provided for in article six,
26 chapter twenty-nine of this code;

27 (10) The West Virginia ethics commission provided
28 for in article two, chapter six-b of this code;

29 (11) Consolidated public retirement board provided
30 for in article ten-d, chapter five of this code; and

31 (12) The child support enforcement division
32 designated in chapter forty-eight-a of this code.

33 (b) The department of commerce, labor and
34 environmental resources and the office of secretary of the
35 department of commerce, labor and environmental
36 resources are hereby abolished. For purposes of
37 administrative support and liaison with the office of the
38 governor, the following agencies and boards, including all
39 allied, advisory and affiliated entities shall be grouped
40 under three bureaus as follows:

41 (1) Bureau of commerce:

42 (A) Division of labor provided for in article one,
43 chapter twenty-one of this code, which shall include:

44 (i) Occupational safety and health review commission
45 provided for in article three-a, chapter twenty-one of this
46 code; and

47 (ii) Board of manufactured housing construction and
48 safety provided for in article nine, chapter twenty-one of
49 this code;

50 (B) Office of miners' health, safety and training
51 provided for in article one, chapter twenty-two-a of this
52 code. The following boards are transferred to the office
53 of miners' health, safety and training for purposes of
54 administrative support and liaison with the office of the
55 governor:

56 (i) Board of coal mine health and safety and coal mine
57 safety and technical review committee provided for in
58 article six, chapter twenty-two-a of this code;

59 (ii) Board of miner training, education and
60 certification provided for in article seven, chapter
61 twenty-two-a of this code; and

62 (iii) Mine inspectors' examining board provided for in
63 article nine, chapter twenty-two-a of this code;

64 (C) The West Virginia development office provided
65 for in article two, chapter five-b of this code, which shall
66 include:

67 (i) Enterprise zone authority provided for in article
68 two-b, chapter five-b of this code;

69 (ii) Economic development authority provided for in
70 article fifteen, chapter thirty-one of this code; and

71 (iii) Tourism commission provided for in article two,
72 chapter five-b of this code and the office of the tourism
73 commissioner;

74 (D) Division of natural resources and natural resources
75 commission provided for in article one, chapter twenty of
76 this code. The Blennerhassett historical state park
77 provided for in article eight, chapter twenty-nine of this
78 code shall be under the division of natural resources;

79 (E) Division of forestry provided for in article one-a,
80 chapter nineteen of this code;

- 81 (F) Geological and economic survey provided for in
82 article two, chapter twenty-nine of this code;
- 83 (G) Water development authority and board provided
84 for in article one, chapter twenty-two-c of this code;
- 85 (2) Bureau of employment programs provided for in
86 article one, chapter twenty-one-a of this code;
- 87 (3) Bureau of environment:
- 88 (A) Air quality board provided for in article two,
89 chapter twenty-two-b of this code;
- 90 (B) Solid waste management board provided for in
91 article three, chapter twenty-two-c of this code;
- 92 (C) Environmental quality board, or its successor
93 board, provided for in article three, chapter twenty-two-b
94 of this code;
- 95 (D) Division of environmental protection provided for
96 in article one, chapter twenty-two of this code;
- 97 (E) Surface mine board provided for in article four,
98 chapter twenty-two-b of this code;
- 99 (F) Oil and gas inspectors' examining board provided
100 for in article seven, chapter twenty-two-c of this code;
- 101 (G) Shallow gas well review board provided for in
102 article eight, chapter twenty-two-c of this code; and
- 103 (H) Oil and gas conservation commission provided for
104 in article nine, chapter twenty-two-c of this code.
- 105 (c) The following agencies and boards, including all
106 of the allied, advisory, affiliated or related entities and
107 funds associated with any such agency or board, are
108 hereby transferred to and incorporated in and shall be
109 administered as a part of the department of education and
110 the arts:
- 111 (1) Library commission provided for in article one,
112 chapter ten of this code;
- 113 (2) Educational broadcasting authority provided for in
114 article five, chapter ten of this code;

115 (3) University of West Virginia board of trustees
116 provided for in article two, chapter eighteen-b of this
117 code;

118 (4) Board of directors of the state college system
119 provided for in article three, chapter eighteen-b of this
120 code;

121 (5) Joint commission for vocational-technical-
122 occupational education provided for in article three-a,
123 chapter eighteen-b of this code;

124 (6) Division of culture and history provided for in
125 article one, chapter twenty-nine of this code; and

126 (7) Division of rehabilitation services provided for in
127 section two, article ten-a, chapter eighteen of this code.

128 (d) The following agencies and boards, including all
129 of the allied, advisory, affiliated or related entities and
130 funds associated with any such agency or board, are
131 hereby transferred to and incorporated in and shall be
132 administered as a part of the department of health and
133 human resources:

134 (1) Human rights commission provided for in article
135 eleven, chapter five of this code;

136 (2) Division of human services provided for in article
137 two, chapter nine of this code;

138 (3) Bureau of public health provided for in article one,
139 chapter sixteen of this code;

140 (4) Office of emergency medical services and advisory
141 council thereto provided for in article four-c, chapter
142 sixteen of this code;

143 (5) Health care cost review authority provided for in
144 article twenty-nine-b, chapter sixteen of this code;

145 (6) Commission on mental retardation provided for in
146 article fifteen, chapter twenty-nine of this code;

147 (7) Women's commission provided for in article
148 twenty, chapter twenty-nine of this code; and

149 (8) The child support enforcement division designated
150 in chapter forty-eight-a of this code.

151 (e) The following agencies and boards, including all
152 of the allied, advisory, affiliated or related entities and
153 funds associated with any such agency or board, are
154 hereby transferred to and incorporated in and shall be
155 administered as a part of the department of military affairs
156 and public safety:

157 (1) Adjutant general's department provided for in
158 article one-a, chapter fifteen of this code;

159 (2) Armory board provided for in article six, chapter
160 fifteen of this code;

161 (3) Military awards board provided for in article one-
162 g, chapter fifteen of this code;

163 (4) West Virginia state police provided for in article
164 two, chapter fifteen of this code;

165 (5) Office of emergency services and disaster recovery
166 board provided for in article five, chapter fifteen of this
167 code and emergency response commission provided for in
168 article five-a of said chapter;

169 (6) Sheriffs' bureau provided for in article eight,
170 chapter fifteen of this code;

171 (7) Division of corrections provided for in chapter
172 twenty-five of this code;

173 (8) Fire commission provided for in article three,
174 chapter twenty-nine of this code;

175 (9) Regional jail and correctional facility authority
176 provided for in article twenty, chapter thirty-one of this
177 code;

178 (10) Board of probation and parole provided for in
179 article twelve, chapter sixty-two of this code; and

180 (11) Division of veterans' affairs and veterans' council
181 provided for in article one, chapter nine-a of this code.

182 (f) The following agencies and boards, including all of
183 the allied, advisory, affiliated or related entities and funds
184 associated with any such agency or board, are hereby
185 transferred to and incorporated in and shall be
186 administered as a part of the department of tax and
187 revenue:

188 (1) Tax division provided for in article one, chapter
189 eleven of this code;

190 (2) Racing commission provided for in article twenty-
191 three, chapter nineteen of this code;

192 (3) Lottery commission and position of lottery
193 director provided for in article twenty-two, chapter twenty-
194 nine of this code;

195 (4) Agency of insurance commissioner provided for
196 in article two, chapter thirty-three of this code;

197 (5) Office of alcohol beverage control commissioner
198 provided for in article sixteen, chapter eleven of this code
199 and article two, chapter sixty of this code;

200 (6) Board of banking and financial institutions
201 provided for in article three, chapter thirty-one-a of this
202 code;

203 (7) Lending and credit rate board provided for in
204 chapter forty-seven-a of this code;

205 (8) Division of banking provided for in article two,
206 chapter thirty-one-a of this code; and

207 (9) The child support enforcement division as
208 designated in chapter forty-eight-a of this code.

209 (g) The following agencies and boards, including all
210 of the allied, advisory, affiliated or related entities and
211 funds associated with any such agency or board, are
212 hereby transferred to and incorporated in and shall be
213 administered as a part of the department of transportation:

214 (1) Division of highways provided for in article two-a,
215 chapter seventeen of this code;

216 (2) Parkways, economic development and tourism
217 authority provided for in article sixteen-a, chapter
218 seventeen of this code;

219 (3) Division of motor vehicles provided for in article
220 two, chapter seventeen-a of this code;

221 (4) Driver's licensing advisory board provided for in
222 article two, chapter seventeen-b of this code;

223 (5) Aeronautics commission provided for in article
224 two-a, chapter twenty-nine of this code;

225 (6) State rail authority provided for in article eighteen,
226 chapter twenty-nine of this code; and

227 (7) Port authority provided for in article sixteen-b,
228 chapter seventeen of this code.

229 (h) Except for such powers, authority and duties as
230 have been delegated to the secretaries of the departments
231 by the provisions of section two of this article, the
232 existence of the position of administrator and of the
233 agency and the powers, authority and duties of each
234 administrator and agency shall not be affected by the
235 enactment of this chapter.

236 (i) Except for such powers, authority and duties as
237 have been delegated to the secretaries of the departments
238 by the provisions of section two of this article, the
239 existence, powers, authority and duties of boards and the
240 membership, terms and qualifications of members of such
241 boards shall not be affected by the enactment of this
242 chapter and all boards which are appellate bodies or were
243 otherwise established to be independent decision makers
244 shall not have their appellate or independent decision-
245 making status affected by the enactment of this chapter.

246 (j) Any department previously transferred to and
247 incorporated in a department created in section two, article
248 one of this chapter by prior enactment of this section in
249 chapter three, acts of the Legislature, first extraordinary
250 session, one thousand nine hundred eighty-nine, and
251 subsequent amendments thereto, shall henceforth be read,
252 construed and understood to mean a division of the

253 appropriate department so created. Wherever elsewhere in
254 this code, in any act, in general or other law, in any rule or
255 regulation, or in any ordinance, resolution or order,
256 reference is made to any department transferred to and
257 incorporated in a department created in section two, article
258 one of this chapter, such reference shall henceforth be
259 read, construed and understood to mean a division of the
260 appropriate department so created, and any such reference
261 elsewhere to a division of a department so transferred and
262 incorporated shall henceforth be read, construed and
263 understood to mean a section of the appropriate division
264 of the department so created.

265 (k) When an agency, board or commission is
266 transferred under a bureau or agency other than a
267 department headed by a secretary pursuant to this section,
268 that transfer shall be construed to be solely for purposes
269 of administrative support and liaison with the office of the
270 governor, a department secretary or a bureau. The
271 bureaus created by the Legislature upon the abolishment
272 of the department of commerce, labor and environmental
273 resources in the year one thousand nine hundred
274 ninety-four shall be headed by a commissioner or other
275 statutory officer of an agency within that bureau. Nothing
276 in this section shall be construed to extend the powers of
277 department secretaries under section two of this article to
278 any person other than a department secretary and nothing
279 herein shall be construed to limit or abridge the statutory
280 powers and duties of statutory commissioners or officers
281 pursuant to this code. Upon the abolishment of the office
282 of secretary of the department of commerce, labor and
283 environmental resources, the governor may appoint a
284 statutory officer serving functions formerly within that
285 department to a position which was filled by the secretary
286 ex officio.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5P. SENIOR SERVICES.

- §16-5P-1. Purpose of article.
- §16-5P-2. Short title.
- §16-5P-3. Definitions.

- §16-5P-4. Appointment of commissioner; term of office; reporting; qualifications; oath.
- §16-5P-5. Compensation; traveling expenses.
- §16-5P-6. Powers and duties generally.
- §16-5P-7. Creation and composition of the West Virginia council on aging; terms of citizen representative; vacancies; officers; meetings.
- §16-5P-8. Expenses of citizen representatives.
- §16-5P-9. Programs and services for the aging.
- §16-5P-10. Community care services.
- §16-5P-11. Prevention of crimes against the elderly.
- §16-5P-12. Designated state agency for handling federal programs.
- §16-5P-13. Records and files, existing programs and contracts; rules.
- §16-5P-14. Reports.
- §16-5P-15. Continuation of bureau.

§16-5P-1. Purpose of article.

1 The purpose of this article is to create a bureau in state
2 government which promotes services to enhance the
3 health, safety and welfare of West Virginia's senior
4 population and serves as the primary agency within state
5 government to provide services to the senior population.

§16-5P-2. Short title.

1 This article may be cited as the "Senior Services Act
2 of 1997".

§16-5P-3. Definitions.

- 1 (a) "Bureau" means the bureau of senior services.
- 2 (b) "Care management" means the planning,
3 arrangement for and coordination of appropriate
4 community-based, in-home services and alternative living
5 arrangements for the frail elderly, disabled or terminally
6 ill.
- 7 (c) "Care services" means housekeeping, personal
8 care, chore, escort/transportation, meals, in-home nursing,
9 day care and/or respite services.
- 10 (d) "Commissioner" means the commissioner of the
11 bureau of senior services.
- 12 (e) "Community care" means a system of
13 community-based, in-home services and alternative living

14 arrangements which provide a full range of preventive,
15 maintenance and restorative services for the frail elderly,
16 disabled or terminally ill.

17 (f) "Comprehensive assessment" means the
18 assessment of needs, counseling in the development of a
19 case plan, arrangements for services and on-going
20 monitoring of the frail elderly, disabled or terminally ill.

21 (g) "Continuum of care" means a system of services
22 which has a primary emphasis on in-home care and
23 community service and which includes services such as
24 nursing, medical, transportation and other health and
25 social services available to an individual in an appropriate
26 setting over an extended period of time.

27 (h) "Council" means the West Virginia council on
28 aging.

29 (i) "Disabled" for the purposes of this act means a
30 person who has temporary or permanent impairments
31 which require services within the continuum of care.

32 (j) "Frail elderly" for the purposes of this act means
33 any person sixty years of age or older, with limitations
34 which restrict the person's ability to perform the normal
35 activities of daily living.

36 (k) "Senior", "Elderly" or "Aging" means any
37 person sixty years of age or older as defined by the term
38 "older individual" in the Older American's Act of 1965
39 as amended.

40 (l) "Sliding fee scale" means a fee for services
41 provided based on an individual client's ability to pay.

**§16-5P-4. Appointment of commissioner; term of office;
reporting; qualifications; oath.**

1 (a) There is hereby established the bureau of senior
2 services. As of the effective date of this article, all
3 references to the commission on aging shall be construed
4 to mean the bureau of senior services.

5 (b) The bureau shall be under the supervision of a
6 commissioner of the bureau of senior services. The

7 commissioner shall be appointed by the governor, with the
8 advice and consent of the Senate, and shall hold office
9 subject to the will and pleasure of the governor. The
10 commissioner shall be selected with consideration to
11 training and experience in senior issues.

12 (c) The commissioner shall devote his or her entire
13 time to the duties of his or her office, and may not be a
14 candidate for nor hold any other public office or trust nor
15 be a member of a political committee.

16 (d) The commissioner, before entering upon the duties
17 of office, shall take and subscribe to the oath prescribed
18 by article IV, section five of the state constitution. The
19 oath shall be filed with the secretary of state.

20 (e) The commissioner shall report directly to the
21 governor or the governor's designee.

§16-5P-5. Compensation; traveling expenses.

1 Notwithstanding the provisions of section two-a, article
2 seven, chapter six of this code, the commissioner of the
3 bureau of senior services shall receive a yearly salary of
4 sixty-five thousand dollars and the necessary traveling
5 expenses incident to the performance of his or her duties.
6 Requisition for traveling expenses shall be accompanied
7 by a sworn itemized statement which shall be filed with the
8 auditor and preserved as a public record.

§16-5P-6. Powers and duties generally.

1 The commissioner shall be the executive and
2 administrative head of the bureau and shall have the power
3 and duty to:

4 (a) Exercise general supervision of the bureau;

5 (b) Propose legislative rules for the effective and
6 expeditious performance and discharge of the duties and
7 responsibilities placed upon the commissioner by law;

8 (c) Conduct and coordinate studies of the problems of
9 the state's older people;

- 10 (d) Encourage and promote the establishment of local
11 programs and services for the aging;
- 12 (e) Conduct programs of public education on the
13 problems of the aging;
- 14 (f) Review state programs for the aging, and annually
15 make recommendations to the governor and the
16 Legislature;
- 17 (g) Encourage and assist governmental and private
18 agencies to coordinate effective efforts on behalf of the
19 aging;
- 20 (h) Coordinate statewide local and voluntary efforts to
21 serve the aging and develop programs at the local level;
- 22 (i) Supervise fiscal management and responsibilities of
23 the bureau;
- 24 (j) Keep an accurate and complete record of all
25 bureau proceedings, record and file all bonds and
26 contracts and assume responsibility for the custody and
27 preservation of all papers and documents of the bureau;
- 28 (k) Submit an annual report to the governor on the
29 condition, operation and functioning of the bureau;
- 30 (l) Invoke any legal or special remedy for the
31 enforcement of orders or the provisions of this chapter;
- 32 (m) Standardize administration, expedite bureau
33 business, revise rules and promote the efficiency of the
34 service;
- 35 (n) Provide a program of continuing professional,
36 technical and specialized instruction for the personnel of
37 the bureau and local service providers; and
- 38 (o) Receive on behalf of the state any grant or gift and
39 accept the same, so that the title shall pass to the state. All
40 moneys from grants or gifts shall be deposited with the
41 state treasurer in a special fund and shall be used for the
42 purposes set forth in the grant or gift.

§16-5P-7. Creation and composition of the West Virginia council on aging; terms of citizen representative; vacancies; officers; meetings.

1 (a) There is hereby created the West Virginia council
2 on aging, which shall be composed of five government
3 members and ten citizen members, and shall serve as an
4 advisory board to the commissioner.

5 (b) The five government members shall be: (1) The
6 director of the division of health; (2) the director of the
7 bureau of medical services; (3) one administrator
8 designated by the secretary of the department of health
9 and human resources; (4) one administrator designated by
10 the superintendent of the West Virginia state police; and
11 (5) the director of the division of rehabilitation services.

12 (c) The citizen members shall be appointed by the
13 governor with the advice and consent of the Senate. No
14 more than five of the citizen members shall belong to the
15 same political party, and no more than six members shall
16 be of the same gender. The members shall be selected in
17 a manner to provide balanced geographical distribution.

18 (d) The designated administrators and the citizen
19 representatives of the council shall be appointed for terms
20 of four years each, and shall serve until their successors
21 are appointed and qualified. The citizen representatives
22 appointed to staggered terms pursuant to section two,
23 article fourteen, chapter twenty-nine of this code to the
24 state commission on aging shall continue to serve the
25 remainder of their term or until their successors are
26 appointed and qualified.

27 (e) A majority of the members of the council shall
28 constitute a quorum for the transaction of business. The
29 council shall elect a chair, a vice-chair, and such other
30 officers as it deems necessary. The council shall meet at
31 least two times each year. Each government representative
32 shall designate a person with the authority to attend
33 meetings and act on behalf of the government
34 representative, who shall be considered a member of the

35 council for the purpose of obtaining a quorum for the
36 transaction of business.

§16-5P-8. Expenses of citizen representatives.

1 Each citizen representative is entitled to receive travel
2 and other necessary expenses actually incurred in the
3 performance of official duties under the provisions of this
4 article. Requisition for such expenses shall be
5 accompanied by a sworn and itemized statement which
6 shall be filed with the auditor.

§16-5P-9. Programs and services for the aging.

1 (a) The bureau may establish local programs of
2 services for the aging as needed throughout the state.
3 Insofar as possible, services shall be designed to foster
4 continued participation of older people in family and
5 community life and to avoid or postpone the onset of
6 dependency and the need for long-term care.

7 (b) Any allocations by the bureau of appropriations
8 for local programs may be made contingent upon local
9 appropriations or gifts in money or in kind for the
10 support of such programs. The county commission of
11 any county or governing body of any municipality in this
12 state may appropriate and expend money for establishing
13 and maintaining programs. Funds appropriated by the
14 county commission or by the governing body of any
15 municipality in this state may be contributed from time to
16 time to any committee or organization approved by the
17 bureau for the purposes authorized by this section.

18 (c) The bureau as provided hereunder may receive
19 and expend funding, including the state's share of federal
20 funds, designated for the construction, acquisition and
21 renovation of senior centers.

22 (d) The Legislature may appropriate funds on a
23 matching basis or funds from any other source to be used
24 for the purposes stated in this section.

§16-5P-10. Community care services.

1 The bureau shall, within available funds, administer
2 programs, including care management, comprehensive
3 assessment and community and in-home care services,
4 based on a sliding fee scale.

§16-5P-11. Prevention of crimes against the elderly.

1 (a) It is the intent of the Legislature that all state
2 agencies cooperate with the bureau and the state police in
3 carrying out the provisions of this section.

4 (b) In planning and developing programs and
5 recommendations relating to the prevention of crime and
6 the fear of crime, including fraud, against elderly persons,
7 the bureau shall, within existing appropriations, evaluate
8 the need for new or improved programs, including:

9 (1) Public education and awareness;

10 (2) Community coordination in areas of social services
11 and criminal justice;

12 (3) Voluntary involvement of elderly persons and
13 retired professionals in the criminal justice system;

14 (4) Victim and witness assistance;

15 (5) Reduction of the economic and physical
16 consequences of crime against the elderly; and

17 (6) Reduction of isolation of the elderly in the
18 community.

19 (c) State agencies shall cooperate with and assist the
20 bureau, within their available resources, in gathering
21 statistical data and implementing programs which have the
22 potential to prevent crime against elderly persons.

§16-5P-12. Designated state agency for handling federal programs.

1 The bureau shall constitute the designated state agency
2 for handling all programs of the federal government
3 relating to the aging requiring action within the state,

4 which are not the specific responsibility of another state
5 agency under the provisions of federal law or which have
6 not been specifically entrusted to another state agency by
7 the Legislature. The bureau shall be empowered to
8 comply with all regulations and requirements to qualify
9 for federal grants and to administer such federal funds.

§16-5P-13. Records and files, existing programs and contracts; rules.

1 (a) All records, files and other property belonging to
2 the West Virginia commission on aging pursuant to article
3 fourteen, chapter twenty-nine of this code shall be turned
4 over to the bureau herein created and shall be continued
5 as part of the records, files and other property thereof.

6 (b) All contracts, programs and agreements entered
7 into or offered by the state commission on aging prior to
8 the effective date of this statute shall continue in legal
9 force and effect under the bureau of senior services.

10 (c) All existing rules promulgated by the state
11 commission on aging shall remain in effect and be
12 administered and interpreted by the commissioner until
13 such time as they are revoked or modified.

§16-5P-14. Reports.

1 The bureau shall submit a report on the condition,
2 operation and functioning of the bureau to the governor
3 and to the members of the Legislature on or before the
4 first day of January of each year, in addition to such other
5 recommendations, studies and plans as it may submit from
6 time to time.

§16-5P-15. Continuation of bureau.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the bureau of senior services shall continue to
3 exist until the first day of July, two thousand one.

CHAPTER 167

(S. B. 424—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, Oliverio, Ross, Snyder, White, Buckalew, Kimble and Scott)

[Passed April 10, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section ten, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to granting the superintendent the right of subrogation for medical expenses incurred against persons injuring an officer during the performance of his or her duties; limiting medical expenditures to an amount specified by the bureau of employment programs; and directing the payment of funds received by subrogation to a special revenue account.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-10. Uniforms; authorized equipment, weapons and supplies; local headquarters; quarters for members; life insurance; medical and hospital fees for injuries and illnesses of members incurred in line of duty.

- 1 (a) The standard uniform to be used by the West
- 2 Virginia state police after the effective date of this article
- 3 shall be as follows: Forestry green blouse with West
- 4 Virginia state police emblem on sleeve; black shoulder
- 5 strap, one-inch black stripe around sleeve, four inches
- 6 from end of sleeve; forestry green breeches with one-inch
- 7 black stripe down the side; trousers (slacks) with one-inch
- 8 black stripe down the side for officers and clerks regularly
- 9 enlisted in the department; forestry green shirts with West
- 10 Virginia state police emblem on sleeve; black shoulder
- 11 straps; forestry green mackinaw with West Virginia state

12 police emblem on sleeve; black shoulder straps; one-inch
13 black stripe around sleeve four inches from end of sleeve;
14 campaign hat of olive drab color; black Sam Browne belt
15 with holster; black leggings and shoes; the officer's
16 uniform will have one and one-quarter inch black stripe
17 around the sleeve of blouse and mackinaw four inches
18 from end of sleeve circumposed with one-half inch gold
19 braid, also black collars on blouse, with two silver shoulder
20 bars for captains, one silver shoulder bar for first
21 lieutenant, one gold shoulder bar for second lieutenant.
22 For noncommissioned officers the uniform blouse and
23 shirt will have thereon black chevrons of the appropriate
24 rank.

25 (b) The superintendent shall establish the weapons and
26 enforcement equipment which shall be authorized for use
27 by members of the department, and shall provide for
28 periodic inspection of such weapons and equipment. He
29 shall provide for the discipline of members using other
30 than authorized weapons and enforcement equipment.

31 (c) The superintendent shall provide the members of
32 the department with suitable arms and weapons, and, when
33 he deems it necessary, with suitably equipped automobiles,
34 motorcycles, watercraft, airplanes and other means of
35 conveyance, to be used by the West Virginia state police,
36 the governor, and other officers and executives in the
37 discretion of the governor, in times of flood, disaster and
38 other emergencies, for traffic study and control, criminal
39 and safety work, and in other matters of official business.
40 He shall also provide the standard uniforms for all
41 members of the department, for officers,
42 noncommissioned officers and troopers herein provided
43 for. All uniforms and all arms, weapons and other
44 property furnished the members of the department by the
45 state of West Virginia shall be and remain the property of
46 the state.

47 (d) The superintendent is authorized to purchase and
48 maintain on behalf of members group life insurance not
49 to exceed the amount of five thousand dollars on behalf
50 of each member.

51 (e) The superintendent is authorized to contract and
52 furnish at department expense medical and hospital
53 services for treatment of illness or injury of a member

54 which shall be determined by the superintendent to have
55 been incurred by such member while engaged in the
56 performance of duty and from causes beyond control of
57 such members. Notwithstanding any other provision of
58 this code, the superintendent shall have the right of
59 subrogation in any civil action or settlement brought by or
60 on behalf of a member in relation to any act by another
61 which results in the illness, injury or death of a member.
62 To this end, the superintendent is hereby authorized to
63 initiate such an action on behalf of the department in
64 order to recover the costs incurred in providing medical
65 and hospital services for the treatment of a member
66 resulting from injury or illness originating in the
67 performance of official duties. This subsection shall not
68 affect the power of a court to apply ordinary equitable
69 defenses to the right of subrogation.

70 The superintendent is further empowered to consult
71 with the commissioner of the bureau of employment
72 programs in an effort to defray the cost of medical and
73 hospital services. In no case will the compensation
74 rendered to health care providers for medical and hospital
75 services exceed the then current rate schedule in use by
76 the bureau of employment programs, workers'
77 compensation division.

78 Third-party reimbursements received by the
79 superintendent after the expiration of the fiscal year in
80 which the injury, illness or death occurred will be
81 deposited to a nonexpiring special revenue account.
82 Funds deposited to this account may be used solely for
83 defraying the costs of medical or hospital services
84 rendered to any sworn members as a direct result of an
85 illness, injury or death resulting from the performance of
86 official duties.

87 (f) The superintendent shall establish and maintain
88 local headquarters at such places in West Virginia as are in
89 his judgment suitable and proper to render the West
90 Virginia state police most efficient for the purpose of
91 preserving the peace, protecting property, preventing
92 crime, apprehending criminals and carrying into effect all
93 other provisions of this article. The superintendent shall
94 provide, by lease or otherwise, for housing and quarters
95 for the accommodation of the members of the West
96 Virginia state police, and shall provide all equipment and
97 supplies necessary for them to perform their duties.

CHAPTER 168

(S. B. 545—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, Oliverio, Ross, Schoonover, Snyder, White, Buckalew, Deem, Kimble and Scott)

Passed April 12, 1997; 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 ten-a, relating to giving the superintendent of the West Virginia state police the right of setoff against any unpaid benefits when a member fails to return assigned clothing or equipment.

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 ten-a, to read as follows:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-10a. Duty to return assigned items; superintendent's right of setoff.

1 (a) Whenever any member of the department of public
2 safety retires, resigns or is terminated from employment,
3 he or she shall surrender, in good condition, considering
4 reasonable wear and tear from proper use, all items of
5 equipment and clothing assigned to such member as set
6 forth in section ten of this article: *Provided*, That this
7 section shall not apply to any member awarded his or her
8 service revolver pursuant to the provisions of section
9 forty-three of this article.

10 (b) Notwithstanding any provision of this code to the
11 contrary, the superintendent of the department of public
12 safety shall have a setoff against any West Virginia state

13 police retirement benefits, salary owed, sick leave benefits
14 or vacation day benefits owed such retired, resigning or
15 terminated member in an amount equal to the value of
16 any equipment and clothing not returned.
17 Notwithstanding the fact that a retired, resigning or
18 terminated member is no longer employed by the
19 department of public safety, the member may file a
20 grievance for the sole purpose of protesting the
21 application of the setoff. Such a grievance shall be
22 processed, considered and decided pursuant to the
23 provisions of section six of this article and rules
24 promulgated thereunder. Prior to applying any setoff
25 under this subsection, the superintendent will notify the
26 retired, resigning or terminated member of his or her
27 opportunity to file a grievance.

CHAPTER 169

(H. B. 2546 —By Delegates Pettit, Kuhn and Williams)

[Passed April 10, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, four and five, article sixteen, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the West Virginia steel futures program; legislative intent; purpose and administration; steel advisory commission; membership; appointments; terms; quorum; general powers of the commission; steel futures program; program goals; financial and technical assistance; projects eligible for assistance; and continuation of steel advisory commission and steel futures program.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16. WEST VIRGINIA STEEL FUTURES PROGRAM.

§31-16-1. Legislative intent; purpose and administration.

§31-16-2. Steel advisory commission; membership, appointment, terms, quorum and selection of officers.

§31-16-3. General powers of the commission.

§31-16-4. Steel futures program.

§31-16-5. Continuation of program.

§31-16-1. Legislative intent; purpose and administration.

1 The Legislature recognizes that the steel industry plays
2 a significant role in West Virginia's economy, and the
3 industry's survival and success is of significant importance
4 to the residents and the tax base of the state. Because of
5 this significant economic role, there is hereby created in
6 the bureau of commerce a steel advisory commission and
7 a new program entitled "The Steel Futures Program".
8 The purpose of the commission and the program is to
9 preserve and improve the economy of the state by pro-
10 moting employment and increased productivity, thereby
11 ensuring continued economic development consistent with
12 these goals, and to maintain a high standard of living for
13 the residents of the state. The commission, through the
14 steel futures program, may supplement any other enter-
15 prise assistance program administered by the West Virgin-
16 ia development office. The steel futures program shall be
17 administered so as to provide financial and technical assis-
18 tance as provided in this article to increase the competi-
19 tiveness of existing steel and steel-related industries within
20 the state and to encourage the establishment and develop-
21 ment of new steel and steel-related industries within the
22 state.

§31-16-2. Steel advisory commission; membership, appointment, terms, quorum and selection of officers.

1 (a) There is hereby created the West Virginia steel
2 advisory commission within the bureau of commerce,
3 which shall consist of fifteen members. The governor or
4 his or her designee shall be a member of the commission
5 and shall serve as its chairperson. Ten members shall be
6 appointed by the governor with the advice and consent of
7 the Senate. At least four of the members appointed by the
8 governor shall be senior management representatives of

9 steel manufacturing companies that employ over fifty
10 people. At least two of the members appointed by the
11 governor shall be representatives of organized labor. One
12 of the members appointed by the governor shall be a
13 member of the united steelworkers of America. One of
14 the members appointed by the governor shall be a mem-
15 ber of the independent steelworkers union. One member
16 shall be appointed by the university of West Virginia
17 board of trustees and one member shall be appointed by
18 the board of directors of the state college system. Of the
19 remaining members, the president of the Senate and the
20 speaker of the House of Delegates shall each appoint one
21 member from their respective houses who shall serve as ex
22 officio nonvoting members. No more than seven of the
23 governor's appointees shall be of the same political party.
24 Prior to making the appointments, the governor shall so-
25 licit recommendations from individuals representing the
26 steel industry and labor organizations representing
27 steelworkers. The governor shall make appointments
28 based upon the knowledge and experience of the individ-
29 ual in the steel industry.

30 (b) Within thirty days after the effective date of this
31 section, the governor, the university of West Virginia
32 board of trustees and the board of directors of the state
33 college system, the president of the Senate and the speaker
34 of the House of Delegates shall make their respective ini-
35 tial appointments to the commission. The terms of office
36 for nonlegislative appointed members are seven years.
37 Each member shall hold office from the date of his or her
38 appointment until the end of the term for which he or she
39 was appointed. Members may be reappointed. Vacancies
40 shall be filled in the manner provided for original ap-
41 pointments. A member shall continue in office until his
42 or her successor takes office or until a period of sixty days
43 has elapsed, whichever occurs first. The terms of legisla-
44 tive members shall be for the term for which they were
45 elected.

46 (c) Notwithstanding the terms of office stated for
47 members in subsection (b) of this section, each member
48 serves at the pleasure of his or her appointing authority

49 and the appointing authority may remove his or her ap-
50 pointee at any time and for any reason.

51 (d) Seven members constitute a quorum and an affir-
52 mative vote of a majority of those members present is
53 necessary to transact business of the commission. In the
54 event of the absence of a member appointed by the presi-
55 dent of the Senate or by the speaker of the House of Dele-
56 gates, the president of the Senate or the speaker of the
57 House of Delegates may become a member, as the case
58 may be, or may designate an alternative member of the
59 commission.

60 (e) Before entering upon the duties of office, each
61 member shall take the oath of office prescribed by the
62 constitution of West Virginia.

63 (f) Members of the commission shall receive no com-
64 pensation but shall be reimbursed for their necessary and
65 actual expenses incurred in the course of duties as mem-
66 bers of the commission.

67 (g) The commission shall provide for the election of
68 officers. The commission shall meet at least three times
69 annually or upon the call of the chairperson or upon the
70 request of five or more members.

71 (h) The West Virginia development office, as requested
72 by the commission, shall provide the commission with
73 meeting space and staff services and other technical assis-
74 tance. The West Virginia development office shall assist
75 the commission with the costs of production and distribu-
76 tion of commission reports. If the commission deter-
77 mines, by a majority vote, to have any study conducted by
78 a third party, the funds for the study shall be derived from
79 contributions from the steel industry or other interested
80 parties.

§31-16-3. General powers of the commission.

1 The West Virginia steel industry advisory commission
2 shall have and may exercise all powers necessary or ap-
3 propriate to carry out the purposes of this article, includ-
4 ing the power:

5 (a) To conduct an examination of existing federal and
6 state laws which currently affect the production and con-
7 sumption of West Virginia steel;

8 (b) To study problems which the West Virginia steel
9 and steel-related industries currently face including unfair
10 competition from foreign industries, the economic factors
11 affecting the West Virginia steel industry, and other mat-
12 ters relevant to the future of the steel and steel-related
13 industries in this state;

14 (c) To facilitate and provide technical assistance in the
15 creation of public-private partnerships that use incentive
16 packaging as a means to encourage economic growth and
17 the creation of value-added, better paying jobs;

18 (d) To develop a steel futures program;

19 (e) To identify training and educational opportunities
20 that enhance the job skills of the workforce of the steel
21 and steel-related industries;

22 (f) To identify and encourage partnering opportuni-
23 ties between the college and university systems of West
24 Virginia and the steel and steel-related industries that pro-
25 vide education and training support to the growth and
26 stability of those industries in this state;

27 (g) To recommend that the West Virginia development
28 office enter into contractual agreements that promote the
29 interests of the West Virginia steel and steel-related indus-
30 tries.

• **§31-16-4. Steel futures program.**

1 (a) The commission shall develop and recommend a
2 strategy for financial and technical assistance to steel and
3 steel-related industries in the state. The strategy shall
4 include investment policies with regard to these industries.
5 In administering the program, the commission shall con-
6 sult with appropriate representatives of steel, and steel-
7 related industries, appropriate representatives of any union
8 that represents workers in these industries, and any other
9 persons with expert knowledge of these industries. The
10 commission shall consult with the chairman of the public
11 service commission to foster the development of public

12 and private cooperative efforts that would result in energy
13 savings and reduced energy costs for steel and
14 steel-related industries. The commission shall consult with
15 the division of environmental protection and other agen-
16 cies with which the steel and steel-related industries must
17 interact to assist the steel and steel-related industries in
18 adhering to regulations in a manner conducive to eco-
19 nomic viability. Assistance may be made available to steel
20 and steel-related industries undertaking projects the com-
21 mission determines to have long-term implications for and
22 broad applicability to the economy of this state when the
23 West Virginia development office finds that:

24 (1) The undertaking of projects by the steel and steel-
25 related industries will benefit the people of the state by
26 creating or preserving jobs and employment opportuni-
27 ties; and

28 (2) The undertaking of projects by the steel and steel-
29 related industries will allow them to compete more effec-
30 tively in the marketplace.

31 (b) Projects eligible to receive assistance under the
32 steel futures program may include, but are not limited to,
33 the following:

34 (1) Research and development specifically related to
35 steel and steel-related industries and feasibility studies for
36 business development within these industries;

37 (2) Employee training;

38 (3) Labor and management relations; and

39 (4) Technology-driven capital investment.

40 (c) Financial and technical assistance may be in the
41 form and conditioned upon terms as stipulated by each
42 enterprise assistance program administered by the West
43 Virginia development office. No later than the thirtieth
44 day of June, one thousand nine hundred ninety-four, and
45 no later than the thirtieth day of June of each year thereaf-
46 ter, the commission shall submit a report to the governor
47 and Legislature describing projects of the steel futures
48 program, results obtained from completed projects of the
49 program and program projects for the next fiscal year.

§31-16-5. Continuation of program.

1 The steel advisory commission and the steel futures
2 program shall continue to exist until the first day of July,
3 two thousand four: *Provided*, That prior to the
4 termination date the joint committee on government
5 organization shall conduct a performance review of the
6 commission and program.

CHAPTER 170

(H. B. 2881—By Delegates Douglas, Collins, Tucker, Prunty, Claypole,
Stalnaker and Capito)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact sections three, four, five and twelve, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto four new sections, designated sections four-a, five-a, ten-a and eleven-a, all relating to changing termination dates for agencies pursuant to the West Virginia sunset law; defining compliance monitoring and further inquiry update; changing termination dates of agencies following full performance evaluations, preliminary performance reviews and compliance monitoring and further inquiry updates; specifying duties of joint committee on government operations in conducting compliance monitoring and further inquiry updates; and changing one type of recommendation that may be made by the joint committee on government operations in its annual report.

Be it enacted by the Legislature of West Virginia:

That sections three, four, five and twelve, article ten, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further amended by adding thereto four new sections,

designated sections four-a, five-a, ten-a and eleven-a, all to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-3. Definitions.

§4-10-4. Termination of agencies following full performance evaluations.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

§4-10-5. Termination of agencies following preliminary performance reviews.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

§4-10-10a. Compliance monitoring and further inquiry updates of agencies by the committee subsequent to a completed full performance evaluation.

§4-10-11a. Compliance monitoring and further inquiry updates of agencies by the committee subsequent to a completed preliminary performance review.

§4-10-12. Annual report by the committee.

§4-10-3. Definitions.

1 As used in this article, unless the context clearly
2 indicates a different meaning:

3 (1) "Agency" means any bureau, department,
4 division, commission, agency, committee, office, board,
5 authority, subdivision, program, council, advisory body,
6 cabinet, panel, system, task force, fund, compact,
7 institution, survey, position, coalition or other entity,
8 however designated, in the state of West Virginia.

9 (2) "Committee" means the joint committee on
10 government operations, hereinafter continued, to perform
11 duties under this article.

12 (3) "Full performance evaluation" means to
13 determine for an agency whether or not the agency is
14 operating in an efficient and effective manner and to
15 determine whether or not there is a demonstrable need for
16 the continuation of the agency, pursuant to the provisions
17 of section ten of this article. References in this code to

18 performance audit or full performance audit shall be
19 taken as and shall mean full performance evaluation.

20 (4) "Preliminary performance review" means to
21 determine for an agency whether or not the agency is
22 performing in an efficient and effective manner and to
23 determine whether or not there is a demonstrable need for
24 the continuation of the agency pursuant to the provisions
25 of section eleven of this article.

26 (5) "Compliance monitoring and further inquiry
27 update" means to determine for an agency whether or not
28 the agency has complied with recommendations contained
29 in a completed full performance evaluation or a
30 completed preliminary performance review conducted
31 pursuant to this article and that further inquiry into the
32 operation of the agency may be conducted pursuant to the
33 provisions of sections ten-a and eleven-a of this article.

§4-10-4. Termination of agencies following full performance evaluations.

1 The following agencies shall be terminated on the date
2 indicated, but no agency may be terminated under this
3 section unless a full performance evaluation has been
4 conducted upon such agency:

5 (1) On the first day of July, one thousand nine
6 hundred ninety-eight: Workers' compensation; office of
7 judges of workers' compensation; department of health
8 and human resources; purchasing division within the
9 department of administration.

10 (2) On the first day of July, one thousand nine
11 hundred ninety-nine: Division of environmental pro-
12 tection; West Virginia parkways, economic development
13 and tourism authority.

14 (3) On the first day of July, two thousand: Division of
15 corrections.

16 (4) On the first day of July, two thousand one:
17 Division of natural resources.

18 (5) On the first day of July, two thousand two:
19 Division of highways; division of labor.

20 (6) On the first day of July, two thousand three:
21 Division of culture and history; school building authority.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

1 The following agencies shall be terminated on the date
2 indicated, but no agency may be terminated under this
3 section unless a compliance monitoring and further
4 inquiry update has been completed on the agency
5 subsequent to the prior completion of a full performance
6 evaluation:

7 (1) On the first day of July, one thousand nine
8 hundred ninety-eight: Division of personnel; division of
9 rehabilitation services.

10 (2) On the first day of July, one thousand nine
11 hundred ninety-nine: Tourism functions within the West
12 Virginia development office.

§4-10-5. Termination of agencies following preliminary performance reviews.

1 The following agencies shall be terminated on the date
2 indicated, but no agency may be terminated under this
3 section unless a preliminary performance review has been
4 conducted upon such agency:

5 (1) On the first day of July, one thousand nine
6 hundred ninety-six: Juvenile facilities review panel.

7 (2) On the first day of July, one thousand nine
8 hundred ninety-seven: Oil and gas conservation commis-
9 sion; public employees insurance agency advisory board;
10 cable television advisory board.

11 (3) On the first day of July, one thousand nine
12 hundred ninety-eight: Women's commission; state lottery
13 commission; meat inspection program of the department
14 of agriculture; soil conservation committee of the
15 department of agriculture; state board of risk and
16 insurance management; board of examiners of land
17 surveyors; commission on uniform state laws; West
18 Virginia's membership in the interstate commission on the

19 Potomac River Basin; family law masters system; board of
20 examiners in speech pathology and audiology; board of
21 social work examiners; child support enforcement
22 division; West Virginia lending and credit rate board;
23 public defender services.

24 (4) On the first day of July, one thousand nine
25 hundred ninety-nine: Public service commission; tree fruit
26 industry self improvement assessment program; capitol
27 building commission; board of banking and financial
28 institutions; state building commission; West Virginia state
29 police.

30 (5) On the first day of July, two thousand: Family
31 protection services board; environmental quality board;
32 West Virginia's membership in the Ohio River valley water
33 sanitation commission; ethics commission; oil and gas
34 inspector's examining board; veterans' council; West
35 Virginia's membership in the southern regional education
36 board; board of respiratory care practitioners; board of
37 examiners in counseling; educational broadcasting
38 authority; West Virginia state rail authority.

39 (6) On the first day of July, two thousand one: Real
40 estate commission; marketing and development division of
41 the department of agriculture; board of architects; public
42 employees insurance agency; public employees insurance
43 agency finance board; center for professional develop-
44 ment; rural health advisory panel.

45 (7) On the first day of July, two thousand two:
46 Whitewater commission within the division of natural
47 resources; state geological and economic survey;
48 unemployment compensation; West Virginia contractor
49 licensing board.

50 (8) On the first day of July, two thousand three:
51 Driver's licensing advisory board; West Virginia
52 commission for national and community service.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

1 The following agencies shall be terminated on the date
2 indicated, but no agency may be terminated under this
3 section unless a compliance monitoring and further
4 inquiry update has been completed on the agency
5 subsequent to the prior completion of a preliminary
6 performance review:

7 (1) On the first day of July, one thousand nine
8 hundred ninety-eight: Board of investments; emergency
9 medical services advisory council; human rights
10 commission; parks section and parks functions of the
11 division of natural resources.

12 (2) On the first day of July, one thousand nine
13 hundred ninety-nine: Office of water resources of the
14 division of environmental protection; office of
15 environmental advocate of the division of environmental
16 protection; governor's cabinet on children and families;
17 West Virginia health care cost review authority.

**§4-10-10a. Compliance monitoring and further inquiry
updates of agencies by the committee subsequent
to a completed full performance evaluation.**

1 It shall be the duty of the committee to conduct a
2 compliance monitoring and further inquiry update of
3 every agency scheduled for termination under section
4 four-a of this article.

5 In conducting such compliance monitoring and
6 further inquiry update, the committee shall determine to
7 what extent the agency has complied with recommenda-
8 tions contained in the completed full performance
9 evaluation. The committee may direct that further inquiry
10 into the operation of the agency be undertaken as part of
11 the compliance monitoring and further inquiry update.

**§4-10-11a. Compliance monitoring and further inquiry
updates of agencies by the committee subsequent
to a completed preliminary performance
review.**

1 It shall be the duty of the committee to conduct a
2 compliance monitoring and further inquiry update of

3 every agency scheduled for termination under section
4 five-a of this article.

5 In conducting such compliance monitoring and
6 further inquiry update, the committee shall determine to
7 what extent the agency has complied with
8 recommendations contained in the completed preliminary
9 performance review. The committee may direct that
10 further inquiry into the operation of the agency be
11 undertaken as part of the compliance monitoring and
12 further inquiry update.

§4-10-12. Annual report by the committee.

1 The committee shall complete its deliberations with
2 respect to agencies scheduled for termination and make
3 an annual report thereon to the Legislature not later than
4 ten days after the Legislature convenes in regular session
5 in the year of the scheduled termination for the agency:
6 *Provided*, That any such annual report required in the
7 year one thousand nine hundred ninety-seven, and every
8 fourth year thereafter, shall be made not later than ten
9 days after the Legislature convenes on the second
10 Wednesday in February. The annual report shall consist
11 of an analysis of the agency including matters as are
12 expressly mandated to be considered by the committee as
13 set forth in this article, together with the recommendations
14 of the committee. The committee shall make one of five
15 recommendations: (1) The agency be terminated as
16 scheduled; (2) the agency be continued and reestablished;
17 (3) the agency be continued and reestablished, and the
18 statutes governing it be amended in specific ways to
19 correct ineffective or discriminatory practices and
20 procedures, burdensome rules and regulations, lack of
21 protection of the public interest, overlapping of
22 jurisdiction with other agencies, unwarranted exercise of
23 authority either in law or in fact or any other deficiencies;
24 (4) a full performance evaluation be performed on an
25 agency on which a preliminary review has been
26 completed; or (5) the agency be continued for a period of
27 time not to exceed one year for the purpose of completing
28 a compliance monitoring and further inquiry update.

29 In the event the committee makes recommendations
 30 concerning the continuation or reestablishment of
 31 agencies pursuant to this article, the annual report shall
 32 include draft bills effectuating the recommendations.

33 Copies of the annual reports shall be made available to
 34 all members of the Legislature, to the agency that is the
 35 subject of the report and to the public generally. A copy
 36 of the annual report shall be formally filed immediately
 37 by the committee with the clerk of each house.

CHAPTER 171

(H. B. 2238—By Delegates Douglas, Collins, Tucker, Prunty, Claypole, Stalnaker
 and Capito)

[Passed April 8, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the state building commission until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

That section one, article 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 6. STATE BUILDING COMMISSION.

§5-6-1. Name of state office building commission changed; composition; appointment, terms and qualifications of members; chairman and secretary; compensation and expenses; powers and duties generally; frequency of meetings; continuation.

1 "The state office building commission of West
 2 Virginia", heretofore created, shall continue in existence,
 3 but on and after the ninth day of February, one thousand
 4 nine hundred sixty-six, shall be known and designated as

5 "The state building commission of West Virginia" and
6 shall continue as a body corporate and as an agency of the
7 state of West Virginia. On and after the date aforesaid, the
8 commission shall consist of the governor, attorney general,
9 state treasurer and four additional members to be
10 appointed by the governor by and with the advice and
11 consent of the Senate. The terms of office for said
12 members to be appointed by the governor shall be four
13 years, except that the terms of office of the first four
14 members so appointed by the governor shall be for one,
15 two, three and four years, respectively. No more than
16 three of such members so appointed by the governor shall
17 be members of the same political party, nor shall any of
18 said members be members or employees of the executive,
19 legislative or judicial branches of government of West
20 Virginia or any political subdivision thereof. The
21 governor shall be chairman of the commission. The
22 secretary of state shall be a member of the commission
23 and serve as its secretary, but shall not have the right to
24 vote upon matters before the commission. All members
25 of the commission shall be citizens and residents of this
26 state. The members of the commission shall be paid or
27 reimbursed for their necessary expenses incurred under
28 this article, but shall receive no compensation for their
29 services as members or officers of the commission:
30 *Provided*, That each member of the commission
31 appointed by the governor shall, in addition to such
32 reimbursement for necessary expenses, receive an amount
33 not to exceed the same compensation as is paid to
34 members of the Legislature for their interim duties as
35 recommended by the citizens legislative compensation
36 commission and authorized by law for each day or
37 substantial portion thereof that he is engaged in the work
38 of the commission. Such expenses and per diem shall be
39 paid solely from funds provided under the authority of
40 this article, and the commission shall not proceed to
41 exercise or carry out any authority or power herein given
42 it to bind said commission beyond the extent to which
43 money has been provided under the authority of this
44 article. On or before the fifteenth day of each month, the
45 commission shall prepare and transmit to the president
46 and minority leader of the Senate and the speaker and the

47 minority leader of the House of Delegates a report
48 covering the activities of the said commission for the
49 preceding calendar month.

50 Pursuant to the provisions of article ten, chapter four
51 of this code, the state building commission shall continue
52 to exist until the first day of July, one thousand nine
53 hundred ninety-nine.

CHAPTER 172

(S. B. 83—Originating in the Committee on Government Organization)

[Passed March 27, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eleven, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia human rights commission until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

That section four, article eleven, 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 11. HUMAN RIGHTS COMMISSION.

§5-11-4. Human rights commission continued; status, powers and objects.

1 The West Virginia human rights commission,
2 heretofore created, is hereby continued. The commission
3 shall have the power and authority and shall perform the
4 functions and services as in this article prescribed and as
5 otherwise provided by law. The commission shall
6 encourage and endeavor to bring about mutual
7 understanding and respect among all racial, religious and
8 ethnic groups within the state and shall strive to eliminate
9 all discrimination in employment and places of public

10 accommodations by virtue of race, religion, color, national
11 origin, ancestry, sex, age, blindness or handicap and shall
12 strive to eliminate all discrimination in the sale, purchase,
13 lease, rental or financing of housing and other real
14 property by virtue of race, religion, color, national origin,
15 ancestry, sex, blindness, handicap or familial status. .

16 Pursuant to the provisions of article ten, chapter four
17 of this code, the West Virginia human rights commission
18 shall continue to exist until the first day of July, one
19 thousand nine hundred ninety-eight.

CHAPTER 173

(H. B. 2498—By Delegates Douglas, Collins, Tucker, Prunty, Claypole,
Stalnaker and Capito)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section eight, article twenty-six, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the governor's cabinet on children and families until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

That section eight, 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.

§5-26-8. Termination date.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the governor's cabinet on children and
3 families shall continue to exist until the first day of July,
4 one thousand nine hundred ninety-nine: *Provided*, That
5 the cabinet shall prepare an annual progress report and

6 shall present the report to the joint committee on
7 government operations. The report shall detail the
8 cabinet's compliance with its purposes, duties and
9 responsibilities as set forth in sections one, three and four
10 of this article, together with proposed plans for future
11 compliance and proposed programs for the following
12 year.

CHAPTER 174

(S. B. 90—Originating in the Committee on Government Organization)

[Passed March 7, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section six, article twenty-six-a, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia commission for national and community service until the first day of July, two thousand three.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 26A. WEST VIRGINIA COMMISSION FOR NATIONAL AND COMMUNITY SERVICE.

§5-26A-6. Termination date.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the West Virginia commission for national
3 and community service shall continue to exist until the
4 first day of July, two thousand three.

CHAPTER 175

(S. B. 89—Originating in the Committee on Government Organization)

[Passed March 21, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article three, chapter five-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the purchasing division within the department of administration until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

1 There is hereby created the purchasing division of the
2 department of administration for the purpose of
3 establishing centralized offices to provide purchasing,
4 travel and leasing services to the various state agencies.

5 No person shall be appointed director of the
6 purchasing division unless that person is, at the time of
7 appointment, a graduate of an accredited college or
8 university and shall have spent a minimum of ten of the
9 fifteen years immediately preceding his appointment
10 employed in an executive capacity in purchasing for any
11 unit of government or for any business, commercial or
12 industrial enterprise.

13 The provisions of this article shall apply to all of the
14 spending units of state government, except as is otherwise
15 provided by this article or by law: *Provided*, That the
16 provisions of this article shall not apply to the legislative
17 branch unless otherwise provided or the Legislature or

18 either house thereof requests the director to render
19 specific services under the provisions of this chapter, nor
20 to purchases of stock made by the alcohol beverage
21 control commissioner, nor to purchases of textbooks for
22 the state board of education.

23 Pursuant to the provisions of article ten, chapter four
24 of this code, the purchasing division within the department
25 of administration shall continue to exist until the first day
26 of July, one thousand nine hundred ninety-eight.

CHAPTER 176

(H. B. 2767—By Delegates Everson, Fantasia, Butcher,
Varner, Willison and Azinger)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section thirteen, article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the tourism commission until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-13. Continuation.

1 Pursuant to the provisions of chapter four, article ten
2 of this code, the tourism commission shall continue to
3 exist until the first day of July, one thousand nine hundred
4 ninety-nine.

CHAPTER 177

(H. B. 2519—By Delegates Douglas, Collins, Tucker, Prunty,
Claypole, Stalnaker and Capito)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section one-a, article two, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuation of the department of health and human resources and providing for continuation of the division of human services and its statutory functions within that department.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES, AND OFFICE OF COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-1a. Department of welfare renamed department of human services; continuation of the department of health and human resources and the division of human services.

1 The state department of welfare, created pursuant to
2 the provisions of chapter nine of this code, is hereby
3 continued as an official department of the state of West
4 Virginia, but effective the twenty-nine day of May, one
5 thousand nine hundred eighty-three, its name shall be the
6 division of human services. All references in the code to
7 the department of welfare shall mean the division of
8 human services, and all references to the commissioner of
9 the department of welfare shall mean the commissioner of
10 the division of human services and for all other legal

11 purposes the department of welfare shall continue as the
12 division of human services.

13 The department of health and human resources and
14 the division of human services within that department shall
15 be charged with the administration of this chapter. The
16 department of health and human resources shall continue
17 to exist and the division of human services shall continue
18 to exist within the department of health and human
19 resources until the first day of July, one thousand nine
20 hundred ninety-eight, to permit a review of their functions
21 to be undertaken by the joint committee on government
22 operations as part of the full performance evaluation of
23 the department of health and human resources scheduled
24 to continue during the interim of the Legislature in the
25 year one thousand nine hundred ninety-seven.

CHAPTER 178

(H. B. 2877—By Delegates H. White, Kuhn, Thompson,
Heck, Willis, Capito and Harrison)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article five, chapter ten of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the educational broadcasting authority until the first day of July, two thousand.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-2. West Virginia educational broadcasting authority; members; organization; officers; employees; meetings; expenses; termination date.

1 The West Virginia educational broadcasting authority,
2 heretofore created, is hereby continued as a public benefit
3 corporation. It shall consist of eleven voting members,
4 who shall be residents of the state, of whom one shall be
5 the state superintendent of schools, one shall be a member
6 of the West Virginia board of education to be selected by
7 it annually, one shall be a member of the university of
8 West Virginia board of trustees to be selected by it
9 annually, and one shall be a member of the board of
10 directors of the state college system to be selected by it
11 annually. The other seven members shall be appointed by
12 the governor by and with the advice and consent of the
13 Senate for overlapping terms of seven years, one term
14 expiring each year, except that the appointment to fill the
15 membership position for the term expiring in the year one
16 thousand nine hundred eighty-three, shall be for a term of
17 six years. Not less than one appointive member shall
18 come from each congressional district. Employees of
19 noncommercial broadcasting stations in West Virginia are
20 not eligible for appointment to the authority. The present
21 members of the authority shall continue to serve out the
22 terms to which they were appointed. Any vacancy among
23 the appointive members shall be filled by the governor by
24 appointment for the unexpired term.

25 The chairperson and vice chairperson of the authority
26 as of the effective date of this section shall continue in
27 their respective offices until their successors are elected.
28 Thereafter, at its annual meeting in each year the authority
29 shall elect one of its members as chairperson and one as
30 vice chairperson. The authority is authorized to select an
31 executive director and such other personnel as may be
32 necessary to perform its duties and to fix the
33 compensation of such personnel to be paid out of moneys
34 appropriated for this purpose. The executive director shall
35 keep a record of the proceedings of the authority and
36 shall perform such other duties as it may prescribe. The
37 authority is authorized to establish such office or offices
38 as may be necessary for the proper performance of its
39 duties.

40 The authority shall hold an annual meeting and may
41 meet at such other times and places as may be necessary,
42 such meetings to be held upon its own resolution or at the
43 call of the chairperson of the authority. The members
44 shall serve without compensation but may be reimbursed
45 for actual expenses incident to the performance of their
46 duties upon presentation to the chairperson of an itemized
47 sworn statement thereof.

48 Pursuant to the provisions of article ten, chapter four
49 of this code, the educational broadcasting authority shall
50 continue to exist until the first day of July, two thousand.

CHAPTER 179

(S. B. 85—Originating in the Committee on Government Organization)

[Passed March 27, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia board of investments until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA BOARD OF INVESTMENTS.

*§12-6-18. West Virginia board of investments continued.

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the West Virginia board of investments shall
3 continue to exist until the first day of July, one thousand
4 nine hundred ninety-eight.

*Clerk's Note: This section was repealed by S. B. 563 (Chapter 95), which passed subsequent to this act.

CHAPTER 180

(H. B. 2286—By Delegates Douglas, Collins, Tucker, Prunty, Claypole,
Stainaker and Capito)

[Passed April 8, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section two, article two, chapter fifteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the West Virginia state police until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

That section two, 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.

§15-2-2. Superintendent; departmental headquarters; continuation of the state police.

1 The department of public safety, heretofore
2 established, shall be continued and hereafter shall be
3 known as the West Virginia state police. Wherever the
4 words "department of public safety" or "division of
5 public safety" appear in this code, they shall mean the
6 West Virginia state police. The governor shall nominate,
7 and by and with the advice and consent of the Senate,
8 appoint a superintendent to be the executive and
9 administrative head of the department. Notwithstanding
10 any provision of this code to the contrary, the
11 superintendent shall be paid an annual salary of sixty
12 thousand dollars. The superintendent shall hold the rank
13 of colonel and is entitled to all rights, benefits and
14 privileges of regularly enlisted members. On the date of
15 his or her appointment, the superintendent shall be at least
16 thirty years of age. Before entering upon the discharge of
17 the duties of his or her office, he or she shall execute a

18 bond in the penalty of ten thousand dollars, payable to the
19 state of West Virginia and conditioned upon the faithful
20 performance of his or her duties. Such bond both as to
21 form and security shall be approved as to form by the
22 attorney general, and to sufficiency by the governor.

23 Before entering upon the duties of his or her office
24 the superintendent shall subscribe to the oath hereinafter
25 provided. The headquarters of the department shall be
26 located in Kanawha County.

27 Pursuant to the provisions of article ten, chapter four
28 of this code, the West Virginia state police shall continue
29 to exist until the first day of July, one thousand nine
30 hundred ninety-nine.

CHAPTER 181

(S. B. 84—Originating in the Committee on Government Organization)

[Passed March 28, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section five, article four-c, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the emergency medical services advisory council until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-5. Emergency medical services advisory council; duties, composition, appointment, meetings, compensation and expenses; continuation.

1 The emergency medical services advisory council,
2 heretofore created and established by former section seven
3 of this article, shall be continued for the purpose of devel-
4 oping, with the commissioner, standards for emergency
5 medical service personnel and for the purpose of provid-
6 ing advice to the office of emergency medical services and
7 the commissioner with respect to reviewing and making
8 recommendations for and providing assistance to the es-
9 tablishment and maintenance of adequate emergency
10 medical services for all portions of this state.

11 The council shall have the duty to advise the commis-
12 sioner in all matters pertaining to his or her duties and
13 functions in relation to carrying out the purposes of this
14 article.

15 The council shall be composed of fifteen members
16 appointed by the governor by and with the advice and
17 consent of the Senate. The mountain state emergency
18 medical services association shall submit to the governor a
19 list of six names of representatives from their association
20 and a list of three names shall be submitted to the gover-
21 nor of representatives of their respective organizations by
22 the county commissioners' association of West Virginia,
23 the West Virginia state firemen's association, the West Vir-
24 ginia hospital association, the West Virginia chapter of the
25 American college of emergency physicians, the West Vir-
26 ginia emergency medical services administrators associa-
27 tion, the West Virginia emergency medical services coal-
28 tion, the ambulance association of West Virginia, the coun-
29 ty commissioner's association and the state department of
30 education. The governor shall appoint from the respective
31 lists submitted, two persons who represent the mountain
32 state emergency medical services association, one of whom
33 shall be a paramedic and one of whom shall be an emer-
34 gency medical technician-basic, and one person from the
35 county commissioners' association of West Virginia, the
36 West Virginia state firemen's association, the West Virginia
37 hospital association, the West Virginia chapter of the

38 American college of emergency physicians, the West Vir-
39 ginia emergency medical services administrators associa-
40 tion, the West Virginia emergency medical services coal-
41 ition, the ambulance association of West Virginia and the
42 state department of education. In addition the governor
43 shall appoint one person to represent emergency medical
44 service providers operating within the state, one person to
45 represent small emergency medical service providers oper-
46 ating within this state and three persons to represent the
47 general public. Not more than six of the members may be
48 appointed from any one congressional district.

49 The current advisory council members' terms shall end
50 on the thirtieth day of June, one thousand nine hundred
51 ninety-six, and, pursuant to the provisions of this section,
52 the governor shall appoint an advisory council on the first
53 day of July, one thousand nine hundred ninety-six. Of
54 those first appointed, one-third shall serve for one year,
55 one-third shall serve for two years and one-third shall
56 serve for three years. Each subsequent term is to be for
57 three years and no member may serve more than four
58 consecutive terms.

59 The council shall choose its own chairman and meet at
60 the call of the commissioner at least twice a year.

61 The members of the council shall receive compensa-
62 tion and expense reimbursement in an amount not to
63 exceed the same compensation and expense reimburse-
64 ment as is paid to members of the Legislature for their
65 interim duties as recommended by the citizens legislative
66 compensation commission and authorized by law, for each
67 day or substantial portion thereof engaged in the perfor-
68 mance of official duties.

69 Pursuant to the provisions of article ten, chapter four
70 of this code, the emergency medical services advisory
71 council shall continue to exist until the first day of July,
72 one thousand nine hundred ninety-eight.

CHAPTER 182

(S. B. 81—Originating in the Committee on Government Organization)

[Passed April 2, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-eight, article twenty-nine-b, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the health care cost review authority until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 29B. HEALTH CARE COST REVIEW AUTHORITY.

***§16-29B-28. Termination date.**

- 1 Pursuant to the provisions of article ten, chapter four
- 2 of this code, the health care cost review authority shall
- 3 continue to exist until the first day of July, one thousand
- 4 nine hundred ninety-nine.

*Clerk's Note: This section was also amended by S. B. 458 (Chapter 102), which passed subsequent to this act.

CHAPTER 183

(S. B. 86—Originating in the Committee on Government Organization)

[Passed March 27, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article sixteen-a, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia parkways, economic development and tourism authority until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.

§17-16A-3. Dissolution and termination of West Virginia turnpike commission; West Virginia parkways, economic development and tourism authority generally.

1 On and after the first day of June, one thousand nine
 2 hundred eighty-nine, the West Virginia turnpike
 3 commission is hereby abolished in all respects, and there is
 4 hereby created the "West Virginia Parkways, Economic
 5 Development and Tourism Authority", and by that name
 6 the parkways authority may sue and be sued and plead
 7 and be impleaded. The parkways authority is hereby
 8 constituted an agency of the state, and the exercise by the
 9 parkways authority of the powers conferred by this article
 10 in the construction, reconstruction, improvement,
 11 operation and maintenance of parkway, economic
 12 development and tourism projects shall be deemed and
 13 held to be an essential governmental function of the state.

14 The West Virginia parkways, economic development
15 and tourism authority shall consist of seven members,
16 including the transportation secretary, who shall serve as
17 chairman of the parkways authority, and six members,
18 including no less than one from each of the counties
19 which have land bordering parkway projects, appointed by
20 the governor, by and with the advice and consent of the
21 Senate. The appointed members shall be residents of the
22 state, and shall have been qualified electors therein for a
23 period of at least one year next preceding their
24 appointment. Upon the effective date of this legislation,
25 the governor shall forthwith appoint six members of the
26 parkways authority for staggered terms. The terms of the
27 parkways authority members first taking office on or after
28 the effective date of this legislation shall expire as
29 designated by the governor at the time of the nomination,
30 one at the end of the first year, one at the end of the
31 second year, one at the end of the third year, one at the
32 end of the fifth year, one at the end of the sixth year and
33 one at the end of the seventh year, after the first day of
34 June, one thousand nine hundred eighty-nine. As these
35 original appointments expire, each subsequent
36 appointment shall be for a full eight-year term. Any
37 member whose term has expired shall serve until his
38 successor has been duly appointed and qualified. Any
39 person appointed to fill a vacancy shall serve only for the
40 unexpired term. Any member shall be eligible for
41 reappointment. The term of any person serving as a
42 member of the West Virginia turnpike commission
43 immediately preceding the effective date of this legislation
44 shall cease and otherwise expire upon such effective date:
45 *Provided*, That any such member shall be eligible for
46 reappointment. Each appointed member of the parkways
47 authority before entering upon his duties shall take an
48 oath as provided by section five, article IV of the
49 constitution of the state of West Virginia.

50 The parkways authority shall elect one of the
51 appointed members as vice chairman, and shall also elect a
52 secretary and treasurer who need not be members of the
53 parkways authority. Four members of the parkways

54 authority shall constitute a quorum and the vote of a
55 majority of members present shall be necessary for any
56 action taken by the parkways authority. No vacancy in
57 the membership of the parkways authority shall impair the
58 right of a quorum to exercise all the rights and perform all
59 the duties of the parkways authority. The parkways
60 authority shall meet at least monthly and either the
61 chairman or any four members shall be empowered to call
62 special meetings for any purpose or purposes: *Provided,*
63 That notice of any such meeting shall be given to all
64 members of the parkways authority not less than ten days
65 prior to said special meetings.

66 Before the issuance of any parkway revenue bonds or
67 revenue refunding bonds under the provisions of this
68 article, each appointed member of the parkways authority
69 shall execute a surety bond in the penal sum of twenty-
70 five thousand dollars and the secretary and treasurer shall
71 execute a surety bond in the penal sum of fifty thousand
72 dollars, each such surety bond to be conditioned upon the
73 faithful performance of the duties of his office, to be
74 executed by a surety company authorized to transact
75 business in the state of West Virginia as surety and to be
76 approved by the governor and filed in the office of the
77 secretary of state.

78 The members of the parkways authority shall not be
79 entitled to compensation for their services, but each
80 member shall be reimbursed for his actual expenses
81 necessarily incurred in the performance of his duties. All
82 expenses incurred in carrying out the provisions of this
83 article shall be payable solely from funds provided under
84 the authority of this article and no liability or obligation
85 shall be incurred by the parkways authority hereunder
86 beyond the extent to which moneys shall have been
87 provided under the authority of this article.

88 Pursuant to the provisions of article ten, chapter four
89 of this code, the West Virginia parkways, economic
90 development and tourism authority shall continue to exist
91 until the first day of July, one thousand nine hundred
92 ninety-nine.

CHAPTER 184

(S. B. 88—Originating in the Committee on Government Organization)

[Passed March 11, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section seven-a, article two, chapter seventeen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the driver's licensing advisory board until the first day of July, two thousand three.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-7a. Driver's licensing advisory board.

1 The driver's licensing advisory board is hereby
2 reestablished. The board shall consist of five members to
3 be appointed by the governor, by and with the advice and
4 consent of the Senate, for terms of three years, except that
5 as to the members first appointed, two shall be appointed
6 for a term of three years, two shall be appointed for a term
7 of two years, and one shall be appointed for a term of one
8 year, all from the first day of July, one thousand nine
9 hundred seventy-four. All vacancies occurring on the
10 board shall be filled by the governor, by and with the
11 advice and consent of the Senate. One member of the
12 board shall be an optometrist duly registered to practice
13 optometry in this state and the other four members of the
14 board shall be physicians or surgeons duly licensed to
15 practice medicine or surgery in this state. The governor
16 shall appoint persons qualified to serve on the board who,
17 in his opinion, will best serve the work and function of the
18 board.

19 The board shall advise the commissioner of motor
20 vehicles as to vision standards and all other medical
21 criteria of whatever kind or nature relevant to the licensing
22 of persons to operate motor vehicles under the provisions
23 of this chapter. The board shall, upon request, advise the
24 commissioner of motor vehicles as to the mental or
25 physical fitness of an applicant for, or the holder of, a
26 license to operate a motor vehicle. The board shall
27 furnish the commissioner with all such medical standards,
28 statistics, data, professional information and advice as he
29 may reasonably request.

30 The members of the board shall receive compensation
31 and expense reimbursement in an amount not to exceed
32 the same compensation and expense reimbursement as is
33 paid to members of the Legislature for their interim duties
34 as recommended by the citizens legislative compensation
35 commission and authorized by law, for each day or
36 substantial portion thereof engaged in the performance of
37 official duties.

38 Pursuant to the provisions of article ten, chapter four
39 of this code, the driver's licensing advisory board shall
40 continue to exist until the first day of July, two thousand
41 three.

CHAPTER 185

(H. B. 2499 —By Delegates Douglas, Collins, Tucker,
Prunty, Claypole, Stalnaker and Caplto)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section eighteen, article nine-d, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the school building authority until the first day of July, two thousand three.

Be it enacted by the Legislature of West Virginia:

That section eighteen, article nine-d, 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 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-18. Continuation.

- 1 Pursuant to the provisions of article ten, chapter four
- 2 of this code, the school building authority shall continue
- 3 to exist until the first day of July, two thousand three.

CHAPTER 186

(S. B. 78—Originating in the Committee on Government Organization)

[Passed March 21, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article ten-a, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of rehabilitation services until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

That section two, article ten-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 10A. VOCATIONAL REHABILITATION.

§18-10A-2. Division of rehabilitation services.

- 1 The division of rehabilitation services is hereby
- 2 transferred to the department of education and the arts
- 3 created in article one, chapter five-f of this code. The
- 4 secretary shall appoint any such board, commission or
- 5 council over the division to the extent required by federal
- 6 law to qualify for federal funds for providing rehabili-

7 tation services for disabled persons. The secretary and
8 such boards, commissions or councils as he or she is
9 required by federal law to appoint are authorized and
10 directed to cooperate with the federal government to the
11 fullest extent in an effort to provide rehabilitation services
12 for disabled persons.

13 References in this article or article ten-b of this chapter
14 to the state board of vocational education, the state board
15 of rehabilitation or the state board as the governing board
16 of vocational or other rehabilitation services or facilities
17 means the secretary of education and the arts. All
18 references in the code to the division of vocational
19 rehabilitation means the division of rehabilitation services
20 and all references to the director of the division of
21 vocational rehabilitation means the director of the division
22 of rehabilitation services.

23 Pursuant to the provisions of article ten, chapter four
24 of this code, the division of rehabilitation services shall
25 continue to exist until the first day of July, one thousand
26 nine hundred ninety-eight.

CHAPTER 187

(H. B. 2867—By Delegates Douglas, Collins, Varner,
Everson, Thompson, H. White and Stainaker)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section three, article one, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the parks section and the parks functions of the division of natural resources until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-3. Division of natural resources, office of director and commission established; termination date for division of natural resources and for parks section of division of natural resources.

1 A division of natural resources, the office of director
2 of the division of natural resources and a natural resources
3 commission are hereby created and established in the state
4 government with jurisdiction, powers, functions, services
5 and enforcement processes as provided in this chapter and
6 elsewhere by law.

7 Pursuant to the provisions of article ten, chapter four
8 of this code, the division of natural resources shall
9 continue to exist until the first day of July, two thousand
10 one.

11 Pursuant to the provisions of article ten, chapter four
12 of this code, the parks section and parks functions of the
13 division of natural resources, transferred to the division of
14 natural resources pursuant to the provisions of section
15 twelve, article one, chapter five-b of this code, shall
16 continue to exist within the division of natural resources
17 until the first day of July, one thousand nine hundred
18 ninety-eight.

CHAPTER 188

(S. B. 87—Originating in the Committee on Government Organization)

[Passed March 27, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article eleven, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the contractor licensing board until the first day of July, two thousand two.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-19. Termination of board.

1 The West Virginia contractor licensing board shall be
2 terminated pursuant to the provisions of article ten,
3 chapter four of this code, on the first day of July, two
4 thousand two.

CHAPTER 189

(H. B. 2287—By Delegates Douglas, Collins, Tucker, Prunty,
Claypole, Stalnaker and Capito)

[Passed April 8, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section four, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the division of environmental protection until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-4. Division of environmental protection continued.

1 Pursuant to the provisions of article ten, chapter four of
2 this code, the division of environmental protection shall
3 continue to exist until the first day of July, one thousand
4 nine hundred ninety-nine.

CHAPTER 190

(H. B. 2288—By Delegates Douglas, Collins, Tucker, Prunty, Claypole,
Stalnaker and Capito)

[Passed April 8, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section seven, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the office of water resources until the first day of July, one thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-7. Offices within division; continuation of the office of water resources.

1 Consistent with the provisions of this article the
2 director shall, at a minimum, maintain the following
3 offices within the division:

4 (1) The office of abandoned mine lands and
5 reclamation, which is charged, at a minimum, with
6 administering and enforcing, under the supervision of the
7 director, the provisions of article two of this chapter;

8 (2) The office of mining and reclamation, which is
9 charged, at a minimum, with administering and enforcing,
10 under the supervision of the director, the provisions of
11 articles three and four of this chapter;

12 (3) The office of air quality, which is charged, at a
13 minimum, with administering and enforcing, under the
14 supervision of the director, the provisions of article five of
15 this chapter;

16 (4) The office of oil and gas, which is charged, at a
17 minimum, with administering and enforcing, under the
18 supervision of the director, the provisions of articles six,
19 seven, eight, nine and ten of this chapter;

20 (5) The office of water resources, which is charged, at
21 a minimum, with administering and enforcing, under the
22 supervision of the director, the provisions of articles
23 eleven, twelve, thirteen and fourteen of this chapter; and

24 (6) The office of waste management, which is charged,
25 at a minimum, with administering and enforcing, under
26 the supervision of the director, the provisions of articles
27 fifteen, sixteen, seventeen, eighteen, nineteen and twenty of
28 this chapter.

29 Pursuant to the provisions of article ten, chapter four
30 of this code, the office of water resources within the
31 division of environmental protection shall continue to
32 exist until the first day of July, one thousand nine hundred
33 ninety-nine.

CHAPTER 191

(H. B. 2289—By Delegates Douglas, Collins, Tucker, Prunty,
Claypole, Flanigan and Capito)

[Passed April 8, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section one, article twenty,
chapter twenty-two of the code of West Virginia, one
thousand nine hundred thirty-one, as amended, continuing
the position of environmental advocate within the division of
environmental protection until the first day of July, one
thousand nine hundred ninety-nine.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 20. ENVIRONMENTAL ADVOCATE.

§22-20-1. Appointment of environmental advocate; powers and duties; salary; continuation of position.

1 The director of the division of environmental
2 protection shall appoint a person to serve as the environ-
3 mental advocate within the division of environmental
4 protection, and shall adopt and promulgate rules in
5 accordance with the provisions of article three, chapter
6 twenty-nine-a of this code governing and controlling the
7 qualifications, powers and duties of the person to be
8 appointed to the position of environmental advocate. The
9 environmental advocate shall serve at the will and pleasure
10 of the director, who shall also set the salary of the environ-
11 mental advocate. All funding for the office of environ-
12 mental advocate shall be from existing funds of the
13 division of environmental protection. The director shall
14 provide an office and secretarial and support staff as
15 needed. The position of environmental advocate shall
16 continue to exist until the first day of July, one thousand
17 nine hundred ninety-nine, pursuant to article ten, chapter
18 four of this code.

CHAPTER 192

(S. B. 80—Originating in the Committee on Government Organization)

[Passed March 21, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the authority of the commissioner of the bureau of employment programs to administer workers' compensation until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1. Commissioner of the bureau of employment programs; compensation programs performance council; official seal; continuation of authority of commissioner; legal services; rules.

1 (a) The commissioner of the bureau of employment
2 programs appointed under the provisions of section one,
3 article two, chapter twenty-one-a of this code, has the sole
4 responsibility for the administration of this chapter except
5 for such matters as are entrusted to the compensation
6 programs performance council created pursuant to section
7 one, article three, chapter twenty-one-a of this code. In
8 the administration of this chapter, the commissioner shall
9 exercise all the powers and duties described in this chapter
10 and in article two, chapter twenty-one-a of this code.

11 (b) The commissioner is authorized to promulgate
12 rules and regulations to implement the provisions of this
13 chapter.

14 (c) The commissioner shall have an official seal for
15 the authentication of orders and proceedings, upon which
16 seal shall be engraved the words "West Virginia Commis-
17 sioner of Employment Programs" and such other design
18 as the commissioner may prescribe. The courts in this
19 state shall take judicial notice of the seal of the commis-
20 sioner and in all cases copies of orders, proceedings or
21 records in the office of the West Virginia commissioner of
22 employment programs shall be equal to the original in
23 evidence.

24 (d) Pursuant to the provisions of article ten, chapter
25 four of this code, the commissioner of the bureau of
26 employment programs shall continue to administer this
27 chapter until the first day of July, one thousand nine
28 hundred ninety-eight.

29 (e) The attorney general shall perform all legal
30 services required by the commissioner under the
31 provisions of this chapter: *Provided*, That in any case in
32 which an application for review is prosecuted from any
33 final decision of the workers' compensation appeal board
34 to the supreme court of appeals, as provided by section
35 four, article five of this chapter, or in any court
36 proceeding before the workers' compensation appeal
37 board, or in any proceedings before the office of judges,
38 or in any case in which a petition for an extraordinary writ
39 is filed in the supreme court of appeals or in any circuit
40 court, in which such representation shall appear to the
41 commissioner to be desirable, the commissioner may
42 designate a regular employee of this office, qualified to
43 practice before such court to represent the commissioner
44 upon such appeal or proceeding, and in no case shall the
45 person so appearing for the commissioner before the
46 court receive remuneration therefor other than such
47 person's regular salary.

CHAPTER 193

(S. B. 79—Originating in the Committee on Government Organization)

[Passed March 7, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section eight, article five, chapter twenty-three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the office of judges of the workers' compensation system until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. REVIEW.**§23-5-8. Continuation of office of administrative law judges; powers of chief administrative law judge and said office.**

1 (a) The workers' compensation office of
2 administrative law judges previously created pursuant to
3 chapter twelve, acts of the Legislature, one thousand nine
4 hundred ninety, second extraordinary session, is hereby
5 continued and designated to be an integral part of the
6 workers' compensation system of this state. The office of
7 judges shall be under the supervision of a chief
8 administrative law judge who shall be appointed by the
9 governor, with the advice and consent of the Senate. The
10 previously appointed incumbent of that position who was
11 serving on the second day of February, one thousand nine
12 hundred ninety-five, shall continue to serve in that
13 capacity unless subsequently removed as provided for in
14 subsection (b) of this section.

15 (b) The chief administrative law judge shall be a
16 person who has been admitted to the practice of law in this
17 state and shall also have had at least four years of
18 experience as an attorney. The chief administrative law
19 judge's salary shall be set by the compensation programs
20 performance council created in section one, article three,
21 chapter twenty-one-a of this code. Said salary shall be
22 within the salary range for comparable chief
23 administrative law judges as determined by the state
24 personnel board created by section six, article six, chapter
25 twenty-nine of this code. The chief administrative law
26 judge may only be removed by a vote of two thirds of the
27 members of the compensation programs performance
28 council and shall not be removed except for official
29 misconduct, incompetence, neglect of duty, gross
30 immorality or malfeasance and then only after he or she
31 has been presented in writing with the reasons for his or
32 her removal and is given opportunity to respond and to
33 present evidence. No other provision of this code
34 purporting to limit the term of office of any appointed
35 official or employee or affecting the removal of any

36 appointed official or employee shall be applicable to the
37 chief administrative law judge.

38 (c) By and with the consent of the commissioner, the
39 chief administrative law judge shall employ administrative
40 law judges and other personnel as are necessary for the
41 proper conduct of a system of administrative review of
42 orders issued by the workers' compensation division
43 which orders have been objected to by a party, and all
44 such employees shall be in the classified service of the
45 state. Qualifications, compensation and personnel practice
46 relating to the employees of the office of judges, other
47 than the chief administrative law judge, shall be governed
48 by the provisions of the statutes, rules and regulations of
49 the classified service pursuant to article six, chapter
50 twenty-nine of this code. All such additional adminis-
51 trative law judges shall be persons who have been admitted
52 to the practice of law in this state and shall also have had at
53 least two years of experience as an attorney. The chief
54 administrative law judge shall supervise the other
55 administrative law judges and other personnel which
56 collectively shall be referred to in this chapter as the office
57 of judges.

58 (d) The administrative expense of the office of judges
59 shall be included within the annual budget of the workers'
60 compensation division.

61 (e) Subject to the approval of the compensation
62 programs performance council pursuant to subdivisions
63 (b) and (c), section seven, article three, chapter
64 twenty-one-a of this code, the office of judges shall from
65 time to time promulgate rules of practice and procedure
66 for the hearing and determination of all objections to
67 findings or orders of the workers' compensation division
68 pursuant to section one of this article. The office of
69 judges shall not have the power to initiate or to
70 promulgate legislative rules as that phrase is defined in
71 article three, chapter twenty-nine-a of this code.

72 (f) The chief administrative law judge shall continue to
73 have the power to hear and determine all disputed claims
74 in accordance with the provisions of this article, establish a
75 procedure for the hearing of disputed claims, take oaths,

76 examine witnesses, issue subpoenas, establish the amount
 77 of witness fees, keep such records and make such reports
 78 as are necessary for disputed claims, and exercise such
 79 additional powers, including the delegation of such powers
 80 to administrative law judges or hearing examiners as may
 81 be necessary for the proper conduct of a system of
 82 administrative review of disputed claims. The chief
 83 administrative law judge shall make such reports as may
 84 be requested of him or her by the compensation programs
 85 performance council.

86 (g) Pursuant to the provisions of article ten, chapter
 87 four of this code, the office of judges shall continue to
 88 exist until the first day of July, one thousand nine hundred
 89 ninety-eight.

CHAPTER 194

(S. B. 91—Originating in the Committee on Government Organization)

[Passed March 14, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two, article one, chapter twenty-five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to making technical corrections changing the termination date of the division of corrections pursuant to the provisions of article ten, chapter four of this code.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. ORGANIZATION AND INSTITUTIONS.

§25-1-2. Reestablishment of division; findings.

1 Pursuant to the provisions of article ten, chapter four
 2 of this code, the division of corrections shall continue to
 3 exist until the first day of July, two thousand.

CHAPTER 195

(S. B. 77—Originating in the Committee on Government Organization)

[Passed March 14, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one-b, article one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the division of culture and history until the first day of July, two thousand three.

Be it enacted by the Legislature of West Virginia:

That section one-b, 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.

§29-1-1b. Continuation date.

- 1 The division of culture and history, together with its
 - 2 citizen's commissions, shall continue to exist until the first
 - 3 day of July, two thousand three, pursuant to the provisions
 - 4 of article ten, chapter four of this code.
-

CHAPTER 196

(H. B. 2407—By Delegates Douglas, Collins, Tucker, Prunty, Claypole,
Stalnaker and Capito)

[Passed April 8, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section five-a, article six, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the division of personnel until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

That section five-a, article six, 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 6. CIVIL SERVICE COMMISSION.

§29-6-5a. Termination of division.

- 1 Pursuant to the provisions of article ten, chapter four
- 2 of this code, the division of personnel shall continue to
- 3 exist until the first day of July, one thousand nine hundred
- 4 ninety-eight.

CHAPTER 197

(H. B. 2876—By Delegates Fantasia, Kuhn, H. White,
Thompson, Heck, Willison and Given)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section four, article eighteen, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia state rail authority until the first day of July, two thousand.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-4. West Virginia state rail authority continued; organization of authority; appointment of members; term of office, compensation and expenses; director of authority; termination date.

1 The West Virginia railroad maintenance authority,
2 heretofore created, is hereby continued and redesignated
3 the West Virginia state rail authority. References in this
4 code to the West Virginia railroad maintenance authority
5 shall be understood and taken to mean the West Virginia
6 state rail authority. Nothing in this article is intended to
7 invalidate any action or obligation of the West Virginia
8 railroad maintenance authority undertaken prior to the
9 effective date of this article. The authority is a
10 governmental instrumentality of the state and a body
11 corporate. The exercise by the authority of the powers
12 conferred by this article and the carrying out of its
13 purposes and duties shall be deemed and held to be, and
14 are hereby determined to be, essential governmental
15 functions and for a public purpose.

16 The authority shall consist of seven members. The
17 secretary of the department of transportation shall be a
18 member ex officio. The other six members shall be
19 appointed by the governor, by and with the advice and
20 consent of the Senate, for a term of six years. Of the
21 members of the authority first appointed, two shall be
22 appointed for a term ending on the thirtieth day of June,
23 one thousand nine hundred seventy-seven, two shall be
24 appointed for a term ending two years thereafter and two
25 shall be appointed for a term ending four years thereafter.
26 A person appointed to fill a vacancy occurring prior to the
27 expiration of the term for which his predecessor was
28 appointed shall be appointed only for the remainder of
29 such term. Each authority member shall serve until the
30 appointment and qualification of his successor. No more
31 than three of the appointed authority members shall at any
32 one time belong to the same political party. Appointed
33 authority members may be reappointed to serve additional
34 terms.

35 All members of the authority shall be citizens of the
36 state. Each appointed member of the board, before
37 entering upon his duties, shall comply with the
38 requirements of article one, chapter six of this code and
39 give bond in the sum of twenty-five thousand dollars in

40 the manner provided in article two, chapter six of this
41 code. The governor may remove any authority member
42 for cause as provided in article six, chapter six of this
43 code.

44 Annually the authority shall elect one of its members
45 as chairman and another as vice chairman, and shall
46 appoint a secretary-treasurer, who need not be a member
47 of the authority. Four members of the authority shall
48 constitute a quorum and the affirmative vote of four
49 members shall be necessary for any action taken by vote
50 of the authority. No vacancy in the membership of the
51 authority shall impair the rights of a quorum by such vote
52 to exercise all the rights and perform all the duties of the
53 authority. The person appointed as secretary-treasurer,
54 including an authority member if he is so appointed, shall
55 give bond in the sum of fifty thousand dollars in the
56 manner provided in article two, chapter six of this code.

57 The secretary of the department of transportation shall
58 not receive any compensation for serving as an authority
59 member. Each of the six appointed members of the
60 authority shall receive the same compensation and
61 expense reimbursement as is paid to members of the
62 Legislature for their interim duties as recommended by
63 the citizens legislative compensation commission and
64 authorized by law for each day or substantial portion
65 thereof engaged in the discharge of official duties. All
66 such compensation and expenses incurred shall be
67 payable solely from funds of the authority or from funds
68 appropriated for such purpose by the Legislature and no
69 liability or obligation shall be incurred by the authority
70 beyond the extent to which moneys are available from
71 funds of the authority or from such appropriations.

72 There shall also be a director of the authority
73 appointed by the authority.

74 Pursuant to the provisions of article ten, chapter four
75 of this code, the West Virginia state rail authority shall
76 continue to exist until the first day of July, two thousand.

CHAPTER 198

(H. B. 2875—By Delegates Kuhn, H. White, Thompson, Heck, Flanigan, Willison and Azinger)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-one, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing public defender services until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-3. Establishment of public defender services, termination date.

1 There is hereby created an executive agency known
2 as public defender services. The agency shall administer,
3 coordinate and evaluate programs by which the state
4 provides legal representation to indigent persons, monitor
5 the progress of various delivery systems, and recommend
6 improvements. The agency shall maintain its office at the
7 state capital.

8 Pursuant to the provisions of article ten, chapter four
9 of this code, public defender services shall continue to
10 exist until the first day of July, one thousand nine hundred
11 ninety-eight.

CHAPTER 199

(S. B. 82—Originating in the Committee on Government Organization)

[Passed March 24, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section fifteen, article thirty-one, chapter thirty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia board of examiners in counseling until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-15. Continuation of board.

1 Pursuant to article ten, chapter four of this code, the
2 West Virginia board of examiners in counseling shall
3 continue to exist until the first day of July, two thousand.

CHAPTER 200

(H. B. 2766—By Delegates Douglas, Varner, Davis, Heck, Willis,
Stalnaker and Collins)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article thirty-four, chapter thirty of the code of West Virginia, one thousand nine hundred thirty one, as amended, by adding thereto a new section, designated section seventeen, placing the board of respiratory care practitioners under sunset review.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 34. BOARD OF RESPIRATORY CARE PRACTITIONERS.

§30-34-17. Termination.

- 1 The board provided for in this article shall terminate
- 2 pursuant to the provisions of article ten, chapter four of
- 3 this code, on the first day of July, two thousand, unless
- 4 continued pursuant to the provisions of that article by
- 5 legislation enacted prior to the termination date.

CHAPTER 201

(S. B. 92—Originating in the Committee on Government Organization)

[Passed March 7, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter forty-seven-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to continuing the West Virginia lending and credit rate board until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

§47A-1-1. Legislative findings; creation, membership, powers and duties of board; continuation.

- 1 (a) The Legislature hereby finds and declares that:

2 (1) Changes in the permissible charges on loans, credit
3 sales or transactions, forbearance or other similar
4 transactions require specialized knowledge of the needs of
5 the citizens of West Virginia for credit for personal and
6 commercial purposes and knowledge of the availability of
7 such credit at reasonable rates to the citizens of this state
8 while affording a competitive return to persons extending
9 such credit;

10 (2) Maximum charges on loans, credit sales or
11 transactions, forbearance or other similar transactions
12 executed in this state should be prescribed from time to
13 time to reflect changed economic conditions, current
14 interest rates and finance charges throughout the United
15 States and the availability of credit within the state in order
16 to promote the making of such loans in this state; and

17 (3) The prescribing of such maximum interest rates
18 and finance charges can be accomplished most effectively
19 and flexibly by a board comprised of the heads of
20 designated government agencies, university schools of
21 business and administration and members of the public.

22 (b) In view of the foregoing findings, it is the purpose
23 of this section to establish the West Virginia lending and
24 credit rate board and authorize said board to prescribe
25 semiannually the maximum interest rates and finance
26 charges on loans, credit sales or transactions, forbearance
27 or similar transactions made pursuant to this section
28 subject to the provisions, conditions and limitations
29 hereinafter set forth and to authorize lenders, sellers and
30 other creditors to charge up to the maximum interest rates
31 or finance charges so fixed. The rates prescribed by the
32 board are alternative rates and any creditor may utilize
33 either the rate or rates set by the board or any other rate or
34 rates which the creditor is permitted to charge under any
35 other provision of this code.

36 (c) The West Virginia lending and credit rate board
37 shall be comprised of:

38 (1) The director of the governor's office of economic
39 and community development;

- 40 (2) The West Virginia state treasurer;
- 41 (3) The West Virginia banking commissioner;
- 42 (4) The deans of the schools of business and
43 administration at Marshall university and West Virginia
44 university;
- 45 (5) The director of the division of consumer
46 protection of the attorney general's office; and
- 47 (6) Three members of the public appointed by the
48 governor with the advice and consent of the Senate. The
49 members of the public shall be appointed for terms of six
50 years each, and until their successors are appointed and
51 qualified; except that of the members first appointed, one
52 shall be appointed for a term of two years, one for a term
53 of four years, and one for a term of six years. A member
54 who has served one full term of six years shall be
55 ineligible for appointment for the next succeeding term.
56 Vacancies shall be filled by appointment of the governor
57 with the advice and consent of the Senate, or if any
58 vacancy remains unfilled for three months, by a majority
59 vote of the board. The West Virginia banking
60 commissioner shall serve as chairperson of the board and
61 the rate or rates set by the board shall be determined by a
62 majority vote of those members of the board in attendance
63 at the respective board meeting.
- 64 (d) The West Virginia lending and credit rate board is
65 hereby authorized and directed to meet after the thirty-
66 first day of December, one thousand nine hundred eighty-
67 three, on the first Tuesday of April and on the first
68 Tuesday of October of each year or more or less
69 frequently as required by the circumstances and to
70 prescribe by order a maximum rate of interest and finance
71 charge for the next succeeding six months, effective on
72 the first day of June and on the first day of December, for
73 any loans, credit sales or transactions, forbearance or
74 similar transactions made pursuant to this section. In
75 fixing said maximum rates of interest and finance charge,
76 the board shall take into consideration prevailing
77 economic conditions, including the monthly index of
78 long-term United States government bond yields for the
79 preceding calendar month, yields on conventional

80 commercial short-term loans and notes throughout West
81 Virginia and throughout the United States and on
82 corporate interest-bearing securities of high quality, the
83 availability of credit at reasonable rates to the citizens of
84 this state which afford a competitive return to persons
85 extending such credit and such other factors as the board
86 may determine.

87 (e) Any petition proposing a change in the prescribed
88 maximum rates of interest and finance charges must be
89 filed in the office of the banking commissioner no later
90 than the fifteenth day of February in order to be voted on
91 at the board meeting on the first Tuesday of April and no
92 later than the fifteenth day of August in order to be voted
93 on at the board meeting on the first Tuesday of October.
94 Whenever any change in the prescribed maximum rates of
95 interest and finance charges is proposed the board shall
96 schedule a hearing, at least fifteen days prior to the board
97 meeting at which the proposed rates of interest and
98 finance charge will be voted on by the members of the
99 board, and shall give all interested parties the opportunity
100 to testify and to submit information at such public hearing
101 that is relevant. Notice of the scheduled public hearing
102 shall be issued and disseminated to the public at least
103 twenty days prior to the scheduled date of the hearing.

104 (f) The board shall prescribe by order issued not later
105 than the twentieth day of April and not later than the
106 twentieth day of October, in accordance with the
107 provisions of subsection (d) of this section the maximum
108 rates of interest and finance charge for the next
109 succeeding six months for any loan, credit sale,
110 forbearance or similar transaction made pursuant to this
111 section and shall cause such maximum rate of interest and
112 finance charge to be issued and disseminated to the public,
113 such maximum rate of interest and finance charge to be
114 effective on the first day of June and the first day of
115 December for the next succeeding six months.

116 (g) Notwithstanding the other provisions of this
117 chapter, the West Virginia lending and credit rate board
118 shall not be required to meet if no petition has been filed
119 with the board requesting a hearing and interest rates and
120 economic conditions have not changed sufficiently to
121 indicate that any change in the existing rate order would

122 be required, and there are not at least two board members
123 who concur that a meeting of the board is necessary. If
124 the board does not meet, the maximum rates of interest
125 and finance charges prescribed by the board in the
126 existing rate order shall remain in full force and effect
127 until the next time the board meets and prescribes
128 different maximum rates of interest and finance charges.

129 (h) If circumstances and economic conditions require,
130 the chairperson or any three board members, at any time,
131 may call an emergency interim meeting of the West
132 Virginia lending and credit rate board, at which time the
133 chairperson shall give ten days' notice of the scheduled
134 emergency meeting to the public. All interested parties
135 shall have the opportunity to be heard and to submit
136 information at such emergency meeting that is relevant.
137 Any and all emergency rate board orders shall be effective
138 within thirty days from the date of such emergency
139 meeting:

140 (i) Each member of the board, except those whose
141 regular salary is paid by the state of West Virginia, shall
142 receive seventy-five dollars per diem while actually
143 engaged in the performance of the duties of the board.
144 Each member shall be reimbursed for all reasonable and
145 necessary expenses actually incurred during the
146 performance of their duties, except that in the event the
147 expenses are paid by a third party the members shall not
148 be reimbursed by the state. The reimbursement shall be
149 paid out of the revolving fund established by section two
150 of this article upon a requisition upon the state auditor,
151 properly certified by the banking commissioner.

152 (j) In setting the maximum interest rates and finance
153 charges, the board may set varying rates based on the type
154 of credit transaction, the term of transaction, the type of
155 debtor, the type of creditor and other factors relevant to
156 determination of such rates. In addition, the board may
157 set varying rates for ranges of principal balances within a
158 single category of credit transactions.

159 (k) Pursuant to the provisions of article ten, chapter
160 four of this code, the West Virginia lending and credit rate
161 board shall continue to exist until the first day of July, one
162 thousand nine hundred ninety-eight.

CHAPTER 202

(H. B. 2406—By Delegates Douglas, Collins, Tucker, Prunty, Claypole,
Stalnaker and Capito)

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend and reenact section twelve, article two, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, continuing the child support enforcement division until the first day of July, one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION; CHILD SUPPORT ENFORCEMENT DIVISION; ESTABLISHMENT AND ORGANIZATION.

§48A-2-12. Establishment of the child support enforcement division; cooperation with the division of human services; continuation.

1 (a) Effective the first day of July, one thousand nine
2 hundred ninety-five, there is hereby established in the
3 department of health and human resources the child
4 support enforcement division. The division is under the
5 immediate supervision of the director, who is responsible
6 for the exercise of the duties and powers assigned to the
7 division under the provisions of this chapter. The division
8 is designated as the single and separate organizational unit
9 within this state to administer the state plan for child and
10 spousal support according to 42 U.S.C. §654(3).

11 (b) The division of human services shall cooperate
12 with the child support enforcement division. At a
13 minimum, such cooperation shall require that the division
14 of human services:

15 (1) Notify the child support enforcement division
16 when the division of human services proposes to terminate
17 or provide public assistance payable to any obligee;

18 (2) Receive support payments made on behalf of a
19 former or current recipient to the extent permitted by Title
20 IV-D, Part D of the Social Security Act; and

21 (3) Accept the assignment of the right, title or interest
22 in support payments and forward a copy of the
23 assignment to the child support enforcement division.

24 (c) Pursuant to the provisions of article ten, chapter
25 four of this code, the child support enforcement division
26 shall continue to exist until the first day of July, one
27 thousand nine hundred ninety-eight.

CHAPTER 203

(S. B. 350—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to the state tax division; increasing salary of tax commissioner; and specifying effective date.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SUPERVISION.

§11-1-1. Office of tax commissioner continued and designated the state tax division; appointment, term, oath, bond and compensation of commissioner; powers

and duties generally; sections of division; assistant tax commissioner; assistant attorneys general to assist commissioner.

1 (a) The office of the tax commissioner shall be
2 continued in all respects as heretofore constituted in the
3 state government, but is hereby designated as the state tax
4 division of the department of tax and revenue.

5 (b) The tax commissioner shall be the chief executive
6 officer of the state tax division and shall be appointed by
7 the governor, by and with the advice and consent of the
8 Senate, to serve at the will and pleasure of the governor for
9 the term for which the governor was elected and until a
10 successor has been appointed and has qualified.

11 (c) The tax commissioner, before entering upon the
12 duties of office, shall take the oath or affirmation
13 prescribed by section 5, article IV of the constitution. The
14 tax commissioner shall give bond with good security, to be
15 approved by the governor, in the penalty of fifteen
16 thousand dollars. The salary of the tax commissioner
17 shall be sixty-five thousand dollars a year or the amount
18 specified in section two-a, article seven, chapter six of this
19 code, whichever amount is greater. The tax commissioner
20 shall be repaid his or her actual disbursements for
21 traveling expenses. The tax commissioner shall be
22 provided with an office in the capitol and with furniture,
23 office equipment and clerical assistance as shall be
24 necessary.

25 (d) The tax commissioner shall have control and
26 supervision of the state tax division and shall be
27 responsible for the work of each of its sections or other
28 subunits. Each section or bureau shall be headed by a
29 director appointed by the tax commissioner and who shall
30 be responsible to the tax commissioner for the work of his
31 or her section or bureau. The tax commissioner may
32 create such sections or bureaus and employ staff or
33 employees as may be necessary to administer the state tax
34 laws for which the tax commissioner or tax division is
35 responsible, within the amount of expenditures
36 appropriated for operation of the tax division by the
37 Legislature. The tax commissioner shall have authority to

38 appoint an assistant tax commissioner who shall be his or
39 her principal assistant. The powers and duties vested in
40 the tax commissioner by this chapter and any other
41 provisions of law may be delegated by the tax
42 commissioner to the assistant or other employees, but the
43 tax commissioner shall be responsible for all official acts
44 of such delegates.

45 (e) The tax commissioner, if he or she deems such
46 action necessary, may request the attorney general to
47 appoint assistant attorneys general who shall perform
48 duties as may be required by the tax commissioner. The
49 attorney general, in pursuance of such request, may select
50 and appoint assistant attorneys general, with the consent of
51 the tax commissioner, to serve during the will and pleasure
52 of the attorney general, and the assistants shall be paid out
53 of any funds made available for that purpose by the
54 Legislature to the state tax division.

CHAPTER 204

(Com. Sub. for H. B. 2590—By Mr. Speaker, Mr. Kiss, and Delegate Faircloth)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections one-a and one-b; to amend and reenact sections twelve, fourteen and fourteen-a, article three of said chapter; to further amend said article by adding thereto a new section, designated section seven-a; to amend and reenact section three, article four of said chapter; and to amend and reenact section three, article five of said chapter, all relating generally to ad valorem property taxes; phasing out tax on intangibles over a five-year period beginning with tax year one thousand nine hundred ninety-eight; defining chattel interests in real property to be real property for tax purposes; defining

chattel interests in tangible personal property to be tangible personal property for tax purposes; providing for tangible personal property of banks and savings and loan associations to be taxed beginning with tax year one thousand nine hundred ninety-eight; allowing banks and savings and loan associations an adjustment to value of shares for value of tangible personal property; and providing for banks and savings and loan associations to be taxed like other businesses beginning tax year one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

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

Article

1C. Fair and Equitable Property Valuation.

- 3. Assessments Generally.**
- 4. Assessment of Real Property.**
- 5. Assessment of Personal Property.**

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-1a. Further legislative findings and declarations; effect of declarations and clarification of chattel interests in real or tangible personal property.

§11-1C-1b. Phase-out of taxation of intangible personal property.

§11-1C-1a. Further legislative findings and declarations; effect of declarations and clarification of chattel interests in real or tangible personal property.

1 (a) The Legislature hereby finds that:

- 2 (1) The voters of this state, in the general election
- 3 held in the year one thousand nine hundred eighty-four,
- 4 ratified amendment five to the constitution of West

5 Virginia which essentially provides that once the first
6 statewide reappraisal of property pursuant to section one-
7 b, article ten of the constitution is implemented and first
8 employed to fix values for ad valorem property tax
9 purposes, no intangible personal property shall be subject
10 to ad valorem property taxation except as provided by
11 general law enacted after ratification of amendment five;

12 (2) In ratifying amendment five, the voters intended
13 for intangible personal property to become exempt from
14 ad valorem property tax at some point after ratification,
15 except as provided in general legislation enacted
16 subsequent to ratification of amendment five;

17 (3) Due to numerous problems, actual or perceived,
18 with the results of the first statewide reappraisal under
19 section one-b, article ten of the constitution, and the
20 public's lack of confidence in those results, the first
21 statewide reappraisal was never implemented and results
22 were never employed to fix values for ad valorem
23 property tax purposes;

24 (4) The Legislature responded to these problems,
25 actual or perceived, by enacting this article which, as its
26 primary purpose, resulted in the making of the second
27 statewide reappraisal of property for ad valorem property
28 tax purposes, which now results in all property being
29 assessed and taxed at sixty percent of its market value,
30 except as otherwise provided by general law; and

31 (5) The intent and objective of the voters in causing
32 the first statewide reappraisal to be made under section
33 one-b, article ten of the constitution, has now been
34 achieved, although not in the manner originally intended
35 by the voters when they ratified amendment five, and that
36 the will and objective of the people in ratifying
37 amendment five will unintentionally be circumvented
38 unless the Legislature acts to prevent such a result.

39 (b) The Legislature, therefore, does hereby declare
40 that:

41 (1) It has the power and authority under the
42 constitution and these circumstances to implement
43 amendment five;

44 (2) The provisions of amendment five shall be
45 implemented beginning tax year one thousand nine
46 hundred ninety-eight and thereafter, notwithstanding any
47 other provision in this article other than section one-b;

48 (3) Chattel interests in real or tangible personal
49 property are tangible property for ad valorem property
50 tax purposes, which shall be assessed and taxed in the levy
51 classification in which the underlying real or tangible
52 personal property is taxed for ad valorem property tax
53 purposes, notwithstanding any other provision in this
54 chapter; and

55 (4) The property of banks and savings and loans shall
56 be assessed and taxed like that of other corporations
57 beginning tax year one thousand nine hundred ninety-
58 eight.

§11-1C-1b. Phase-out of taxation of intangible personal property.

1 Notwithstanding anything in this code to the contrary,
2 intangible personal property with tax situs in this state that
3 would have been taxable prior to the effective date of this
4 act shall be exempt from ad valorem property tax
5 beginning tax year one thousand nine hundred ninety-
6 eight: *Provided*, That such property shall be subject to ad
7 valorem property tax and taxed at fifty percent of assessed
8 value for tax year one thousand nine hundred ninety-
9 eight; at forty percent of assessed value for the tax year
10 one thousand nine hundred ninety-nine; at thirty percent
11 of assessed value for the tax year two thousand; at twenty
12 percent of the assessed value for the tax year two thousand
13 one; at ten percent of the assessed value for the tax year
14 two thousand two and eliminated completely for the tax
15 year two thousand three and thereafter.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-7a. Chattel interests in real and tangible personal property.

§11-3-12. Assessment of corporate property; reports to assessors by corporations.

§11-3-14. Assessment of stock, realty and tangible personal property of banks.

§11-3-14a. Taxation of building and loan associations and federal savings and loan associations.

§11-3-7a. Chattel interests in real and tangible personal property.

1 For ad valorem property tax purposes, chattel interests
2 in real property and chattel interest in tangible personal
3 property are hereby defined to be an interest in real or
4 tangible personal property and are to be assessed and
5 taxed like real or tangible personal property is taxed. As
6 so defined, chattel interest in real property and chattel
7 interests in tangible personal property are not intangible
8 personal property for property tax purposes.

§11-3-12. Assessment of corporate property; reports to assessors by corporations.

1 (a) Each incorporated company, banking institution,
2 and national banking association, foreign or domestic,
3 having its principal office or chief place of business in this
4 state, owning property subject to taxation in this state,
5 except railroad, telegraph and express companies,
6 telephone companies, pipeline, car line companies and
7 other public utility companies, shall annually, between the
8 first day of the assessment year and the first day of
9 October, make a written report, verified by the oath of the
10 president or chief accounting officer, to the assessor of the
11 county in which its principal office or chief place of
12 business is situated or in which such property subject to
13 taxation in this state is located if such corporation does not
14 have a principal office or chief place of business in this
15 state, showing the following items, viz: (1) The amount of
16 capital authorized to be employed by it; (2) the amount of
17 cash capital paid on each share of stock; (3) the amount
18 of credits and investments other than its own capital stock
19 held by it on said date, with their fair market value; (4) the
20 quantity, location and fair market value of all of its real
21 estate, and tax district or districts in which it is located; and

22 (5) the kinds, quantity and fair market value of all its
23 tangible property in each tax district in which it is located.

24 (b) The oath required for this section shall be
25 substantially as follows, viz:

26 State of West Virginia, County, ss:

27 I,, president (treasurer or manager) of (here
28 insert name of corporation), do solemnly swear (or affirm)
29 that the foregoing is, to the best of my knowledge and
30 judgment, true in all respects; that it contains a statement
31 of all the real estate and personal property, including
32 credits and investments belonging to said corporation; that
33 the value affixed to such property is, in my opinion, its
34 value, by which I mean the price at which it would sell if
35 voluntarily offered for sale on such terms as are usually
36 employed in selling such property, and not the price
37 which might be realized at a forced or auction sale; and
38 said corporation has not, to my knowledge, during the
39 sixty-day period immediately prior to the first day of the
40 assessment year converted any of its assets into nontaxable
41 securities or notes or other evidence of indebtedness for
42 the purposes of evading the assessment of taxes thereon;
43 so help me, God.

44

45 The officer administering such oath shall append
46 thereto the following certificate, viz:

47 Subscribed and sworn to before me by this
48 the day of, 19.....

49

50 (c) The amendments to this section enacted in the
51 year one thousand nine hundred ninety-seven shall be
52 effective beginning tax year one thousand nine hundred
53 ninety-eight and thereafter.

**§11-3-14. Assessment of stock, realty and tangible personal
property of banks.**

1 (a) Shares of stock in a banking institution, national
2 banking association or industrial loan company shall be
3 assessed at their true and actual value, according to the

4 rules prescribed in this chapter, to the several holders of
5 such stock in the county, district and town where such
6 bank, company or association is located, and not
7 elsewhere, whether such holders reside there or not. The
8 real and actual value of such shares shall be ascertained
9 according to the best information which the assessor may
10 be able to obtain, whether from any return made by such
11 bank, company or association to any officer of the state or
12 the United States, from actual sales of the stock, from
13 answers to questions by the assessor, as hereinafter
14 provided, or from other trustworthy sources. The cashier,
15 secretary or principal accounting officer of every such
16 bank, company or association shall cause to be kept a
17 correct list of the names and residences of all the
18 shareholders therein, and number of shares held by each,
19 which list shall be open to the inspection of the assessors
20 of the county, and of the tax commissioner or assistants;
21 and such cashier, secretary or officer shall answer under
22 oath such questions as the assessor may ask him
23 concerning the matters shown by such list, and concerning
24 the value of such shares, and shall be subject to the same
25 penalties, for failure to do so, which are imposed by law
26 upon individuals failing to answer questions which the
27 assessor is authorized to ask. The taxes so assessed upon
28 the shares of any such bank, company, or association shall
29 be paid by the cashier, secretary or proper accounting
30 officer thereof, and in the same manner and at the same
31 time as other taxes are required to be paid in such county,
32 district and town. In default of such payment such
33 cashier, secretary or accounting officer as well as such
34 bank, company or association shall be liable for such
35 taxes, and in addition, for a sum equal to ten percent
36 thereof. Any taxes so paid upon any such share may, with
37 interest thereon, be recovered from the owners thereof by
38 the bank, company, association or officer paying them, or
39 may be deducted from the dividends accruing on such
40 shares. The real estate of any such bank, company or
41 association shall be assessed as in other cases, and a
42 proportionate share of such assessed value shall be
43 deducted in ascertaining the market value of the shares.
44 The tangible personal property of any such bank,

45 company, or association shall be assessed as in other cases
46 and a proportional share of such assessed value shall be
47 deducted in ascertaining the market value of the shares for
48 tax years as follows: Such deduction shall be sixteen and
49 sixty-six onehundredth percent of the assessed value of
50 the tangible personal property for the tax year one
51 thousand nine hundred ninety-eight; thirty-three and
52 thirty-two onehundredth percent of the assessed value of
53 the tangible personal property for the tax year one
54 thousand nine hundred ninety-nine; forty-nine and
55 ninety-eight hundredth percent of the assessed value of
56 the tangible personal property for the tax year two
57 thousand; sixty-six and sixty-four hundredth percent of
58 the assessed value of the tangible personal property for the
59 tax year two thousand one; eighty-three and twenty one-
60 hundredth percent for the tax year two thousand two with
61 such personal property tax deduction being eliminated
62 entirely for the tax year two thousand three and thereafter.
63 And if such tangible personal property or if the title to the
64 building in which any such bank, company or association
65 does its business and the land on which such building
66 stands is held by separate corporation in which such bank,
67 company or association alone or together with another
68 such bank or banks, company or companies, association
69 or associations owns stock, and such tangible personal
70 property or building and land be assessed to such separate
71 corporation, a proportionate share of the assessed value of
72 such tangible personal property or real estate of such
73 separate company shall be deducted in ascertaining the
74 market value of the shares of such bank, company or
75 association. The return shall be made as of the first day of
76 the assessment year.

77 (b) This section shall become inoperative beginning
78 tax year two thousand three and thereafter.

**§11-3-14a. Taxation of building and loan associations and
federal savings and loan associations.**

1 (a) The capital of every building and loan association
2 and federal savings and loan association shall include all
3 of its assets and shall be assessed at its true and actual

4 value according to the rules prescribed by this chapter, to
5 such building and loan association or federal savings and
6 loan association in the county, district and town where
7 such association is located: *Provided*, That investment
8 shares and investment share accounts in such associations
9 representing money withdrawable therefrom are hereby
10 defined as money for purposes of taxation under this
11 section and, as such, shall not be taxed but shall be
12 deducted by the assessor in determining the true and
13 actual value of the capital of any such association. The
14 real and actual value of such capital shall be ascertained
15 according to the best information which the assessor may
16 be able to obtain, whether from any return made by such
17 association to any officer of this state, or the United States,
18 or from answers to questions by the assessor, as hereinafter
19 provided, or from other trustworthy sources.

20 The secretary or principal accounting officer of every
21 such building and loan association and federal savings and
22 loan association shall cause to be kept a complete
23 accounting record, including a complete record of all such
24 investment shares and investment share accounts, which
25 shall be open to the inspection of the assessors of the
26 counties, and the tax commissioner or his assistants, and
27 such secretary or officer shall answer under oath such
28 questions as the assessor may ask him concerning the
29 matters shown by such records and accounts, and shall be
30 subject to the same penalties for failure to do so, which are
31 imposed by law upon individuals failing to answer
32 questions which the assessor is authorized to ask. The tax
33 levied and assessed upon the capital of every such
34 building and loan association and federal savings and loan
35 association shall be paid by such association in the manner
36 and at the same time as other taxes are required to be paid
37 in such county, district and town.

38 The real estate of any such building and loan
39 association or federal savings and loan association shall be
40 assessed as in other cases, and a proportionate share of
41 such assessed value shall be deducted in ascertaining the
42 value of such capital. The tangible personal property of
43 any such building and loan association or federal savings

44 and loan association shall be assessed as in other cases and
45 a proportional share of such assessed value shall be
46 deducted in ascertaining the value of the capital for tax
47 years as follows: Such deduction shall be sixteen and
48 sixty-six one hundredth percent of the assessed value of
49 the tangible personal property for the tax year one
50 thousand nine hundred ninety-eight; thirty-three and
51 thirty-two one hundredth percent of the assessed value of
52 the tangible personal property for the tax year one
53 thousand nine hundred ninety-nine; forty-nine and
54 ninety-eight hundredth percent of the assessed value of
55 the tangible personal property for the tax year two
56 thousand; sixty-six and sixty-four hundredth percent of
57 the assessed value of the tangible personal property for the
58 tax year two thousand one; eighty-three and twenty one
59 hundredth percent for the tax year two thousand two with
60 such personal property tax deduction being eliminated
61 entirely for the tax year two thousand three and thereafter.
62 If the title to the building in which any such association
63 does its business and the land on which such building
64 stands is held by a separate corporation, in which any such
65 association alone or together with another such association
66 or banking company or companies own stock, and such
67 building and land be assessed in such separate
68 corporation, a proportionate share of the assessed value of
69 such real estate of such separate company shall be
70 deducted in ascertaining the value of the capital of such
71 association. Every such association shall make a return to
72 the assessor as of the first day of the assessment year.

73 (b) This section shall become inoperative beginning
74 tax year two thousand three and thereafter.

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-3. Definitions.

1 For the purpose of giving effect to the "Tax
2 Limitations Amendment", this chapter shall be interpreted
3 in accordance with the following definitions, unless the
4 context clearly requires a different meaning:

5 "Owner" means the person, as defined in section ten,
6 article two, chapter two of this code, who is possessed of

7 the freehold, whether in fee or for life. A person seized or
8 entitled in fee subject to a mortgage or deed of trust
9 securing a debt or liability is considered the owner until
10 the mortgagee or trustee takes possession, after which the
11 mortgagee or trustee shall be considered the owner. A
12 person who has an equitable estate of freehold, or is a
13 purchaser of a freehold estate who is in possession before
14 transfer of legal title is also considered the owner.

15 “Used and occupied by the owner thereof
16 exclusively for residential purpose” means actual
17 habitation by the owner of all or a portion of a parcel of
18 real property as a place of abode to the exclusion of any
19 commercial use: *Provided*, That if the parcel of real
20 property was unoccupied at the time of assessment and
21 either (a) was used and occupied by the owner thereof
22 exclusively for residential purposes on the first day of July
23 of the previous year or (b) was unimproved on the first of
24 July of the previous year but a building improvement for
25 residential purposes was subsequently constructed thereon
26 between that date and the time of assessment, the property
27 shall be considered “used and occupied by the owner
28 thereof exclusively for residential purpose”: *Provided*,
29 *however*, That nothing herein contained shall permit an
30 unoccupied or unimproved property to be considered
31 “used and occupied by the owner thereof exclusively for
32 residential purposes” for more than one year. If a license
33 is required for an activity on the premises or if an activity
34 is conducted thereon which involves the use of equipment
35 of a character not commonly employed solely for
36 domestic as distinguished from commercial purposes, the
37 use may not be considered to be exclusively residential.

38 “Farm” means a tract or contiguous tracts of land
39 used for agriculture, horticulture or grazing and includes
40 all real property designated as “wetlands” by the United
41 States army corps of engineers or the United States fish
42 and wildlife service.

43 “Occupied and cultivated” means subjected as a unit
44 to farm purposes, whether used for habitation or not, and
45 although parts may be lying fallow, in timber or in
46 wastelands.

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.**§11-5-3. Definitions.**

1 The words “personal property,” as used in this
2 chapter includes all fixtures attached to land, if not
3 included in the valuation of such land entered in the
4 proper landbook; all things of value, moveable and
5 tangible, which are the subjects of ownership; all chattels
6 personal; all notes, bonds, and accounts receivable, stocks
7 and all other intangible property.

8 “Agriculture” means the cultivation of the soil,
9 including the planting and harvesting of crops and the
10 breeding and management of livestock.

11 “Horticulture” means plant production of every
12 character except forestry.

13 “Grazing” means the use of land for pasturage.

14 “Products of agriculture” means those things the
15 existence of which follows directly from the activity of
16 agriculture, horticulture or grazing, including dairy,
17 poultry, bee and any other similar products, whether in the
18 natural form or processed as an incident to the marketing
19 of the raw material.

20 “Producer” means the person who is actually
21 engaged in the agriculture, horticulture and grazing which
22 gives existence and fruition to products of agriculture as
23 distinguished from the broker or middleman.

24 “Tax year” means the calendar year following the
25 July first assessment day or, in the case of a public service
26 business assessed pursuant to article six of this chapter, the
27 calendar year beginning on the January first assessment
28 day.

29 “While owned by the producer” means while title is
30 in the producer as above defined.

31 “Employed exclusively” means that the prepon-
32 derant and the sole gainful use is for the designated
33 purpose.

CHAPTER 205

(Com. Sub. for H. B. 2619—By Delegate Michael)

[Passed April 11, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen-a, relating to clarification of application of freeport warehouse exemption against ad valorem property tax as it applies to goods in a warehouse awaiting shipment out-of-state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-13a. Application of exemption to finished goods in warehouse.

1 (a) This section is intended to clarify the intent of the
2 Legislature and the citizens in establishing the exemption
3 from ad valorem property taxation granted by section
4 one-c, article ten of the West Virginia constitution and
5 section thirteen of this article as it pertains to goods held
6 in warehouse facilities in this state awaiting shipment to a
7 destination outside this state. This section codifies policies
8 applied by agencies and departments of this state upon
9 which persons have relied. It is the intent of the
10 Legislature that the provisions of this section are to be
11 liberally construed in favor of a person claiming
12 exemption from tax pursuant to section one-c, article ten
13 of the West Virginia constitution, this section and section
14 thirteen of this article.

15 (b) Goods which have been moved to a warehouse or
16 storage facility, at which no substantial alteration takes
17 place, to await shipment to a destination outside this state
18 are deemed to be moving in interstate commerce over the
19 territory of the state and therefore are exempt from ad
20 valorem property tax and do not have a tax situs in West
21 Virginia for purposes of ad valorem taxation.

22 (c) Notwithstanding subsection (b) of this section,
23 personal property of inventories of natural resources shall
24 not be exempt from ad valorem taxation unless required
25 by federal law.

26 (d) This section is intended to be declarative of the law
27 as of the enactment hereof and shall be fully retroactive.

CHAPTER 206

(Com. Sub. for H. B. 2496—By Delegate Warner)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section one, article six, chapter eleven 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-a, all relating to tax assessments of commercial motor vehicles; expanding coverage for imposition of an ad valorem tax on public service businesses to include commercial vehicles subject to proportional registration agreements involving other states by virtue of engaging in interstate commerce, and those involved solely in intrastate commerce; and setting forth a formula to calculate the tax.

Be it enacted by the Legislature of West Virginia:

That section one, article six, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article be further

amended by adding thereto a new section, designated section seven-a, all to read as follows:

ARTICLE 6. ASSESSMENT OF PUBLIC SERVICE BUSINESSES.

§11-6-1. Returns of property to board of public works.

§11-6-7a. Same — Commercial motor vehicles; calculation of tax.

§11-6-1. Returns of property to board of public works.

1 (a) On or before the first day of May in each year a
2 return in writing shall be filed with the board of public
3 works: (1) By the owner or operator of every railroad,
4 wholly or in part within this state; (2) by the owner or
5 operator of every railroad bridge upon which a separate
6 toll or fare is charged; (3) by the owner or operator of
7 every car or line of cars used upon any railroad within the
8 state for transportation or accommodation of freight or
9 passengers, other than the owners or operators as may own
10 or operate a railroad within the state; (4) by the owner or
11 operator of every express company or express line, wholly
12 or in part within this state, used for the transportation by
13 steam or otherwise of freight and other articles of com-
14 merce; (5) by the owner or operator of every pipeline,
15 wholly or in part within this state, used for the transporta-
16 tion of oil or gas or water, whether the oil or gas or water
17 be owned by the owner or operator or not, or for the
18 transmission of electrical or other power, or the transmis-
19 sion of steam or heat and power or of articles by pneumat-
20 ic or other power; (6) by the owner or operator of every
21 telegraph or telephone line, wholly or in part within this
22 state, except private lines not operated for compensation;
23 (7) by the owner and operator of every gas company and
24 electric lighting company furnishing gas or electricity for
25 lighting, heating or power purposes; (8) by the owner or
26 operator of hydroelectric companies for the generation
27 and transmission of light, heat or power; (9) by the owner
28 or operator of water companies furnishing or distributing
29 water; (10) by the owner or operator of all other public
30 service corporations or persons engaged in public service
31 business whose property is located, wholly or in part, with-
32 in this state; and (11) on or before the first day of May,

33 one thousand nine hundred ninety-eight, and on or before
34 the first day of May, each year thereafter, by the owner or
35 operator of every truck or semitrailer used as a commer-
36 cial motor vehicle in the transportation of property either
37 exclusively within this state or within and without this state
38 by commercial motor vehicles registered under a propor-
39 tional registration agreement pursuant to the provisions of
40 section ten-a, article two, chapter seventeen-a of this code.
41 For the purposes of this article, commercial motor vehicle
42 is defined as those vehicles registered under a proportional
43 registration agreement pursuant to the provisions of sec-
44 tion ten-a, article two, chapter seventeen-a of this code and
45 vehicles that would otherwise be subject to registration
46 under a proportional registration agreement as provided in
47 section ten-a except that the vehicle is only engaged in
48 intrastate commerce. The procedure for determining the
49 valuation thereof is exclusively provided for under section
50 seven-a of this article.

51 (b) The words "owner or operator," as applied here-
52 in to railroad companies, shall include every railroad com-
53 pany incorporated by or under the laws of this state for
54 the purpose of constructing and operating a railroad, or of
55 operating part of a railroad within this state, whether the
56 railroad or any part of it be in operation or not; and shall
57 also include every other railroad company, or persons or
58 associations of persons, owning or operating a railroad or
59 part of a railroad in this state on which freight or passen-
60 gers, or both, are carried for compensation. The word
61 "railroad," as used herein includes every street, city, sub-
62 urban or electric or other railroad or railway.

63 (c) The words "owner or operator," as applied here-
64 in to express companies, shall include every express com-
65 pany incorporated by or under the laws of this state, or
66 doing business in this state, whether incorporated or not,
67 and any person or association of persons, owning or oper-
68 ating any express company or express line upon any rail-
69 road or otherwise, doing business partly or wholly within
70 this state.

71 (d) The words "owner or operator," as applied here-
72 in to trucks or semitrailers used as a commercial motor
73 vehicle in the transportation of property, shall include
74 every company incorporated by or under the laws of this
75 state, or doing business in this state, whether incorporated
76 or not, and any person or association of persons, owning
77 or operating any truck or semitrailer used as a commercial
78 motor vehicle in the transportation of property doing
79 business partly or wholly within this state.

80 (e) The return shall be signed and sworn to by the
81 owner or operator if a natural person, or, if the owner or
82 operator shall be a corporation, shall be signed and sworn
83 to by its president, vice president, secretary or principal
84 accounting officer.

85 (f) The return required by this section of every own-
86 er or operator shall cover the year ending on the thirty-
87 first day of December, next preceding, and shall be made
88 on forms prescribed by the board of public works, which
89 board is hereby invested with full power and authority and
90 it is hereby made its duty to prescribe the forms as will
91 require from any owner or operator herein mentioned
92 information as in the judgment of the board may be of
93 use to it in determining the true and actual value of the
94 properties of the owners or operators.

§11-6-7a. Same — Commercial motor vehicles; calculation of tax.

1 (a) In the case of commercial motor vehicles used
2 for the transportation of property exclusively within this
3 state or commercial vehicles used for the transportation of
4 property both within and without this state which are sub-
5 ject to being registered under a proportional registration
6 agreement pursuant to the provisions of section ten-a,
7 article two, chapter seventeen-a of this code, by owners or
8 operators, the return shall show for each commercial vehi-
9 cle operator the total miles driven in West Virginia and the
10 total miles driven in any other states as reported in the
11 most recent taxable year to the division of motor vehicles
12 pursuant to any proportional registration agreement on
13 file therewith. The return shall, additionally, show the
14 gross capital cost of the commercial vehicle to the pur-

15 chaser thereof and the year the purchaser acquired the
16 commercial vehicle. In the case of commercial motor
17 vehicles used for the transportation of property exclusive-
18 ly within this state the return shall only show the gross
19 capital cost of the commercial vehicle to the purchaser
20 thereof and the year the commercial vehicle was acquired
21 by the purchaser thereof.

22 (b) Ad valorem taxes provided for in this chapter
23 shall, notwithstanding the provisions of section five, article
24 one-c of this chapter, be determined as follows for: (1)
25 The gross capital cost of a commercial vehicle shall be
26 multiplied by a percentage factor representing the remain-
27 der of the vehicle's value after depreciation according to a
28 depreciation schedule established by the tax commission-
29 er, which calculation shall yield the appraised value of the
30 vehicle; (2) for a trailer, semitrailer or road tractor regis-
31 tered in this state as part of a fleet registered under any
32 proportional registration agreement under the provisions
33 of section ten-a, article two, chapter seventeen-a of this
34 code, the appraised value shall be multiplied by the frac-
35 tion comprised of a numerator representing the total miles
36 driven in West Virginia (regardless whether property is
37 being transported for commercial purposes) in the taxable
38 year and a denominator representing the total miles driven
39 in the taxable year by the commercial motor vehicle oper-
40 ator during times property was being transported for com-
41 mercial purposes, as reported to the division of motor
42 vehicles pursuant to any proportional registration agree-
43 ment on file therewith to obtain the apportioned value,
44 which apportioned value shall be multiplied by sixty per-
45 cent to yield the assessed value which shall be multiplied
46 by the applicable rate of tax; (3) for a trailer, semitrailer
47 or road tractor operated exclusively in this state and which
48 is not a part of a fleet registered under any proportional
49 registration agreement or is not registered under the provi-
50 sions of section ten-a, article two, chapter seventeen-a of
51 this code, the tax shall be determined by multiplying the
52 appraised value by sixty percent to obtain the assessed
53 value which shall be multiplied by the tax rate to obtain
54 the amount of the tax.

CHAPTER 207

(S. B. 513—By Senator Craigo)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-f, relating to appraisal of property as part of qualified capital addition to a manufacturing facility for ad valorem property tax purposes; legislative findings; definition of terms; certification by state tax commissioner; and rules including emergency rules and effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6F. SPECIAL METHOD FOR APPRAISING QUALIFIED CAPITAL ADDITIONS TO MANUFACTURING FACILITIES.

- §11-6F-1. Legislative findings.
- §11-6F-2. Definitions.
- §11-6F-3. Tax treatment of certified capital addition property.
- §11-6F-4. Application and certification.
- §11-6F-5. Authority to propose rules.
- §11-6F-6. Effective date.

§11-6F-1. Legislative findings.

- 1 The Legislature finds that the encouragement of
- 2 economic growth and development in this state is in the
- 3 public interest and promotes the general welfare of the
- 4 people of this state. The Legislature further finds that the
- 5 ad valorem property tax valuation set forth in this article

6 for certified capital addition property, as defined in
7 section two of this article, will help preserve the tax base
8 and preserve and create jobs attributable to manufacturing
9 facilities existing in this state.

§11-6F-2. Definitions.

1 As used in this article, the term:

2 (a) "Certified capital addition property" means all
3 real property and personal property included within or to
4 be included within a qualified capital addition to a
5 manufacturing facility that has been certified by the state
6 tax commissioner in accordance with section four of this
7 article: *Provided*, That airplanes and motor vehicles
8 licensed by the division of motor vehicles shall in no event
9 constitute certified capital addition property.

10 (b) "Manufacturing facility" means any factory, mill,
11 chemical plant, refinery, warehouse, building or complex
12 of buildings, including land on which it is located, and all
13 machinery, equipment, improvements and other real
14 property and personal property located at or within the
15 facility used in connection with the operation of the
16 facility in a manufacturing business.

17 (c) "Personal property" means all property specified
18 in subdivision (q), section ten, article two, chapter two of
19 this code and includes, but is not limited to, furniture,
20 fixtures, machinery and equipment, pollution control
21 equipment, computers and related data processing
22 equipment, spare parts and supplies.

23 (d) "Qualified capital addition to a manufacturing
24 facility" means all real property and personal property,
25 the combined original cost of all of the property which
26 exceeds fifty million dollars to be constructed, located or
27 installed at or within two miles of a manufacturing facility
28 owned or operated by the person making the capital
29 addition that has a total original cost before the capital
30 addition of at least one hundred million dollars: *Provided*,
31 That if the capital addition is made in a polymer alliance
32 zone as designated from time-to-time by executive order

33 of the governor, then the person making the capital
34 addition may for purposes of satisfying the requirements
35 of this subsection join in a multiparty project with a
36 person owning or operating a manufacturing facility that
37 has a total original cost before the capital addition of at
38 least one hundred million dollars if the capital addition
39 creates additional production capacity of existing or
40 related products or feedstock or derivative products
41 respecting the manufacturing facility.

42 (e) "Real property" means all property specified in
43 subdivision (p), section ten, article two, chapter two of this
44 code and includes, but is not limited to, lands, buildings
45 and improvements on the land such as sewers, fences,
46 roads, paving and leasehold improvements.

§11-6F-3. Tax treatment of certified capital addition property.

1 Notwithstanding any other provisions of law, the value
2 of certified capital addition property, for purposes of ad
3 valorem property taxation under this chapter, shall be its
4 salvage value, which for purposes of this article is five
5 percent of the certified capital addition property's original
6 cost.

§11-6F-4. Application and certification.

1 Any person seeking designation of property as
2 certified capital addition property shall first make a sworn
3 application to the state tax commissioner on forms
4 prescribed by the state tax commissioner on or before the
5 date the property is first required to be reported on an
6 annual return for ad valorem property tax purposes. The
7 state tax commissioner shall within ninety days of the
8 application determine in writing whether the property is or
9 will be part of a qualified capital addition to a manufactur-
10 ing facility as defined in section two of this article and
11 shall provide a copy of the written determination to the
12 applicant and the assessor or assessors in the county or
13 counties in which the manufacturing facility is located.
14 The applicant may file an appeal with the state tax com-
15 missioner to have a formal hearing for a review and

16 redetermination on qualified capital additions to a manu-
17 facturing facility which have been disallowed by the state
18 tax commissioner within thirty days of the official written
19 notification from the state tax commissioner. After the
20 state tax commissioner determines that property is or will
21 be part of a qualified capital addition to a manufacturing
22 facility, the property is and remains certified capital
23 addition property for purposes of this article until the
24 earlier of: (a) The disposition of the property to an
25 unrelated third party other than a transferee who continues
26 to operate the manufacturing facility; (b) the cessation of
27 all business at the manufacturing facility; or (c) the tenth
28 year succeeding the year in which the qualified capital
29 addition to a manufacturing facility to which the property
30 relates is first placed in service. All applications and
31 determinations under this section constitute return infor-
32 mation and are subject to section twenty-three, article one-
33 a of this chapter. The state tax commissioner shall report
34 annually the number of applications filed, certified, denied
35 and pending pursuant to this section for the preceding
36 year along with recommendations regarding the structure,
37 benefits and costs of the valuation method specified in this
38 article to the joint committee on government and finance
39 and to the governor: *Provided*, That identifying character-
40 istics and facts about applicants may not in any event be
41 disclosed under this section.

§11-6F-5. Authority to propose rules.

1 The state tax commissioner shall propose rules for
2 promulgation in accordance with article three, chapter
3 twenty-nine-a of this code for the administration of this
4 article as may be necessary to implement the provisions of
5 this article: *Provided*, That the state tax commissioner
6 may promulgate emergency rules to implement the
7 provisions of this article.

§11-6F-6. Effective date.

1 This article is effective for the tax years beginning on
2 and after the first day of July, one thousand nine hundred
3 ninety-seven.

CHAPTER 208

(S. B. 379—By Senator Buckalew)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section two-a, article nine, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to funding of criminal investigation division in the amount appropriated by the Legislature out of bingo fees, charitable raffle fees and charitable raffle board fees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2a. Criminal investigation division established; funding of same.

1 (a) *Criminal investigation division.* — A criminal
2 investigation division consisting of no more than twelve
3 investigators, of which one investigator shall serve as
4 division director, plus necessary support staff, all of whom
5 are exempt from the classified service, is hereby
6 established in the state tax division for the purpose of
7 assuring compliance with laws and rules pertaining to the
8 taxes, fees or credits administered under article ten of this
9 chapter, including, but not limited to, the provisions of
10 articles twenty, twenty-one and twenty-three, chapter
11 forty-seven of this code, but not including income taxes,
12 imposed on individuals by article twenty of this chapter.

13 (b) *Special audits division.* — A special audits division
14 consisting of no more than eight tax examiners, plus
15 necessary support staff, all of whom are covered by the
16 classified service, is hereby established in the auditing
17 section of the state tax division for purposes of assuring
18 compliance with laws and rules pertaining to taxes, fees or

19 credits administered under article ten of this chapter,
20 including, but not limited to, the provisions of articles
21 twenty, twenty-one and twenty-three, chapter forty-seven
22 of this code, but not including income taxes imposed on
23 individuals by article twenty-one of this chapter.

24 (c) The Legislature hereby finds that the enforcement
25 of the laws and rules pertaining to the taxes, fees or credits
26 administered under article ten of this chapter, as such are
27 applicable to persons whose residence or principal place
28 of business is outside of the state of West Virginia, requires
29 greater efforts and investigation than required for resident
30 persons subject thereto, and does further find that there is
31 a greater rate of noncompliance with said laws and rules
32 by such nonresident persons. Therefore, the criminal
33 investigation division and the special audits division
34 created in subsections (a) and (b) of this section are
35 hereby directed to expend a significant amount of their
36 efforts to ensure compliance with the laws and rules
37 pertaining to taxes, fees or credits administered under
38 article ten of this chapter in accordance with the authority
39 provided in this section, by persons whose residence or
40 principal place of business is located outside the state of
41 West Virginia.

42 (d) *Deposits of certain fees.* — Charitable bingo fees
43 imposed by article twenty, chapter forty-seven of this
44 code; charitable raffle fees imposed by article twenty-one
45 of said chapter; and charitable raffle boards and games
46 fees imposed by article twenty-three of said chapter in an
47 amount not to exceed the amount appropriated by the
48 Legislature in any fiscal year shall be deposited in a
49 special revenue account established in the office of the
50 treasurer. The special revenue account shall be used to
51 support compliance expenditures relating to the
52 establishment, operation, maintenance and support of the
53 criminal investigation division established in subsection (a)
54 of this section and the special audits division established in
55 subsection (b) of this section. Such expenditures may
56 include, but shall not be limited to, employee
57 compensation, equipment, office supplies and travel
58 expenses. On the last day of each fiscal year,
59 unencumbered funds in the special revenue account in
60 excess of seventy-five thousand dollars shall be transferred
61 to the general revenue fund.

62 (e) *Investigators.* — Investigators employed in the
63 criminal investigation division shall have a background in
64 accounting or law enforcement or related fields pursuant
65 to article twenty-nine, chapter thirty of this code, or its
66 equivalent. Any investigator so designated by the tax
67 commissioner shall have all the lawful powers delegated to
68 members of the division of public safety except the power
69 to carry firearms and shall have the authority to enforce
70 the provisions of this article and the criminal provisions of
71 any other article of this code to which this article applies,
72 in any county or municipality of this state. The tax
73 commissioner shall establish such additional standards as
74 he or she considers applicable or necessary. Any
75 employee shall, before entering upon the discharge of his
76 or her duties, execute a bond with security in the sum of
77 three thousand five hundred dollars, payable to the state of
78 West Virginia, conditioned for the faithful performance of
79 the employee's duties and the bond shall be approved as to
80 form by the attorney general and shall be filed with the
81 secretary of state for preservation in that office. The
82 division of public safety, any county sheriff or deputy
83 sheriff and any municipal police officer upon request by
84 the tax commissioner is hereby authorized to assist the tax
85 commissioner in enforcing the provisions of this article
86 and any criminal penalty provision of any article of this
87 code to which this article applies.

88 (f) *Class A license plates.* — Notwithstanding the
89 provisions of article three, chapter seventeen-a of this
90 code, upon application by the tax commissioner and
91 payment of fees, the commissioner of motor vehicles shall
92 issue a maximum of twenty Class A license plates to be
93 used on state owned or leased vehicles assigned to
94 investigators employed in the criminal investigation
95 division.

96 (g) *Reports.* — On the first day of July of each year,
97 beginning in the year one thousand nine hundred ninety-
98 four, the tax commissioner shall present a written report to
99 the joint committee on government operations on the
100 division's compliance with the provisions of this section,
101 including, but not limited to, activities of the divisions
102 created by this section and disbursement of funding.

CHAPTER 209

(Com. Sub. for S. B. 142—By Senators Chafin, Fanning, Minear,
Helmick, Sharpe and Ross)

[Passed April 11, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to a reduction of the severance tax rate for coal mined in West Virginia by underground methods based upon seam thickness.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-3. Imposition of tax or privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness.

1 (a) *Imposition of tax.* — Upon every person exercising
2 the privilege of engaging or continuing within this state in
3 the business of severing, extracting, reducing to possession
4 and producing for sale, profit or commercial use coal,
5 limestone or sandstone, or in the business of furnishing
6 certain health care services, there is hereby levied and shall
7 be collected from every person exercising such privilege
8 an annual privilege tax.

9 (b) *Rate and measure of tax.* — The tax imposed in
10 subsection (a) of this section shall be five percent of the
11 gross value of the natural resource produced or the health
12 care service provided, as shown by the gross income
13 derived from the sale or furnishing thereof by the
14 producer or the provider of the health care service, except

15 as otherwise provided in this article. In the case of coal,
16 this five percent rate of tax includes the thirty-five one
17 hundredths of one percent additional severance tax on
18 coal imposed by the state for the benefit of counties and
19 municipalities as provided in section six of this article.

20 (c) *“Certain health care services” defined.* — For
21 purposes of this section, the term “certain health care
22 services” means, and is limited to, behavioral health
23 services and community care services.

24 (d) *Tax in addition to other taxes.* — The tax imposed
25 by this section shall apply to all persons severing or
26 processing (or both severing and processing) in this state
27 natural resources enumerated in subsection (a) of this
28 section, and to all persons providing certain health care
29 services in this state as enumerated in subsection (c) of this
30 section, and shall be in addition to all other taxes imposed
31 by law.

32 (e) *Effective date.* — This section, as amended in the
33 year one thousand nine hundred ninety-three, shall apply
34 to gross proceeds derived after the thirty-first day of May
35 of such year. The language of this section, as in effect on
36 the first day of January of such year, shall apply to gross
37 proceeds derived prior to the first day of June of such
38 year and, with respect to such gross proceeds, shall be
39 fully and completely preserved.

40 (f) *Reduction of severance tax rate.* — For tax years
41 beginning after the effective date of this subsection, any
42 person exercising the privilege of engaging within this
43 state in the business of severing coal for the purposes
44 provided in subsection (a) of this section, shall be allowed
45 a reduced rate of tax on coal mined by underground
46 methods in accordance with the following:

47 (i) For coal mined by underground methods from
48 seams with an average thickness of thirty-seven inches to
49 forty-five inches, the tax imposed in subsection (a) of this
50 section shall be two percent of the gross value of the coal
51 produced. For coal mined by underground methods from
52 seams with an average thickness of less than thirty-seven
53 inches, the tax imposed in subsection (a) of this section

54 shall be one percent of the gross value of the coal
55 produced. Gross value is determined from the sale of the
56 mined coal by the producer. This rate of tax includes the
57 thirty-five one hundredths of one percent additional
58 severance tax imposed by the state for the benefit of
59 counties and municipalities as provided in section six of
60 this article.

61 (ii) This reduced rate of tax applies to any new
62 underground mine producing coal after the effective date
63 of this subsection, from seams of less than forty-five
64 inches in average thickness or any existing mine that has
65 not produced coal from seams forty-five inches or less in
66 thickness in the one hundred eighty days immediately
67 preceding the effective date of this subsection.

68 (iii) The seam thickness shall be based on the weighted
69 average isopach mapping of actual coal thickness by mine
70 as certified by a professional engineer.

CHAPTER 210

(H. B. 2653—By Delegate Michael)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections five-a and six, article thirteen-a, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the distribution of dedicated oil, gas and coal severance taxes to counties and municipalities; removing the requirement that the proceeds from the taxes be appropriated; continuing and redesignating certain funds; and requirements for budgeting additional tax on severance, extraction and production of coal.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13A. SEVERANCE TAXES.

§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities; distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; special funds in the office of state treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules; special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities; distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; special funds in the office of state treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

1 (a) Effective the first day of July, one thousand nine
2 hundred ninety-six, five percent of the tax attributable to
3 the severance of oil and gas imposed by section three-a of
4 this article is hereby dedicated for the use and benefit of
5 counties and municipalities within this state and shall be

6 distributed to the counties and municipalities as provided
7 in this section. Effective the first day of July, one thou-
8 sand nine hundred ninety-seven, and thereafter, ten per-
9 cent of the tax attributable to the severance of oil and gas
10 imposed by section three-a of this article is hereby dedi-
11 cated for the use and benefit of counties and municipali-
12 ties within this state and shall be distributed to the counties
13 and municipalities as provided in this section.

14 (b) Seventy-five percent of this dedicated tax shall be
15 distributed by the state treasurer in the manner specified in
16 this section to the various counties of this state in which
17 the oil and gas upon which this additional tax is imposed
18 was located at the time it was removed from the ground.
19 Those counties are referred to in this section as the "oil
20 and gas producing counties". The remaining twenty-five
21 percent of the net proceeds of this additional tax on oil
22 and gas shall be distributed among all the counties and
23 municipalities of this state in the manner specified in this
24 section.

25 (c) The tax commissioner is hereby granted plenary
26 power and authority to promulgate reasonable rules re-
27 quiring the furnishing by oil and gas producers of such
28 additional information as may be necessary to compute
29 the allocation required under the provisions of subsection
30 (f) of this section. The tax commissioner is also hereby
31 granted plenary power and authority to promulgate such
32 other reasonable rules as may be necessary to implement
33 the provisions of this section.

34 (d) In order to provide a procedure for the distribu-
35 tion of seventy-five percent of the dedicated tax on oil and
36 gas to the oil and gas producing counties, the special fund
37 known as the oil and gas county revenue fund established
38 in the state treasurer's office by chapter two hundred
39 forty-two, acts of the Legislature, regular session, one
40 thousand nine hundred ninety-five, as amended and reen-
41 acted in the subsequent act of the Legislature, is hereby
42 continued. In order to provide a procedure for the distri-
43 bution of the remaining twenty-five percent of the dedi-
44 cated tax on oil and gas to all counties and municipalities
45 of the state, without regard to oil and gas having been

46 produced in those counties or municipalities, the special
47 fund known as the all counties and municipalities revenue
48 fund established in state treasurer's office by chapter two
49 hundred forty-two, acts of the Legislature, regular session,
50 one thousand nine hundred ninety-five, as amended and
51 reenacted in the subsequent act of the Legislature, is here-
52 by redesignated as the "all counties and municipalities oil
53 and gas revenue fund" and is hereby continued.

54 Seventy-five percent of the dedicated tax on oil and
55 gas shall be deposited in the "oil and gas county reve-
56 nue fund" and twenty-five percent of the dedicated tax on
57 oil and gas shall be deposited in the "all counties and
58 municipalities oil and gas revenue fund", from time to
59 time, as the proceeds are received by the tax commission-
60 er. The moneys in the funds shall be distributed to the
61 respective counties and municipalities entitled to the mon-
62 eys in the manner set forth in subsection (e) of this sec-
63 tion.

64 (e) The moneys in the "oil and gas county revenue
65 fund" and the moneys in the "all counties and munici-
66 palities oil and gas revenue fund" shall be allocated
67 among and distributed annually to the counties and mu-
68 nicipalities entitled to the moneys by the state treasurer in
69 the manner specified in this section. On or before each
70 distribution date, the state treasurer shall determine the
71 total amount of moneys in each fund which will be avail-
72 able for distribution to the respective counties and munici-
73 palities entitled to the moneys on that distribution date.
74 The amount to which an oil and gas producing county is
75 entitled from the "oil and gas county revenue fund" shall
76 be determined in accordance with subsection (f) of this
77 section, and the amount to which every county and munic-
78 ipality shall be entitled from the "all counties and munici-
79 palities oil and gas revenue fund" shall be determined in
80 accordance with subsection (g) of this section. After de-
81 termining, as set forth in subsections (f) and (g) of this
82 section, the amount each county and municipality is enti-
83 tled to receive from the respective fund or funds, a warrant
84 of the state auditor for the sum due to the county or mu-
85 nicipality shall issue and a check drawn thereon making

86 payment of the sum shall thereafter be distributed to the
87 county or municipality.

88 (f) The amount to which an oil and gas producing
89 county is entitled from the "oil and gas county revenue
90 fund" shall be determined by:

91 (1) In the case of moneys derived from tax on the
92 severance of gas:

93 (A) Dividing the total amount of moneys in the fund
94 derived from tax on the severance of gas then available for
95 distribution by the total volume of cubic feet of gas ex-
96 tracted in this state during the preceding year; and

97 (B) Multiplying the quotient thus obtained by the
98 number of cubic feet of gas taken from the ground in the
99 county during the preceding year; and

100 (2) In the case of moneys derived from tax on the
101 severance of oil:

102 (A) Dividing the total amount of moneys in the fund
103 derived from tax on the severance of oil then available for
104 distribution by the total number of barrels of oil extracted
105 in this state during the preceding year; and

106 (B) Multiplying the quotient thus obtained by the
107 number of barrels of oil taken from the ground in the
108 county during the preceding year.

109 (g) The amount to which each county and municipali-
110 ty is entitled from the "all counties and municipalities oil
111 and gas revenue fund" shall be determined in accordance
112 with the provisions of this subsection. For purposes of this
113 subsection "population" means the population as deter-
114 mined by the most recent decennial census taken under
115 the authority of the United States:

116 (1) The treasurer shall first apportion the total amount
117 of moneys available in the "all counties and municipali-
118 ties oil and gas revenue fund" by multiplying the total
119 amount in the fund by the percentage which the popula-
120 tion of each county bears to the total population of the
121 state. The amount thus apportioned for each county is the
122 county's "base share".

123 (2) Each county's "base share" shall then be subdi-
124 vided into two portions. One portion is determined by
125 multiplying the "base share" by that percentage which
126 the total population of all unincorporated areas within the
127 county bears to the total population of the county, and the
128 other portion is determined by multiplying the "base
129 share" by that percentage which the total population of all
130 municipalities within the county bears to the total popula-
131 tion of the county. The former portion shall be paid to
132 the county and the latter portion shall be the "municipali-
133 ties' portion" of the county's "base share". The per-
134 centage of the latter portion to which each municipality in
135 the county is entitled shall be determined by multiplying
136 the total of the latter portion by the percentage which the
137 population of each municipality within the county bears to
138 the total population of all municipalities within the county.

139 (h) Moneys distributed to any county or municipality
140 under the provisions of this section, from either or both
141 special funds, shall be deposited in the county or munici-
142 pal general fund and may be expended by the county
143 commission or governing body of the municipality for
144 such purposes as the county commission or governing
145 body shall determine to be in the best interest of its re-
146 spective county or municipality: *Provided*, That in coun-
147 ties with population in excess of two hundred thousand, at
148 least seventy-five percent of the funds received from the
149 oil and gas county revenue fund shall be apportioned to
150 and expended within the oil and gas producing area or
151 areas of the county, the oil and gas producing areas of
152 each county to be determined generally by the state tax
153 commissioner: *Provided, however*, That the moneys dis-
154 tributed to any county or municipality under the provi-
155 sions of this section shall not be budgeted for personal
156 services in an amount to exceed one fourth of the total
157 amount of the moneys.

158 (i) On or before the twenty-eighth day of March, one
159 thousand nine hundred ninety-seven, and each
160 twenty-eighth day of March thereafter, each county com-
161 mission or governing body of a municipality receiving
162 any such moneys shall submit to the tax commissioner on
163 forms provided by the tax commissioner a special budget.

164 detailing how the moneys are to be spent during the sub-
165 sequent fiscal year. The budget shall be followed in ex-
166 pending the moneys unless a subsequent budget is ap-
167 proved by the state tax commissioner. All unexpended
168 balances remaining in the county or municipality general
169 fund at the close of a fiscal year shall remain in the gener-
170 al fund and may be expended by the county or municipi-
171 pality without restriction.

172 (j) On or before the fifteenth day of December, one
173 thousand nine hundred ninety-six, and each fifteenth day
174 of December thereafter, the tax commissioner shall deliver
175 to the clerk of the Senate and the clerk of the House of
176 Delegates a consolidated report of the budgets, created by
177 subsection (i) of this section, for all county commissions
178 and municipalities as of the fifteenth day of July of the
179 current year.

180 (k) The state tax commissioner shall retain for the
181 benefit of the state from the dedicated tax attributable to
182 the severance of oil and gas the amount of thirty-five
183 thousand dollars annually as a fee for the administration
184 of the additional tax by the tax commissioner.

§11-13A-6. Additional tax on the severance, extraction and production of coal; dedication of additional tax for benefit of counties and municipalities; distribution of major portion of such additional tax to coal-producing counties; distribution of minor portion of such additional tax to all counties and municipalities; reports; rules; special funds in office of state treasurer; method and formulas for distribution of such additional tax; expenditure of funds by counties and municipalities for public purposes; special funds in counties and municipalities; and requiring special county and municipal budgets and reports thereon.

1 (a) Additional coal severance tax. — Upon every
2 person exercising the privilege of engaging or continuing
3 within this state in the business of severing coal, or prepar-
4 ing coal (or both severing and preparing coal), for sale,
5 profit or commercial use, there is hereby imposed an addi-
6 tional severance tax, the amount of which shall be equal to

7 the value of the coal severed or prepared (or both severed
8 and prepared), against which the tax imposed by section
9 three of this article is measured as shown by the gross
10 proceeds derived from the sale of the coal by the produc-
11 er, multiplied by thirty-five one hundredths of one per-
12 cent. The tax imposed by this subsection is in addition to
13 the tax imposed by section three of this article, and this
14 additional tax is referred to in this section as the "addi-
15 tional tax on coal".

16 (b) This additional tax on coal is imposed pursuant to
17 the provisions of section six-a, article ten of the West Vir-
18 ginia constitution. Seventy-five percent of the net pro-
19 ceeds of this additional tax on coal shall be distributed by
20 the state treasurer in the manner specified in this section to
21 the various counties of this state in which the coal upon
22 which this additional tax is imposed was located at the time
23 it was severed from the ground. Those counties are re-
24 ferred to in this section as the "coal-producing counties".
25 The remaining twenty-five percent of the net proceeds of
26 this additional tax on coal shall be distributed among all
27 the counties and municipalities of this state in the manner
28 specified in this section.

29 (c) The additional tax on coal shall be due and pay-
30 able, reported and remitted as elsewhere provided in this
31 article for the tax imposed by section three of this article,
32 and all of the enforcement and other provisions of this
33 article shall apply to the additional tax. In addition to the
34 reports and other information required under the provi-
35 sions of this article and the tonnage reports required to be
36 filed under the provisions of section seventy-seven, article
37 two, chapter twenty-two-a of this code, the tax commis-
38 sioner is hereby granted plenary power and authority to
39 promulgate reasonable rules requiring the furnishing by
40 producers of such additional information as may be nec-
41 essary to compute the allocation required under the provi-
42 sions of subsection (f) of this section. The tax commis-
43 sioner is also hereby granted plenary power and authority
44 to promulgate such other reasonable rules as may be nec-
45 essary to implement the provisions of this section: *Provid-*
46 *ed*, That notwithstanding any language contained in this
47 code to the contrary, the gross amount of additional tax

48 on coal collected under this article shall be paid over and
49 distributed without the application of any credits against
50 the tax imposed by this section.

51 (d) In order to provide a procedure for the distribu-
52 tion of seventy-five percent of the net proceeds of the
53 additional tax on coal to the coal-producing counties, the
54 special fund known as the "county coal revenue fund"
55 established in the state treasurer's office by chapter one
56 hundred sixty-two, acts of the Legislature, regular session,
57 one thousand nine hundred eighty-five, as amended and
58 reenacted in subsequent acts of the Legislature, is hereby
59 continued. In order to provide a procedure for the distri-
60 bution of the remaining twenty-five percent of the net
61 proceeds of the additional tax on coal to all counties and
62 municipalities of the state, without regard to coal having
63 been produced therein, the special fund known as the "all
64 counties and municipalities revenue fund" established in
65 the state treasurer's office by chapter one hundred sixty-
66 two, acts of the Legislature, regular session, one thousand
67 nine hundred eighty-five, as amended and reenacted in
68 subsequent acts of the Legislature, is hereby redesignated
69 as the "all counties and municipalities coal revenue fund"
70 and is hereby continued.

71 Seventy-five percent of the net proceeds of such addi-
72 tional tax on coal shall be deposited in the "county coal
73 revenue fund" and twenty-five percent of the net pro-
74 ceeds shall be deposited in the "all counties and munici-
75 palities coal revenue fund", from time to time, as the pro-
76 ceeds are received by the tax commissioner. The moneys
77 in the funds shall be distributed to the respective counties
78 and municipalities entitled to the moneys in the manner
79 set forth in subsection (e) of this section.

80 (e) The moneys in the "county coal revenue fund"
81 and the moneys in the "all counties and municipalities
82 coal revenue fund" shall be allocated among and distrib-
83 uted quarterly to the counties and municipalities entitled
84 to the moneys by the state treasurer in the manner speci-
85 fied in this section. On or before each distribution date,
86 the state treasurer shall determine the total amount of
87 moneys in each fund which will be available for distribu-

88 tion to the respective counties and municipalities entitled
89 to the moneys on that distribution date. The amount to
90 which a coal-producing county is entitled from the
91 "county coal revenue fund" shall be determined in ac-
92 cordance with subsection (f) of this section, and the
93 amount to which every county and municipality is entitled
94 from the "all counties and municipalities coal revenue
95 fund" shall be determined in accordance with subsection
96 (g) of this section. After determining as set forth in sub-
97 section (f) and subsection (g) of this section the amount
98 each county and municipality is entitled to receive from
99 the respective fund or funds, a warrant of the state auditor
100 for the sum due to each county or municipality shall issue
101 and a check drawn thereon making payment of such
102 amount shall thereafter be distributed to each such county
103 or municipality.

104 (f) The amount to which a coal-producing county is
105 entitled from the "county coal revenue fund" shall be
106 determined by: (1) Dividing the total amount of moneys
107 in the fund then available for distribution by the total
108 number of tons of coal mined in this state during the pre-
109 ceding quarter; and (2) multiplying the quotient thus
110 obtained by the number of tons of coal removed from the
111 ground in the county during the preceding quarter.

112 (g) The amount to which each county and municipali-
113 ty is entitled from the "all counties and municipalities
114 coal revenue fund" shall be determined in accordance
115 with the provisions of this subsection. For purposes of this
116 subsection "population" means the population as deter-
117 mined by the most recent decennial census taken under
118 the authority of the United States:

119 (1) The treasurer shall first apportion the total amount
120 of moneys available in the "all counties and municipali-
121 ties coal revenue fund" by multiplying the total amount
122 in the fund by the percentage which the population of
123 each county bears to the total population of the state. The
124 amount thus apportioned for each county is the county's
125 "base share".

126 (2) Each county's "base share" shall then be subdivi-
127 ded into two portions. One portion is determined by

128 multiplying the "base share" by that percentage which
129 the total population of all unincorporated areas within the
130 county bears to the total population of the county, and the
131 other portion is determined by multiplying the "base
132 share" by that percentage which the total population of all
133 municipalities within the county bears to the total popula-
134 tion of the county. The former portion shall be paid to
135 the county and the latter portion is the "municipalities'
136 portion" of the county's "base share". The percentage
137 of the latter portion to which each municipality in the
138 county is entitled shall be determined by multiplying the
139 total of the latter portion by the percentage which the
140 population of each municipality within the county bears to
141 the total population of all municipalities within the county.

142 (h) All counties and municipalities shall create a "coal
143 severance tax revenue fund" which shall be the depository
144 for moneys distributed to any county or municipality
145 under the provisions of this section, from either or both
146 special funds. Moneys in the coal severance tax revenue
147 fund, in compliance with subsection (i) of this section,
148 may be expended by the county commission or governing
149 body of the municipality for such public purposes as the
150 county commission or governing body shall determine to
151 be in the best interest of the people of its respective county
152 or municipality: *Provided*, That in counties with popula-
153 tion in excess of two hundred thousand, at least seventy-
154 five percent of the funds received from the county coal
155 revenue fund shall be apportioned to, and expended with-
156 in the coal-producing area or areas of the county, said
157 coal-producing areas of each county to be determined
158 generally by the state tax commissioner: *Provided, how-*
159 *ever*, That the coal severance tax revenue fund moneys
160 shall not be budgeted for personal services in an amount
161 to exceed one fourth of the total funds available in such
162 fund.

163 (i) On or before the twenty-eighth day of March, one
164 thousand nine hundred eighty-six, and each twenty-eighth
165 day of March thereafter, each county commission or gov-
166 erning body of a municipality receiving such revenue
167 shall submit to the tax commissioner on forms provided
168 by the tax commissioner a special budget, detailing how

169 such revenue is to be spent during the subsequent fiscal
170 year. Such budget shall be followed in expending the
171 revenue unless a subsequent budget is approved by the
172 state tax commissioner. All unexpended balances
173 remaining in coal severance tax revenue fund at the close
174 of a fiscal year shall be reappropriated to the budget of
175 the county commission or governing body for the
176 subsequent fiscal year. The reappropriation shall be
177 entered as an amendment to the new budget and submitted
178 to the tax commissioner on or before the fifteenth day of
179 July of the current budget year.

180 (j) On or before the fifteenth day of December, one
181 thousand nine hundred eighty-six, and each fifteenth day
182 of December thereafter, the tax commissioner shall deliver
183 to the clerk of the Senate and the clerk of the House of
184 Delegates a consolidated report of the special budgets,
185 created by subsection (i) of this section, for all county
186 commissions and municipalities as of the fifteenth day of
187 July of the current year.

188 (k) The state tax commissioner shall retain for the
189 benefit of the state from the additional taxes on coal
190 collected the amount of thirty-five thousand dollars
191 annually as a fee for the administration of such additional
192 tax by the tax commissioner.

CHAPTER 211

(Com. Sub. for H. B. 2870—By Delegates Beach, Kelley, Proudfoot, Boggs,
Buchanan, Damron and Dempsey)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article thirteen-m, all relating generally to allowing a tax credit to eligible taxpayers equal to two hundred fifty dollars for each new job

filled by a full-time employee of the eligible taxpayer working in a new consumer-ready wood product manufacturing facility in this state, or at a new consumer-ready wood product line of an existing manufacturing facility, that begins manufacturing after the thirtieth day of June, one thousand nine hundred ninety-seven; stating legislative purpose; defining terms; allowing credit against business franchise tax and against income taxes; providing rules for determining amount of allowable credit and for application of amount of allowable credit against certain taxes; providing for proration of credit among partners, members of limited liability companies and shareholders in electing small business corporations; requiring annual computation of number of new jobs filled by full-time employees; making credit available to successors; providing for credit recapture upon certain events along with interest, additions to tax and a waivable money penalty; specifying time limitations for certain actions; authorizing promulgation of administrative rules; providing rule of construction; specifying effective date; and providing for expiration of credit.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13M. TAX CREDIT FOR NEW VALUE-ADDED WOOD MANUFACTURING OPERATIONS.

- §11-13M-1. Legislative purpose.
- §11-13M-2. Definitions.
- §11-13M-3. Eligibility for tax credits; creation of the credit.
- §11-13M-4. Amount of credit allowed; expiration of the credit.
- §11-13M-5. Application of annual credit allowance.
- §11-13M-6. Proration of credit among partners, members of limited liability companies, or shareholders in small business corporations.
- §11-13M-7. Annual computation of the number of new jobs held by full-time employees.
- §11-13M-8. Availability of credit to successors.
- §11-13M-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.
- §11-13M-10. Administrative rules.
- §11-13M-11. Construction of article.

§11-13M-12. Effective date.

§11-13M-1. Legislative purpose.

1 The Legislature finds that production of consumer-
2 ready wood products is very important to the economy of
3 this state and that a sound economy is in the public
4 interest and promotes the general welfare of the people of
5 this state. In order to encourage capital investment in this
6 state, through the manufacture of consumer-ready wood
7 products after the thirtieth day of June, one thousand nine
8 hundred ninety-seven, thereby increasing employment
9 and economic development, there is hereby provided to
10 eligible taxpayers a credit for each new job filled by a
11 full-time hourly employee who works in a new consumer-
12 ready wood product manufacturing facility, or in a new
13 consumer-ready wood product line of an existing
14 manufacturing facility, that begins operating in this state
15 after the thirtieth day of June, one thousand nine hundred
16 ninety-seven.

§11-13M-2. Definitions.

1 (a) *General.* — When used in this article, or in the
2 administration of this article, terms defined in subsection
3 (b) of this section have the meanings ascribed to them by
4 this section, unless a different meaning is clearly required
5 by the context in which the term is used.

6 (b) *Terms defined.*

7 (1) “*Affiliate*” means and includes all persons, as
8 defined in this section, which are affiliates of each other
9 when either directly or indirectly:

10 (A) One person controls or has the power to control
11 the other, or

12 (B) A third party or third parties control or have the
13 power to control two persons, the two thus being affiliates.
14 In determining whether concerns are independently
15 owned and operated and whether or not an affiliation
16 exists, consideration shall be given to all appropriate
17 factors, including common ownership, common
18 management and contractual relationships.

19 (2) "*Commissioner*" or "*tax commissioner*" means
20 the tax commissioner of the state of West Virginia, or the
21 tax commissioner's delegate.

22 (3) "*Consumer-ready wood products*" means value-
23 added wood products that are ready for sale to consumers
24 at the end of the manufacturing process. Consumer-ready
25 wood includes any value-added wood product that does
26 not require further manufacturing before it may
27 ordinarily be used or consumed by the purchaser of the
28 product, except that consumer-ready wood product does
29 not include any product that is not manufactured
30 primarily from wood, any product that is not
31 commercially marketed as a wood product for sale
32 primarily to consumers of the product, or paper or paper
33 products.

34 (4) "*Corporation*" includes any corporation, a joint-
35 stock company and any association or other organization
36 which is classified as a corporation under federal income
37 tax law.

38 (5) "*Delegate*", when used in reference to the tax
39 commissioner, means any officer or employee of the tax
40 division of the department of tax and revenue duly
41 authorized by the tax commissioner directly, or indirectly
42 by one or more redelegations of authority, to perform the
43 functions mentioned or described in this article.

44 (6) "*Eligible taxpayer*" means a person who after
45 the thirtieth day of June, one thousand nine hundred
46 ninety-seven, begins manufacturing a consumer-ready
47 wood product at a new manufacturing facility located in
48 this state, or begins manufacturing a new consumer-ready
49 wood product line at an existing manufacturing facility
50 located in this state, which results in the creation of new
51 jobs filled by full-time employees.

52 (7) "*Employer*" means the person for whom an
53 individual performs or performed any service, of whatever
54 nature, as the employee of such person, except that if the
55 person for whom the individual performs or performed
56 the service does not have control of the payment of wages

57 for such services, the term "employer" means the person
58 having control of the payment of such wages.

59 (8) "*Existing manufacturing facility*" means a
60 building which at anytime during the twelve months
61 preceding the month in which manufacture of a
62 consumer-ready wood product begins was used by the
63 taxpayer, or by a related person, to manufacture tangible
64 personal property.

65 (9) "*Full-time employee*" means a permanent hourly
66 employee of an eligible taxpayer, who is a West Virginia
67 domiciled resident, and works in a new consumer-ready
68 wood product manufacturing facility in this state, or in a
69 new consumer-ready wood product line of an existing
70 manufacturing facility in this state, more than eighteen
71 hundred hours during the entire twelve-month period
72 ending on the last day of the taxable year of the eligible
73 employer, whether these hours are hours worked at the
74 manufacturing facility, or include hours of employer paid
75 vacation leave or other employer paid leave. Full-time
76 employee does not include an employee who is a part-
77 time, seasonal or temporary employee.

78 (10) "*Internal Revenue Code*" means the Internal
79 Revenue Code of 1986, as amended, of the United States.

80 (11) "*Manufacturing facility*" means any facility
81 which is used in the manufacturing of tangible personal
82 property (including processing resulting in a change in
83 the condition of such property).

84 (12) "*New consumer-ready wood product line*"
85 means the manufacture of a consumer-ready wood
86 product in an existing manufacturing facility in this state
87 that first begins manufacturing the new consumer-ready
88 wood product line after the thirtieth day of June, one
89 thousand nine hundred ninety-seven.

90 (13) "*New consumer-ready wood product*
91 *manufacturing facility*" means a building that is primarily
92 used by the eligible taxpayer to manufacture a consumer-
93 ready wood product that is first placed in service and used
94 for that purpose by the eligible taxpayer after the thirtieth

95 day of June, one thousand nine hundred ninety-seven. If
96 the facility was used by the taxpayer, or by a related
97 person, to manufacture tangible personal property at any
98 time during the twelve months preceding the month in
99 which the facility is first used by the taxpayer to
100 manufacture a consumer-ready wood product, the
101 building is not a new consumer-ready wood product
102 manufacturing facility.

103 (14) "*New job*" means a job at a new consumer-
104 ready wood product manufacturing facility located in this
105 state, or at a new consumer-ready wood product line at an
106 existing manufacturing facility located in this state, which
107 did not exist in this state with any employer as of the first
108 day of the second calendar month preceding the calendar
109 month in which the new consumer-ready wood product
110 manufacturing facility begins to manufacture consumer-
111 ready wood products, or in which the new consumer-ready
112 wood product line begins to manufacture consumer-ready
113 wood products in an existing manufacturing facility
114 located in this state, that is filled by a full-time employee
115 of the eligible taxpayer.

116 (15) "*Partnership*" means and includes a syndicate,
117 group, pool, joint venture or other unincorporated
118 organization through or by means of which any business,
119 financial operation, or venture is carried on, which is
120 classified as a partnership for federal income tax purposes
121 for the taxable year.

122 (16) "*Partner*" includes a member in a syndicate,
123 group, pool, joint venture or organization classified as a
124 partnership for federal income tax purposes for the
125 taxable year.

126 (17) "*Part-time employee*" means any employee
127 who normally works twenty hours or less per week.

128 (18) "*Seasonal employee*" means an employee who
129 normally works on a full-time basis less than five months
130 in a year.

131 (19) "*Temporary employee*" means an employee
132 performing services under a contractual arrangement with
133 the employer of two years or less duration.

134 (20) "*Person*" means and includes an individual, a
135 trust, estate, partnership, association, company or
136 corporation.

137 (21) "*Related entity*", "*related person*", "*entity*
138 *related to*" or "*person related to*" means:

139 (A) An individual, corporation, partnership, affiliate,
140 association or trust or any combination or group thereof
141 controlled by the taxpayer;

142 (B) An individual, corporation, partnership, affiliate,
143 association or trust or any combination or group thereof
144 that is in control of the taxpayer;

145 (C) An individual, corporation, partnership, affiliate,
146 association or trust or any combination or group thereof
147 controlled by an individual, corporation, partnership,
148 affiliate, association or trust or any combination or group
149 thereof that is in control of the taxpayer; or

150 (D) A member of the same controlled group as the
151 taxpayer. For purposes of this subdivision (21),
152 "control," with respect to a corporation, means
153 ownership, directly or indirectly, of stock possessing fifty
154 percent or more of the total combined voting power of all
155 classes of the stock of the corporation which entitles its
156 owner to vote. "Control," with respect to a trust, means
157 ownership, directly or indirectly, of fifty percent or more
158 of the beneficial interest in the principal or income of the
159 trust. The ownership of stock in a corporation, of a capital
160 or profits interest in a partnership or association or of a
161 beneficial interest in a trust shall be determined in
162 accordance with the rules for constructive ownership of
163 stock provided in section 267(c) of the Internal Revenue
164 Code: *Provided*, That paragraph (3) of section 267(c) of
165 the Internal Revenue Code shall not apply.

166 (22) “*Tax year*” or “*taxable year*,” means the tax
167 year of the taxpayer for federal income tax purposes.

168 (23) “*Taxpayer*” means any person subject to the
169 tax imposed by articles twenty-one, twenty-three or
170 twenty-four of this chapter.

§11-13M-3. Eligibility for tax credits; creation of the credit.

1 There shall be allowed to every eligible taxpayer a
2 credit against the taxes imposed in articles twenty-one,
3 twenty-three and twenty-four of this chapter. The amount
4 of this credit shall be determined and applied as provided
5 in this article.

§11-13M-4. Amount of credit allowed; expiration of the credit.

1 (a) *Credit allowable.* — The amount of annual credit
2 allowable under this article to an eligible taxpayer shall be
3 two hundred fifty dollars for each new job at a new
4 consumer-ready wood product manufacturing facility
5 located in this state, or at a new consumer-ready wood
6 product line of an existing manufacturing facility located
7 in this state, that is filled by a full-time employee of the
8 eligible taxpayer during the taxable year, subject to the
9 following:

10 (1) When the new consumer-ready wood product
11 manufacturing facility, or the new wood product line of an
12 existing consumer-ready wood product manufacturing
13 facility, is in operation for less than twelve months of the
14 taxable year in which it is placed in service, the credit
15 allowed by subsection (a) of this section shall be prorated
16 by the ratio that the number of months in the taxpayer’s
17 taxable year during which the new consumer-ready wood
18 products facility, or the new products line of an existing
19 consumer-ready wood product manufacturing facility, was
20 in service bears to twelve.

21 (2) When the eligible taxpayer stops manufacturing
22 consumer-ready wood products at the new consumer-
23 ready wood product manufacturing facility, or at the new
24 wood product line of an existing consumer-ready wood
25 product manufacturing facility, during the taxable year,
26 the credit allowed by subsection (a) of this section shall be

27 prorated by the ratio that the number of months in the
28 taxpayer's taxable year during which the new consumer-
29 ready wood products facility, or the new products line of
30 an existing consumer-ready wood product manufacturing
31 facility, was in operation manufacturing consumer-ready
32 wood product bears to twelve.

33 (3) When determining the number of full-time
34 employees who fill new jobs at the new consumer-ready
35 wood product manufacturing facility located in this state,
36 or who fill new jobs at a new consumer-ready wood
37 product line of an existing manufacturing facility located
38 in this state, the eligible taxpayer shall not include any
39 position occupied by any employee of the eligible
40 taxpayer, or of a related person, which existed in this state
41 as of the first day of the second calendar month preceding
42 the calendar month in which the new consumer-ready
43 wood product manufacturing facility, or a new consumer-
44 ready wood product line at an existing consumer-ready
45 wood products manufacturing facility first becomes
46 operational, whether such positions are filled by
47 permanent, seasonal, temporary or part-time employees.

48 (4) The amount of credit allowable each taxable year
49 shall be calculated annually based upon the number of
50 new jobs filled by full-time employees during the taxable
51 year.

52 (b) *Expiration of credit.* — This credit shall expire
53 on the first day of July, two thousand two. When the first
54 day of July in the year two thousand two falls during the
55 taxable year of the eligible taxpayer, the amount of credit
56 allowable for that taxable year shall be limited to that
57 portion of the amount of credit that would have been
58 allowable had the credit not expired multiplied by the
59 ratio the number of months during taxpayers taxable year
60 ending before the first day of July, two thousand two,
61 bears to twelve.

§11-13M-5. Application of annual credit allowance.

1 (a) *Application of credit against business franchise*
2 *tax.* — The amount of credit allowed under section four
3 of this article shall first be applied against the eligible

4 taxpayer's liability for the tax imposed by article twenty-
5 three of this chapter that is attributable to a new consumer-
6 ready wood product manufacturing facility located in this
7 state and to a new consumer-ready wood product
8 production line at an existing manufacturing facility
9 located in this state.

10 (b) *Application of remaining credit against income*
11 *tax.* — After application of the allowable credit against the
12 tax imposed by article twenty-three of this chapter, as
13 provided in subsection (a) of this section, any remaining
14 credit may be applied against the taxes imposed by article
15 twenty-one or twenty-four of this chapter to the extent
16 those taxes are attributable to a new consumer-ready wood
17 product manufacturing facility located in this state and to
18 a new consumer-ready wood product production line at an
19 existing manufacturing facility located in this state:
20 *Provided,* That no credit shall be allowed against employer
21 withholding taxes due under article twenty-one of this
22 chapter.

23 (c) *Excess credit forfeited.* — If after application of
24 subsections (a) and (b) of this section, any credit remains
25 for the taxable year, the amount remaining and not used is
26 forfeited. Unused credit may not be carried back to any
27 prior taxable year and shall not carry forward to any
28 subsequent taxable year.

29 (d) *Application of this credit when other credits*
30 *apply.* — The credit allowed under this article shall be
31 applied after application of all other applicable tax credits
32 allowed for the taxable year against the taxes imposed by
33 articles twenty-one, twenty-three or twenty-four of this
34 chapter.

35 (e) *Completion of annual schedule to assert credit.*
36 — To assert this credit against tax, the eligible taxpayer
37 shall prepare and file with the annual tax return filed
38 under articles twenty-one, twenty-three or twenty-four of
39 this chapter, an annual schedule showing the amount of
40 tax paid for the taxable year, and the amount of credit
41 allowed under this article. This annual schedule shall set

42 forth the information and be in the form prescribed by the
43 tax commissioner.

44 (f) *Payments of estimated tax.* — A taxpayer may
45 consider the amount of credit allowed under this article
46 when determining the taxpayer's liability under articles
47 twenty-one, twenty-three and twenty-four of this chapter
48 for periodic payments of estimated tax for the taxable
49 year, in accordance with the procedures and requirements
50 prescribed by the tax commissioner. The annual total tax
51 liability and total tax credit allowed under this article are
52 subject to adjustment and reconciliation pursuant to the
53 filing of the annual schedule required by subsection (e) of
54 this section.

§11-13M-6. Proration of credit among partners, members of limited liability companies, or shareholders in small business corporations.

1 The amount of credit allowed under this article for
2 the taxable year to a partnership or limited liability
3 company classified as a partnership for the taxable year,
4 or to an electing small business corporation, that remains
5 after application the credit against the tax imposed by
6 article twenty-three of this chapter as provided in
7 subsection (a), section five of this article shall be allocated
8 to the individual partners, members or shareholders, as the
9 case may be, in proportion to their ownership interest in
10 the partnership, limited liability company or electing small
11 business corporation. The amount of credit allocated to
12 the individual partners, members or shareholders, as the
13 case may be, may be applied against the taxes imposed by
14 articles twenty-one and twenty-four of this chapter in
15 accordance with the rule set forth in subsection (b), section
16 five of this article.

§11-13M-7. Annual computation of the number of new jobs held by full-time employees.

1 (a) The eligible taxpayer shall annually determine
2 the number of new jobs held by full-time permanent
3 employees of the eligible taxpayer in the taxable year by
4 calculating the average number of full-time employees
5 holding jobs for each month of the taxable year by

6 averaging the beginning and ending monthly employment
7 of full-time employees, then totaling the monthly
8 averages and dividing that total by twelve.

9 (b) The eligible taxpayer shall also annually
10 determine the number of new jobs filled during the
11 taxable year by full-time employees of the eligible
12 taxpayer employed at a new consumer-ready wood
13 product manufacturing facility, or at a new consumer-
14 ready wood product line at an existing manufacturing
15 facility, located in this state that is owned or operated by
16 the eligible taxpayer, by calculating the average number
17 of new jobs held by full-time employees for each month
18 of the taxable year by averaging the beginning and
19 ending monthly employment of full-time employees
20 holding new jobs, then totaling the monthly averages and
21 dividing that total by twelve.

22 (c) Preexisting jobs carried over from a corporation
23 or other entity merged with the taxpayer, and not
24 reflective of a true increase in the number of new jobs in
25 West Virginia, or preexisting jobs formerly in place with a
26 contract service provider which are taken over or
27 supplanted by the internal operations of the taxpayer, or
28 any other increase in the count of jobs in place with a
29 taxpayer which is not reflective of new jobs, as defined in
30 section two of this article, shall not count as new jobs for
31 purposes of the credit allowed under this article.

32 (d) The tax commissioner may prescribe by rule
33 alternative methods for determining the number of jobs
34 held by full-time permanent employees in the taxable year
35 upon a finding by the tax commissioner that an alternative
36 method is appropriate for ascertaining an accurate and
37 realistic determination of new jobs held by full-time
38 employees in the taxable year. For purposes of
39 prescribing alternative methods, the tax commissioner may
40 require the deduction or inclusion of jobs in place with
41 contract service providers that provide or at any time
42 provided any service to any eligible taxpayer or to any
43 member of the affiliated group related to any eligible
44 taxpayer or to any one or more entities related to the
45 eligible taxpayer: *Provided*, That deduction, or inclusion

46 of those jobs shall only pertain to jobs held by employees
47 of the contract service provider that are attributable or that
48 were formerly attributable to the service provided by the
49 contract service provider to the taxpayer. The tax
50 commissioner may require any deconsolidation of any
51 filing entity, or may require an alternative method based
52 on separate accounting, unitary combination, combination
53 of the affiliated group or combination of the taxpayer and
54 one or more entities related to the taxpayer, or any other
55 method determined by the tax commissioner to be
56 appropriate for ascertaining an accurate and realistic
57 determination of new jobs held by full-time employees in
58 the taxable year.

§11-13M-8. Availability of credit to successors.

1 (a) *Transfer or sale.* — When there is a transfer or
2 sale of the business assets of an eligible taxpayer to a
3 successor taxpayer which continues to operate the new
4 consumer-ready wood product manufacturing facility
5 located in this state, or the new consumer-ready wood
6 product line of an existing manufacturing facility located
7 in this state, the successor taxpayer is entitled to the credit
8 allowed under this article: *Provided*, That the successor
9 taxpayer otherwise remains in compliance with the
10 requirements of this article for entitlement to the credit.

11 (b) *Allocation of credit between eligible taxpayer*
12 *and successor eligible taxpayer.* — For any taxable year
13 during which a transfer, or sale of the business assets of an
14 eligible taxpayer to a successor taxpayer under this section
15 occurs, or a merger allowed under this section occurs, the
16 credit allowed under this article shall be apportioned
17 between the predecessor eligible taxpayer and the
18 successor taxpayer based on the number of days during
19 the taxable year that each taxpayer acted as the legal
20 employer of individuals filling new jobs for which the
21 credit allowed under this article is based and the number
22 of days during the taxable year that each taxpayer owned
23 the new consumer-ready wood product manufacturing
24 facility located in this state, or the new consumer-ready
25 wood product line of an existing manufacturing facility
26 located in this state.

27 (c) *Stock purchases.* — When a corporation which is
28 an eligible taxpayer entitled to the credit allowed under
29 this article is purchased through a stock purchase by a new
30 owner, and the corporation remains a legal entity so as to
31 retain its corporate identity, the entitlement of that
32 corporation to the credit allowed under this article will not
33 be affected by the ownership change.

34 (d) *Mergers.* —

35 (1) When a corporation or other entity which is an
36 eligible taxpayer entitled to the credit allowed under this
37 article is merged with another corporation, or entity, the
38 surviving corporation, or entity, shall be entitled to the
39 credit to which the predecessor eligible taxpayer was
40 originally entitled only if the surviving corporation, or
41 entity, otherwise complies with the provisions of this
42 article.

43 (2) The amount of credit available in any taxable
44 year during which a merger occurs shall be apportioned
45 between the predecessor eligible taxpayer and the
46 successor eligible taxpayer based on the number of days
47 during the taxable year that each taxpayer acted as the
48 legal employer of employees holding the new jobs upon
49 which the credit allowed under this article is based and the
50 number of days during the taxable year that each owned
51 the transferred business assets: *Provided*, That when the
52 taxable year of the predecessor eligible taxpayer and the
53 taxable year of the successor eligible taxpayer are
54 different, the apportionment shall be made in accordance
55 with legislative rules prescribed by the tax commissioner.

56 (e) No provision of this section or of this article shall
57 be construed to allow sales or other transfers of the tax
58 credit allowed under this article. The credit allowed under
59 this article may be transferred only in circumstances where
60 there is a valid successorship as described under this
61 section.

§11-13M-9. Credit recapture; interest; penalties; additions to tax; statute of limitations.

1 (a) If it appears upon audit or otherwise that any
2 person has improperly claimed the credit allowed by this
3 article, the amount improperly claimed and which the

4 person was not entitled to take shall be recaptured.
5 Amended returns shall be filed for any taxable year for
6 which the credit was improperly taken. Any additional
7 taxes due under this chapter shall be remitted with the
8 amended return or returns filed with the tax commissioner,
9 along with interest, as provided in section seventeen, article
10 ten of this chapter, and a ten percent penalty plus such
11 other penalties and additions to tax as may be applicable
12 under the provisions of article ten of this chapter.

13 (b) *Recapture for jobs lost.* —

14 (1) In any tax year the number of individuals
15 employed in full-time positions by the eligible taxpayer
16 decreases by more than ten percent, credit recapture shall
17 apply, and the taxpayer shall return to the state an amount
18 of tax determined by multiplying five hundred dollars by
19 the number of full-time jobs lost which exceed ten
20 percent. An amended return shall be filed for the tax year
21 for which credit recapture is required. Any additional
22 taxes due under this chapter shall be remitted with the
23 amended return filed with the tax commissioner, along
24 with interest, as provided in section seventeen, article ten of
25 this chapter, and a ten percent penalty plus such other
26 penalties and additions to tax as may be applicable under
27 the provisions of article ten of this chapter.

28 (2) Notwithstanding the provisions of article ten of
29 this chapter, penalties and additions to tax imposed under
30 article ten of this chapter and the ten percent penalty
31 imposed under this section may be waived, in whole or in
32 part, at the discretion of the tax commissioner. However,
33 interest may not be waived.

34 (c) Notwithstanding the provisions of article ten of
35 this chapter, the time within which a notice of assessment
36 may be issued by the tax commissioner to recover
37 recapture tax shall be five years from the date of filing of
38 any tax return on which this credit was taken or five years
39 from the date of payment of any tax liability calculated
40 pursuant to the assertion of the credit allowed under this
41 article, whichever is later.

§11-13M-10. Administrative rules.

1 The tax commission may prescribe such rules as may
2 be necessary to carry out the purposes of this article,
3 including, but not limited to, rules relating to applicability
4 of credit, method of claiming of credit, credit recapture,
5 documentation necessary to claim credit and rules
6 preventing abuse of this article by related persons or by
7 change in the form of doing business. All rules
8 promulgated under this article shall be promulgated in
9 accordance with article three, chapter twenty-nine-a of this
10 code.

§11-13M-11. Construction of article.

1 The provisions of this article shall be reasonably
2 construed. The burden of proof is on the person claiming
3 the credit allowed by this article to establish by clear and
4 convincing evidence that the person is entitled to the
5 amount of credit asserted for the taxable year.

§11-13M-12. Effective date.

1 This article shall be effective for taxable years
2 beginning on or after the first day of July, one thousand
3 nine hundred ninety-seven.

CHAPTER 212

(S. B. 324—By Senators Love, Schoonover and Anderson)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article fifteen, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to sales tax exemptions; providing sales tax exemptions on services provided by certain entertainers or performing artists, on materials and services sold by certain county government agencies, and on sales by the division of natural resources of the magazine known as "Wonderful West Virginia".

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 15. CONSUMERS SALES TAX.

§11-15-9. Exemptions.

1 (a) *Exemptions for which exemption certificate may be*
2 *issued.* — A person having a right or claim to any
3 exemption set forth in this subsection may, in lieu of
4 paying the tax imposed by this article and filing a claim
5 for refund, execute a certificate of exemption, in the form
6 required by the tax commissioner, and deliver it to the
7 vendor of the property or service, in the manner required
8 by the tax commissioner. However, the tax commissioner
9 may, by rule, specify those exemptions authorized in this
10 subsection for which exemptions certificates are not
11 required. The following sales of tangible personal
12 property and/or services are exempt as provided in this
13 subsection:

14 (1) Sales of gas, steam and water delivered to
15 consumers through mains or pipes and sales of electricity;

16 (2) Sales of textbooks required to be used in any of
17 the schools of this state or in any institution in this state
18 which qualifies as a nonprofit or educational institution
19 subject to the West Virginia department of education and
20 the arts, the board of trustees of the university system of
21 West Virginia or the board of directors for colleges
22 located in this state;

23 (3) Sales of property or services to this state, its
24 institutions or subdivisions, governmental units, institutions
25 or subdivisions of other states: *Provided*, That the law of
26 the other state provides the same exemption to
27 governmental units or subdivisions of this state and to the
28 United States, including agencies of federal, state or local
29 governments for distribution in public welfare or relief
30 work;

31 (4) Sales of vehicles which are titled by the division of
32 motor vehicles and which are subject to the tax imposed

33 by section four, article three, chapter seventeen-a of this
34 code, or like tax;

35 (5) Sales of property or services to churches which
36 make no charge whatsoever for the services they render:
37 *Provided*, That the exemption granted in this subdivision
38 applies only to services, equipment, supplies, food for
39 meals and materials directly used or consumed by these
40 organizations, and does not apply to purchases of gasoline
41 or special fuel;

42 (6) Sales of tangible personal property or services to a
43 corporation or organization which has a current
44 registration certificate issued under article twelve of this
45 chapter, which is exempt from federal income taxes under
46 Section 501(c)(3) or (c)(4) of the Internal Revenue Code
47 of 1986, as amended, and which is:

48 (A) A church or a convention or association of
49 churches as defined in Section 170 of the Internal
50 Revenue Code of 1986, as amended;

51 (B) An elementary or secondary school which
52 maintains a regular faculty and curriculum and has a
53 regularly enrolled body of pupils or students in
54 attendance at the place in this state where its educational
55 activities are regularly carried on;

56 (C) A corporation or organization which annually
57 receives more than one half of its support from any
58 combination of gifts, grants, direct or indirect charitable
59 contributions or membership fees;

60 (D) An organization which has no paid employees and
61 its gross income from fund raisers, less reasonable and
62 necessary expenses incurred to raise the gross income (or
63 the tangible personal property or services purchased with
64 the net income), is donated to an organization which is
65 exempt from income taxes under Section 501(c)(3) or
66 (c)(4) of the Internal Revenue Code of 1986, as amended;

67 (E) A youth organization, such as the girl scouts of the
68 United States of America, the boy scouts of America or
69 the YMCA Indian guide/princess program and the local
70 affiliates thereof, which is organized and operated

71 exclusively for charitable purposes and has as its primary
72 purpose the nonsectarian character development and
73 citizenship training of its members;

74 (F) For purposes of this subsection:

75 (i) The term "support" includes, but is not limited to:

76 (I) Gifts, grants, contributions or membership fees;

77 (II) Gross receipts from fund raisers which include
78 receipts from admissions, sales of merchandise,
79 performance of services or furnishing of facilities in any
80 activity which is not an unrelated trade or business within
81 the meaning of Section 513 of the Internal Revenue Code
82 of 1986, as amended;

83 (III) Net income from unrelated business activities,
84 whether or not the activities are carried on regularly as a
85 trade or business;

86 (IV) Gross investment income as defined in Section
87 509(e) of the Internal Revenue Code of 1986, as
88 amended;

89 (V) Tax revenues levied for the benefit of a
90 corporation or organization either paid to or expended on
91 behalf of the organization; and

92 (VI) The value of services or facilities (exclusive of
93 services or facilities generally furnished to the public
94 without charge) furnished by a governmental unit referred
95 to in Section 170(c)(1) of the Internal Revenue Code of
96 1986, as amended, to an organization without charge.
97 This term does not include any gain from the sale or other
98 disposition of property which would be considered as gain
99 from the sale or exchange of a capital asset, or the value of
100 an exemption from any federal, state or local tax or any
101 similar benefit;

102 (ii) The term "charitable contribution" means a
103 contribution or gift to or for the use of a corporation or
104 organization, described in Section 170(c)(2) of the
105 Internal Revenue Code of 1986, as amended; and

106 (iii) The term "membership fee" does not include
107 any amounts paid for tangible personal property or
108 specific services rendered to members by the corporation
109 or organization;

110 (G) The exemption allowed by this subdivision does
111 not apply to sales of gasoline or special fuel or to sales of
112 tangible personal property or services to be used or
113 consumed in the generation of unrelated business income
114 as defined in Section 513 of the Internal Revenue Code of
115 1986, as amended. The provisions of this subdivision
116 apply to sales made after the thirtieth day of June, one
117 thousand nine hundred eighty-nine: *Provided*, That the
118 exemption granted in this subdivision applies only to
119 services, equipment, supplies and materials used or
120 consumed in the activities for which the organizations
121 qualify as tax exempt organizations under the Internal
122 Revenue Code and does not apply to purchases of
123 gasoline or special fuel;

124 (7) An isolated transaction in which any taxable
125 service or any tangible personal property is sold,
126 transferred, offered for sale or delivered by the owner of
127 the property or by his or her representative for the owner's
128 account, the sale, transfer, offer for sale or delivery not
129 being made in the ordinary course of repeated and
130 successive transactions of like character by the owner or
131 on his or her account by the representative: *Provided*,
132 That nothing contained in this subdivision may be
133 construed to prevent an owner who sells, transfers or offers
134 for sale tangible personal property in an isolated
135 transaction through an auctioneer from availing himself or
136 herself of the exemption provided in this subdivision,
137 regardless of where the isolated sale takes place. The tax
138 commissioner may propose a legislative rule for
139 promulgation pursuant to article three, chapter twenty-
140 nine-a of this code which he or she considers necessary
141 for the efficient administration of this exemption;

142 (8) Sales of tangible personal property or of any
143 taxable services rendered for use or consumption in
144 connection with the commercial production of an
145 agricultural product the ultimate sale of which is subject to

146 the tax imposed by this article or which would have been
147 subject to tax under this article: *Provided*, That sales of
148 tangible personal property and services to be used or
149 consumed in the construction of or permanent
150 improvement to real property and sales of gasoline and
151 special fuel are not exempt: *Provided, however*, That nails
152 and fencing shall not be considered as improvements to
153 real property;

154 (9) Sales of tangible personal property to a person for
155 the purpose of resale in the form of tangible personal
156 property: *Provided*, That sales of gasoline and special
157 fuel by distributors and importers is taxable except when
158 the sale is to another distributor for resale: *Provided*,
159 *however*, That sales of building materials or building
160 supplies or other property to any person engaging in the
161 activity of contracting, as defined in this article, which is to
162 be installed in, affixed to or incorporated by that person
163 or his or her agent into any real property, building or
164 structure is not exempt under this subdivision;

165 (10) Sales of newspapers when delivered to consumers
166 by route carriers;

167 (11) Sales of drugs dispensed upon prescription and
168 sales of insulin to consumers for medical purposes;

169 (12) Sales of radio and television broadcasting time,
170 preprinted advertising circulars and newspaper and
171 outdoor advertising space for the advertisement of goods
172 or services;

173 (13) Sales and services performed by day-care centers;

174 (14) Casual and occasional sales of property or
175 services not conducted in a repeated manner or in the
176 ordinary course of repetitive and successive transactions of
177 like character by a corporation or organization which is
178 exempt from tax under subdivision (6) of this subsection
179 on its purchases of tangible personal property or services:

180 (A) For purposes of this subdivision, the term "casual
181 and occasional sales not conducted in a repeated manner
182 or in the ordinary course of repetitive and successive
183 transactions of like character" means sales of tangible

184 personal property or services at fund raisers sponsored by
185 a corporation or organization which is exempt, under
186 subdivision (6) of this subsection, from payment of the tax
187 imposed by this article on its purchases, when the fund
188 raisers are of limited duration and are held no more than
189 six times during any twelve-month period and "limited
190 duration" means no more than eighty-four consecutive
191 hours; and

192 (B) The provisions of this subdivision apply to sales
193 made after the thirtieth day of June, one thousand nine
194 hundred eighty-nine;

195 (15) Sales of property or services to a school which
196 has approval from the board of trustees of the university
197 system of West Virginia or the board of directors of the
198 state college system to award degrees, which has its
199 principal campus in this state, and which is exempt from
200 federal and state income taxes under Section 501(c)(3) of
201 the Internal Revenue Code of 1986, as amended:
202 *Provided*, That sales of gasoline and special fuel are
203 taxable;

204 (16) Sales of mobile homes to be utilized by
205 purchasers as their principal year-round residence and
206 dwelling: *Provided*, That these mobile homes are subject
207 to tax at the three-percent rate;

208 (17) Sales of lottery tickets and materials by licensed
209 lottery sales agents and lottery retailers authorized by the
210 state lottery commission, under the provisions of article
211 twenty-two, chapter twenty-nine of this code;

212 (18) Leases of motor vehicles titled pursuant to the
213 provisions of article three, chapter seventeen-a of this code
214 to lessees for a period of thirty or more consecutive days.
215 This exemption applies to leases executed on or after the
216 first day of July, one thousand nine hundred eighty-seven,
217 and to payments under long-term leases executed before
218 that date, for months of the lease beginning on or after
219 that date;

220 (19) Notwithstanding the provisions of section
221 eighteen of this article or any other provision of this

222 article to the contrary, sales of propane to consumers for
223 poultry house heating purposes, with any seller to the
224 consumer who may have prior paid the tax in his or her
225 price, to not pass on the same to the consumer, but to
226 make application and receive refund of the tax from the
227 tax commissioner, pursuant to rules which are
228 promulgated after being proposed for legislative approval
229 in accordance with chapter twenty-nine-a of this code by
230 the tax commissioner;

231 (20) Any sales of tangible personal property or
232 services purchased after the thirtieth day of September,
233 one thousand nine hundred eighty-seven, and lawfully
234 paid for with food stamps pursuant to the federal food
235 stamp program codified in 7 U.S.C. §2011 et seq., as
236 amended, or with drafts issued through the West Virginia
237 special supplement food program for women, infants and
238 children codified in 42 U.S.C. §1786;

239 (21) Sales of tickets for activities sponsored by
240 elementary and secondary schools located within this state;

241 (22) Sales of electronic data processing services and
242 related software: *Provided*, That for the purposes of this
243 subdivision "electronic data processing services" means:
244 (A) The processing of another's data, including all
245 processes incident to processing of data such as
246 keypunching, keystroke verification, rearranging or
247 sorting of previously documented data for the purpose of
248 data entry or automatic processing and changing the
249 medium on which data is sorted, whether these processes
250 are done by the same person or several persons; and (B)
251 providing access to computer equipment for the purpose
252 of processing data or examining or acquiring data stored
253 in or accessible to the computer equipment;

254 (23) Tuition charged for attending educational
255 summer camps;

256 (24) Dispensing of services performed by one
257 corporation, partnership or limited liability company for
258 another corporation, partnership or limited liability
259 company when the entities are members of the same
260 controlled group or are related taxpayers as defined in

261 Section 267 of the Internal Revenue Code. "Control"
262 means ownership, directly or indirectly, of stock, equity
263 interests or membership interests possessing fifty percent
264 or more of the total combined voting power of all classes
265 of the stock of a corporation, equity interests of a
266 partnership or membership interests of a limited liability
267 company entitled to vote or ownership, directly or
268 indirectly, of stock, equity interests or membership
269 interests possessing fifty percent or more of the value of
270 the corporation, partnership or limited liability company;

271 (25) Food for the following are exempt:

272 (A) Food purchased or sold by public or private
273 schools, school sponsored student organizations or school
274 sponsored parent-teacher associations to students enrolled
275 in such school or to employees of such school during
276 normal school hours; but not those sales of food made to
277 the general public;

278 (B) Food purchased or sold by a public or private
279 college or university or by a student organization
280 officially recognized by the college or university to
281 students enrolled at the college or university when the
282 sales are made on a contract basis so that a fixed price is
283 paid for consumption of food products for a specific
284 period of time without respect to the amount of food
285 product actually consumed by the particular individual
286 contracting for the sale and no money is paid at the time
287 the food product is served or consumed;

288 (C) Food purchased or sold by a charitable or private
289 nonprofit organization, a nonprofit organization or a
290 governmental agency under a program to provide food to
291 low-income persons at or below cost;

292 (D) Food sold in an occasional sale by a charitable or
293 nonprofit organization including volunteer fire
294 departments and rescue squads, if the purpose of the sale
295 is to obtain revenue for the functions and activities of the
296 organization and the revenue obtained is actually
297 expended for that purpose;

298 (E) Food sold by any religious organization at a social
299 or other gathering conducted by it or under its auspices, if
300 the purpose in selling the food is to obtain revenue for the
301 functions and activities of the organization and the
302 revenue obtained from selling the food is actually used in
303 carrying on those functions and activities: *Provided*, That
304 purchases made by the organizations are not exempt as a
305 purchase for resale;

306 (26) Sales of food by little leagues, midget football
307 leagues, youth football or soccer leagues and similar types
308 of organizations, including scouting groups and church
309 youth groups, if the purpose in selling the food is to
310 obtain revenue for the functions and activities of the
311 organization and the revenues obtained from selling the
312 food is actually used in supporting or carrying on
313 functions and activities of the groups: *Provided*, That the
314 purchases made by the organizations are not exempt as a
315 purchase for resale;

316 (27) Charges for room and meals by fraternities and
317 sororities to their members: *Provided*, That the purchases
318 made by a fraternity or sorority are not exempt as a
319 purchase for resale;

320 (28) Sales of or charges for the transportation of
321 passengers in interstate commerce;

322 (29) Sales of tangible personal property or services to
323 any person which this state is prohibited from taxing
324 under the laws of the United States or under the
325 constitution of this state;

326 (30) Sales of tangible personal property or services to
327 any person who claims exemption from the tax imposed
328 by this article or article fifteen-a of this chapter pursuant
329 to the provision of any other chapter of this code;

330 (31) Charges for the services of opening and closing a
331 burial lot;

332 (32) Sales of livestock, poultry or other farm products
333 in their original state by the producer of the livestock,
334 poultry or other farm products or a member of the
335 producer's immediate family who is not otherwise engaged

336 in making retail sales of tangible personal property; and
337 sales of livestock sold at public sales sponsored by
338 breeders or registry associations or livestock auction
339 markets: *Provided*, That the exemptions allowed by this
340 subdivision apply to sales made on or after the first day of
341 July, one thousand nine hundred ninety, and may be
342 claimed without presenting or obtaining exemption
343 certificates: *Provided, however*, That the farmer shall
344 maintain adequate records;

345 (33) Sales of motion picture films to motion picture
346 exhibitors for exhibition if the sale of tickets or the charge
347 for admission to the exhibition of the film is subject to the
348 tax imposed by this article and sales of coin-operated
349 video arcade machines or video arcade games to a person
350 engaged in the business of providing the machines to the
351 public for a charge upon which the tax imposed by this
352 article is remitted to the tax commissioner: *Provided*, That
353 the exemption provided in this subdivision applies to sales
354 made on or after the first day of July, one thousand nine
355 hundred ninety, and may be claimed by presenting to the
356 seller a properly executed exemption certificate;

357 (34) Sales of aircraft repair, remodeling and
358 maintenance services when the services are to an aircraft
359 operated by a certified or licensed carrier of persons or
360 property, or by a governmental entity, or to an engine or
361 other component part of an aircraft operated by a
362 certificated or licensed carrier of persons or property, or
363 by a governmental entity and sales of tangible personal
364 property that is permanently affixed or permanently
365 attached as a component part of an aircraft owned or
366 operated by a certificated or licensed carrier of persons or
367 property, or by a governmental entity, as part of the repair,
368 remodeling or maintenance service and sales of
369 machinery, tools or equipment, directly used or consumed
370 exclusively in the repair, remodeling or maintenance of
371 aircraft, aircraft engines or aircraft component parts, for a
372 certificated or licensed carrier of persons or property, or
373 for a governmental entity;

374 (35) Charges for memberships or services provided by
375 health and fitness organizations relating to personalized
376 fitness programs;

377 (36) Sales of services by individuals who baby-sit for a
378 profit: *Provided*, That the gross receipts of the individual
379 from the performance of baby-sitting services do not
380 exceed five thousand dollars in a taxable year;

381 (37) Sales of services after the thirtieth day of June,
382 one thousand nine hundred ninety-seven, by public
383 libraries or by libraries at academic institutions or by
384 libraries at institutions of higher learning;

385 (38) Commissions received after the thirtieth day of
386 June, one thousand nine hundred ninety-seven, by a
387 manufacturer's representative;

388 (39) Sales of primary opinion research services after
389 the thirtieth day of June, one thousand nine hundred
390 ninety-seven, when:

391 (A) The services are provided to an out-of-state client;

392 (B) The results of the service activities, including, but
393 not limited to, reports, lists of focus group recruits and
394 compilation of data are transferred to the client across
395 state lines by mail, wire or other means of interstate
396 commerce, for use by the client outside the state of West
397 Virginia; and

398 (C) The transfer of the results of the service activities is
399 an indispensable part of the overall service.

400 For the purpose of this subdivision the term "primary
401 opinion research" means original research in the form of
402 telephone surveys, mall intercept surveys, focus group
403 research, direct mail surveys, personal interviews and other
404 data collection methods commonly utilized for
405 quantitative and qualitative opinion research studies;

406 (40) Sales of property or services after the thirtieth
407 day of June, one thousand nine hundred ninety-seven, to
408 persons within the state when those sales are for the
409 purposes of the production of value-added products:
410 *Provided*, That the exemption granted in this subdivision
411 applies only to services, equipment, supplies and materials
412 directly used or consumed by those persons engaged
413 solely in the production of value-added products:
414 *Provided, however*, That this exemption may not be
415 claimed by any one purchaser for more than five

416 consecutive years, except as otherwise permitted in this
417 section.

418 For the purpose of this subdivision, the term "value-
419 added product" means the following products derived
420 from processing a raw agricultural product, whether for
421 human consumption or for other use: For purposes of
422 this subdivision, the following enterprises qualify as
423 processing raw agricultural products into value-added
424 products: Those engaged in the conversion of:

425 (A) Lumber into furniture, toys, collectibles and home
426 furnishings;

427 (B) Fruits into wine;

428 (C) Honey into wine;

429 (D) Wool into fabric;

430 (E) Raw hides into semi-finished or finished leather
431 products;

432 (F) Milk into cheese;

433 (G) Fruits or vegetables into a dried, canned or frozen
434 product;

435 (H) Feeder cattle into commonly accepted slaughter
436 weights;

437 (I) Aquatic animals into a dried, canned, cooked or
438 frozen product; and

439 (J) Poultry into a dried, canned, cooked or frozen
440 product;

441 (41) After the thirtieth day of June, one thousand nine
442 hundred ninety-seven, sales of music instructional services
443 by a music teacher; and artistic services or artistic
444 performances of an entertainer or performing artist
445 pursuant to a contract with the owner or operator of a
446 retail establishment, restaurant, inn, bar, tavern, sports or
447 other entertainment facility or any other business location
448 in this state in which the public or a limited portion of the
449 public may assemble to hear or see musical works or other
450 artistic works be performed for the enjoyment of the

451 members of the public there assembled when the amount
452 paid by the owner or operator for the artistic service or
453 artistic performance does not exceed three thousand
454 dollars: *Provided*, That nothing contained herein may be
455 construed to deprive private social gatherings, weddings or
456 other private parties from asserting the exemption set forth
457 in this subdivision. For the purposes of this exemption,
458 artistic performance or artistic service means and is limited
459 to the conscious use of creative power, imagination and
460 skill in the creation of aesthetic experience for an
461 audience present and in attendance, and includes, and is
462 limited to, stage plays, musical performances, poetry
463 recitations and other readings, dance presentation, circuses
464 and similar presentations, and does not include the
465 showing of any film or moving picture, gallery
466 presentations of sculptural or pictorial art, nude or strip
467 show presentations, video games, video arcades, carnival
468 rides, radio or television shows or any video or audio
469 taped presentations or the sale or leasing of video or audio
470 tapes, airshows, or any other public meeting, display or
471 show other than those specified herein: *Provided*,
472 *however*, That nothing contained herein may be construed
473 to exempt the sales of tickets from the tax imposed in this
474 article. The state tax commissioner shall propose a
475 legislative rule pursuant to article three, chapter twenty-
476 nine-a of this code establishing definitions and eligibility
477 criteria for asserting this exemption which is not
478 inconsistent with the provisions set forth herein: *Provided*
479 *further*, That nude dancers or strippers shall not be
480 considered as entertainers for the purposes of this
481 exemption;

482 (42) After the thirtieth day of June, one thousand nine
483 hundred ninety-seven, charges to a member by a
484 membership association or organization which is exempt
485 from paying federal income taxes under Section
486 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986,
487 as amended, for membership in the association or
488 organization, including charges to members for
489 newsletters prepared by the association or organization for
490 distribution primarily to its members, charges to members
491 for continuing education seminars, workshops,
492 conventions, lectures or courses put on or sponsored by
493 the association or organization, including charges for

494 related course materials prepared by the association or
495 organization or by the speaker or speakers for use during
496 the continuing education seminar, workshop, convention,
497 lecture or course, but not including any separate charge or
498 separately stated charge for meals, lodging, entertainment
499 or transportation taxable under this article: *Provided*, That
500 the association or organization pays the tax imposed by
501 this article on its purchases of meals, lodging,
502 entertainment or transportation taxable under this article
503 for which a separate or separately stated charge is not
504 made. A membership association or organization which is
505 exempt from paying federal income taxes under Section
506 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986,
507 as amended, may elect to pay the tax imposed under this
508 article on the purchases for which a separate charge or
509 separately stated charge could apply and not charge its
510 members the tax imposed by this article or, the association
511 or organization may avail itself of the exemption set forth
512 in subdivision (9) of this subsection relating to purchases
513 of tangible personal property for resale and then collect
514 the tax imposed by this article on those items from its
515 member;

516 (43) Sales of governmental services or governmental
517 materials after the thirtieth day of June, one thousand nine
518 hundred ninety-seven, by county assessors, county
519 sheriffs, county clerks or circuit clerks in the normal
520 course of local government operations; and

521 (44) Direct or subscription sales by the division of
522 natural resources of the magazine currently entitled
523 "Wonderful West Virginia".

524 (b) *Refundable exemptions*. — Any person having a
525 right or claim to any exemption set forth in this subsection
526 shall first pay to the vendor the tax imposed by this article
527 and then apply to the tax commissioner for a refund or
528 credit, or as provided in section nine-d of this article, give
529 to the vendor his or her West Virginia direct pay permit
530 number. The following sales of tangible personal
531 property and/or services are exempt from tax as provided
532 in this subsection:

533 (1) Sales of property or services to bona fide
534 charitable organizations who make no charge whatsoever

535 for the services they render: *Provided*, That the
536 exemption granted in this subdivision applies only to
537 services, equipment, supplies, food, meals and materials
538 directly used or consumed by these organizations, and
539 shall not apply to purchases of gasoline or special fuel;

540 (2) Sales of services, machinery, supplies and materials
541 directly used or consumed in the activities of
542 manufacturing, transportation, transmission,
543 communication, production of natural resources, gas
544 storage, generation or production or selling electric power,
545 provision of a public utility service or the operation of a
546 utility service or the operation of a utility business, in the
547 businesses or organizations named in this subdivision and
548 shall not apply to purchases of gasoline or special fuel;

549 (3) Sales of property or services to nationally
550 chartered fraternal or social organizations for the sole
551 purpose of free distribution in public welfare or relief
552 work: *Provided*, That sales of gasoline and special fuel are
553 taxable;

554 (4) Sales and services, fire fighting or station house
555 equipment, including construction and automotive, made
556 to any volunteer fire department organized and
557 incorporated under the laws of the state of West Virginia:
558 *Provided*, That sales of gasoline and special fuel are
559 taxable; and

560 (5) Sales of building materials or building supplies or
561 other property to an organization qualified under Section
562 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,
563 as amended, which are to be installed in, affixed to or
564 incorporated by the organization or its agent into real
565 property, or into a building or structure which is or will be
566 used as permanent low-income housing, transitional
567 housing, an emergency homeless shelter, a domestic
568 violence shelter or an emergency children and youth
569 shelter if the shelter is owned, managed, developed or
570 operated by an organization qualified under Section
571 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986,
572 as amended.

CHAPTER 213

(S. B. 279—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 24, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine, article twenty-one, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia personal income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in the laws
3 of the United States relating to income taxes, unless a
4 different meaning is clearly required. Any reference in
5 this article to the laws of the United States shall mean the
6 provisions of the Internal Revenue Code of 1986, as
7 amended, and any other provisions of the laws of the
8 United States as relate to the determination of income for
9 federal income tax purposes. All amendments made to
10 the laws of the United States after the thirty-first day of
11 December, one thousand nine hundred ninety-five, but
12 prior to the first day of January, one thousand nine
13 hundred ninety-seven, shall be given effect in determining
14 the taxes imposed by this article to the same extent those
15 changes are allowed for federal income tax purposes,
16 whether such changes are retroactive or prospective, but
17 no amendment to the laws of the United States made on or
18 after the first day of January, one thousand nine hundred
19 ninety-seven, shall be given any effect.

20 (b) *Medical savings accounts.* — The term “taxable
21 trust” does not include a medical savings account
22 established pursuant to section twenty, article fifteen,
23 chapter thirty-three of this code or section fifteen, article
24 sixteen of said chapter. Employer contributions to a
25 medical savings account established pursuant to said
26 sections, are not “wages” for purposes of withholding
27 under section seventy-one of this article.

28 (c) *Surtax.* — The term “surtax” means the twenty
29 percent additional tax imposed on taxable withdrawals
30 from a medical savings account under section twenty,
31 article fifteen, chapter thirty-three of this code, and the
32 twenty percent additional tax imposed on taxable
33 withdrawals from a medical savings account under section
34 fifteen, article sixteen of said chapter, which are collected
35 by the tax commissioner as tax collected under this article.

36 (d) *Effective date.* — The amendments to this section
37 enacted in the year one thousand nine hundred ninety-
38 seven shall be retroactive to the extent allowable under
39 federal income tax law. With respect to taxable years that
40 begin prior to the first day of January, one thousand nine
41 hundred ninety-six, the law in effect for each of those
42 years shall be fully preserved as to such year, except as
43 provided in this section.

CHAPTER 214

(S. B. 269—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed March 25, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section three, article twenty-four, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to updating the meaning of certain terms used in the West Virginia

corporation net income tax act by bringing them into conformity with their meanings for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article shall have the same
2 meaning as when used in a comparable context in the laws
3 of the United States relating to federal income taxes,
4 unless a different meaning is clearly required by the
5 context or by definition in this article. Any reference in
6 this article to the laws of the United States shall mean the
7 provisions of the Internal Revenue Code of 1986, as
8 amended, and such other provisions of the laws of the
9 United States as relate to the determination of income for
10 federal income tax purposes. All amendments made to
11 the laws of the United States after the thirty-first day of
12 December, one thousand nine hundred ninety-five, but
13 prior to the first day of January, one thousand nine
14 hundred ninety-seven, shall be given effect in determining
15 the taxes imposed by this article to the same extent those
16 changes are allowed for federal income tax purposes,
17 whether such changes are retroactive or prospective, but
18 no amendment to the laws of the United States made on or
19 after the first day of January, one thousand nine hundred
20 ninety-seven, shall be given any effect.

21 (b) The term "Internal Revenue Code of 1986"
22 means the Internal Revenue Code of the United States
23 enacted by the "Federal Tax Reform Act of 1986" and
24 includes the provisions of law formerly known as the
25 Internal Revenue Code of 1954, as amended, and in effect
26 when the "Federal Tax Reform Act of 1986" was
27 enacted, that were not amended or repealed by the
28 "Federal Tax Reform Act of 1986". Except when
29 inappropriate, any references in any law, executive order
30 or other document:

31 (1) To the Internal Revenue Code of 1954 shall
32 include reference to the Internal Revenue Code of 1986;
33 and

34 (2) To the Internal Revenue Code of 1986 shall
35 include a reference to the provisions of law formerly
36 known as the Internal Revenue Code of 1954.

37 (c) *Effective date.* — The amendments to this section
38 enacted in the year one thousand nine hundred ninety-
39 seven shall be retroactive to the extent allowable under
40 federal income tax law. With respect to taxable years that
41 begin prior to the first day of January, one thousand nine
42 hundred ninety-six, the law in effect for each of those
43 years shall be fully preserved as to such year, except as
44 provided in this section.

CHAPTER 215

(Com. Sub. for H. B. 2688—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 12, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to repeal article eighteen, chapter eighteen-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend chapter five of said code by adding thereto two new articles, designated articles one-b and one-c; and to amend and reenact section four, article seven, chapter five-a of said code, all relating generally to information technology; setting forth findings and purpose; defining terms; creating the position of chief technology officer within the office of the governor; appointment and qualification of the chief technology officer; powers and duties of the chief technology officer; requiring spending units to notify chief technology officer of proposed purchases of certain goods and services; biannual report; moving the science and technology council to the office of the governor; setting forth legislative purposes;

reappointment, terms and compensation of members of the council; powers and duties of council; the responsibilities of the executive director of the council; requiring a comprehensive strategic plan that must be reported; providing for public and private partnerships; changing the powers and duties of the information services and communications division; authority of chief technology officer to obtain assistance from the division; allowing certain assessments against spending units; and transfer of proceeds of assessments to office of chief technology officer.

Be it enacted by the Legislature of West Virginia:

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

Chapter

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

5A. Department of Administration.

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

1B. Chief Technology Officer.

1C. Science and Technology Council.

ARTICLE 1B. CHIEF TECHNOLOGY OFFICER.

§5-1B-1. Findings and purposes.

§5-1B-2. Definitions.

§5-1B-3. Creation of the office of chief technology officer; appointment and qualifications.

§5-1B-4. Powers and duties; professional staff.

- §5-1B-5. Notice of request for proposals by state spending units required to make purchases through the state purchasing division.
- §5-1B-6. Notice of request for proposals by state spending units exempted from submitting purchases to the state purchasing division.
- §5-1B-7. Biannual report.
- §5-1B-8. Exemptions.

§5-1B-1. Findings and purposes.

1 The Legislature finds and declares that information
2 technology is essential to finding practical solutions to the
3 everyday problems of government, and that the
4 management goals and purposes of government are
5 furthered by the development of compatible, linked
6 information systems across government. Therefore, it is
7 the purpose of this article to create, as an integral part of
8 the office of the governor, the office of chief technology
9 officer with the authority to advise and make
10 recommendations to all state spending units on their
11 information systems.

§5-1B-2. Definitions.

1 As used in this article:

2 (a) "Information systems" means computer-based
3 information equipment and related services designed for
4 the automated transmission, storage, manipulation and
5 retrieval of data by electronic or mechanical means;

6 (b) "Information technology" means data
7 processing and telecommunications hardware, software,
8 services, supplies, personnel, maintenance and training,
9 and includes the programs and routines used to employ
10 and control the capabilities of data processing hardware;

11 (c) "Information equipment" includes central
12 processing units, front-end processing units,
13 miniprocessors, microprocessors and related peripheral
14 equipment such as data storage devices, networking
15 equipment, services, routers, document scanners, data entry
16 equipment, terminal controllers, data terminal equipment,
17 computer-based word processing systems other than
18 memory typewriters and equipment and systems for
19 computer networks;

20 (d) "Related services" include feasibility studies,
21 systems design, software development and time-sharing
22 services whether provided by state employees or others;

23 (e) "Telecommunications" means any transmission,
24 emission or reception of signs, signals, writings, images or
25 sounds of intelligence of any nature by wire, radio or
26 other electromagnetic or optical systems. The term
27 includes all facilities and equipment performing those
28 functions that are owned, leased or used by the executive
29 agencies of state government; and

30 (f) "Chief technology officer" means the person
31 holding the position created in section three of this article
32 and vested with authority to assist state spending units in
33 planning and coordinating information systems that serve
34 the effectiveness and efficiency of the individual state
35 spending units, and further the overall management goals
36 and purposes of government.

**§5-1B-3. Creation of the office of chief technology officer;
appointment and qualifications.**

1 There is hereby created the office of chief
2 technology officer within the office of the governor. The
3 chief technology officer shall be appointed by and shall
4 serve at the will and pleasure of the governor. The chief
5 technology officer shall have knowledge in the field of
6 information technology, experience in the design and
7 management of information systems and an
8 understanding of the special demands upon government
9 with respect to budgetary constraints, the protection of
10 privacy interests and federal and state standards of
11 accountability.

§5-1B-4. Powers and duties; professional staff.

1 (a) With respect to all state spending units the chief
2 technology officer may:

3 (1) Develop an organized approach to information
4 resource management for this state;

5 (2) Provide, with the assistance of the information
6 services and communications division of the department

7 of administration, technical assistance to the administrators
8 of the various state spending units in the design and
9 management of information systems;

10 (3) Evaluate, in conjunction with the information
11 services and communications division of the department
12 of administration, the economic justification, system
13 design and suitability of information equipment and
14 related services, and review and make recommendations
15 on the purchase, lease or acquisition of information
16 equipment and contracts for related services by the state
17 spending units;

18 (4) Develop a mechanism for identifying those
19 instances where systems of paper forms should be
20 replaced by direct use of information equipment and
21 those instances where applicable state or federal standards
22 of accountability demand retention of some paper
23 processes;

24 (5) Develop a mechanism for identifying those
25 instances where information systems should be linked and
26 information shared, while providing for appropriate
27 limitations on access and the security of information;

28 (6) Create new technologies to be used in
29 government, convene conferences and develop incentive
30 packages to encourage the utilization of technology;

31 (7) Engage in any other activities as directed by the
32 governor; and

33 (8) Charge a fee to be assessed by the director of the
34 information services and communications division to the
35 state spending units for evaluations performed and
36 technical assistance provided under the provisions of this
37 section. All fees collected by the chief technology officer
38 shall be deposited in a special account in the state treasury
39 to be known as the "Chief Technology Officer
40 Administration Fund". Expenditures from the fund shall
41 be made by the chief technology officer for the purposes
42 set forth in this article and are not authorized from
43 collections but are to be made only in accordance with
44 appropriation by the Legislature and in accordance with

45 the provisions of article three, chapter twelve of this code
46 and upon the fulfillment of the provisions set forth in
47 article two, chapter five-a of this code. Amounts collected
48 which are found from time to time to exceed the funds
49 needed for purposes set forth in this article may be
50 transferred to other accounts or funds and redesignated
51 for other purposes by appropriation of the Legislature.

52 (b) With respect to executive agencies only, the chief
53 technology officer may:

54 (1) Develop a unified and integrated structure for
55 information systems for all executive agencies;

56 (2) Establish, based on need and opportunity,
57 priorities and time lines for addressing the information
58 technology requirements of the various executive agencies
59 of state government;

60 (3) Exercise such authority inherent to the chief
61 executive of the state as the governor may, by executive
62 order, delegate, to overrule and supersede decisions made
63 by the administrators of the various executive agencies of
64 government with respect to the design and management of
65 information systems and the purchase, lease or acquisition
66 of information equipment and contracts for related
67 services;

68 (4) Draw upon staff of other executive agencies for
69 advice and assistance in the formulation and
70 implementation of administrative and operational plans
71 and policies; and

72 (5) Recommend to the governor transfers of
73 equipment and human resources from any executive
74 agency and the most effective and efficient uses of the
75 fiscal resources of executive agencies, to consolidate or
76 centralize information-processing operations.

77 (c) The chief technology officer may employ the
78 personnel necessary to carry out the work of the office
79 and may approve reimbursement of costs incurred by
80 employees to obtain education and training.

§5-1B-5. Notice of request for proposals by state spending units required to make purchases through the state purchasing division.

1 Any state spending unit that is required to submit a
2 request for proposal to the state purchasing division prior
3 to purchasing goods or services shall notify the chief
4 technology officer, in writing, of any proposed purchase
5 of goods or services related to its information and
6 telecommunication systems. The notice shall contain a
7 brief description of the goods and services to be
8 purchased. The state spending unit shall provide the
9 notice to the chief technology officer at the same time it
10 submits its request for proposal to the state purchasing
11 division.

§5-1B-6. Notice of request for proposals by state spending units exempted from submitting purchases to the state purchasing division.

1 (a) Any state spending unit that is not required to
2 submit a request for proposal to the state purchasing
3 division prior to purchasing goods or services shall notify
4 the chief technology officer, in writing, of any proposed
5 purchase of goods or services related to its information or
6 telecommunication systems. The notice shall contain a
7 detailed description of the goods and services to be
8 purchased. The state spending unit shall provide the
9 notice to the chief technology officer a minimum of ten
10 days prior to the time it requests bids on the provision of
11 the goods or services.

12 (b) If the chief technology officer evaluates the
13 suitability of the information and telecommunication
14 equipment and related services under the provisions of
15 subdivision (3), subsection (a), section four of this article
16 and determines that the goods or services to be purchased
17 are not suitable, he or she shall, within ten days of
18 receiving the notice from the state spending unit, notify
19 the state spending unit, in writing, of any
20 recommendations he or she has regarding the proposed
21 purchase of the goods or services. If the state spending
22 unit receives a written notice from the chief technology
23 officer within the time period required by this section, the

24 state spending unit shall not put the goods or services out
25 for bid less than fifteen days following receipt of the
26 notice from the chief technology officer.

§5-1B-7. Biannual report.

1 The chief technology officer shall report biannually
2 to the legislative joint committee on government and
3 finance on the activities of his or her office.

§5-1B-8. Exemptions.

1 The provisions of this article do not apply to the
2 Legislature or the judiciary.

ARTICLE 1C. SCIENCE AND TECHNOLOGY COUNCIL.

§5-1C-1. Legislative purpose.

§5-1C-2. Science and technology advisory council; members, appointment
and expenses; appointment, duties, and compensation of
director.

§5-1C-3. Powers and duties of science and technology council.

§5-1C-4. Public-private partnerships; funding.

§5-1C-5. Exemptions.

§5-1C-1. Legislative purpose.

1 (a) The Legislature hereby finds that a pressing need
2 exists for a strategy based upon science and technology
3 which promotes a scientifically literate citizenry, enhances
4 government efficiency, encourages the creation of higher-
5 paying jobs and enhances the growth of West Virginia's
6 gross state product. To that end, the state recognizes the
7 need for collaborative research and development efforts
8 among institutions of higher education, industry,
9 government and private organizations which will advance
10 the state's scientific and technological development. The
11 Legislature further finds that focused research and
12 technical assistance efforts related to West Virginia
13 industry will speed such development, improve technology
14 transfer, assist companies in becoming growth leaders and
15 link basic research and technological development to
16 economic advancement.

17 (b) The Legislature therefore declares that creation
18 of a science and technology advisory council will be

19 advantageous to the state by working to move West
20 Virginia into a strong competitive position in science and
21 technology and by improving the efficiency of
22 government. The council shall provide policy advice to
23 the Legislature and to the chief technology officer in the
24 office of the governor on scientific and technology
25 subjects and issues and provide policy advice to the
26 council for community and economic development on
27 science and technology issues that will serve to foster
28 economic growth. The council shall also develop a state
29 science and technology strategic plan for submission to
30 the Legislature and the governor.

**§5-1C-2. Science and technology advisory council; members,
appointment and expenses; appointment, duties,
and compensation of director.**

1 (a)(1) The science and technology advisory council
2 created by chapter one hundred twenty, acts of the
3 Legislature, regular session, one thousand nine hundred
4 ninety-six, which is a body corporate and politic,
5 constituting a public corporation and government
6 instrumentality, is hereby abolished and a new science and
7 technology advisory council is created within the office of
8 the governor.

9 (2) The council shall consist of eleven members who
10 have professional, labor or managerial knowledge in
11 science and technology development and operations and
12 shall be appointed as follows:

13 (A) The governor shall appoint five members, with
14 the advice and consent of the Senate. No more than three
15 of the five members may belong to the same political
16 party. Three of the five members shall also be from
17 different congressional districts of the state, and, shall
18 provide a broad state geographical distribution of
19 members of the council;

20 (B) The governor shall appoint one member, with the
21 advice and consent of the Senate, from a list of two
22 persons recommended by the speaker of the House of
23 Delegates;

24 (C) The governor shall appoint one member, with the
25 advice and consent of the Senate, from a list of two
26 persons recommended by the president of the Senate;

27 (D) The governor shall appoint two members, with
28 the advice and consent of the Senate, from a list of four
29 persons recommended by the chancellor of the university
30 of West Virginia system;

31 (E) The governor shall appoint one member, with the
32 advice and consent of the Senate, from a list of two
33 persons recommended by the chancellor of the state
34 college system of West Virginia; and

35 (F) The governor shall appoint one member, with the
36 advice and consent of the Senate, from a list of two
37 persons recommended by the council for community and
38 economic development.

39 (b) The terms of the council members first taking
40 office on or after the effective date of this legislation
41 expire as designated by the governor at the time of their
42 appointment, with three terms expiring at the end of the
43 first year, four terms expiring at the end of the second
44 year, and four terms expiring at the end of the third year.
45 As the original appointments expire, each subsequent
46 appointment is for a full three-year term. Any member
47 whose term has expired shall serve until a successor has
48 been duly appointed and qualified. Any person
49 appointed to fill a vacancy shall serve only for the
50 unexpired term. In cases of any vacancy in the office of a
51 member, the vacancy shall be filled by the governor in the
52 same manner as the original appointment was made.

53 (c) Members of the council are not entitled to
54 compensation for services performed as members, but are
55 entitled to reimbursement for all reasonable and necessary
56 expenses actually incurred in the performance of their
57 duties. A majority of serving members constitutes a
58 quorum for the purpose of conducting business. The
59 governor shall designate a chair, who is not a public
60 official, for a term to run concurrently with the term of
61 office of the member designated as chair. The council
62 shall conduct all meetings in accordance with the open

63 meeting law pursuant to article nine-a, chapter six of this
64 code.

65 (d) The council shall prepare and publish an annual
66 report of its activities and accomplishments and submit it
67 to the governor and to the legislative joint committee on
68 government and finance on or before the fifteenth day of
69 December of each year.

70 (e) Each year, the council shall submit to the
71 governor a list of science and technology projects
72 recommended for funding. The projects shall serve to
73 fulfill the policies established by the science and
74 technology strategic plan. The recommendation shall
75 itemize the funds requested and shall identify any
76 expenditures that will be matched by federal funds, or
77 matched by foundation, corporate or by other funds.

78 (f) The chair of the council also shall serve as the
79 executive director of the council for his or her term of
80 office. He or she shall hold a graduate degree and have
81 professional experience in fields involving science and
82 technology research or development. The expenses of the
83 executive director shall be paid from funds provided by
84 foundation grants, in-kind contributions or other funds
85 obtained pursuant to subsection (b), section four of this
86 article. The executive director shall provide or obtain
87 scientific and technical information to support the
88 administrative work of the council, and to that end may
89 contract with the university system, a nonprofit
90 organization or any state spending unit for research and
91 administrative support.

92 (g) The executive director of the council shall be
93 available to the governor, the chief technology officer
94 within the office of the governor, the speaker of the House
95 of Delegates and the president of the Senate, to analyze
96 and comment upon proposed legislation and rules which
97 relate to or materially affect state scientific and technical
98 issues.

§5-1C-3. Powers and duties of science and technology council.

1 (a) (1) The council shall consult with the board of
2 trustees of the university system, the board of directors of
3 the college system and with state business leaders in the
4 exercise of its powers and duties, which include, but are
5 not limited to, the following:

6 (A) Preparation of a comprehensive strategic plan
7 and recommendation of programs in furtherance of the
8 comprehensive strategic plan that will support and foster
9 state science and technology research;

10 (B) Cooperation with appropriate state spending units
11 to retain and enlarge existing state industries through
12 technology expansion; and

13 (C) Formulation of plans to establish science and
14 technology research centers at state colleges and
15 universities.

16 (2) The council may seek public and private research
17 grants and contracts, matching funds and procurement
18 arrangements from the state and federal government,
19 private industry and other agencies, in furtherance of its
20 mission and programs.

21 (3) The council shall develop an initial
22 comprehensive strategic plan that will support and foster
23 economic growth in science and technology research and
24 development in the state and shall provide the initial plan
25 to the chief technology officer within the office of the
26 governor and the joint committee on government and
27 finance no later than the first day of July, one thousand
28 nine hundred ninety-seven. The initial comprehensive
29 strategic plan shall include, but not be limited to, the
30 following:

31 (A) A science and technology policy;

32 (B) The identification of strengths and weaknesses in
33 the basic science resources and research capabilities in the
34 state;

35 (C) The identification of methods that will coordinate
36 and engender collaborative research efforts between

37 research entities throughout the state, whether public or
38 private;

39 (D) The designation of areas for potential scientific
40 and technological development, including those related to
41 and having a direct impact upon the economic
42 development of the state;

43 (E) Recommendations on how to improve and
44 strengthen the partnership between the private sector,
45 institutions of higher education and government;

46 (F) Recommendations on how to improve the
47 infrastructure for research and research training;

48 (G) Recommendations on a system to transfer
49 technology to the private sector in the state;

50 (H) Recommendations on information systems that
51 serve the effectiveness and efficiency of state spending
52 units and higher education and further the overall
53 management goals and purposes of government;

54 (I) Recommendations on a tracking system for
55 special needs students enrolled in the public schools and
56 state colleges and universities, and the programs and
57 services provided for those students;

58 (J) Recommendations on legislative changes required
59 to improve the overall science and technology
60 environment in the state; and

61 (K) Other recommendations on science and
62 technology policy and programs as appropriate.

63 (4) The strategic plan may be updated and refiled on
64 or before the first day of July of each year. The council
65 shall submit an annual work plan each year beginning the
66 first day of July, one thousand nine hundred ninety-eight,
67 to the chief technology officer and the joint committee on
68 government and finance.

69 (b) In developing its strategic plan, the science and
70 technology council shall utilize its resources as well as the
71 technical support available to it through the university of
72 West Virginia system, the state college system of West

73 Virginia, the West Virginia development office, the West
74 Virginia experimental program to stimulate competitive
75 research (EPSCoR), federal and state agencies, and other
76 appropriate organizations that have an interest in fostering
77 science and technology research and development in West
78 Virginia.

79 (c) The council shall undertake to keep abreast of
80 state and national scientific and technological
81 developments and work to establish, foster and
82 successfully conclude university, college and other
83 scientific research projects or clusters.

84 (d) To reduce and avoid duplication of research
85 work and expenditures, the council shall, as a part of its
86 comprehensive strategic plan, formulate methods that will
87 coordinate and generate collaborative efforts between
88 research entities throughout West Virginia, whether public
89 or private, and foster synergistic relationships among
90 them. Cooperating agencies may contract with the
91 council, as provided in section four of this article, so as to
92 participate in science and technology projects, jointly or
93 through the programs of the council with other
94 participating institutions, government units and private
95 business firms.

§5-1C-4. Public-private partnerships; funding.

1 (a) In furtherance of its mission, the science and
2 technology council is authorized to enter into contracts or
3 joint venture agreements with federal and state agencies;
4 with nonprofit corporations organized pursuant to the
5 corporate laws of this state or other jurisdictions that are
6 qualified under section 501(c)(3) of the Internal Revenue
7 Code; and with other organizations that conduct research,
8 make grants, improve educational programs and work for
9 the scientific, educational or economic development of
10 this state. The chief technology officer within the office of
11 the governor and the council, by a majority vote, shall
12 approve all contracts and joint venture agreements. The
13 council may also enter into contractual agreements for
14 consideration even though the entities are funded from
15 sources other than the state. Members of the council may
16 sit on the boards of directors of any contracting private

17 nonprofit corporation, foundation or firm: *Provided*,
18 That members of the council are not exempt from any of
19 the provisions of chapter six-b of this code.

20 (b) The council may receive and accept gifts or
21 grants from private foundations, corporations, individuals,
22 devises and bequests or from other lawful sources. The
23 funds shall be paid into a special account in the state
24 treasury for the use and benefit of the science and
25 technology advisory council.

§5-1C-5. Exemptions.

1 The provisions of this article do not apply to the
2 Legislature or the judiciary.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.

§5A-7-4. Powers and duties of division generally; professional staff; telephone service.

1 (a) The division is responsible for providing
2 technical services and assistance to the various state
3 spending units with respect to developing and improving
4 data processing and telecommunications functions. The
5 division may provide training and direct data processing
6 services to the various state agencies. The division shall,
7 upon request of the chief technology officer within the
8 office of the governor, provide technical assistance in
9 evaluating the economic justification, system design and
10 suitability of equipment and systems used in state
11 government. The director shall report to the secretary.

12 (b) The director is responsible for the development
13 of personnel to carry out the technical work of the
14 division and may approve reimbursement of costs
15 incurred by employees to obtain education and training.

16 (c) The director may assess each state spending unit
17 for the cost of any evaluation of the economic
18 justification, system design and suitability of equipment
19 and systems used by the state spending unit or any other
20 technical assistance that is provided or performed by the
21 chief technology officer and the division under the
22 provisions of section four, article one-b of this chapter.

23 (d) The director shall transfer any moneys received as
24 a result of the assessments that he or she makes under
25 subsection (c) of this section to the office of chief
26 technology officer. The director shall report quarterly to
27 the joint committee on government and finance on all
28 assessments made pursuant to subsection (c) of this
29 section.

30 (e) The director shall maintain an accounting system
31 for all telephone service to the state.

32 (f) The provisions of this article do not apply to the
33 Legislature or the judiciary.

CHAPTER 216

(S. B. 503—By Senators Oliverio, Walker, Prezioso,
McKenzie and Tomblin, Mr. President)

[Passed April 10, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact article twenty-four, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the technology-related assistance revolving loan fund for individuals with disabilities act; authorizing the director of the division of rehabilitation services or his or her designee to vote as an ex officio member of the technology-related assistance revolving loan fund for individuals with disabilities board; revising qualifications of members of board; continuing the board and terms of members; authority of governor to appoint members of board; removal of board member; compensation and expenses for board members; powers, duties and responsibilities of the board; legislative rules; reports to the Legislature; loan agreements; maximum interest rate on loans; creating the technology-related assistance revolving loan fund for individuals with disabilities fund in the state treasury; abolishment of prior fund; deposits required to be made into fund; and administrative costs.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 24. TECHNOLOGY-RELATED ASSISTANCE REVOLVING LOAN FUND FOR INDIVIDUALS WITH DISABILITIES ACT.

- §29-24-1. Legislative findings and declarations.
- §29-24-2. Terms defined.
- §29-24-3. Board created, membership, terms, officers and staff.
- §29-24-4. Compensation and expenses of board.
- §29-24-5. Power, duties and responsibilities of the board; loans.
- §29-24-6. Disbursements.
- §29-24-7. Fund created.
- §29-24-8. Deposits created by the board.
- §29-24-9. Fund use.

§29-24-1. Legislative findings and declarations.

1 Individuals with disabilities comprise a significant and
2 increasing percentage of West Virginia's population. The
3 Legislature finds and declares that action is necessary to
4 assist these individuals in their homes, schools, employ-
5 ment and communities to become more independent citi-
6 zens of the state. Many of these individuals require tech-
7 nology-related devices and technology-related services in
8 order to perform functions, such as caring for themselves,
9 performing manual tasks, mobility, seeing, hearing, speak-
10 ing, breathing and learning in order to have the ability to
11 more independently participate in society and the work
12 force. In order to meet the present and increasing needs
13 of West Virginians for technology-related devices and
14 technology-related services, it is necessary for the state to
15 provide funds for the technology-related revolving loan
16 fund for individuals with disabilities that neither supplant
17 nor replace existing state, federal or private sector funds.

§29-24-2. Terms defined.

1 As used in this article, the term:

2 (a) "Board" means the technology-related assistance
3 revolving loan fund for individuals with disabilities board.

4 (b) "Individual with disability" means any individual,
5 of any age who, for the purposes of state or federal law, is
6 considered to have a disability or handicap, injuries and
7 chronic health conditions, whether congenital or acquired;
8 and who is or would be enabled by technology-related
9 devices or technology-related services to maintain or im-
10 prove his or her ability to function in society and the
11 workplace.

12 (c) "Qualifying borrower" means any individual with
13 disabilities and their family members, guardians, autho-
14 rized representatives or nonprofit entity who demonstrates
15 that such a loan will improve their independence or be-
16 come more productive members of the community. The
17 individual must demonstrate credit worthiness and repay-
18 ment abilities to the satisfaction of the board. No more
19 than twenty percent of all loan funds are to be provided to
20 nonprofit entities in a single year.

21 (d) "Technology-related assistance" means either the
22 provision of technology-related devices or technology-
23 related services to improve the independence, quality of
24 life or productive involvement in the community of indi-
25 viduals with disabilities.

26 (e) "Technology-related device" means any item,
27 piece of equipment or product system, whether acquired
28 commercially off-the-shelf, modified or customized, that
29 is used to increase, maintain or improve functional capa-
30 bilities of individuals with disabilities.

31 (f) "Technology-related service" means any service
32 that directly assists an individual with a disability in the
33 selection, acquisition or use of a technology-related de-
34 vice, including:

35 (1) The evaluation of the needs of an individual with a
36 disability, including a functional evaluation in the individ-
37 ual's customary environment;

38 (2) Purchasing, leasing or otherwise providing for the
39 acquisition of technology-related devices by individuals
40 with disabilities;

41 (3) Selecting, designing, fitting, customizing, adapting,
42 applying, maintaining, repairing or replacing technology-
43 related devices;

44 (4) Coordinating and using other therapies, interven-
45 tions or services with technology-related devices, such as
46 those associated with existing education and rehabilitation
47 plans and programs; and

48 (5) Training or technical assistance for individuals or
49 the family of an individual with disabilities.

50 (g) "Revolving loan fund" means the technology-
51 related assistance revolving loan fund for individuals with
52 disabilities established in this article.

53 (h) "Consumer" means individuals with disabilities
54 and, when appropriate, their family members, guardians,
55 advocates or authorized representatives.

§29-24-3. Board created, membership, terms, officers and staff.

1 (a) The technology-related assistance revolving loan
2 fund for individuals with disabilities board created by
3 chapter two hundred forty-seven, acts of the Legislature,
4 regular session, one thousand nine hundred ninety-six, is
5 hereby continued.

6 (b) The board shall consist of seven members as fol-
7 lows, of whom at least three must be individuals with dis-
8 abilities:

9 (1) Director of the division of rehabilitation services,
10 ex officio, who shall be entitled to vote, or his or her
11 designee;

12 (2) A representative of the banking industry;

13 (3) A representative of the medical profession;

14 (4) A certified public accountant; and

15 (5) Three members from the public at large who are
16 users or providers of technology-related assistance devices
17 or services for individuals with disabilities. Members shall
18 be appointed by the governor, by and with the advice and
19 consent of the Senate, for terms of three years. Members
20 appointed by the governor with the advice and consent of
21 the Senate prior to the effective date of this section shall
22 continue to serve for the terms for which they were ap-
23 pointed. State officers or employees may be appointed to
24 the board unless otherwise prohibited by law.

25 (c) In the event a board member fails to attend more
26 than twenty-five percent of the scheduled meetings in a
27 twelve-month period, the board may, after written notifica-
28 tion to that member and the secretary of education and the
29 arts, request in writing that the governor remove the mem-
30 ber and appoint a new member to serve his or her unex-
31 pired term.

32 (d) In the event of death, resignation, disqualification
33 or removal for any reason of any member of the board,
34 the vacancy shall be filled in the same manner as the origi-
35 nal appointment and the successor shall serve for the un-
36 expired term.

37 (e) The board shall elect from its membership a chair-
38 person, treasurer and secretary as well as any other officer
39 as appropriate. The term of the "chairperson" is for two
40 years in duration and he or she cannot serve more than
41 two consecutive terms.

§29-24-4. Compensation and expenses of board.

1 Members of the board who are not employees of the
2 state are entitled to receive a compensation in an amount
3 not to exceed fifty dollars for each day the member of the
4 board is in attendance at a meeting of the board, plus
5 reimbursement for reasonable and necessary expenses
6 actually incurred in the performance of their duties as a
7 member of the board in accordance with state travel regu-
8 lations. Members with disabilities are also entitled to reim-
9 bursement for costs associated with personal assistance,
10 interpreters and disability-related accommodations for the
11 purpose of conducting the business of the board. Com-

12 pensation, reimbursement and other costs authorized in
13 this section shall be paid from moneys in the revolving
14 loan fund.

**§29-24-5. Power, duties and responsibilities of the board;
loans.**

1 (a) The board has the following powers, duties and
2 responsibilities:

3 (1) Meet at such times (minimum of four times each
4 fiscal year) and at places as it determines necessary or
5 convenient to perform its duties. The board shall also
6 meet on the call of the chairperson or secretary of educa-
7 tion and the arts;

8 (2) Maintain written minutes of its meetings;

9 (3) Propose rules for legislative promulgation in ac-
10 cordance with the provisions of article three, chapter twen-
11 ty-nine-a of this code for the transaction of its business
12 and to carry out the purposes of this article. Such rules
13 shall include: (A) Guidelines, procedures, reporting re-
14 quirements, accountability measures and such other crite-
15 ria as the board deems appropriate and necessary to fulfill
16 its governance responsibility under this article if it elects to
17 contract with a nonprofit, consumer-driven organization to
18 carry out the purposes of this article; (B) an appeals pro-
19 cess with regard to the administration of the fund; and (C)
20 rules governing the operation of the fund, including, but
21 not limited to, eligibility of receipt of funds and all other
22 matters consistent with and necessary to accomplishing the
23 purpose of this fund;

24 (4) Employ personnel on a full-time, part-time or
25 contracted basis. Board personnel may be members of the
26 state civil service system. Participating agencies shall make
27 staff support and resources available to the board whenev-
28 er practicable at the discretion of the agencies. The com-
29 pensation of personnel shall be paid from moneys in the
30 revolving loan fund;

31 (5) Receive, administer and disburse funds to support
32 purposes established by this article and contract with non-
33 profit, consumer-based groups dealing with individuals

34 with disabilities to assist in administering programs estab-
35 lished by this article;

36 (6) Maintain detailed records of all expenditures of
37 the board, funds received as gifts and donations and dis-
38 bursements made from the revolving loan fund;

39 (7) Submit to the secretary of education and the arts
40 and the Legislature annually a summary report concern-
41 ing programmatic and financial status of the revolving
42 loan fund;

43 (8) Develop and implement a comprehensive set of
44 financial standards to ensure the integrity and accountabil-
45 ity of all funds received as well as loan funds disbursed;
46 and

47 (9) Conform to the standards and requirements pre-
48 scribed by the state auditor.

49 (b) Subject to available funds, the board shall enter
50 into loan agreements with any qualifying borrower, who
51 demonstrates that:

52 (1) The loan will assist one or more individuals with
53 disabilities in improving their independence, productivity
54 and full participation in the community; and

55 (2) The applicant has the ability to repay the loan.
56 Any necessary loan limitation shall be determined by the
57 board. All loans must be repaid within such terms and at
58 such interest rates as the board may determine to be ap-
59 propriate. However, no loan may extend beyond sixty
60 months from date of award and may be paid off anytime
61 without prepayment penalty. The board shall determine
62 the interest rate to be charged on loans made pursuant to
63 this article, but in no event may the interest rate on any
64 such loans be less than four or more than twenty-one
65 percent per annum.

66 (c) The board may authorize loans up to ninety per-
67 cent of the cost of an item or items.

68 (d) The board may award loans to qualifying borrow-
69 ers for purposes, including, but not limited to, the follow-
70 ing:

71 (1) To assist one or more individuals with disabilities
72 to improve their independence through the purchase of
73 technology-related devices; and

74 (2) To assist one or more individuals with disabilities
75 to become more independent members of the community
76 and improve such individuals quality of life within the
77 community through the purchase of technology-related
78 devices.

79 (e) In the event of the failure of the borrower to repay
80 the loan balance due and owing, the board shall seek to
81 recover the loan balance by such legal or administrative
82 action available to it. Persons or representatives of persons
83 who default on a loan are not eligible for a new loan. The
84 board shall retain ownership of all property, equipment or
85 devices until the borrower's loan is paid in full.

86 (f) A new loan may not be issued to, or on behalf of, a
87 disabled person if a previous loan made to, or on behalf
88 of, such person remains unpaid.

89 (g) The board may charge a fee for loan applications
90 and processing. All funds generated by fee charges shall
91 be directly placed into the revolving loan fund to off-set
92 the costs of application processing.

93 The board may accept federal funds granted by Con-
94 gress or executive order for the purposes of this chapter as
95 well as gifts and donations from individuals, private orga-
96 nizations or foundations. The acceptance and use of fed-
97 eral funds does not commit state funds and does not place
98 an obligation upon the Legislature to continue the purpos-
99 es for which the federal funds are made available. All
100 funds received in the manner described in this article shall
101 be deposited in the revolving loan fund to be disbursed as
102 other moneys in the revolving loan fund.

§29-24-6. Disbursements.

1 Loans may be made for amounts ranging from a min-
2 imum of five hundred dollars to a maximum of five thou-
3 sand dollars. The loan must be used to purchase technol-
4 ogy-related devices or directly related services that will

5 assist the person with a disability to overcome barriers in
6 daily living.

§29-24-7. Fund created.

1 The technology-related assistance revolving loan fund
2 for individuals with disabilities is hereby created in the
3 state treasury to be expended by the board in accordance
4 with the provisions of and for the purposes of this article.
5 Upon the effective date of this section, any funds remain-
6 ing in the technology-related assistance revolving loan
7 fund for individuals with disabilities created by chapter
8 two hundred forty-seven, acts of the Legislature, regular
9 session, one thousand nine hundred ninety-six, which is
10 hereby abolished, shall be deposited into the fund created
11 by this section. Nothing contained herein may be con-
12 strued to require any level of funding by the Legislature.

§29-24-8. Deposits created by the board.

1 The board shall deposit all amounts paid, appropriat-
2 ed, granted or donated to it, including interest accrued on
3 loan balances, fees charged and funds received in repay-
4 ment of loans, in the revolving loan fund.

§29-24-9. Fund use.

1 The moneys in the revolving loan fund shall be used
2 only for the following purposes:
3 (a) Implementing revolving loan program for
4 technology-related devices;
5 (b) Providing technology-related devices to individu-
6 als with severe disabilities who meet economic criteria
7 established by the board;
8 (c) Providing support for technology-related assis-
9 tance;
10 (d) Providing technology-related and disability pre-
11 vention education and research;
12 (e) Disseminating public information;
13 (f) Conducting program evaluation and needs assess-
14 ment;

- 15 (g) Operating the board and other administrative and
16 personnel costs;
- 17 (h) Conducting research and demonstration projects,
18 including new and future uses of technology-related
19 services; and
- 20 (i) Developing a strategic plan.
- 21 Administrative costs are not to exceed ten percent of
22 the revolving loan fund's yearly budget.
- 23 All unexpended moneys contained in this fund at the
24 end of the fiscal year shall be carried forward from year to
25 year.

CHAPTER 217

(Com. Sub. for S. B. 415—By Senators Buckalew and Sharpe)

[Passed April 10, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article twenty, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-b, relating to prohibiting use or possession of tobacco products by inmates held in facilities operated solely by the regional jail and correctional facility authority.

Be it enacted by the Legislature of West Virginia:

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

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

§31-20-5b. Prohibition against use or possession of tobacco products by inmates held by regional facility authority in regional jails operated solely by the authority; authorization to establish smoking cessation program.

1 Notwithstanding any provision of this code to the
2 contrary, the authority shall prohibit the use or possession
3 of tobacco products by inmates held in facilities operated
4 solely by the authority. The authority may establish
5 smoking cessation programs to facilitate the prohibition
6 set forth in this section.

CHAPTER 218

(S. B. 291—By Senators Ross, Dittmar, Love, Wiedebusch,
Ball, McKenzie and Buckalew)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact section twenty-three, article seventeen, chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections thirty-five and thirty-six, all relating to toll bridges; authorizing municipalities to maintain ownership of toll bridges under certain circumstances; establishing permissible uses of tolls collected; and requiring municipalities retaining bridges to provide for their maintenance and inspection.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 17. TOLL BRIDGES.

§17-17-23. When tolls to cease.

§17-17-35. Authorization for municipalities to maintain ownership of and continue charging tolls for toll bridges upon the payment of

all bonds issued to acquire and construct or refinance the bridge and the interest thereon; permitted use of tolls collected.

§17-17-36. Maintenance of bridges retained by municipalities after repayment of indebtedness thereon; inspections by commissioner; bridge maintenance fund.

§17-17-23. When tolls to cease.

1 Except as otherwise provided in section thirty-five of
2 this article, when the particular bonds issued for any
3 bridge or bridges and the interest thereon shall have been
4 paid, or a sufficient amount shall have been provided for
5 their payment and shall continue to be held for that
6 purpose, and there are no operating or maintenance
7 expenses outstanding, and any advances made from the
8 state road fund toward the construction, operation and
9 maintenance of such bridge or bridges shall have been
10 repaid, the authority operating such bridge or bridges
11 shall cease the collection of tolls for the use thereof:
12 *Provided*, That the commissioner may, in his discretion,
13 continue thereafter tolls for a period sufficient to
14 accumulate sufficient funds to pay for major maintenance
15 and repairs foreseeable as being needed on such bridge or
16 bridges in the immediate future: *Provided, however*, That
17 tolls may be imposed or reimposed on any such bridge or
18 bridges in the manner provided in section twenty-three-b
19 of this article. Thereafter, and as long as the cost of
20 maintaining, repairing and operating such bridge or
21 bridges is being provided for through means other than
22 tolls, no tolls shall be charged for transit thereover and
23 such bridge or bridges shall be free: *Provided further*,
24 That notwithstanding any other provision of law, if any
25 portion of the cost of construction of a toll bridge is
26 financed, with the aid of federal funds under federal-aid
27 road legislation and the share of the cost of such bridge
28 borne by the state or its subdivisions shall have been
29 repaid from tolls, or a fund sufficient for such repayment
30 shall have been provided or set aside for that purpose, tolls
31 for the use of such bridge shall cease and such bridge
32 shall thereafter be maintained and operated as a free
33 bridge.

§17-17-35. Authorization for municipalities to maintain ownership of and continue charging tolls for toll bridges upon the payment of all bonds issued to acquire and construct or refinance the bridge and the interest thereon; permitted use of tolls collected.

1 Any municipality which owns and operates a toll
2 bridge as of the first day of January, one thousand nine
3 hundred ninety-eight, may, at the sole discretion of the
4 municipality, and upon adoption of a resolution to such
5 effect by the council of such municipality and subject to
6 the requirements of section thirty-six of this article, retain
7 ownership of the toll bridge and may establish and retain
8 toll charges for the use thereof after all bonds issued for
9 the acquisition and construction of the bridge, all bonds
10 issued to refinance such bonds and all interest on such
11 bonds have been paid or such payment has been provided
12 for by defeasement or otherwise. All such tolls collected
13 after a municipality determines to maintain ownership of a
14 toll bridge and the bonds issued for the acquisition and
15 construction of such bridge or issued to refinance such
16 bonds and all interest thereon have been paid or such
17 payment has been provided for by defeasement or
18 otherwise, shall be applied first to provide a fund sufficient
19 to pay the cost of maintaining, repairing, operating and
20 demolishing such bridge pursuant to section thirty-six of
21 this article, and thereafter, for any legal purpose of the
22 municipality. Collected tolls remaining after providing
23 for the payment of the cost of maintaining, repairing,
24 operating and demolishing such bridge may be pledged
25 or otherwise encumbered to effectuate any municipal
26 purpose.

§17-17-36. Maintenance of bridges retained by municipalities after repayment of indebtedness thereon; inspections by commissioner; bridge maintenance fund.

1 (a) Prior to a municipality retaining ownership of a
2 bridge pursuant to section thirty-five of this article, the

3 municipality shall notify the commissioner in writing of its
4 intent to do so. Upon receipt of such notice, the commis-
5 sioner shall make an initial inspection of the bridge to
6 determine what repairs, replacements, improvement and
7 additions are necessary to place the bridge in a safe and
8 efficient condition for use of the public, cause an estimate
9 of the cost of such and shall also provide an estimate of
10 the amount of funds required annually to maintain the
11 bridge after completion of initial improvements. The
12 commissioner shall appoint an engineer to inspect the
13 bridge and to consult and assist the commissioner in mak-
14 ing findings. The cost of the engineer's service shall be
15 paid by the municipality.

16 (b) The municipality shall make the improvements to
17 the bridge that are determined to be necessary by the
18 commissioner. The commissioner may make periodic
19 inspections during construction of improvements and at
20 the completion of any improvement project. The commis-
21 sioner shall report on each inspection to the municipality
22 and include identification of any deficiencies with recom-
23 mended action to correct the deficiencies. The municipali-
24 ty shall reimburse the commissioner for inspections and
25 reports.

26 (c) The municipality shall establish a separate fund,
27 designated as the "bridge maintenance fund". Proceeds
28 in the fund shall be expended for the purpose of improve-
29 ments and maintenance of the bridge in a safe and effi-
30 cient condition for use by the public. Upon the initial
31 inspection of the bridge by the commissioner pursuant to
32 subsection (a) of this section, the municipality shall depos-
33 it in the fund an amount equal to the estimate of the com-
34 missioner for the costs of the initial improvements to the
35 bridge made pursuant to subsection (a) of this section.
36 Upon completion of the initial improvements, the munic-
37 ipality shall maintain an adequate balance of moneys in the
38 fund sufficient to maintain the bridge annually, as deter-
39 mined by the commissioner pursuant to subsection (a) of
40 this section.

CHAPTER 219

(S. B. 257—By Senators Craig, Anderson, Bailey, Chafin, Helmick, Jackson, Love, Macnaughtan, Plymale, Prezioso, Sharpe, Walker, Boley, Dugan, McKenzie, Minear and Sprouse)

[Passed March 21, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend article two, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twelve-a, relating to authorizing the tourism commission the use of the tourism promotion fund to support the southern legislative conference annual meeting to be held in this state in the year one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-12a. Tourism fund support of southern legislative conference annual meeting of 1997.

1 (a) Notwithstanding the provisions of section twelve of
2 this article, the tourism commission may expend moneys
3 from the tourism promotion fund in the amount necessary
4 to support the annual meeting of the southern legislative
5 conference which will be held in this state in the month of
6 July, one thousand nine hundred ninety-seven.

7 (b) The provisions of this section expire on the first
8 day of September, one thousand nine hundred ninety-
9 seven.

CHAPTER 220

(Com. Sub. for S. B. 372—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections fifteen, sixteen and seventeen, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article six of said chapter by adding thereto a new section, designated section seventeen; and to amend and reenact sections eleven and nineteen, article ten of said chapter, all relating generally to unemployment compensation; clarifying definitions of employer and employment; providing that agricultural labor if performed by certain aliens is not employment; authorizing food stamp overissuance intercept of unemployment benefits; codifying reporting requirements and required information; providing exemptions to confidentiality requirements; allowing use of information; and clarifying that breach of confidentiality provisions are criminal violations.

Be it enacted by the Legislature of West Virginia:

That sections fifteen, sixteen and seventeen, article one-a, chapter twenty-one-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article six of said chapter be amended by adding thereto a new section, designated section seventeen; and that sections eleven and nineteen, article ten of said chapter be amended and reenacted, all to read as follows:

Article

- 1A. Definitions.
- 6. Employee Eligibility; Benefits.
- 10. General Provisions.

ARTICLE 1A. DEFINITIONS.

§21A-1A-15. Employer.

§21A-1A-16. Employment.

§21A-1A-17. Employment does not include.

§21A-1A-15. Employer.

1 “Employer” means:

2 (1) Any employing unit which is or becomes a liable
3 employer under any federal unemployment tax act;

4 (2) Any employing unit which has acquired or
5 acquires the organization, trade or business, or
6 substantially all the assets thereof, of an employing unit
7 which at the time of such acquisition was an employer
8 subject to this chapter;

9 (3) For the effective period of its election pursuant to
10 section three, article five of this chapter, any employing
11 unit which has elected to become subject to this chapter;

12 (4) Any employing unit which: (A) In any calendar
13 quarter in either the current or preceding calendar year
14 paid for service in employment wages of one thousand
15 five hundred dollars or more; or (B) for some portion of a
16 day in each of twenty different calendar weeks, whether or
17 not the weeks were consecutive, in either the current or the
18 preceding calendar year had in employment at least one
19 individual (irrespective of whether the same individual was
20 in employment in each day) except as provided in
21 subdivisions (7) and (8) of this section;

22 (5) Any employing unit for which service in
23 employment, as defined in subdivision (9), section sixteen
24 of this article, the definition of “employment” in this
25 article is performed;

26 (6) Any employing unit for which service in
27 employment, as defined in subdivision (10), section
28 sixteen of this article, the definition of “employment” in
29 this article is performed;

30 (7) Any employing unit for which agricultural labor,
31 as defined in subdivision (12), section sixteen of this
32 article, the definition of “employment” is performed; or

33 (8) Any employing unit for which domestic service in
34 employment, as defined in subdivision (13), section

35 sixteen of this article, the definition of "employment" is
36 performed.

§21A-1A-16. Employment.

1 "Employment", subject to the other provisions of this
2 article, means:

3 (1) Service, including service in interstate commerce,
4 performed for wages or under any contract of hire, written
5 or oral, express or implied;

6 (2) Any service performed by an employee, as defined
7 in Section 3306(i) of the federal Unemployment Tax Act,
8 including service in interstate commerce;

9 (3) Any service performed, including service in
10 interstate commerce, by any officer of a corporation;

11 (4) An individual's entire service, performed within or
12 both within and without this state if: (A) The service is
13 localized in this state; or (B) the service is not localized in
14 any state but some of the service is performed in this state
15 and: (i) The base of operations, or, if there is no base of
16 operations, then the place from which the service is
17 directed or controlled, is in this state; or (ii) the base of
18 operations or place from which the service is directed or
19 controlled is not in any state in which some part of the
20 service is performed but the individual's residence is in
21 this state;

22 (5) Service not covered under subdivision (4) of this
23 section and performed entirely without this state with
24 respect to no part of which contributions are required and
25 paid under an unemployment compensation law of any
26 other state or of the federal government, is employment
27 subject to this chapter if the individual performing the
28 services is a resident of this state and the commissioner
29 approves the election of the employing unit for whom the
30 services are performed that the entire service of the
31 individual is employment subject to this chapter;

32 (6) Service is localized within a state, if: (A) The
33 service is performed entirely within the state; or (B) the
34 service is performed both within and without the state, but

35 the service performed without the state is incidental to the
36 individual's service within this state, as, for example, is
37 temporary or transitory in nature or consists of isolated
38 transactions;

39 (7) Services performed by an individual for wages are
40 employment subject to this chapter unless and until it is
41 shown to the satisfaction of the commissioner that: (A)
42 The individual has been and will continue to be free from
43 control or direction over the performance of the services,
44 both under his or her contract of service and in fact; and
45 (B) the service is either outside the usual course of the
46 business for which the service is performed or that such
47 service is performed outside of all the places of business
48 of the enterprise for which such service is performed; and
49 (C) the individual is customarily engaged in an
50 independently established trade, occupation, profession or
51 business;

52 (8) All service performed by an officer or member of
53 the crew of an American vessel (as defined in Section 305
54 of an act of Congress entitled Social Security Act
55 Amendment of 1946, approved the tenth day of August,
56 one thousand nine hundred forty-six), on or in connection
57 with the vessel, provided that the operating office, from
58 which the operations of the vessel operating on navigable
59 waters within and without the United States is ordinarily
60 and regularly supervised, managed, directed and
61 controlled, is within this state;

62 (9) (A) Service performed by an individual in the
63 employ of this state or any of its instrumentalities (or in
64 the employ of this state and one or more other states or
65 their instrumentalities) for a hospital or institution of
66 higher education located in this state: *Provided*, That the
67 service is excluded from "employment" as defined in the
68 federal Unemployment Tax Act solely by reason of
69 Section 3306(c)(7) of that act and is not excluded from
70 "employment" under subdivision (9), section seventeen
71 of this article;

72 (B) Service performed in the employ of this state or
73 any of its instrumentalities or political subdivisions thereof
74 or any of its instrumentalities or any instrumentality of

75 more than one of the foregoing or any instrumentality of
76 any foregoing and one or more other states or political
77 subdivisions: *Provided*, That the service is excluded from
78 "employment" as defined in the federal Unemployment
79 Tax Act by Section 3306(c)(7) of that act and is not
80 excluded from "employment" under subdivision (13),
81 section seventeen of this article; and

82 (C) Service performed in the employ of a nonprofit
83 educational institution which is not an institution of higher
84 education;

85 (10) Service performed by an individual in the
86 employ of a religious, charitable, educational or other
87 organization but only if the following conditions are met:

88 (A) The service is excluded from "employment" as
89 defined in the federal Unemployment Tax Act solely by
90 reason of Section 3306(c)(8) of that act; and

91 (B) The organization had four or more individuals in
92 employment for some portion of a day in each of twenty
93 different weeks, whether or not the weeks were
94 consecutive, within either the current or preceding
95 calendar year, regardless of whether they were employed
96 at the same moment of time;

97 (11) Service of an individual who is a citizen of the
98 United States, performed outside the United States after
99 the thirty-first day of December, one thousand nine
100 hundred seventy-one (except in Canada and in the case of
101 the Virgin Islands after the thirty-first day of December,
102 one thousand nine hundred seventy-one, and before the
103 first day of January, the year following the year in which
104 the secretary of labor approves for the first time an
105 unemployment insurance law submitted to him or her by
106 the Virgin Islands for approval), in the employ of an
107 American employer (other than service which is
108 considered "employment" under the provisions of
109 subdivision (4), (5) or (6) of this section or the parallel
110 provisions of another state's law) if:

111 (A) The employer's principal place of business in the
112 United States is located in this state; or

113 (B) The employer has no place of business in the
114 United States, but: (i) The employer is an individual who
115 is a resident of this state; or (ii) the employer is a
116 corporation which is organized under the laws of this state;
117 or (iii) the employer is a partnership or a trust and the
118 number of the partners or trustees who are residents of this
119 state is greater than the number who are residents of any
120 one other state; or

121 (C) None of the criteria of paragraphs (A) and (B) of
122 this subdivision is met but the employer has elected
123 coverage in this state or, the employer having failed to
124 elect coverage in any state, the individual has filed a claim
125 for benefits, based on the service, under the law of this
126 state.

127 (D) An "American employer", for purposes of this
128 subdivision, means a person who is: (i) An individual who
129 is a resident of the United States; or (ii) a partnership if
130 two thirds or more of the partners are residents of the
131 United States; or (iii) a trust, if all of the trustees are
132 residents of the United States; or (iv) a corporation
133 organized under the laws of the United States or of any
134 state;

135 (12) Service performed by an individual in
136 agricultural labor as defined in subdivision (3), section
137 seventeen of this article when:

138 (A) The service is performed for a person who: (i)
139 During any calendar quarter in either the current or the
140 preceding calendar year paid remuneration in cash of
141 twenty thousand dollars or more to individuals employed
142 in agricultural labor including labor performed by an
143 alien referred to in paragraph (B) of this subdivision; or
144 (ii) for some portion of a day in each of twenty different
145 calendar weeks, whether or not the weeks were consecutive,
146 in either the current or the preceding calendar year,
147 employed in agricultural labor, including labor performed
148 by an alien referred to in paragraph (B) of this
149 subdivision, ten or more individuals, regardless of whether
150 they were employed at the same moment of time;

151 (B) The service is not performed in agricultural labor
152 if performed by an individual who is an alien admitted to
153 the United States to perform service in agricultural labor
154 pursuant to Sections 214(c) and 101(a)(15)(H) of the
155 Immigration and Nationality Act;

156 (C) For the purposes of the definition of employment,
157 any individual who is a member of a crew furnished by a
158 crew leader to perform service in agricultural labor for
159 any other person shall be treated as an employee of the
160 crew leader: (i) If the crew leader holds a valid certificate
161 of registration under the Migrant and Seasonal
162 Agricultural Worker Protection Act; or substantially all the
163 members of the crew operate or maintain tractors,
164 mechanized harvesting or crop-dusting equipment, or any
165 other mechanized equipment, which is provided by the
166 crew leader; and (ii) if the other person is not otherwise an
167 employer of the individual;

168 (D) For the purposes of this subdivision, in the case of
169 any individual who is furnished by a crew leader to
170 perform service in agricultural labor for any other person
171 and who is not treated as an employee of the crew leader
172 under paragraph (C) of this subdivision: (i) The other
173 person and not the crew leader shall be treated as the
174 employer of the individual; and (ii) the other person shall
175 be treated as having paid cash remuneration to the
176 individual in an amount equal to the amount of cash
177 remuneration paid to the individual by the crew leader
178 (either on his or her own behalf or on behalf of the other
179 person) for the service in agricultural labor performed for
180 the other person; and

181 (E) For the purposes of this subdivision, the term
182 "crew leader" means an individual who: (i) Furnishes
183 individuals to perform service in agricultural labor for any
184 other person; (ii) pays (either on his or her own behalf or
185 on behalf of the other person) the individuals so furnished
186 by him or her for the service in agricultural labor
187 performed by them; and (iii) has not entered into a written
188 agreement with the other person under which the
189 individual is designated as an employee of the other
190 person;

191 (13) (A) The term "employment" includes domestic
192 service in a private home, local college club or local
193 chapter of a college fraternity or sorority performed for a
194 person who paid cash remuneration of one thousand
195 dollars or more in any calendar quarter in the current
196 calendar year or the preceding calendar year to
197 individuals employed in domestic service; and

198 (B) Notwithstanding the foregoing definition of
199 "employment", if the services performed during one half
200 or more of any pay period by an employee for the person
201 employing him or her constitute employment, all the
202 services of the employee for the period are employment;
203 but if the services performed during more than one half of
204 any such pay period by an employee for the person
205 employing him or her do not constitute employment, then
206 none of the services of the employee for the period are
207 employment.

§21A-1A-17. Employment does not include.

1 The term "employment" does not include:

2 (1) Service performed in the employ of the United
3 States or any instrumentality of the United States exempt
4 under the constitution of the United States from the
5 payments imposed by this law, except that to the extent
6 that the Congress of the United States shall permit states to
7 require any instrumentalities of the United States to make
8 payments into an unemployment fund under a state
9 unemployment compensation law, all of the provisions of
10 this law shall be applicable to the instrumentalities and to
11 service performed for the instrumentalities in the same
12 manner, to the same extent and on the same terms as to all
13 other employers, employing units, individuals and
14 services: *Provided*, That if this state is not certified for
15 any year by the secretary of labor under Section 1603(c)
16 of the federal Internal Revenue Code, the payments
17 required of the instrumentalities with respect to the year
18 shall be refunded by the commissioner from the fund in
19 the same manner and within the same period as is
20 provided in section nineteen, article five of this chapter,
21 with respect to payments erroneously collected;

22 (2) Service performed with respect to which
23 unemployment compensation is payable under the
24 Railroad Unemployment Insurance Act and service with
25 respect to which unemployment benefits are payable
26 under an unemployment compensation system for
27 maritime employees established by an act of Congress.
28 The commissioner may enter into agreements with the
29 proper agency established under an act of Congress to
30 provide reciprocal treatment to individuals who, after
31 acquiring potential rights to unemployment compensation
32 under an act of Congress, or who have, after acquiring
33 potential rights to unemployment compensation under an
34 act of Congress, acquired rights to benefit under this
35 chapter. Such agreement shall become effective ten days
36 after the publications which shall comply with the general
37 rules of the department;

38 (3) Service performed by an individual in agricultural
39 labor, except as provided in subdivision (12), section
40 sixteen of this article, the definition of "employment".
41 For purposes of this subdivision, the term "agricultural
42 labor" includes all services performed:

43 (A) On a farm, in the employ of any person, in
44 connection with cultivating the soil, or in connection with
45 raising or harvesting any agricultural or horticultural
46 commodity, including the raising, shearing, feeding,
47 caring for, training and management of livestock, bees,
48 poultry and fur-bearing animals and wildlife;

49 (B) In the employ of the owner or tenant or other
50 operator of a farm, in connection with the operation,
51 management, conservation, improvement or maintenance
52 of the farm and its tools and equipment, or in salvaging
53 timber or clearing land of brush and other debris left by a
54 hurricane, if the major part of the service is performed on
55 a farm;

56 (C) In connection with the production or harvesting of
57 any commodity defined as an agricultural commodity in
58 Section (15)(g) of the Agricultural Marketing Act, as
59 amended, or in connection with the ginning of cotton, or
60 in connection with the operation or maintenance of
61 ditches, canals, reservoirs or waterways, not owned or

62 operated for profit, used exclusively for supplying and
63 storing water for farming purposes;

64 (D) (i) In the employ of the operator of a farm in
65 handling, planting, drying, packing, packaging,
66 processing, freezing, grading, storing or delivering to
67 storage or to market or to a carrier for transportation to
68 market, in its unmanufactured state, any agricultural or
69 horticultural commodity; but only if the operator
70 produced more than one half of the commodity with
71 respect to which the service is performed; or (ii) in the
72 employ of a group of operators of farms (or a cooperative
73 organization of which the operators are members) in the
74 performance of service described in subparagraph (i) of
75 this paragraph, but only if the operators produced more
76 than one half of the commodity with respect to which the
77 service is performed; but the provisions of subparagraphs
78 (i) and (ii) of this paragraph are not applicable with
79 respect to service performed in connection with
80 commercial canning or commercial freezing or in
81 connection with any agricultural or horticultural
82 commodity after its delivery to a terminal market for
83 distribution for consumption;

84 (E) On a farm operated for profit if the service is not
85 in the course of the employer's trade or business or is
86 domestic service in a private home of the employer. As
87 used in this subdivision, the term "farm" includes stock,
88 dairy, poultry, fruit, fur-bearing animals, truck farms,
89 plantations, ranches, greenhouses, ranges and nurseries, or
90 other similar land areas or structures used primarily for
91 the raising of any agricultural or horticultural
92 commodities;

93 (4) Domestic service in a private home except as
94 provided in subdivision (13), section sixteen of this article,
95 the definition of "employment";

96 (5) Service performed by an individual in the employ
97 of his or her son, daughter or spouse;

98 (6) Service performed by a child under the age of
99 eighteen years in the employ of his or her father or
100 mother;

101 (7) Service as an officer or member of a crew of an
102 American vessel, performed on or in connection with the
103 vessel, if the operating office, from which the operations
104 of the vessel operating on navigable waters within or
105 without the United States are ordinarily and regularly
106 supervised, managed, directed and controlled, is without
107 this state;

108 (8) Service performed by agents of mutual fund
109 broker-dealers or insurance companies, exclusive of
110 industrial insurance agents, or by agents of investment
111 companies, who are compensated wholly on a commission
112 basis;

113 (9) Service performed: (A) In the employ of a church
114 or convention or association of churches, or an
115 organization which is operated primarily for religious
116 purposes and which is operated, supervised, controlled or
117 principally supported by a church or convention or
118 association of churches; or (B) by a duly ordained,
119 commissioned or licensed minister of a church in the
120 exercise of his or her ministry or by a member of a
121 religious order in the exercise of duties required by the
122 order; or (C) in a facility conducted for the purpose of
123 carrying out a program of rehabilitation for individuals
124 whose earning capacity is impaired by age or physical or
125 mental deficiency or injury or providing remunerative
126 work for individuals who because of their impaired
127 physical or mental capacity cannot be readily absorbed in
128 the competitive labor market by an individual receiving
129 the rehabilitation or remunerative work; or (D) as part of
130 an unemployment work-relief or work-training program
131 assisted or financed, in whole or in part, by any federal
132 agency or an agency of a state or political subdivision
133 thereof, by an individual receiving the work relief or work
134 training; or (E) by an inmate of a custodial or penal
135 institution;

136 (10) Service performed in the employ of a school,
137 college or university, if the service is performed: (A) By a
138 student who is enrolled and is regularly attending classes
139 at the school, college or university; or (B) by the spouse of
140 a student, if the spouse is advised, at the time the spouse

141 commences to perform the service, that: (i) The
142 employment of the spouse to perform the service is
143 provided under a program to provide financial assistance
144 to the student by the school, college or university; and (ii)
145 the employment will not be covered by any program of
146 unemployment insurance;

147 (11) Service performed by an individual who is
148 enrolled at a nonprofit or public educational institution
149 which normally maintains a regular faculty and
150 curriculum and normally has a regularly organized body
151 of students in attendance at the place where its educational
152 activities are carried on as a student in a full-time program,
153 taken for credit at the institution, which combines
154 academic instruction with work experience, if the service is
155 an integral part of the program, and the institution has so
156 certified to the employer, except that this subdivision does
157 not apply to service performed in a program established
158 for or on behalf of an employer or group of employers;

159 (12) Service performed in the employ of a hospital, if
160 the service is performed by a patient of the hospital, as
161 defined in this article; and

162 (13) Service in the employ of a governmental entity
163 referred to in subdivision (9), section sixteen of this article,
164 the definition of "employment" if the service is
165 performed by an individual in the exercise of duties: (A)
166 As an elected official; (B) as a member of a legislative
167 body, or a member of the judiciary, of a state or political
168 subdivision; (C) as a member of the state national guard or
169 air national guard; (D) as an employee serving on a
170 temporary basis in case of fire, storm, snow, earthquake,
171 flood or similar emergency; (E) in a position which, under
172 or pursuant to the laws of this state, is designated as: (i) A
173 major nontenured policymaking or advisory position; or
174 (ii) a policymaking or advisory position the performance
175 of the duties of which ordinarily does not require more
176 than eight hours per week.

177 Notwithstanding the foregoing exclusions from the
178 definition of "employment", services, except agricultural
179 labor and domestic service in a private home, are in
180 employment if with respect to the services a tax is required

181 to be paid under any federal law imposing a tax against
182 which credit may be taken for contributions required to be
183 paid into a state unemployment compensation fund, or
184 which as a condition for full tax credit against the tax
185 imposed by the federal Unemployment Tax Act are
186 required to be covered under this chapter.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-17. Food stamp overissuance intercept of unemployment benefits.

1 (a) Notwithstanding the provisions of section two,
2 article ten of this chapter, the commissioner shall deduct
3 and withhold from any unemployment compensation
4 payable to an individual that owes an uncollected
5 overissuance of food stamp coupons, as defined under
6 subsection (f) of this section:

7 (1) The amount, if any, determined pursuant to a
8 written agreement between the individual and the
9 department of health and human resources under Section
10 13(c)(3)(A) of the Food Stamp Act of 1977, as codified in
11 7 U.S.C. 2022(c)(3)(A), and submitted to the
12 commissioner; or

13 (2) Any amount otherwise required to be deducted
14 and withheld from such unemployment compensation
15 pursuant to legal process, as that term is used in Section
16 13(c)(3)(B) of the Food Stamp Act of 1977, as codified in
17 7 U.S.C. 2022(c)(3)(B) properly served upon the
18 commissioner.

19 (b) Any amount deducted and withheld under
20 subsection (a) of this section shall be paid by the
21 commissioner to the department of health and human
22 resources.

23 (c) Any amount deducted and withheld under
24 subsection (a) of this section shall for all purposes be
25 treated as if it were paid to the individual as
26 unemployment compensation and paid by the individual
27 to the department of health and human resources in
28 satisfaction of the individual's uncollected overissuance.

29 (d) For purposes of this section, the term
30 “unemployment compensation” means any
31 compensation payable under this chapter, including
32 amounts payable by the commissioner pursuant to an
33 agreement under any federal law providing for
34 compensation, assistance or allowances with respect to
35 unemployment.

36 (e) This section applies only if appropriate
37 arrangements have been made for reimbursement by the
38 department of health and human resources for the
39 administrative costs incurred by the commissioner under
40 this section which are attributable to uncollected
41 overissuance being enforced by the state or department of
42 health and human resources.

43 (f) The term “uncollected overissuance” means, for
44 purposes of this section, obligations which are being
45 enforced pursuant to a plan described in Section 13(c)(1)
46 of the Food Stamp Act of 1977, as codified in 7 U.S.C.
47 2022(c)(1).

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.

§21A-10-19. Disclosure of information to child support agencies.

§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.

1 (a) Each employer, including labor organizations as
2 defined in subsection (i) of this section, shall, quarterly,
3 submit certified reports on or before the last day of the
4 month next following the calendar quarter, on forms to be
5 prescribed by the commissioner. The reports shall
6 contain:

7 (1) The employer’s assigned unemployment
8 compensation registration number, the employer’s name
9 and the address at which the employer’s payroll records
10 are maintained;

11 (2) Each employee's social security account number,
12 name, and the gross wages paid to each employee, which
13 shall include the first eight thousand dollars of
14 remuneration and all amounts in excess of such amount,
15 notwithstanding subdivision (1), subsection (b), section
16 twenty-eight, article one-a of this chapter;

17 (3) The total gross wages paid within the quarter for
18 employment, which includes money wages and the cash
19 value of other remuneration, and shall include the first
20 eight thousand dollars of remuneration paid to each
21 employee and all amounts in excess of such amount,
22 notwithstanding subdivision (1), subsection (b), section
23 twenty-eight, article one-a of this chapter; and

24 (4) Other information as is reasonably connected with
25 the administration of this chapter.

26 (b) Information thus obtained may not be published
27 or be open to public inspection so as to reveal the identity
28 of the employing unit or the individual.

29 (c) Notwithstanding the provisions of subsection (b) of
30 this section, the commissioner may provide information
31 thus obtained to the following governmental entities for
32 purposes consistent with state and federal laws:

33 (1) The United States department of agriculture;

34 (2) The state agency responsible for enforcement of
35 the medicaid program under Title XIX of the Social
36 Security Act;

37 (3) The United States department of health and human
38 services or any state or federal program operating and
39 approved under Title I, Title II, Title X, Title XIV or Title
40 XVI of the Social Security Act;

41 (4) Those agencies of state government responsible
42 for economic and community development; secondary,
43 post-secondary and vocational education; vocational
44 rehabilitation, employment and training, including, but not
45 limited to, the administration of the Perkins Act and the
46 Job Training and Partnership Act;

47 (5) The tax division, but only for the purposes of
48 collection and enforcement;

49 (6) The division of labor for purposes of enforcing
50 the wage bond and the contractor licensing provisions of
51 chapter twenty-one of this code;

52 (7) Any agency of this or any other state, or any
53 federal agency, charged with the administration of an
54 unemployment compensation law or the maintenance of a
55 system of public employment offices;

56 (8) Any claimant for benefits or any other interested
57 party to the extent necessary for the proper presentation
58 or defense of a claim; and

59 (9) The division of workers' compensation for
60 purposes of collection and enforcement: *Provided*, That
61 the division of workers' compensation shall provide similar
62 information to the other divisions of the bureau of
63 employment programs.

64 (d) The agencies or organizations which receive
65 information under subsection (c) of this section shall
66 agree that the information shall remain confidential so as
67 not to reveal the identity of the employing unit or the
68 individual consistent with the provisions of this chapter.

69 (e) The commissioner may, before furnishing any
70 information permitted under this section, require that
71 those who request the information shall reimburse the
72 bureau of employment programs for any cost associated
73 therewith.

74 (f) The commissioner may refuse to provide any
75 information requested under this section if the agency or
76 organization making the request does not certify that it
77 will comply with the state and federal law protecting the
78 confidentiality of the information.

79 (g) A person who violates the confidentiality
80 provisions of this section is guilty of a misdemeanor and,
81 upon conviction thereof, shall be fined not less than
82 twenty dollars nor more than two hundred dollars, or
83 imprisoned not longer than ninety days, or both.

84 (h) No action for slander or libel, either criminal or
85 civil, shall be predicated upon information furnished by
86 any employer or any employee to the commissioner in
87 connection with the administration of any of the
88 provisions of this chapter.

89 (i) For purposes of subsection (a) of this section, the
90 term "labor organization" means any organization of
91 any kind, or any agency or employee representation
92 committee or plan, in which employees participate and
93 which exists for the purpose, in whole or in part, of
94 dealing with employers concerning grievances, labor
95 disputes, wages, rates of pay, hours of employment, or
96 conditions of work. It includes any entity, also known as a
97 hiring hall, which is used by the organization and an
98 employer to carry out requirements described in 29
99 U.S.C. 158(f)(3) of an agreement between the
100 organization and the employer.

§21A-10-19. Disclosure of information to child support agencies.

1 (a) The bureau of employment programs shall
2 disclose, upon request, to officers or employees of any
3 state or local child support enforcement agency, and to
4 employees of the federal secretary of health and human
5 services, any wage and benefit information with respect to
6 individuals which is contained in its records.

7 The term "state or local child support enforcement
8 agency" means any agency of a state or political
9 subdivision thereof operating pursuant to a plan described
10 in Section 453, 453a or 454 of the Social Security Act,
11 which has been approved by the secretary of health and
12 human services under Part D, Title IV of the Social
13 Security Act.

14 (b) The requesting agency shall agree that the
15 information is to be used only for the purpose of
16 establishing and collecting child support obligations from,
17 and locating, individuals owing the obligations which are
18 being enforced pursuant to a plan described in Section
19 453, 453a or 454 of the Social Security Act which has
20 been approved by the secretary of health and human
21 services under Part D, Title IV of the Social Security Act.

22 (c) The information may not be released unless the
23 requesting agency agrees to reimburse the costs involved
24 for furnishing the information.

25 (d) In addition to the requirements of this section, all
26 other requirements with respect to confidentiality of
27 information obtained in the administration of this chapter
28 and the sanctions imposed on improper disclosure shall
29 apply to the use of the information by officers, and
30 employees of child support enforcement agencies. A state
31 or local child support enforcement agency may disclose to
32 any agent of the agency that is under contract with the
33 agency to carry out the purposes described in subsection
34 (b) of this section, wage information that is disclosed to an
35 officer or employee of the agency under subsection (a) of
36 this section. Any agent of a state or local child support
37 agency that receives wage information under this
38 paragraph shall comply with the safeguards established to
39 keep the information confidential and is subject to the
40 criminal provisions of subsection (g), section eleven of this
41 article.

CHAPTER 221

(Com. Sub. for H. B. 2167—By Delegates Beane, Doyle, Farris, Fleischauer,
Jenkins and Walters)

[Passed March 27, 1997; in effect January 1, 1998. Approved by the Governor.]

AN ACT to repeal article seven, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section twenty-seven, article two, chapter forty-eight of said code; to amend and reenact section three, article three, chapter forty-eight-a of said code; to amend and reenact section six, article four of said chapter; to amend and reenact sections two and four, article five of said chapter; and to amend said code by adding thereto a

new chapter, designated chapter forty-eight-b, all relating to replacing the revised uniform reciprocal enforcement of support act with the uniform interstate family support act.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter forty-eight-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section twenty-seven, article two, chapter forty-eight of said code be amended and reenacted; that section three, article three, chapter forty-eight-a of said code be amended and reenacted; that section six, article four of said chapter be amended and reenacted; that sections two and four, article five of said chapter be amended and reenacted; and that said code be further amended by adding thereto a new chapter, designated chapter forty-eight-b, all to read as follows:

Chapter

48. Domestic Relations.

48A. Enforcement of Family Obligations.

48B. Uniform Interstate Family Support Act.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-27. Confidentiality of domestic relations court files.

1 All orders in domestic relations cases entered in the
2 civil order books by circuit clerks are public records. For
3 purposes of this section, domestic relations cases shall
4 include actions for divorce, annulment, separate
5 maintenance, paternity, child support, custody, visitation,
6 actions brought under the provisions of the uniform
7 interstate family support act and petitions for writs of
8 habeas corpus wherein the issue is child custody.

9 Upon the filing of a domestic relations case, all
10 pleadings, exhibits or other documents contained in the
11 court file are confidential and not open for public
12 inspection either during the pendency of the case or after
13 the case is closed.

14 When sensitive information has been disclosed during
15 a hearing or in pleadings, evidence, or documents filed in
16 the record, a circuit judge or family law master may, sua
17 sponte or upon motion of a party, order such information
18 sealed in the court file. Sealed documents or court files
19 shall only be opened by order of a circuit judge or family
20 law master: *Provided*, That, in any case pending before a
21 family law master, the master may open and inspect the
22 entire contents of the court file.

23 The parties, their designees, their attorneys, a duly
24 appointed guardian ad litem or any person who has
25 standing to modify or enforce a support order, shall have
26 the right to examine and copy any document in a
27 confidential court file which has not been sealed by order
28 of a circuit judge or family law master. Upon motion and
29 for good cause shown, the circuit court or family law
30 master may permit a person not a party to the action the
31 right to examine and copy such documents as are
32 necessary to further the interests of justice.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article

3. **Children's Advocate.**
4. **Proceeding Before a Master.**
5. **Remedies for the Enforcement of Support Obligations and Visitations.**

ARTICLE 3. CHILDREN'S ADVOCATE.

§48A-3-3. Duties of the children's advocate.

- 1 Subject to the control and supervision of the director:
- 2 (a) The children's advocate shall supervise and direct
3 the secretarial, clerical and other employees in his or her
4 office in the performance of their duties as such
5 performance affects the delivery of legal services. The
6 children's advocate will provide appropriate instruction
7 and supervision to employees of his or her office who are
8 nonlawyers, concerning matters of legal ethics and matters
9 of law, in accordance with applicable state and federal
10 statutes, rules and regulations.

11 (b) In accordance with the requirements of rule 5.4(c)
12 of the rules of professional conduct as promulgated and
13 adopted by the supreme court of appeals, the children's
14 advocate shall not permit a nonlawyer who is employed by
15 the department of health and human resources in a
16 supervisory position over the children's advocate to direct
17 or regulate the advocate's professional judgment in
18 rendering legal services to recipients of services in
19 accordance with the provisions of this chapter; nor shall
20 any nonlawyer employee of the department attempt to
21 direct or regulate the advocate's professional judgment.

22 (c) The children's advocate shall make available to the
23 public an informational pamphlet, designed in con-
24 sultation with the director. The informational pamphlet
25 shall explain the procedures of the court and the
26 children's advocate; the duties of the children's advocate;
27 the rights and responsibilities of the parties; and the
28 availability of human services in the community. The
29 informational pamphlet shall be provided as soon as
30 possible after the filing of a complaint or other initiating
31 pleading. Upon request, a party to a domestic relations
32 proceeding shall receive an oral explanation of the
33 informational pamphlet from the office of the children's
34 advocate.

35 (d) The children's advocate shall act to establish the
36 paternity of every child born out of wedlock for whom
37 paternity has not been established, when such child's
38 primary caretaker is an applicant for or recipient of aid to
39 families with dependent children, and when such primary
40 caretaker has assigned to the division of human services
41 any rights to support for the child which might be
42 forthcoming from the putative father: *Provided*, That if
43 the children's advocate is informed by the secretary of the
44 department of health and human resources or his or her
45 authorized employee that it has been determined that it is
46 against the best interest of the child to establish paternity,
47 the children's advocate shall decline to so act. The
48 children's advocate, upon the request of any primary
49 caretaker of a child born out of wedlock, regardless of
50 whether such primary caretaker is an applicant or recipient

51 of aid to families with dependent children, shall undertake
52 to establish the paternity of such child.

53 (e) The children's advocate shall undertake to secure
54 support for any individual who is receiving aid to families
55 with dependent children when such individual has
56 assigned to the division of human services any rights to
57 support from any other person such individual may have:
58 *Provided*, That if the children's advocate is informed by
59 the secretary of the department of health and human
60 resources or his or her authorized employee that it has
61 been determined that it is against the best interests of a
62 child to secure support on the child's behalf, the
63 children's advocate shall decline to so act. The children's
64 advocate, upon the request of any individual, regardless of
65 whether such individual is an applicant or recipient of aid
66 to families with dependent children, shall undertake to
67 secure support for the individual. If circumstances
68 require, the children's advocate shall utilize the provisions
69 of chapter forty-eight-b of this code and any other
70 reciprocal arrangements which may be adopted with other
71 states for the establishment and enforcement of support
72 obligations, and if such arrangements and other means
73 have proven ineffective, the children's advocate may
74 utilize the federal courts to obtain and enforce court
75 orders for support.

76 (f) The children's advocate shall pursue the
77 enforcement of support orders through the withholding
78 from income of amounts payable as support:

79 (1) Without the necessity of an application from the
80 obligee in the case of a support obligation owed to an
81 obligee to whom services are already being provided
82 under the provisions of this chapter; and

83 (2) On the basis of an application for services in the
84 case of any other support obligation arising from a
85 support order entered by a court of competent
86 jurisdiction.

87 (g) The children's advocate may decline to commence
88 an action to obtain an order of support under the
89 provisions of section one, article five of this chapter if an

90 action for divorce, annulment or separate maintenance is
91 pending, or the filing of such action is imminent, and such
92 action will determine the issue of support for the child:
93 *Provided*, That such action shall be deemed to be
94 imminent if it is proposed by the obligee to be
95 commenced within the twenty-eight days next following a
96 decision by the children's advocate that an action should
97 properly be brought to obtain an order for support.

98 (h) If the child advocate office, through the children's
99 advocate, shall undertake paternity determination services,
100 child support collection or support collection services for
101 a spouse or former spouse upon the written request of an
102 individual who is not an applicant or recipient of
103 assistance from the division of human services, the office
104 may impose an application fee for furnishing such
105 services. Such application fee shall be in a reasonable
106 amount, not to exceed twenty-five dollars, as determined
107 by the director: *Provided*, That the director may fix such
108 amount at a higher or lower rate which is uniform for this
109 state and all other states if the secretary of the federal
110 department of health and human services determines that a
111 uniform rate is appropriate for any fiscal year to reflect
112 increases or decreases in administrative costs. Any cost in
113 excess of the application fee so imposed may be collected
114 from the obligor who owes the child or spousal support
115 obligation involved.

ARTICLE 4. PROCEEDING BEFORE A MASTER.

§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 be
3 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 the
8 provisions of article six of this chapter and any dependent
9 claims related to such action regarding child support,
10 custody and visitation;

11 (3) All petitions for writs of habeas corpus wherein the
12 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 cases
17 or by general order has referred such motions to the
18 master: *Provided*, That if the family law master
19 determines, in his or her discretion, that the pleadings raise
20 substantial issues concerning the identification of separate
21 property or the division of marital property which may
22 have a bearing on an award of support, the family law
23 master shall notify the court of this fact and the circuit
24 court shall refer the case to a temporary or special law
25 master or commissioner of the court designated by the
26 chief justice of the supreme court;

27 (5) All petitions for modification of an order
28 involving child custody, child visitation, child support or
29 spousal 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
40 withholding from income of amounts payable as support
41 or 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 chapter forty-eight-b of this code or under the provisions
45 of the revised uniform reciprocal enforcement of support
46 act or the uniform interstate family support act of any
47 other state;

48 (9) Proceedings for the enforcement of support,
49 custody or visitation orders: *Provided*, That contempt
50 actions shall be heard by a circuit judge; and

51 (10) All actions to establish custody of a minor child
52 or visitation with a minor child, including actions brought
53 pursuant to the uniform child custody jurisdiction act and
54 actions brought to establish grandparent visitation:
55 *Provided*, That any action instituted under article six,
56 chapter forty-nine shall be heard by a circuit judge.

57 (b) On its own motion or upon motion of a party, the
58 circuit court may revoke the referral of a particular matter
59 to a master if the master is recused, if the matter is
60 uncontested, or for other good cause, or if the matter will
61 be more expeditiously and inexpensively heard by the
62 circuit judge without substantially affecting the rights of
63 parties in actions which must be heard by the circuit court.

**ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT
OBLIGATIONS AND VISITATIONS.**

§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

§48A-5-4. Liens against real and personal property for overdue support.

§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

1 (a) The total of any matured, unpaid installments of
2 child support required to be paid by an order entered or
3 modified by a court of competent jurisdiction, or by the
4 order of a magistrate court of this state under the prior
5 enactments of this code, shall stand, by operation of law, as
6 a decretal judgment against the obligor owing such
7 support. The amount of unpaid support shall bear interest
8 from the date it accrued, at a rate of ten dollars upon one
9 hundred dollars per annum, and proportionately for a
10 greater or lesser sum, or for a longer or shorter time. A
11 child support order shall not be retroactively modified so
12 as to cancel or alter accrued installments of support.
13 When an obligor is in arrears in the payment of support
14 which is required to be paid by the terms of such order, an
15 obligee may file an "Affidavit of Accrued Support" with

16 the clerk of the circuit court, setting forth the particulars
17 of such arrearage, and requesting a writ of execution,
18 suggestion or suggestee execution. If the duty of support
19 is based upon a foreign support order, the obligee shall
20 first register the foreign support order in the same manner
21 and with the same effect as such orders are registered in
22 actions under the uniform interstate family support act as
23 set forth in article six, chapter forty-eight-b of this code:
24 *Provided*, That a copy of the reciprocal enforcement of
25 support law of the state in which the order was made need
26 not be filed with the clerk.

27 (b) The affidavit may be filed in the county wherein
28 the obligee or the obligor resides, or where the obligor's
29 source of income is located.

30 (c) The affidavit may be filed when a payment
31 required by such order has been delinquent, in whole or in
32 part, for a period of fourteen days.

33 (d) The affidavit shall:

34 (1) Identify the obligee and obligor by name and
35 address, and shall list the obligor's social security number
36 or numbers, if known;

37 (2) Name the court which entered the support order
38 and set forth the date of such entry;

39 (3) State the total amount of accrued support which
40 has not been paid by the obligor;

41 (4) List the date or dates when support payments
42 should have been paid but were not, and the amount of
43 each such delinquent payment; and

44 (5) If known, the name and address of the obligor's
45 source of income.

46 (e) Upon receipt of the affidavit, the clerk shall issue a
47 writ of execution, suggestion or suggestee execution, and
48 shall mail a copy of the affidavit and a notice of the filing
49 of the affidavit to the obligor, at his last known address. If
50 the children's advocate is not acting on behalf of the
51 obligee in filing the affidavit, the clerk shall forward a

52 copy of the affidavit and the notice of the filing to the
53 children's advocate.

54 (f) The notice provided for in subsection (e) of this
55 section shall inform the obligor that if he or she desires to
56 contest the affidavit on the grounds that the amount
57 claimed to be in arrears is incorrect or that a writ of
58 execution, suggestion or suggestee execution is not proper
59 because of mistakes of fact, he or she must, within
60 fourteen days of the date of the notice: (1) Inform the
61 children's advocate in writing of the reasons why the
62 affidavit is contested and request a meeting with the
63 children's advocate; or (2) obtain a date for a hearing
64 before the family law master and mail written notice of
65 such hearing to the obligee and to the children's advocate
66 on a form prescribed by the administrative office of the
67 supreme court of appeals and made available through the
68 office of the clerk of the circuit court.

69 (g) Upon being informed by an obligor that he or she
70 desires to contest the affidavit, the children's advocate
71 shall inform the court of such fact, and the court shall
72 require the obligor to give security, post a bond, or give
73 some other guarantee to secure payment of overdue
74 support.

75 (h) The clerk of the circuit court shall make available
76 form affidavits for use under the provisions of this section.
77 Such form affidavits shall be provided to the clerk by the
78 child advocate office. The notice of the filing of an
79 affidavit shall be in a form prescribed by the child
80 advocate office.

81 (i) Writs of execution, suggestions or suggestee
82 executions issued pursuant to the provisions of this section
83 shall have priority over any other legal process under the
84 laws of this state against the same income, except for
85 withholding from income of amounts payable as support
86 in accordance with the provisions of section three of this
87 article, and shall be effective despite any exemption that
88 might otherwise be applicable to the same income.

89 (j) Notwithstanding any other provision of this code to
90 the contrary, the amount to be withheld from the

91 disposable earnings of an obligor pursuant to a suggestee
92 execution in accordance with the provisions of this section
93 shall be the same amount which could properly be
94 withheld in the case of a withholding order under the
95 provisions of subsection (e), section three of this article.

**§48A-5-4. Liens against real and personal property for
overdue support.**

1 An order for support entered by a court of competent
2 jurisdiction will give rise to a lien imposed against real and
3 personal property for amounts of overdue support owed
4 by an obligor who resides or owns property within this
5 state when the provisions of section seventeen, article two,
6 chapter forty-eight of this code have been complied with:
7 *Provided*, That a foreign order shall first be registered as a
8 foreign support order with the clerk in the same manner as
9 such orders are registered in actions under the uniform
10 interstate family support act as set forth in article six,
11 chapter forty-eight-b of this code: *Provided, however*,
12 That a copy of the reciprocal enforcement of support law
13 of the state in which the order was made need not be filed
14 with the clerk.

**CHAPTER 48B. UNIFORM INTERSTATE
FAMILY SUPPORT ACT.**

Article

1. **General Provisions.**
2. **Jurisdiction.**
3. **Civil Provisions of General Application.**
4. **Establishment of Support Order.**
5. **Direct Enforcement of Order of Another State Without Registration.**
6. **Enforcement and Modification of Support Order After Registration.**
7. **Determination of Parentage.**
8. **Interstate Rendition.**
9. **Miscellaneous Provisions.**

ARTICLE 1. GENERAL PROVISIONS.

- §48B-1-101. Definitions.
§48B-1-102. Tribunals of state.
§48B-1-103. Remedies cumulative.

§48B-1-101. Definitions.

1 As used in this chapter:

2 (1) "Child" means an individual, whether over or
3 under the age of majority, who is or is alleged to be owed
4 a duty of support by the individual's parent or who is or is
5 alleged to be the beneficiary of a support order directed to
6 the parent.

7 (2) "Child support order" means a support order for
8 a child, including a child who has attained the age of
9 majority under the law of the issuing state.

10 (3) "Duty of support" means an obligation imposed
11 or imposable by law to provide support for a child, spouse,
12 or former spouse, including an unsatisfied obligation to
13 provide support.

14 (4) "Home state" means the state in which a child
15 lived with a parent or a person acting as parent for at least
16 six consecutive months immediately preceding the time of
17 filing of a petition or comparable pleading for support
18 and, if a child is less than six months old, the state in which
19 the child lived from birth with any of them. A period of
20 temporary absence of any of them is counted as part of
21 the six-month or other period.

22 (5) "Income" includes earnings or other periodic
23 entitlements to money from any source and any other
24 property subject to withholding for support under the law
25 of this state.

26 (6) "Income-withholding order" means an order or
27 other legal process directed to an obligor's employer or
28 other debtor, as defined by section sixteen, article one-a,
29 chapter forty-eight-a of this code to withhold support
30 from the income of the obligor.

31 (7) "Initiating state" means a state from which a
32 proceeding is forwarded or in which a proceeding is filed
33 for forwarding to a responding state under this chapter or
34 a law or procedure substantially similar to this chapter, the
35 uniform reciprocal enforcement of support act, or the
36 revised uniform reciprocal enforcement of support act.

37 (8) "Initiating tribunal" means the authorized
38 tribunal in an initiating state.

39 (9) "Issuing state" means the state in which a tribunal
40 issues a support order or renders a judgment determining
41 parentage.

42 (10) "Issuing tribunal" means the tribunal that issues
43 a support order or renders a judgment determining
44 parentage.

45 (11) "Law" includes decisional and statutory law and
46 rules having the force of law.

47 (12) "Obligee" means: (i) An individual to whom a
48 duty of support is or is alleged to be owed or in whose
49 favor a support order has been issued or a judgment
50 determining parentage has been rendered; (ii) a state or
51 political subdivision to which the rights under a duty of
52 support or support order have been assigned or which has
53 independent claims based on financial assistance provided
54 to an individual obligee; or (iii) an individual seeking a
55 judgment determining parentage of the individual's child.

56 (13) "Obligor" means an individual, or the estate of a
57 decedent: (i) Who owes or is alleged to owe a duty of
58 support; (ii) who is alleged but has not been adjudicated to
59 be a parent of a child; or (iii) who is liable under a support
60 order.

61 (14) "Register" means to record a support order or
62 judgment determining parentage in the registry of foreign
63 support orders.

64 (15) "Registering tribunal" means a tribunal in which
65 a support order is registered.

66 (16) "Responding state" means a state in which a
67 proceeding is filed or to which a proceeding is forwarded
68 for filing from an initiating state under this chapter or a
69 law or procedure substantially similar to this chapter, the
70 uniform reciprocal enforcement of support act, or the
71 revised uniform reciprocal enforcement of support act.

72 (17) "Responding tribunal" means the authorized
73 tribunal in a responding state.

74 (18) "Spousal-support order" means a support order
75 for a spouse or former spouse of the obligor.

76 (19) "State" means a state of the United States, the
77 District of Columbia, Puerto Rico, the United States Virgin
78 Islands or any territory or insular possession subject to the
79 jurisdiction of the United States. The term includes: (i)
80 An Indian tribe; (ii) a foreign jurisdiction that has enacted
81 a law or established procedures for issuance and
82 enforcement of support orders which are substantially
83 similar to the procedures under this chapter, the uniform
84 reciprocal enforcement of support act, or the revised
85 uniform reciprocal of enforcement of support act.

86 (20) "Support enforcement agency" means a public
87 official or agency authorized to seek: (i) Enforcement of
88 support orders or laws relating to the duty of support; (ii)
89 establishment or modification of child support; (iii)
90 determination of parentage; or (iv) to locate obligors or
91 their assets.

92 (21) "Support order" means a judgment, decree or
93 order, whether temporary, final or subject to modification,
94 for the benefit of a child, a spouse or a former spouse,
95 which provides for monetary support, health care,
96 arrearages, or reimbursement and may include related
97 costs and fees, interest, income withholding, attorney's
98 fees and other relief.

99 (22) "Tribunal" means a court, administrative
100 agency, family law master or quasi-judicial entity
101 authorized to establish, enforce or modify support orders
102 or to determine parentage.

§48B-1-102. Tribunals of state.

1 The circuit court and the family law masters are the
2 tribunals of this state.

§48B-1-103. Remedies cumulative.

1 Remedies provided by this chapter are cumulative and
2 do not affect the availability of remedies under other law.

ARTICLE 2. JURISDICTION.

- §48B-2-201. Bases for jurisdiction over nonresident.
- §48B-2-202. Procedure when exercising jurisdiction over nonresident.
- §48B-2-203. Initiating and responding tribunal of state.
- §48B-2-204. Simultaneous proceedings in another state.
- §48B-2-205. Continuing, exclusive jurisdiction.
- §48B-2-206. Enforcement and modification of support order by tribunal having continuing jurisdiction.
- §48B-2-207. Recognition of controlling child support order.
- §48B-2-208. Multiple child support orders for two or more obligees.
- §48B-2-209. Credit for payments.

PART 1. EXTENDED PERSONAL JURISDICTION.

§48B-2-201. Bases for jurisdiction over nonresident.

1 In a proceeding to establish, enforce, or modify a
2 support order or to determine parentage, a tribunal of this
3 state may exercise personal jurisdiction over a nonresident
4 individual or the individual's guardian or conservator if:
5 (1) The individual is personally served with notice within
6 this state; (2) the individual submits to the jurisdiction of
7 this state by consent, by entering a general appearance, or
8 by filing a responsive document having the effect of
9 waiving any contest to personal jurisdiction; (3) the
10 individual resided with the child in this state; (4) the
11 individual resided in this state and provided prenatal
12 expenses or support for the child; (5) the child resides in
13 this state as a result of the acts or directives of the
14 individual; (6) the individual engaged in sexual
15 intercourse in this state and the child may have been
16 conceived by that act of intercourse; (7) the individual has
17 committed a tortious act by failing to support a child
18 resident in this state; or (8) there is any other basis
19 consistent with the constitutions of this state and the
20 United States for the exercise of personal jurisdiction.

§48B-2-202. Procedure when exercising jurisdiction over nonresident.

1 A tribunal of this state exercising personal jurisdiction
2 over a nonresident under section two hundred one may
3 apply section three hundred sixteen (Special Rules of
4 Evidence and Procedure) to receive evidence from another

5 state, and section three hundred eighteen (Assistance with
6 Discovery) to obtain discovery through a tribunal of
7 another state. In all other respects, articles three through
8 seven do not apply and the tribunal shall apply the
9 procedural and substantive law of this state, including the
10 rules on choice of law other than those established by this
11 chapter.

PART 2. PROCEEDINGS INVOLVING TWO OR MORE STATES.

§48B-2-203. Initiating and responding tribunal of state.

1 Under this chapter, a tribunal of this state may serve as
2 an initiating tribunal to forward proceedings to another
3 state and as a responding tribunal for proceedings initiated
4 in another state.

§48B-2-204. Simultaneous proceedings in another state.

1 (a) A tribunal of this state may exercise jurisdiction to
2 establish a support order if the petition or comparable
3 pleading is filed after a petition or comparable pleading is
4 filed in another state only if: (1) The petition or
5 comparable pleading in this state is filed before the
6 expiration of the time allowed in the other state for filing a
7 responsive pleading challenging the exercise of
8 jurisdiction by the other state; (2) the contesting party
9 timely challenges the exercise of jurisdiction in the other
10 state; and (3) if relevant, this state is the home state of the
11 child.

12 (b) A tribunal of this state may not exercise
13 jurisdiction to establish a support order if the petition or
14 comparable pleading is filed before a petition or
15 comparable pleading is filed in another state if: (1) The
16 petition or comparable pleading in the other state is filed
17 before the expiration of the time allowed in this state for
18 filing a responsive pleading challenging the exercise of
19 jurisdiction by this state; (2) the contesting party timely
20 challenges the exercise of jurisdiction in this state; and (3)
21 if relevant, the other state is the home state of the child.

§48B-2-205. Continuing, exclusive jurisdiction.

1 (a) A tribunal of this state issuing a support order
2 consistent with the law of this state has continuing,
3 exclusive jurisdiction over a child support order: (1) As
4 long as this state remains the residence of the obligor, the
5 individual obligee, or the child for whose benefit the
6 support order is issued; or (2) until all of the parties who
7 are individuals have filed written consents with the tribunal
8 of this state for a tribunal of another state to modify the
9 order and assume continuing, exclusive jurisdiction.

10 (b) A tribunal of this state issuing a child support
11 order consistent with the law of this state may not exercise
12 its continuing jurisdiction to modify the order if the order
13 has been modified by a tribunal of another state pursuant
14 to this chapter or a law substantially similar to this chapter.

15 (c) If a child support order of this state is modified by
16 a tribunal of another state pursuant to this chapter or a law
17 substantially similar to this chapter, a tribunal of this state
18 loses its continuing, exclusive jurisdiction with regard to
19 prospective enforcement of the order issued in this state,
20 and may only: (1) Enforce the order that was modified as
21 to amounts accruing before the modification; (2) enforce
22 nonmodifiable aspects of that order; and (3) provide other
23 appropriate relief for violations of that order which
24 occurred before the effective date of the modification.

25 (d) A tribunal of this state shall recognize the
26 continuing, exclusive jurisdiction of a tribunal of another
27 state which has issued a child support order pursuant to a
28 law substantially similar to this chapter.

29 (e) A temporary support order issued ex parte or
30 pending resolution of a jurisdictional conflict does not
31 create continuing, exclusive jurisdiction in the issuing
32 tribunal.

33 (f) A tribunal of this state issuing a support order
34 consistent with the law of this state has continuing,
35 exclusive jurisdiction over a spousal support order
36 throughout the existence of the support obligation. A
37 tribunal of this state may not modify a spousal support

38 order issued by a tribunal of another state having
39 continuing, exclusive jurisdiction over that order under the
40 law of that state.

**§48B-2-206. Enforcement and modification of support order
by tribunal having continuing jurisdiction.**

1 (a) A tribunal of this state may serve as an initiating
2 tribunal to request a tribunal of another state to enforce or
3 modify a support order issued in that state.

4 (b) A tribunal of this state having continuing,
5 exclusive jurisdiction over a support order may act as a
6 responding tribunal to enforce or modify the order. If a
7 party subject to the continuing, exclusive jurisdiction of
8 the tribunal no longer resides in the issuing state, in
9 subsequent proceedings the tribunal may apply section
10 three hundred sixteen (Special Rules of Evidence and
11 Procedure) to receive evidence from another state and
12 section three hundred eighteen (Assistance with
13 Discovery) to obtain discovery through a tribunal of
14 another state.

15 (c) A tribunal of this state which lacks continuing,
16 exclusive jurisdiction over a spousal support order may
17 not serve as a responding tribunal to modify a spousal
18 support order of another state.

PART 3. RECONCILIATION OF MULTIPLE ORDERS.

§48B-2-207. Recognition of controlling child support order.

1 (a) If a proceeding is brought under this chapter and
2 only one tribunal has issued a child support order, the
3 order of that tribunal is controlling and must be
4 recognized.

5 (b) If a proceeding is brought under this chapter, and
6 two or more child support orders have been issued by
7 tribunals of this state or another state with regard to the
8 same obligor and child, a tribunal of this state shall apply
9 the following rules in determining which order to
10 recognize for purposes of continuing, exclusive
11 jurisdiction:

12 (1) If only one of the tribunals would have continuing,
13 exclusive jurisdiction under this chapter, the order of that
14 tribunal is controlling and must be recognized.

15 (2) If more than one of the tribunals would have
16 continuing, exclusive jurisdiction under this chapter, an
17 order issued by a tribunal in the current home state of the
18 child must be recognized, but if an order has not been
19 issued in the current home state of the child, the order
20 most recently issued is controlling and must be
21 recognized.

22 (3) If none of the tribunals would have continuing,
23 exclusive jurisdiction under this chapter, the tribunal of
24 this state having jurisdiction over the parties must issue a
25 child support order, which is controlling and must be
26 recognized.

27 (c) If two or more child support orders have been
28 issued for the same obligor and child and if the obligor or
29 the individual obligee resides in this state, a party may
30 request a tribunal of this state to determine which order
31 controls and must be recognized under subsection (b).
32 The request must be accompanied by a certified copy of
33 every support order in effect. Every party whose rights
34 may be affected by a determination of the controlling
35 order must be given notice of the request for that
36 determination.

37 (d) The tribunal that issued the order that must be
38 recognized as controlling under subsection (a), (b) or (c)
39 is the tribunal that has continuing, exclusive jurisdiction in
40 accordance with section two hundred five.

41 (e) A tribunal of this state which determines by order
42 the identity of the controlling child support order under
43 subsections (b) (1) or (b) (2) or which issued a new
44 controlling child support order under subsection (b) (3)
45 shall include in that order the basis upon which the
46 tribunal made its determination.

47 (f) Within thirty days after issuance of the order
48 determining the identity of the controlling order, the party
49 obtaining that order shall file a certified copy of it with

50 each tribunal that had issued or registered an earlier order
51 of child support. Failure of the party obtaining the order
52 to file a certified copy as required subjects that party to
53 appropriate sanctions by a tribunal in which the issue of
54 failure to file arises, but that failure has no effect on the
55 validity or enforceability of the controlling order.

§48B-2-208. Multiple child support orders for two or more obligees.

1 In responding to multiple registrations or petitions for
2 enforcement of two or more child support orders in effect
3 at the same time with regard to the same obligor and
4 different individual obligees, at least one of which was
5 issued by a tribunal of another state, a tribunal of this state
6 shall enforce those orders in the same manner as if the
7 multiple orders had been issued by a tribunal of this state.

§48B-2-209. Credit for payments.

1 Amounts collected and credited for a particular period
2 pursuant to a support order issued by a tribunal of another
3 state must be credited against the amounts accruing or
4 accrued for the same period under a support order issued
5 by the tribunal of this state.

ARTICLE 3. CIVIL PROVISIONS OF GENERAL APPLICATION.

- §48B-3-301. Proceedings under chapter.
- §48B-3-302. Action by minor parent.
- §48B-3-303. Application of law of state.
- §48B-3-304. Duties of initiating tribunal.
- §48B-3-305. Duties and powers of responding tribunal.
- §48B-3-306. Inappropriate tribunal.
- §48B-3-307. Duties of support enforcement agency.
- §48B-3-308. Duty of West Virginia support enforcement commission.
- §48B-3-309. Private counsel.
- §48B-3-310. Duties of state information agency.
- §48B-3-311. Pleadings and accompanying documents.
- §48B-3-312. Nondisclosure of information in exceptional circumstances.
- §48B-3-313. Costs and fees.
- §48B-3-314. Limited immunity of petitioner.
- §48B-3-315. Nonparentage as defense.
- §48B-3-316. Special rules of evidence and procedure.

§48B-3-317. Communications between tribunals.

§48B-3-318. Assistance with discovery.

§48B-3-319. Receipt and disbursement of payments.

§48B-3-301. Proceedings under chapter.

1 (a) Except as otherwise provided in this chapter, this
2 article applies to all proceedings under this chapter.

3 (b) This chapter provides for the following
4 proceedings: (1) Establishment of an order for spousal
5 support or child support pursuant to article four; (2)
6 enforcement of a support order and income-withholding
7 order of another state without registration pursuant to
8 article five; (3) registration of an order for spousal support
9 or child support of another state for enforcement pursuant
10 to article six; (4) modification of an order for child
11 support or spousal support issued by a tribunal of this
12 state pursuant to article two, Part 2; (5) registration of an
13 order for child support of another state for modification
14 pursuant to article six; (6) determination of parentage
15 pursuant to article seven; and (7) assertion of jurisdiction
16 over nonresidents pursuant to article two, Part 1.

17 (c) An individual petitioner or a support enforcement
18 agency may commence a proceeding authorized under
19 this chapter by filing a petition in an initiating tribunal for
20 forwarding to a responding tribunal or by filing a petition
21 or a comparable pleading directly in a tribunal of another
22 state which has or can obtain personal jurisdiction over the
23 respondent.

§48B-3-302. Action by minor parent.

1 A minor parent, or a guardian or other legal
2 representative of a minor parent, may maintain a
3 proceeding on behalf of or for the benefit of the minor's
4 child.

§48B-3-303. Application of law of state.

1 Except as otherwise provided by this chapter, a
2 responding tribunal of this state: (1) Shall apply the
3 procedural and substantive law, including the rules on

4 choice of law, generally applicable to similar proceedings
5 originating in this state and may exercise all powers and
6 provide all remedies available in those proceedings; and
7 (2) shall determine the duty of support and the amount
8 payable in accordance with the law and support guidelines
9 of this state.

§48B-3-304. Duties of initiating tribunal.

1 (a) Upon the filing of a petition authorized by this
2 chapter, an initiating tribunal of this state shall forward
3 three copies of the petition and its accompanying
4 documents: (1) To the responding tribunal or appropriate
5 support enforcement agency in the responding state; or
6 (2) if the identity of the responding tribunal is unknown,
7 to the state information agency of the responding state
8 with a request that they be forwarded to the appropriate
9 tribunal and that receipt be acknowledged.

10 (b) If a responding state has not enacted this chapter
11 or a law or procedure substantially similar to this chapter,
12 a tribunal of this state may issue a certificate or other
13 document and make findings required by the law of the
14 responding state. If the responding state is a foreign
15 jurisdiction, the tribunal may specify the amount of
16 support sought and provide other documents necessary to
17 satisfy the requirements of the responding state.

§48B-3-305. Duties and powers of responding tribunal.

1 (a) When a responding tribunal of this state receives a
2 petition or comparable pleading from an initiating
3 tribunal or directly pursuant to subsection (c), section
4 three hundred one (proceedings under this chapter), the
5 clerk of the court shall cause the petition or pleading to be
6 filed and notify the petitioner where and when it was filed.

7 (b) A responding tribunal of this state, to the extent
8 otherwise authorized by law, may do one or more of the
9 following: (1) Issue or enforce a support order, modify a
10 child support order or render a judgment to determine
11 parentage; (2) order an obligor to comply with a support
12 order, specifying the amount and the manner of
13 compliance; (3) order income withholding; (4) determine

14 the amount of any arrearages and specify a method of
15 payment; (5) enforce orders by civil or criminal contempt,
16 or both; (6) set aside property for satisfaction of the
17 support order; (7) place liens and order execution on the
18 obligor's property; (8) order an obligor to keep the
19 tribunal informed of the obligor's current residential
20 address, telephone number, employer, address of
21 employment and telephone number at the place of
22 employment; (9) issue a *caapias* for an obligor who has
23 failed after proper notice to appear at a hearing ordered
24 by the tribunal and enter the *caapias* in any local and state
25 computer systems for criminal warrants; (10) order the
26 obligor to seek appropriate employment by specified
27 methods; (11) award reasonable attorney's fees and other
28 fees and costs; and (12) grant any other available remedy.

29 (c) A responding tribunal of this state shall include in
30 a support order issued under this chapter, or in the
31 documents accompanying the order, the calculations on
32 which the support order is based.

33 (d) A responding tribunal of this state may not
34 condition the payment of a support order issued under
35 this chapter upon compliance by a party with provisions
36 for visitation.

37 (e) If a responding tribunal of this state issues an order
38 under this chapter, the tribunal shall send a copy of the
39 order to the petitioner and the respondent and to the
40 initiating tribunal, if any.

§48B-3-306. Inappropriate tribunal.

1 If a petition or comparable pleading is received by an
2 inappropriate tribunal of this state, the clerk of the court
3 shall forward the pleading and accompanying documents
4 to an appropriate tribunal in this state or another state and
5 notify the petitioner where and when the pleading was
6 sent.

§48B-3-307. Duties of support enforcement agency.

1 (a) A support enforcement agency of this state, upon
2 request, shall provide services to a petitioner in a
3 proceeding under this chapter.

4 (b) A support enforcement agency that is providing
5 services to the petitioner as appropriate shall: (1) Take all
6 steps necessary to enable an appropriate tribunal in this
7 state or another state to obtain jurisdiction over the
8 respondent; (2) request an appropriate tribunal to set a
9 date, time, and place for a hearing; (3) make a reasonable
10 effort to obtain all relevant information, including
11 information as to income and property of the parties; (4)
12 within two days, exclusive of Saturdays, Sundays and legal
13 holidays, after receipt of a written notice from an
14 initiating, responding, or registering tribunal, send a copy
15 of the notice to the petitioner; (5) within two days,
16 exclusive of Saturdays, Sundays and legal holidays, after
17 receipt of a written communication from the respondent
18 or the respondent's attorney, send a copy of the
19 communication to the petitioner; and (6) notify the
20 petitioner if jurisdiction over the respondent cannot be
21 obtained.

22 (c) This chapter does not create or negate a
23 relationship of attorney and client or other fiduciary
24 relationship between a support enforcement agency or the
25 attorney for the agency and the individual being assisted
26 by the agency.

**§48B-3-308. Duty of West Virginia support enforcement
commission.**

1 If the West Virginia support enforcement commission
2 determines that the support enforcement agency is
3 neglecting or refusing to provide services to an individual,
4 the commission may order the agency to perform its
5 duties under this chapter or may provide those services
6 directly to the individual.

§48B-3-309. Private counsel.

1 An individual may employ private counsel to
2 represent the individual in proceedings authorized by this
3 chapter.

§48B-3-310. Duties of state information agency.

1 (a) The child support enforcement division is the state
2 information agency under this chapter.

3 (b) The state information agency shall: (1) Compile
4 and maintain a current list, including addresses, of the
5 tribunals in this state which have jurisdiction under this
6 chapter and any support enforcement agencies in this state
7 and transmit a copy to the state information agency of
8 every other state; (2) maintain a register of tribunals and
9 support enforcement agencies received from other states;
10 (3) forward to the appropriate tribunal in the place in this
11 state in which the individual obligee or the obligor resides,
12 or in which the obligor's property is believed to be
13 located, all documents concerning a proceeding under this
14 chapter received from an initiating tribunal or the state
15 information agency of the initiating state; and (4) obtain
16 information concerning the location of the obligor and
17 the obligor's property within this state not exempt from
18 execution, by such means as postal verification and federal
19 or state locator services, examination of telephone
20 directories, requests for the obligor's address from
21 employers, and examination of governmental records,
22 including, to the extent not prohibited by other law, those
23 relating to real property, vital statistics, law enforcement,
24 taxation, motor vehicles, driver's licenses and social
25 security.

§48B-3-311. Pleadings and accompanying documents.

1 (a) A petitioner seeking to establish or modify a
2 support order or to determine parentage in a proceeding
3 under this chapter must verify the petition. Unless
4 otherwise ordered under section three hundred twelve
5 (Nondisclosure of Information in Exceptional
6 Circumstances), the petition or accompanying documents
7 must provide, so far as known, the name, residential
8 address and social security numbers of the obligor and the
9 obligee, and the name, sex, residential address, social
10 security number and date of birth of each child for whom
11 support is sought. The petition must be accompanied by a
12 certified copy of any support order in effect. The petition

13 may include any other information that may assist in
14 locating or identifying the respondent.

15 (b) The petition must specify the relief sought. The
16 petition and accompanying documents must conform
17 substantially with the requirements imposed by the forms
18 mandated by federal law for use in cases filed by a
19 support enforcement agency.

§48B-3-312. Nondisclosure of information in exceptional circumstances.

1 Upon a finding, which may be made ex parte, that the
2 health, safety or liberty of a party or child would be
3 unreasonably put at risk by the disclosure of identifying
4 information, or if an existing order so provides, a tribunal
5 shall order that the address of the child or party or other
6 identifying information not be disclosed in a pleading or
7 other document filed in a proceeding under this chapter.

§48B-3-313. Costs and fees.

1 (a) The petitioner may not be required to pay a filing
2 fee or other costs.

3 (b) If an obligee prevails, a responding tribunal may
4 assess against an obligor filing fees, reasonable attorney's
5 fees, other costs and necessary travel and other reasonable
6 expenses incurred by the obligee and the obligee's
7 witnesses. The tribunal may not assess fees, costs or
8 expenses against the obligee or the support enforcement
9 agency of either the initiating or the responding state,
10 except as provided by other law. Attorney's fees may be
11 taxed as costs, and may be ordered paid directly to the
12 attorney, who may enforce the order in the attorney's own
13 name. Payment of support owed to the obligee has
14 priority over fees, costs and expenses.

15 (c) The tribunal shall order the payment of costs and
16 reasonable attorney's fees if it determines that a hearing
17 was requested primarily for delay. In a proceeding under
18 article six (Enforcement and Modification of Support
19 Order After Registration), a hearing is presumed to have
20 been requested primarily for delay if a registered support
21 order is confirmed or enforced without change.

§48B-3-314. Limited immunity of petitioner.

1 (a) Participation by a petitioner in a proceeding before
2 a responding tribunal, whether in person, by private
3 attorney, or through services provided by the support
4 enforcement agency, does not confer personal jurisdiction
5 over the petitioner in another proceeding.

6 (b) A petitioner is not amenable to service of civil
7 process while physically present in this state to participate
8 in a proceeding under this chapter.

9 (c) The immunity granted by this section does not
10 extend to civil litigation based on acts unrelated to a
11 proceeding under this chapter committed by a party while
12 present in this state to participate in the proceeding.

§48B-3-315. Nonparentage as defense.

1 A party whose parentage of a child has been
2 previously determined by or pursuant to law may not
3 plead nonparentage as a defense to a proceeding under
4 this chapter.

§48B-3-316. Special rules of evidence and procedure.

1 (a) The physical presence of the petitioner in a
2 responding tribunal of this state is not required for the
3 establishment, enforcement or modification of a support
4 order or the rendition of a judgment determining
5 parentage.

6 (b) A verified petition, affidavit, document
7 substantially complying with federally mandated forms
8 and a document incorporated by reference in any of them,
9 not excluded under the hearsay rule if given in person, is
10 admissible in evidence if given under oath by a party or
11 witness residing in another state.

12 (c) A copy of the record of child support payments
13 certified as a true copy of the original by the custodian of
14 the record may be forwarded to a responding tribunal.
15 The copy is evidence of facts asserted in it, and is
16 admissible to show whether payments were made.

17 (d) Copies of bills for testing for parentage, and for
18 prenatal and postnatal health care of the mother and child,
19 furnished to the adverse party at least ten days before trial,
20 are admissible in evidence to prove the amount of the
21 charges billed and that the charges were reasonable,
22 necessary and customary.

23 (e) Documentary evidence transmitted from another
24 state to a tribunal of this state by telephone, telecopier or
25 other means that do not provide an original writing may
26 not be excluded from evidence on an objection based on
27 the means of transmission.

28 (f) In a proceeding under this chapter, a tribunal of
29 this state may permit a party or witness residing in another
30 state to be deposed or to testify by telephone, audiovisual
31 means or other electronic means at a designated tribunal
32 or other location in that state. A tribunal of this state shall
33 cooperate with tribunals of other states in designating an
34 appropriate location for the deposition or testimony. The
35 supreme court of appeals shall promulgate new rules or
36 amend the rules of practice and procedure for family law
37 to establish procedures pertaining to the exercise of cross
38 examination in those instances involving the receipt of
39 testimony by means other than direct or personal
40 testimony.

41 (g) If a party called to testify at a civil hearing refuses
42 to answer on the ground that the testimony may be self-
43 incriminating, the trier of fact may draw an adverse
44 inference from the refusal.

45 (h) A privilege against disclosure of communications
46 between spouses does not apply in a proceeding under this
47 chapter.

48 (i) The defense of immunity based on the relationship
49 of husband and wife or parent and child does not apply in
50 a proceeding under this chapter.

§48B-3-317. Communications between tribunals.

1 A tribunal of this state may communicate with a
2 tribunal of another state in writing, or by telephone or
3 other means, to obtain information concerning the laws of

4 that state, the legal effect of a judgment, decree, or order
5 of that tribunal and the status of a proceeding in the other
6 state. A tribunal of this state may furnish similar
7 information by similar means to a tribunal of another
8 state.

§48B-3-318. Assistance with discovery.

1 A tribunal of this state may: (1) Request a tribunal of
2 another state to assist in obtaining discovery; and (2) upon
3 request, compel a person over whom it has jurisdiction to
4 respond to a discovery order issued by a tribunal of
5 another state.

§48B-3-319. Receipt and disbursement of payments.

1 A support enforcement agency or tribunal of this state
2 shall disburse promptly any amounts received pursuant to
3 a support order, as directed by the order. The agency or
4 tribunal shall furnish to a requesting party or tribunal of
5 another state a certified statement by the custodian of the
6 record of the amounts and dates of all payments received.

ARTICLE 4. ESTABLISHMENT OF SUPPORT ORDER.

§48B-4-401. Petition to establish support order.

1 (a) If a support order entitled to recognition under this
2 chapter has not been issued, a responding tribunal of this
3 state may issue a support order if: (1) The individual
4 seeking the order resides in another state; or (2) the
5 support enforcement agency seeking the order is located
6 in another state.

7 (b) The tribunal may issue a temporary child support
8 order if: (1) The respondent has signed a verified
9 statement acknowledging parentage; (2) the respondent
10 has been determined by or pursuant to law to be the
11 parent; or (3) there is other clear and convincing evidence
12 that the respondent is the child's parent.

13 (c) Upon finding, after notice and opportunity to be
14 heard, that an obligor owes a duty of support, the tribunal
15 shall issue a support order directed to the obligor and may
16 issue other orders pursuant to section three hundred five
17 (Duties and Powers of Responding Tribunal).

ARTICLE 5. DIRECT ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION.

§48B-5-501. Employer's receipt of income-withholding order of another state.

§48B-5-502. Employer's compliance with income-withholding order of another state.

§48B-5-503. Compliance with multiple income withholding orders.

§48B-5-504. Immunity from civil liability.

§48B-5-505. Penalties for noncompliance.

§48B-5-506. Contest by obligor.

§48B-5-507. Administrative enforcement of orders.

§48B-5-501. Employer's receipt of income-withholding order of another state.

1 An income-withholding order issued in another state
2 may be sent to the person or entity defined as the
3 obligor's employer under section sixteen, article one-a,
4 chapter forty-eight-a of this code without first filing a
5 petition or comparable pleading or registering the order
6 with a tribunal of this state.

§48B-5-502. Employer's compliance with income-withholding order of another state.

1 (a) Upon receipt of the order, the obligor's employer
2 shall immediately provide a copy of the order to the
3 obligor.

4 (b) The employer shall treat an income-withholding
5 order issued in another state which appears regular on its
6 face as if it had been issued by a tribunal of this state.

7 (c) Except as provided by subsection (d) and section
8 five hundred three, the employer shall withhold and
9 distribute the funds as directed in the withholding order
10 by complying with the terms of the order, as applicable,
11 that specify:

12 (1) The duration and the amount of periodic
13 payments of current child support, stated as a sum certain;

14 (2) The person or agency designated to receive
15 payments and the address to which the payments are to be
16 forwarded;

17 (3) Medical support, whether in the form of periodic
18 cash payment, stated as a sum certain, or ordering the
19 obligor to provide health insurance coverage for the child
20 under a policy available through the obligor's
21 employment;

22 (4) The amount of periodic payments of fees and
23 costs for a support enforcement agency, the issuing
24 tribunal, and the obligee's attorney, stated as sums certain;
25 and

26 (5) The amount of periodic payments of arrears and
27 interest on arrears, stated as sums certain.

28 (d) The employer shall comply with the law of the
29 state of the obligor's principal place of employment for
30 withholding from income with respect to:

31 (1) The employer's fee for processing an income
32 withholding order;

33 (2) The maximum amount permitted to be withheld
34 from the obligor's income;

35 (3) The time periods within which the employer must
36 implement the withholding order and forward the child
37 support payment.

§48B-5-503. Compliance with multiple income withholding orders.

1 If the obligor's employer receives multiple orders to
2 withhold support from the earnings of the same obligor,
3 the employer shall be deemed to have satisfied the terms
4 of the multiple orders if the law of the state of the
5 obligor's principal place of employment to establish the
6 priorities for withholding and allocating income withheld
7 for multiple child support obligees is complied with.

§48B-5-504. Immunity from civil liability.

1 An employer who complies with an income-
2 withholding order issued in another state in accordance
3 with this article is not subject to civil liability to any
4 individual or agency with regard to the employer's
5 withholding child support from the obligor's income.

§48B-5-505. Penalties for noncompliance.

1 An employer who willfully fails to comply with an
2 income-withholding order issued by another state and
3 received for enforcement is subject to the same penalties
4 that may be imposed for noncompliance with an order
5 issued by a tribunal of this state.

§48B-5-506. Contest by obligor.

1 (a) An obligor may contest the validity or
2 enforcement of an income-withholding order issued in
3 another state and received directly by an employer in this
4 state in the same manner as if the order had been issued
5 by a tribunal of this state. Section six hundred four
6 (Choice of Law) applies to the contest.

7 (b) The obligor shall give notice of the contest to:

8 (1) A support enforcement agency providing services
9 to the obligee;

10 (2) Each employer which has directly received an
11 income-withholding order; and

12 (3) The person or agency designated to receive
13 payments in the income-withholding order; or if no
14 person or agency is designated, to the obligee.

§48B-5-507. Administrative enforcement of orders.

1 (a) A party seeking to enforce a support order or an
2 income-withholding order, or both, issued by a tribunal of
3 another state may send the documents required for
4 registering the order to a support enforcement agency of
5 this state.

6 (b) Upon receipt of the documents, the support
7 enforcement agency, without initially seeking to register
8 the order, shall consider and, if appropriate, use any
9 administrative procedure authorized by the law of this
10 state to enforce a support order or an income-withholding
11 order, or both. If the obligor does not contest
12 administrative enforcement, the order need not be
13 registered. If the obligor contests the validity or
14 administrative enforcement of the order, the support

15 enforcement agency shall register the order pursuant to
16 this chapter.

**ARTICLE 6. ENFORCEMENT AND MODIFICATION OF
SUPPORT ORDER AFTER REGISTRATION.**

- §48B-6-601. Registration of order for enforcement.
- §48B-6-602. Procedure to register order for enforcement.
- §48B-6-603. Effect of registration for enforcement.
- §48B-6-604. Choice of law.
- §48B-6-605. Notice of registration of order.
- §48B-6-606. Procedure to contest validity or enforcement of registered order.
- §48B-6-607. Contest of registration or enforcement.
- §48B-6-608. Confirmed order.
- §48B-6-609. Procedure to register child support order of another state for modification.
- §48B-6-610. Effect of registration for modification.
- §48B-6-611. Modification of child support order of another state.
- §48B-6-612. Recognition of order modified in another state.
- §48B-6-613. Jurisdiction to modify support order of another state when individual parties reside in this state.
- §48B-6-614. Notice to issuing tribunal of modification.

PART 1. REGISTRATION AND ENFORCEMENT OF SUPPORT ORDER.

§48B-6-601. Registration of order for enforcement.

1 A support order or an income-withholding order
2 issued by a tribunal of another state may be registered in
3 this state for enforcement.

§48B-6-602. Procedure to register order for enforcement.

1 (a) A support order or income-withholding order of
2 another state may be registered in this state by sending the
3 following documents and information to the state
4 information agency who shall forward the order to the
5 appropriate tribunal: (1) A letter of transmittal to the
6 tribunal requesting registration and enforcement; (2) two
7 copies, including one certified copy, of all orders to be
8 registered, including any modification of an order; (3) a
9 sworn statement by the party seeking registration or a
10 certified statement by the custodian of the records
11 showing the amount of any arrearage; (4) the name of the
12 obligor and, if known: (i) The obligor's address and social

13 security number; (ii) the name and address of the
14 obligor's employer and any other source of income of the
15 obligor; and (iii) a description and the location of
16 property of the obligor in this state not exempt from
17 execution; and (5) the name and address of the obligee
18 and, if applicable, the agency or person to whom support
19 payments are to be remitted.

20 (b) On receipt of a request for registration, the clerk of
21 the court shall cause the order to be filed as a foreign
22 judgment, together with one copy of the documents and
23 information, regardless of their form.

24 (c) A petition or comparable pleading seeking a
25 remedy that must be affirmatively sought under other law
26 of this state may be filed at the same time as the request
27 for registration or later. The pleading must specify the
28 grounds for the remedy sought.

§48B-6-603. Effect of registration for enforcement.

1 (a) A support order or income-withholding order
2 issued in another state is registered when the order is filed
3 in the registering tribunal of this state.

4 (b) A registered order issued in another state is
5 enforceable in the same manner and is subject to the same
6 procedures as an order issued by a tribunal of this state.

7 (c) Except as otherwise provided in this article, a
8 tribunal of this state shall recognize and enforce, but may
9 not modify, a registered order if the issuing tribunal had
10 jurisdiction.

§48B-6-604. Choice of law.

1 (a) The law of the issuing state governs the nature,
2 extent, amount, and duration of current payments and
3 other obligations of support and the payment of
4 arrearages under the order.

5 (b) In a proceeding for arrearages, the statute of
6 limitation under the laws of this state or of the issuing
7 state, whichever is longer, applies.

PART 2. CONTEST OF VALIDITY OR ENFORCEMENT.

§48B-6-605. Notice of registration of order.

1 (a) When a support order or income-withholding
2 order issued in another state is registered, the clerk of the
3 court shall notify the nonregistering party. The notice
4 must be accompanied by a copy of the registered order
5 and the documents and relevant information accom-
6 panying the order.

7 (b) The notice must inform the nonregistering party:
8 (1) That a registered order is enforceable as of the date of
9 registration in the same manner as an order issued by a
10 tribunal of this state; (2) that a hearing to contest the
11 validity or enforcement of the registered order must be
12 requested within twenty days after notice; (3) that failure
13 to contest the validity or enforcement of the registered
14 order in a timely manner will result in confirmation of the
15 order and enforcement of the order and the alleged
16 arrearages and precludes further contest of that order with
17 respect to any matter that could have been asserted; and
18 (4) of the amount of any alleged arrearages.

19 (c) Upon registration of an income-withholding order
20 for enforcement, the registering tribunal shall notify the
21 obligor's employer pursuant to article five, chapter forty-
22 eight-a of this code.

§48B-6-606. Procedure to contest validity or enforcement of registered order.

1 (a) A nonregistering party seeking to contest the
2 validity or enforcement of a registered order in this state
3 shall request a hearing within twenty days after the date of
4 mailing or personal service of notice of the registration.
5 The nonregistering party may seek to vacate the
6 registration, to assert any defense to an allegation of
7 noncompliance with the registered order, or to contest the
8 remedies being sought or the amount of any alleged
9 arrearages pursuant to section six hundred seven (Contest
10 of Registration or Enforcement).

11 (b) If the nonregistering party fails to contest the
12 validity or enforcement of the registered order in a timely
13 manner, the order is confirmed by operation of law.

14 (c) If a nonregistering party requests a hearing to
15 contest the validity or enforcement of the registered order,
16 the registering tribunal shall schedule the matter for
17 hearing and give notice to the parties of the date, time and
18 place of the hearing.

§48B-6-607. Contest of registration or enforcement.

1 (a) A party contesting the validity or enforcement of a
2 registered order or seeking to vacate the registration has
3 the burden of proving one or more of the following
4 defenses: (1) The issuing tribunal lacked personal
5 jurisdiction over the contesting party; (2) the order was
6 obtained by fraud; (3) the order has been vacated,
7 suspended or modified by a later order; (4) the issuing
8 tribunal has stayed the order pending appeal; (5) there is a
9 defense under the law of this state to the remedy sought;
10 (6) full or partial payment has been made; or (7) the
11 statute of limitation under section six hundred four
12 (Choice of Law) precludes enforcement of some or all of
13 the arrearages.

14 (b) If a party presents evidence establishing a full or
15 partial defense under subsection (a), a tribunal may stay
16 enforcement of the registered order, continue the
17 proceeding to permit production of additional relevant
18 evidence, and issue other appropriate orders. An
19 uncontested portion of the registered order may be
20 enforced by all remedies available under the law of this
21 state.

22 (c) If the contesting party does not establish a defense
23 under subsection (a) to the validity or enforcement of the
24 order, the registering tribunal shall issue an order
25 confirming the order.

§48B-6-608. Confirmed order.

1 Confirmation of a registered order, whether by
2 operation of law or after notice and hearing, precludes

3 further contest of the order with respect to any matter that
4 could have been asserted at the time of registration.

PART 3. REGISTRATION AND MODIFICATION
OF CHILD SUPPORT ORDER.

**§48B-6-609. Procedure to register child support order of
another state for modification.**

1 A party or support enforcement agency seeking to
2 modify, or to modify and enforce, a child support order
3 issued in another state shall register that order in this state
4 in the same manner provided in Part 1 if the order has not
5 been registered. A petition for modification may be filed
6 at the same time as a request for registration, or later. The
7 pleading must specify the grounds for modification.

§48B-6-610. Effect of registration for modification.

1 A tribunal of this state may enforce a child support
2 order of another state registered for purposes of
3 modification, in the same manner as if the order had been
4 issued by a tribunal of this state, but the registered order
5 may be modified only if the requirements of section six
6 hundred eleven (Modification of Child Support Order of
7 Another State) have been met.

**§48B-6-611. Modification of child support order of another
state.**

1 (a) After a child support order issued in another state
2 has been registered in this state, the responding tribunal of
3 this state may modify that order only if section six
4 hundred thirteen does not apply and after notice and
5 hearing it finds that: (1) The following requirements are
6 met: (i) The child, the individual obligee, and the obligor
7 do not reside in the issuing state; (ii) a petitioner who is a
8 nonresident of this state seeks modification; and (iii) the
9 respondent is subject to the personal jurisdiction of the
10 tribunal of this state; or (2) the child or a party who is an
11 individual, is subject to the personal jurisdiction of the
12 tribunal of this state and all of the parties who are
13 individuals have filed written consents in the issuing
14 tribunal for a tribunal of this state to modify the support

15 order and assume continuing, exclusive jurisdiction over
16 the order. However, if the issuing state is a foreign
17 jurisdiction that has not enacted a law or established
18 procedures substantially similar to the procedures under
19 this chapter, the consent otherwise required of an
20 individual residing in this state is not required for the
21 tribunal to assume jurisdiction to modify the child support
22 order.

23 (b) Modification of a registered child support order is
24 subject to the same requirements, procedures, and defenses
25 that apply to the modification of an order issued by a
26 tribunal of this state and the order may be enforced and
27 satisfied in the same manner.

28 (c) A tribunal of this state may not modify any aspect
29 of a child support order that may not be modified under
30 the law of the issuing state. If two or more tribunals have
31 issued child support orders for the same obligor and child,
32 the order that controls and must be so recognized under
33 section two hundred seven establishes the aspects of the
34 support order which are nonmodifiable.

35 (d) On issuance of an order modifying a child support
36 order issued in another state, a tribunal of this state
37 becomes the tribunal of continuing, exclusive jurisdiction.

§48B-6-612. Recognition of order modified in another state.

1 A tribunal of this state shall recognize a modification
2 of its earlier child support order by a tribunal of another
3 state which assumed jurisdiction pursuant to this chapter
4 or a law substantially similar to this chapter and, upon
5 request, except as otherwise provided in this chapter, shall:
6 (1) Enforce the order that was modified only as to
7 amounts accruing before the modification; (2) enforce
8 only nonmodifiable aspects of that order; (3) provide
9 other appropriate relief only for violations of that order
10 which occurred before the effective date of the
11 modification; and (4) recognize the modifying order of
12 the other state, upon registration, for the purpose of
13 enforcement.

§48B-6-613. Jurisdiction to modify support order of another state when individual parties reside in this state.

1 (a) If all of the individual parties reside in this state
2 and the child does not reside in the issuing state, a tribunal
3 of this state has jurisdiction to enforce and to modify the
4 issuing state's child support order in a proceeding to
5 register that order.

6 (b) A tribunal of this state exercising jurisdiction as
7 provided in this section shall apply the provisions of
8 articles one and two and this article to the enforcement or
9 modification proceeding. Articles three through five, and
10 articles seven and eight do not apply and the tribunal shall
11 apply the procedural and substantive law of this state.

§48B-6-614. Notice to issuing tribunal of modification.

1 Within thirty days after issuance of a modified child
2 support order, the party obtaining the modification shall
3 file a certified copy of the order with the issuing tribunal
4 which had continuing, exclusive jurisdiction over the
5 earlier order, and in each tribunal in which the party
6 knows that earlier order has been registered. Failure of
7 the party obtaining the order to file a certified copy as
8 required subjects that party to appropriate sanctions by a
9 tribunal in which the issue of failure to file arises, but that
10 failure has no effect on the validity or enforceability of
11 the modified order of the new tribunal of continuing,
12 exclusive jurisdiction.

ARTICLE 7. DETERMINATION OF PARENTAGE.

§48B-7-701. Proceeding to determine parentage.

1 (a) A tribunal of this state may serve as an initiating or
2 responding tribunal in a proceeding brought under this
3 chapter or a law substantially similar to this chapter, the
4 uniform reciprocal enforcement of support act, or the
5 revised uniform reciprocal enforcement of support act to
6 determine that the petitioner is a parent of a particular
7 child or to determine that a respondent is a parent of that
8 child.

9 (b) In a proceeding to determine parentage, a
10 responding tribunal of this state shall apply article six,
11 chapter forty-eight-a of this code and the rules of this state
12 on choice of law.

ARTICLE 8. INTERSTATE RENDITION.

§48B-8-801. Grounds for rendition.

§48B-8-802. Conditions of rendition.

§48B-8-801. Grounds for rendition.

1 (a) For purposes of this article, "governor" includes
2 an individual performing the functions of governor or the
3 executive authority of a state covered by this chapter.

4 (b) The governor of this state may: (1) Demand that
5 the governor of another state surrender an individual
6 found in the other state who is charged criminally in this
7 state with having failed to provide for the support of an
8 obligee; or (2) on the demand by the governor of another
9 state, surrender an individual found in this state who is
10 charged criminally in the other state with having failed to
11 provide for the support of an obligee.

12 (c) A provision for extradition of individuals not
13 inconsistent with this chapter applies to the demand even if
14 the individual whose surrender is demanded was not in the
15 demanding state when the crime was allegedly committed
16 and has not fled therefrom.

§48B-8-802. Conditions of rendition.

1 (a) Before making demand that the governor of
2 another state surrender an individual charged criminally in
3 this state with having failed to provide for the support of
4 an obligee, the governor of this state may require a
5 prosecutor of this state to demonstrate that at least sixty
6 days previously the obligee had initiated proceedings for
7 support pursuant to this chapter or that the proceeding
8 would be of no avail.

9 (b) If, under this chapter or a law substantially similar
10 to this chapter, the uniform reciprocal enforcement of

11 support act, or the revised uniform reciprocal enforcement
12 of support act, the governor of another state makes a
13 demand that the governor of this state surrender an
14 individual charged criminally in that state with having
15 failed to provide for the support of a child or other
16 individual to whom a duty of support is owed, the
17 governor may require a prosecutor to investigate the
18 demand and report whether a proceeding for support has
19 been initiated or would be effective. If it appears that a
20 proceeding would be effective but has not been initiated,
21 the governor may delay honoring the demand for a
22 reasonable time to permit the initiation of a proceeding.

23 (c) If a proceeding for support has been initiated and
24 the individual whose rendition is demanded prevails, the
25 governor may decline to honor the demand. If the
26 petitioner prevails and the individual whose rendition is
27 demanded is subject to a support order, the governor may
28 decline to honor the demand if the individual is
29 complying with the support order.

ARTICLE 9. MISCELLANEOUS PROVISIONS.

§48B-9-901. Uniformity of application and construction.

§48B-9-902. Short title.

§48B-9-903. Effective date.

§48B-9-901. Uniformity of application and construction.

1 This chapter shall be applied and construed to
2 effectuate its general purpose to make uniform the law
3 with respect to the subject of this chapter among states
4 enacting it.

§48B-9-902. Short title.

1 This chapter may be cited as the "Uniform Interstate
2 Family Support Act."

§48B-9-903. Effective date.

1 The provisions of this chapter take effect on the first
2 day of January, one thousand nine hundred ninety-eight.

CHAPTER 222

(S. B. 555—By Senators Wooton, Ball, Bowman, Dittmar, Fanning, Hunter, Oliverio, Ross, Schoonover, Snyder, White, Buckalew, Deem, Kimble and Scott)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one thousand three hundred one, one thousand three hundred two, one thousand three hundred three and one thousand three hundred four, article thirteen, chapter thirty-one-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to professional limited liability companies ("PLLC"); authorizing formation of PLLC's by psychologists licensed under article twenty-one, chapter thirty of said code; specifying that persons providing compatible professional services may form PLLC's; authorizing one or more persons who may legally and ethically practice together to form PLLC's; specifying who may be members of PLLC's; authorizing ownership of limited liability companies by PLLC's; requiring reporting of names of members of PLLC's to secretary of state; and requiring certain licensing boards to allow formation of PLLC's by licensees.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 13. PROFESSIONAL LIMITED LIABILITY COMPANIES.

§31B-13-1301. Definitions.

§31B-13-1302. Who may become a member; professional limited liability companies authorized.

§31B-13-1303. Name.

§31B-13-1304. Duty of licensing board.

§31B-13-1301. Definitions.

1 As used in this article:

2 (1) "Licensing board" means the governing body or
3 agency established under chapter thirty of this code which
4 is responsible for the licensing and regulation of the
5 practice of the profession which the professional limited
6 liability company is organized to provide;

7 (2) "Professional limited liability company" means a
8 limited liability company organized under this chapter for
9 the purpose of rendering a professional service; and

10 (3) "Professional service" means the services
11 rendered by the following professions: Attorneys-at-law
12 under article two, physicians and podiatrists under article
13 three, dentists under article four, optometrists under article
14 eight, accountants under article nine, veterinarians under
15 article ten, architects under article twelve, engineers under
16 article thirteen, osteopathic physicians and surgeons under
17 article fourteen, chiropractors under article sixteen and
18 psychologists under article twenty-one, all of chapter
19 thirty of this code.

§31B-13-1302. Who may become a member; professional limited liability companies authorized.

1 (a) One or more persons duly licensed or otherwise
2 legally authorized to render the same or compatible
3 professional services or to otherwise practice together
4 within this state may become members of a professional
5 limited liability company under the provisions of this
6 chapter for the purpose of rendering the same or
7 compatible professional services. Notwithstanding any
8 provision of this code to the contrary, including any
9 limitation or restriction set forth in any licensing provision
10 of chapter thirty of this code, a professional limited
11 liability company may be formed to provide any of the
12 professional services as defined in section one thousand
13 three hundred one of this article.

14 (b) Any one or more persons who, under applicable
15 legal or ethical rules or principles, can collectively practice
16 the same or compatible professions, whether as general

17 partners, joint venturers, fellow shareholders, fellow
18 members or common business owners, may form, own and
19 operate, as members, a professional limited liability
20 company under this article. For purposes of this section,
21 members of professional limited liability companies may
22 be natural persons, professional corporations, other
23 professional limited liability companies and professional
24 partnerships. Professional limited liability companies may
25 form, own and operate separate limited liability
26 companies.

27 (c) No professional limited liability company
28 organized under this article may have as a member
29 anyone other than a person who is duly licensed or
30 otherwise legally authorized to render the professional
31 services for which the professional limited liability
32 company was organized. The names of members of
33 professional limited liability companies who have
34 signature authority shall be furnished to the secretary of
35 state. Any change in the persons who have signature
36 authority for a professional limited liability company shall
37 be promptly reported to the secretary of state.

§31B-13-1303. Name.

1 The name of a professional limited liability company
2 shall contain the words "professional limited liability
3 company" or the abbreviation "P.L.L.C.", "PLLC",
4 "Professional L.L.C.", or "Professional LLC".

§31B-13-1304. Duty of licensing board.

1 The licensing board for each of the professions
2 authorized to form professional limited liability
3 companies under this article shall propose legislative rules
4 for promulgation, in accordance with the provisions of
5 article three, chapter twenty-nine-a of this code, providing
6 for the implementation of this article and the procedures
7 for the formation and approval of professional limited
8 liability companies for the particular profession under the
9 jurisdiction of such licensing board. The rules of each
10 licensing board shall permit the formation and approval of
11 professional limited liability companies with members
12 from different professions.

CHAPTER 223

(Com. Sub. for H. B. 2842—By Delegates Givens, Hunt, Coleman, Mahan, Amores, Trump and L. White)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend and reenact sections two hundred one, two hundred two and two hundred three, article two, chapter thirty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections three hundred one and three hundred five, article three of said chapter; to further amend said article by adding thereto a new section, designated section three hundred four-a; to amend and reenact sections four hundred one, four hundred two, four hundred five, four hundred six, four hundred nine, four hundred thirteen and four hundred fourteen, article four of said chapter; and to further amend said article by adding thereto a new section, designated section four hundred seven-a, all relating to revisions to Uniform Securities Act; exempting federal covered advisers and certain other investment advisers from registration requirements; including references to notice filings for federal covered advisers; making it unlawful to employ unregistered investment adviser representatives; requiring investment adviser representatives to make certain notifications; requiring federal covered advisers to comply with notice filing and fee requirements; establishing certain registration fees and compliance assessments; changing minimum financial, surety bond, record keeping, financial reporting and correcting amendment requirements; establishing notice filing, fee and other requirements for federal covered securities, including provision for oversale assessments; adding and amending certain definitions; establishing registration exemption for federal covered securities; deleting "blue chip exemption" for certain securities; changing funding method for securities division; requiring that violators of chapter pay certain examination expenses; providing for administrative assessments for such violators; and expanding criminal penalties.

Be it enacted by the Legislature of West Virginia:

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

Article

2. **Registration of Broker-Dealers and Agents; Registration and Notice Filing for Investment Advisers.**
3. **Registration of Securities.**
4. **General Provisions.**

ARTICLE 2. REGISTRATION OF BROKER-DEALERS AND AGENTS; REGISTRATION AND NOTICE FILING FOR INVESTMENT ADVISERS.

§32-2-201. Registration requirement.

§32-2-202. Registration and notice filing procedure.

§32-2-203. Post-registration provisions.

§32-2-201. Registration requirement.

- 1 (a) It is unlawful for any person to transact business in
- 2 this state as a broker-dealer or agent unless he or she is
- 3 registered under this chapter.
- 4 (b) It is unlawful for any broker-dealer or issuer to
- 5 employ an agent unless the agent is registered. The
- 6 registration of an agent is not effective during any period
- 7 when he or she is not associated with a particular broker-
- 8 dealer registered under this chapter or a particular issuer.
- 9 When an agent begins or terminates a connection with a
- 10 broker-dealer or issuer, or begins or terminates those
- 11 activities which make him or her an agent, the agent as

12 well as the broker-dealer or issuer shall promptly notify
13 the commissioner.

14 (c) It is unlawful for any person to transact business in
15 this state as an investment adviser unless: (1) He or she is
16 so registered under this chapter; (2) he or she is registered
17 as a broker-dealer without the imposition of a condition
18 under subdivision (5), subsection (b), section two hundred
19 four of this article; (3) he or she is a federal covered
20 adviser except that, until the tenth day of October, one
21 thousand nine hundred ninety-nine, a federal covered
22 adviser for which a nonpayment or underpayment of a fee
23 has not been promptly remedied following written
24 notification to the adviser of such nonpayment or
25 underpayment shall be required to register under this
26 article; or (4) he or she has no place of business in this
27 state and: (A) His or her only clients in this state are
28 investment companies as defined in the Investment
29 Company Act of 1940, other investment advisers, federal
30 covered advisers, broker-dealers, banks, trust companies,
31 savings and loan associations, insurance companies,
32 employee benefit plans with assets of not less than one
33 million dollars, and governmental agencies or
34 instrumentalities, whether acting for themselves or as
35 trustees with investment control, or other institutional
36 investors as are designated by rule or order of the
37 commissioner; or (B) during any period of twelve
38 consecutive months he or she does not have more than
39 five clients who are residents of this state, other than those
40 specified in this subsection, whether or not he or she or
41 any of the clients who are residents of this state is then
42 present in the state.

43 (d) Every registration or notice filing expires one year
44 from its effective date unless renewed. The commissioner
45 by rule or order may prepare an initial schedule for
46 renewals of registrations or notice filings so that
47 subsequent renewals of registrations or notice filings
48 effective on the effective date of this chapter may be
49 staggered by calendar months. For this purpose the
50 commissioner by rule may reduce the registration or
51 notice filing fee proportionately.

52 (e) It is unlawful for any:

53 (1) Person required to be registered as an investment
54 adviser under this article to employ an investment adviser
55 representative unless the investment adviser representative
56 is registered under this article: *Provided*, That the
57 registration of an investment adviser representative is not
58 effective during any period when he or she is not
59 employed by an investment adviser registered under this
60 article; or

61 (2) Federal covered adviser to employ, supervise, or
62 associate with an investment adviser representative having
63 a place of business located in this state, unless such
64 investment adviser representative is registered under this
65 article, or is exempt from registration. When an
66 investment adviser representative begins or terminates
67 employment with an investment adviser, the investment
68 adviser (in the case of 210 (f) (i)), or the investment
69 adviser representative (in the case of 201 (f) (ii)), shall
70 promptly notify the commissioner.

71 (f) Except with respect to advisers whose only clients
72 are those described in subdivision (4), subsection (c) of
73 this section, it is unlawful for any federal covered adviser
74 to conduct advisory business in this state unless such
75 person complies with the provisions of subsection (b),
76 section two hundred two of this article.

§32-2-202. Registration and notice filing procedure.

1 (a) A broker-dealer, agent or investment adviser may
2 obtain an initial or renewal registration by filing with the
3 commissioner an application together with a consent to
4 service of process pursuant to subsection (g), section four
5 hundred fourteen, article four of this chapter. The
6 application shall contain whatever information the
7 commissioner by rule requires concerning matters such as:
8 (1) The applicant's firm and place of organization; (2) the
9 applicant's proposed method of doing business; (3) the
10 qualifications and business history of the applicant and in
11 the case of a broker-dealer or investment adviser, the
12 qualifications and business history of any partner, officer
13 or director, any person occupying a similar status or

14 performing similar functions, or any person, directly or
15 indirectly, controlling the broker-dealer or investment
16 adviser and, in the case of an investment adviser, the
17 qualifications and business history of any employee; (4)
18 any injunction or administrative order or conviction of a
19 misdemeanor involving a security or any aspect of the
20 securities business and any conviction of a felony; and (5)
21 subject to the limitations of §15(h)(1) of the Securities
22 Exchange Act of 1934, the applicant's financial condition
23 and history. The commissioner may by rule or order
24 require an applicant for initial registration to publish an
25 announcement of the application as a Class I legal
26 advertisement in compliance with the provisions of article
27 three, chapter fifty-nine of this code, and the publication
28 area or areas for the publication shall be specified by the
29 commissioner. If no denial order is in effect and no
30 proceeding is pending under section two hundred four of
31 this article, registration becomes effective at noon of the
32 thirtieth day after an application is filed. The
33 commissioner may by rule or order specify an earlier
34 effective date, and he or she may by order defer the
35 effective date until noon of the thirtieth day after the filing
36 of any amendment to an application. Registration of a
37 broker-dealer automatically constitutes registration of any
38 agent who is a partner, officer or director, or a person
39 occupying a similar status or performing similar functions,
40 as designated by the broker-dealer in writing to the
41 commissioner and approved in writing by the
42 commissioner. Registration of an investment adviser
43 automatically constitutes registration of any investment
44 adviser representative who is a partner, officer, or director
45 or a person occupying a similar status or performing
46 similar functions as designated by the investment adviser
47 in writing to the commissioner and approved in writing
48 by the commissioner.

49 (b) Except with respect to federal covered advisers
50 whose only clients are those described in paragraph (A),
51 subdivision (4), subsection (c), section two hundred one of
52 this article, a federal covered adviser shall file with the
53 commissioner, prior to acting as a federal covered adviser
54 in this state, such documents as have been filed with the

55 securities and exchange commissioner as the
56 commissioner, by rule or order, may require along with
57 notice filing fees under subsection (c) of this section.

58 (c) Every applicant for initial or renewal registration
59 shall pay a filing fee of two hundred fifty dollars in the
60 case of a broker-dealer and the agent of an issuer,
61 fifty-five dollars in the case of an agent, one hundred
62 seventy dollars in the case of an investment adviser, and
63 fifty dollars for each investment adviser representative.
64 When an application is denied or withdrawn, the
65 commissioner shall retain all of the fee.

66 (d) A registered broker-dealer or investment adviser
67 may file an application for registration of a successor,
68 whether or not the successor is then in existence, for the
69 unexpired portion of the year. A filing fee of twenty
70 dollars shall be paid.

71 (e) The commissioner may, by rule or order, require a
72 minimum capital for registered broker-dealers, subject to
73 the limitations of section fifteen of the Securities
74 Exchange Act of 1934, and establish minimum financial
75 requirements for investment advisers, subject to the
76 limitations of section 222 of the Investment Advisers Act
77 of 1940, which may include different requirements for
78 those investment advisers who maintain custody of clients'
79 funds or securities or who have discretionary authority
80 over same and those investment advisers who do not.

81 (f) The commissioner may, by rule or order, require
82 registered broker-dealers, agents and investment advisers
83 who have custody of or discretionary authority over client
84 funds or securities, to post surety bonds in amounts as the
85 commissioner may prescribe, by rule or order, subject to
86 the limitations of section fifteen of the Securities
87 Exchange Act of 1934 (for broker-dealers) and section
88 222 of the Investment Advisers Act of 1940 (for
89 investment advisers), up to twenty-five thousand dollars
90 and may determine their conditions. Any appropriate
91 deposit of cash or securities shall be accepted in lieu of
92 any bond so required. No bond may be required of any
93 registrant whose net capital, or, in the case of an
94 investment adviser, whose minimum financial require-

95 ments, which may be defined by rule, exceeds the amounts
96 required by the commissioner. Every bond shall provide
97 for suit thereon by any person who has a cause of action
98 under section four hundred nine, article four of this
99 chapter and, if the commissioner by rule or order requires,
100 by any person who has a cause of action not arising under
101 this chapter. Every bond shall provide that no suit may be
102 maintained to enforce any liability on the bond unless
103 brought within the time limitations of subsection (f),
104 section four hundred nine, article four of this chapter.

105 (g) Every applicant, whether registered under this
106 chapter or not, shall pay a fifty-dollar fee for each name
107 or address change.

108 (h) Every broker-dealer and investment advisor
109 registered under this chapter shall pay an annual fifty-
110 dollar fee for each branch office located in West Virginia.

111 (i) Each agent, representative and associated person of
112 a broker-dealer or investment advisor when applying for
113 an initial license under section two hundred two of this
114 article or changing employers shall pay a compliance
115 assessment of twenty-five dollars. Each agent, repre-
116 sentative and associated person, when applying for a
117 renewal license under section two hundred two of this
118 article, shall pay a compliance assessment of ten dollars.

§32-2-203. Post-registration provisions.

1 (a) Every registered broker-dealer and investment
2 adviser shall make and keep such accounts,
3 correspondence, memoranda, papers, books and other
4 records as the commissioner prescribes by rule or order,
5 except as provided by section fifteen of the Securities
6 Exchange Act of 1934 (in the case of a broker-dealer)
7 and section 222 of the Investment Advisers Act of 1940
8 (in the case of an investment adviser). All records so
9 required, with respect to an investment adviser, shall be
10 preserved for three years unless the commissioner
11 prescribes by rule or order otherwise for particular types
12 of records.

13 (b) With respect to investment advisers, the
14 commissioner may require that certain information be
15 furnished or disseminated as necessary or appropriate in
16 the public interest or for the protection of investors and
17 advisory clients. To the extent determined by the
18 commissioner, in his or her discretion, information
19 furnished to clients or prospective clients of an investment
20 adviser that would be in compliance with the Investment
21 Advisers Act of 1940 and the rules thereunder may be
22 used in whole or partial satisfaction of this requirement.

23 (c) Every registered broker-dealer and investment
24 advisor shall file such financial reports as the
25 commissioner may prescribe by rule or order, except as
26 provided by section fifteen of the Securities Exchange Act
27 of 1934 (in the case of a broker-dealer) and section 222
28 of the Investment Advisers Act of 1940 (in the case of an
29 investment adviser).

30 (d) If the information contained in any document
31 filed with the commissioner is or becomes inaccurate or
32 incomplete in any material respect, the registrant or
33 federal covered adviser shall promptly file a correcting
34 amendment with the commissioner.

35 (e) All the records referred to in subsection (a) of this
36 section are subject at any time or from time to time to
37 such reasonable periodic, special or other examinations by
38 representatives of the commissioner, within or without this
39 state, as the commissioner deems necessary or appropriate
40 in the public interest or for the protection of investors.
41 For the purpose of avoiding unnecessary duplication of
42 examinations, the commissioner, insofar as he or she
43 deems it practicable in administering this subsection, may
44 cooperate with the securities administrators of other states,
45 the securities and exchange commission, and any national
46 securities exchange or national securities association
47 registered under the Securities Exchange Act of 1934.

ARTICLE 3. REGISTRATION OF SECURITIES.

§32-3-301. Registration requirement.

§32-3-304a. Federal covered securities.

§32-3-305. Provisions applicable to registration and notice filing generally.

§32-3-301. Registration requirement.

1 It is unlawful for any person to offer or sell any
2 security in this state unless: (1) It is registered under this
3 chapter; or (2) the security or transaction is exempted
4 under section four hundred two of this article; or (3) the
5 security is a federal covered security.

§32-3-304a. Federal covered securities.

1 (a) Securities for which a registration statement has
2 been filed with the securities and exchange commission
3 under the Securities Act of 1933 with respect to a federal
4 covered security under section 18(b)(2) of the Securities
5 Act of 1933 may be offered for sale or sold to residents of
6 this state upon the commissioner's receipt of: (1) A
7 notice as prescribed by the commissioner by rule or
8 otherwise or in lieu thereof a copy of the issuer's federal
9 registration statement as filed with the securities and
10 exchange commissioner; (2) a consent to service of
11 process signed by the issuer; and (3) payment of a fee as
12 provided for in subsection (b), section three hundred five
13 of this article: *Provided*, That up through the tenth day of
14 October, one thousand nine hundred ninety-nine, or such
15 other date as may be legally permissible, a federal covered
16 security for which a fee has not been paid or promptly
17 remedied following written notification from the
18 commissioner to the issuer of the nonpayment or
19 underpayment of such fees, as required by this article,
20 shall be required to register under this article.

21 (b) The commissioner, by rule or otherwise, may
22 require the filing of any or all of the following documents
23 with respect to a federal covered security under section
24 18(b)(2) of the Securities Act of 1933:

25 (1) Prior to the initial offer of such federal covered
26 security in this state, all documents that are part of a
27 current federal registration statement filed with the
28 securities and exchange commission under the Securities
29 Act of 1933; and

30 (2) After the initial offer of such federal covered
31 security in this state, all documents that are part of an
32 amendment to a current federal registration statement filed
33 with the securities and exchange commission under the
34 Securities Act of 1933, which shall be filed concurrently
35 with the commissioner.

36 (c) With respect to any security that is a federal
37 covered security under section 18(b)(4)(D) of the
38 Securities Act of 1933, the commissioner, by rule or order,
39 may require the issuer to file a notice on SEC Form D and
40 a consent to service of process signed by the issuer no
41 later than fifteen days after the first sale of such federal
42 covered security in this state, together with a fee as
43 established by rule by the commissioner.

44 (d) The commissioner, by rule or otherwise, may
45 require the filing of any document filed with the securities
46 and exchange commission under the Securities Act of
47 1933, with respect to a federal covered security under
48 section 18(b)(3) or (4) of the Securities Act of 1933,
49 together with a filing fee for such document as
50 appropriate under subsections (m) and (n), section three
51 hundred five of this article.

52 (e) The commissioner may issue a stop order
53 suspending the offer and sale of a federal covered
54 security, except a federal covered security under section
55 18(b)(1) of the Securities Act of 1933, if it finds that: (1)
56 The order is in the public interest; and (2) there is a failure
57 to comply with any condition established under this
58 section.

59 (f) The commissioner, by rule or order, may waive
60 any or all of the provisions of this section.

**§32-3-305. Provisions applicable to registration and notice
filing generally.**

1 (a) A registration or notice filing statement may be
2 filed by the issuer, any other person on whose behalf the
3 offering is to be made, or a registered broker-dealer. A
4 registration or notice filing statement filed under this
5 chapter registering or noticing investment company shares

6 shall cover only one class, series or portfolio of investment
7 company shares.

8 (b) Every person filing a registration or notice filing
9 statement shall pay a filing fee of one twentieth of one
10 percent of the maximum aggregate offering price at which
11 the registered or noticed securities are to be offered in this
12 state, but the fee shall in no case be less than fifty dollars
13 or more than fifteen hundred dollars. When a registration
14 or notice filing statement is withdrawn before the effective
15 date or a preeffective stop order is entered under section
16 three hundred six of this article, the commissioner shall
17 retain all of the fee.

18 (c) Every registration statement and notice filing shall
19 specify: (1) The amount of securities to be offered in this
20 state; (2) the states in which a registration statement or
21 similar document in connection with the offering has been
22 or is to be filed; and (3) any adverse order, judgment or
23 decree entered in connection with the offering by the
24 regulatory authorities in each state or by any court or the
25 securities and exchange commission.

26 (d) In any case where securities sold in this state are in
27 excess of the aggregate amount of securities specified
28 under subsection (c) of this section, the commissioner may
29 require payment of an oversale assessment which shall be
30 three times an amount which equals the difference
31 between the filing fee that would have been payable under
32 subsection (b) of this section based upon the total amount
33 of securities sold in this state and the total filing fees
34 previously paid to the commissioner with respect to such
35 registration or notice filing, but in no case shall the
36 oversale assessment be less than three hundred fifty dollars
37 or be more than fifteen hundred dollars.

38 (e) Any document filed under this chapter or a
39 predecessor act within five years preceding the filing of a
40 registration statement may be incorporated by reference in
41 the registration statement to the extent that the document
42 is currently accurate.

43 (f) The commissioner may by rule or otherwise permit
44 the omission of any item of information or document
45 from any registration or notice filing statement.

46 (g) In the case of a nonissuer distribution, information
47 may not be required under section three hundred four of
48 this article or subsection (k) of this section unless it is
49 known to the person filing the registration statement or to
50 the persons on whose behalf the distribution is to be made,
51 or can be furnished by them without unreasonable effort
52 or expense.

53 (h) The commissioner may by rule or order require as
54 a condition of registration by qualification or
55 coordination: (1) That any security issued within the past
56 three years or to be issued to a promoter for a
57 consideration substantially different from the public
58 offering price, or to any person for a consideration other
59 than cash, be deposited in escrow; and (2) that the
60 proceeds from the sale of the registered security in this
61 state be impounded until the issuer receives a specified
62 amount from the sale of the security either in this state or
63 elsewhere. The commissioner may by rule or order
64 determine the conditions of any escrow or impounding
65 required under this subsection, but he or she may not
66 reject a depository solely because of location in another
67 state.

68 (i) The commissioner may by rule or order require as
69 a condition of registration that any security registered by
70 qualification or coordination be sold only on a specified
71 form of subscription or sale contract, and that a signed or
72 conformed copy of each contract be filed with the
73 commissioner or preserved for any period up to three
74 years specified in the rule or order.

75 (j) Every registration statement is effective for one
76 year from its effective date, or any longer period during
77 which the security is being offered or distributed in a
78 nonexempted transaction by or for the account of the
79 issuer or other person on whose behalf the offering is
80 being made or by any underwriter or broker-dealer who is
81 still offering part of an unsold allotment or subscription
82 taken by him or her as a participant in the distribution,

83 except during the time a stop order is in effect under
84 section three hundred six of this article. All outstanding
85 securities of the same class as a registered security are
86 considered to be registered for the purpose of any
87 nonissuer transaction: (1) So long as the registration
88 statement is effective; and (2) between the thirtieth day
89 after the entry of any stop order suspending or revoking
90 the effectiveness of the registration statement under
91 section three hundred six of this article (if the registration
92 statement did not relate, in whole or in part, to a nonissuer
93 distribution) and one year from the effective date of the
94 registration statement. A registration statement may not
95 be withdrawn for one year from its effective date if any
96 securities of the same class are outstanding. A registration
97 statement may be withdrawn otherwise only in the
98 discretion of the commissioner.

99 (k) So long as a registration statement is effective, the
100 commissioner may by rule or order require the person
101 who filed the registration statement to file reports, not
102 more often than quarterly, to keep reasonably current the
103 information contained in the registration statement and to
104 disclose the progress of the offering.

105 (l) A registration statement relating to a security
106 issued by a face amount certificate company or a
107 redeemable security issued by an open-end management
108 company or unit investment trust, as those terms are
109 defined in the Investment Company Act of 1940, may be
110 amended after its effective date so as to increase the
111 securities specified as proposed to be offered. The
112 amendment becomes effective when the commissioner so
113 orders. Every person filing an amendment shall pay a
114 filing fee, calculated in the manner specified in subsection
115 (b) of this section, with respect to the additional securities
116 proposed to be offered.

117 (m) Every person changing the name or address of a
118 securities registration or notice filing shall pay a fifty-
119 dollar fee for change.

120 (n) Every person amending a registration statement
121 or notice filing or offering a document without increasing

122 the dollar amount registered shall pay a fifty-dollar fee for
123 each amended statement, notice filing or document.

ARTICLE 4. GENERAL PROVISIONS.

§32-4-401. Definitions.

§32-4-402. Exemptions.

§32-4-405. Unlawful representations concerning registration, exemption or notice filing.

§32-4-406. Administration of chapter; operating fund for securities department.

§32-4-407a. Administrative assessments.

§32-4-409. Criminal penalties.

§32-4-413. Administrative files and opinions.

§32-4-414. Scope of the chapter and service of process.

§32-4-401. Definitions.

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

3 (a) "Commissioner" means the auditor of the state of
4 West Virginia.

5 (b) "Agent" means any individual other than a
6 broker-dealer who represents a broker-dealer or issuer in
7 effecting or attempting to effect purchases or sales of
8 securities. "Agent" does not include an individual who
9 represents an issuer in: (1) Effecting transactions in a
10 security exempted by subdivisions (1), (2), (3), (10) or
11 (11) of subsection (a), section four hundred two of this
12 article; (2) effecting transactions exempted by subsection
13 (b), section four hundred two of this article; (3) effecting
14 transactions in a covered security as described in section
15 18(b)(3) and section 18(b)(4)(d) of the Securities Act of
16 1933; (4) effecting transactions with existing employees,
17 partners or directors of the issuer if no commission or
18 other remuneration is paid or given, directly or indirectly,
19 for soliciting any person in this state; or (5) effecting
20 transactions in this state limited to those transactions
21 described in section 15(h)(2) of the Securities Exchange
22 Act of 1934. A partner, officer or director of a broker-
23 dealer or issuer, or a person occupying a similar status or
24 performing similar functions, is an agent only if he or she
25 otherwise comes within this definition.

26 (c) "Broker-dealer" means any person engaged in
27 the business of effecting transactions in securities for the
28 account of others or for his or her own account.
29 "Broker-dealer" does not include: (1) An agent; (2) an
30 issuer; (3) a bank, savings institution or trust company; or
31 (4) a person who has no place of business in this state if:
32 (A) He or she effects transactions in this state exclusively
33 with or through; (i) the issuers of the securities involved in
34 the transactions; (ii) other broker-dealers; or (iii) banks,
35 savings institutions, trust companies, insurance companies,
36 investment companies as defined in the Investment
37 Company Act of 1940, pension or profit-sharing trusts, or
38 other financial institutions or institutional buyers, whether
39 acting for themselves or as trustees; or (B) during any
40 period of twelve consecutive months he or she does not
41 direct more than fifteen offers to sell or buy into this state
42 in any manner to persons other than those specified in
43 clause (A), whether or not the offeror or any of the
44 offerees is then present in this state.

45 (d) "Fraud," "deceit" and "defraud" are not
46 limited to common-law deceit.

47 (e) "Guaranteed" means guaranteed as to payment of
48 principal, interest or dividends.

49 (f) "Federal covered adviser" means a person who is:
50 (1) Registered under section 203 of the Investment
51 Advisers Act of 1940; or (2) is excluded from the
52 definition of "investment advisor" under section two
53 hundred two-a (11) of the Investment Advisers Act of
54 1940.

55 (g) "Investment adviser" means any person who, for
56 compensation, engages in the business of advising others,
57 either directly or through publications or writings, as to
58 the value of securities or as to the advisability of investing
59 in, purchasing or selling securities, or who, for
60 compensation and as a part of a regular business, issues or
61 promulgates analyses or reports concerning securities.
62 "Investment adviser" also includes financial planners and
63 other persons who, as an integral component of other
64 financially related services, provide the foregoing
65 investment advisory services to others for compensation

66 and as part of a business or who hold themselves out as
67 providing the foregoing investment advisory services to
68 others for compensation. "Investment adviser" does not
69 include: (1) A bank, savings institution or trust company;
70 (2) a lawyer, accountant, engineer or teacher whose
71 performance of those services is solely incidental to the
72 practice of his or her profession; (3) a broker-dealer
73 whose performance of these services is solely incidental to
74 the conduct of his or her business as a broker-dealer and
75 who receives no special compensation for them; (4) a
76 publisher, employee or columnist of a newspaper, news
77 magazine or business or financial publication, or an
78 owner, operator, producer, or employee of a cable, radio,
79 or television network, station, or production facility if, in
80 either case, the financial or business news published or
81 disseminated is made available to the general public and
82 the content does not consist of rendering advice on the
83 basis of the specific investment situation of each client; (5)
84 a person whose advice, analyses or reports relate only to
85 securities exempted by subdivision (1), subsection (a),
86 section four hundred two of this article; (6) a person who
87 has no place of business in this state if (A) his or her only
88 clients in this state are other investment advisers, broker-
89 dealers, banks, savings institutions, trust companies,
90 insurance companies, investment companies as defined in
91 the Investment Company Act of 1940, pension or profit-
92 sharing trusts, or other financial institutions or institutional
93 buyers, whether acting for themselves or as trustees, or (B)
94 during any period of twelve consecutive months he or she
95 does not have more than five clients who are residents of
96 this state other than those specified in clause (A), whether
97 or not he or she or any of the persons to whom the
98 communications are directed is then present in this state;
99 (7) an investment adviser representative; (8) a "federal
100 covered adviser"; or (9) such other persons not within the
101 intent of this paragraph as the commissioner may by rule
102 or order designate.

103 (h) "Investment adviser representative" means any
104 partner, officer, director of, or a person occupying a
105 similar status or performing similar functions, or other
106 individual, except clerical or ministerial personnel, who is

107 employed by or associated with an investment adviser that
108 is registered or required to be registered under this
109 chapter, or who has a place of business located in this state
110 and is employed by or associated with a federal covered
111 adviser; and including clerical or ministerial personnel,
112 who does any of the following: (1) Makes any
113 recommendations or otherwise renders advice regarding
114 securities; (2) manages accounts or portfolios of clients;
115 (3) determines which recommendation or advice
116 regarding securities should be given; (4) solicits, offers or
117 negotiates for the sale of or sells investment advisory
118 services unless such person is registered as an agent
119 pursuant to this article; or (5) supervises employees who
120 perform any of the foregoing unless such person is
121 registered as an agent pursuant to this article.

122 (i) "Issuer" means any person who issues or proposes
123 to issue any security, except that: (1) With respect to
124 certificates of deposit, voting-trust certificates or collateral-
125 trust certificates, or with respect to certificates of interest or
126 shares in an unincorporated investment trust not having a
127 board of directors or persons performing similar functions
128 or of the fixed, restricted management, or unit type, the
129 term "issuer" means the person or persons performing
130 the acts and assuming the duties of depositor or manager
131 pursuant to the provisions of the trust or other agreement
132 or instrument under which the security is issued; and (2)
133 with respect to certificates of interest or participation in oil,
134 gas or mining titles or leases or in payments out of
135 production under such titles or leases, there is not
136 considered to be any "issuer."

137 (j) "Nonissuer" means not, directly or indirectly, for
138 the benefit of the issuer.

139 (k) "Person" means an individual, a corporation, a
140 partnership, an association, a joint-stock company, a trust
141 where the interests of the beneficiaries are evidenced by a
142 security, an unincorporated organization, a government or
143 a political subdivision of a government.

144 (l) (1) "Sale" or "sell" includes every contract of
145 sale of, contract to sell, or disposition of, a security or
146 interest in a security for value.

147 (2) "Offer" or "offer to sell" includes every attempt
148 or offer to dispose of, or solicitation of an offer to buy, a
149 security or interest in a security for value.

150 (3) Any security given or delivered with, or as a bonus
151 on account of, any purchase of securities or any other
152 thing is considered to constitute part of the subject of the
153 purchase and to have been offered and sold for value.

154 (4) A purported gift of assessable stock is considered
155 to involve an offer and sale.

156 (5) Every sale or offer of a warrant or right to
157 purchase or subscribe to another security of the same or
158 another issuer, as well as every sale or offer of a security
159 which gives the holder a present or future right or
160 privilege to convert into another security of the same or
161 another issuer, is considered to include an offer of the
162 other security.

163 (6) The terms defined in this subdivision do not
164 include: (A) Any bona fide pledge or loan; (B) any stock
165 dividend, whether the corporation distributing the
166 dividend is the issuer of the stock or not, if nothing of
167 value is given by stockholders for the dividend other than
168 the surrender of a right to a cash or property dividend
169 when each stockholder may elect to take the dividend in
170 cash or property or in stock; (C) any act incident to a class
171 vote by stockholders, pursuant to the certificate of
172 incorporation or the applicable corporation statute, on a
173 merger, consolidation, reclassification of securities or sale
174 of corporate assets in consideration of the issuance of
175 securities of another corporation; or (D) any act incident
176 to a judicially approved reorganization in which a security
177 is issued in exchange for one or more outstanding
178 securities, claims or property interests, or partly in such
179 exchange and partly for cash.

180 (m) "Securities Act of 1933," "Securities Exchange
181 Act of 1934," "Public Utility Holding Company Act of
182 1935," and "Investment Company Act of 1940" mean
183 the federal statutes of those names as amended before the
184 effective date of this chapter. The National Securities
185 Markets Improvement Act of 1996 ("NSMIA") means

186 the federal statute which makes certain amendments to the
187 Securities Act of 1933, the Securities Exchange Act of
188 1934, the Investment Company Act of 1940, and the
189 Investment Advisers Act of 1940.

190 (n) "Security" means any note; stock; treasury stock;
191 bond; debenture; evidence of indebtedness; certificate of
192 interest or participation in any profit-sharing agreement;
193 collateral-trust certificate; preorganization certificate or
194 subscription; transferable share; investment contract;
195 voting-trust certificate; certificate of deposit for a security;
196 certificate of interest or participation in an oil, gas, or
197 mining title or lease or in payments out of production
198 under such a title or lease; or, in general, any interest or
199 instrument commonly known as a "security," or any
200 certificate of interest or participation in, temporary or
201 interim certificate for, receipt for, guarantee of, or warrant
202 or right to subscribe to or purchase, any of the foregoing.
203 "Security" does not include any insurance or endowment
204 policy or annuity contract under which an insurance
205 company promises to pay money either in a lump sum or
206 periodically for life or some other specified period.

207 (o) "Federal covered security" means any security
208 that is a covered security under section 18(b) of the
209 Securities Act of 1933, as amended by the National
210 Securities Markets Improvement Act of 1996, or rules
211 promulgated thereunder.

212 (p) "State" means any state, territory or possession of
213 the United States, the District of Columbia and Puerto
214 Rico.

§32-4-402. Exemptions.

1 (a) The following securities are exempt from section
2 three hundred one, article three of this chapter and
3 section four hundred three of this article:

4 (1) Any security (including a revenue obligation)
5 issued or guaranteed by the United States, any state, any
6 political subdivision of a state, or any agency or corporate
7 or other instrumentality of one or more of the foregoing;
8 or any certificate of deposit for any of the foregoing;

9 (2) Any security issued or guaranteed by Canada, any
10 Canadian province, any political subdivision of any such
11 province, any agency or corporate or other instrumentality
12 of one or more of the foregoing, or any other foreign
13 government with which the United States currently
14 maintains diplomatic relations, if the security is recognized
15 as a valid obligation by the issuer or guarantor;

16 (3) Any security issued by and representing an interest
17 in or a debt of, or guaranteed by, any bank organized
18 under the laws of the United States, or any bank, savings
19 institution or trust company organized and supervised
20 under the laws of any state;

21 (4) Any security issued by and representing an interest
22 in or a debt of, or guaranteed by, any federal savings and
23 loan association, or any building and loan or similar
24 association organized under the laws of any state and
25 authorized to do business in this state;

26 (5) Any security issued by and representing an interest
27 in or a debt of, or guaranteed by, any insurance company
28 organized under the laws of any state and authorized to do
29 business in this state;

30 (6) Any security issued or guaranteed by any federal
31 credit union or any credit union, industrial loan
32 association or similar association organized and supervised
33 under the laws of this state;

34 (7) Any security issued or guaranteed by any railroad,
35 other common carrier, public utility or holding company
36 which is: (A) Subject to the jurisdiction of the interstate
37 commerce commission; (B) a registered holding company
38 under the Public Utility Holding Company Act of 1935,
39 or a subsidiary of such a company within the meaning of
40 that act; (C) regulated in respect of its rates and charges by
41 a governmental authority of the United States or any state;
42 or (D) regulated in respect of the issuance or guarantee of
43 the security by a governmental authority of the United
44 States, any state, Canada, or any Canadian province;

45 (8) Any security listed or approved for listing upon
46 notice of issuance on the New York Stock Exchange, the

47 American Stock Exchange, or the Midwest Stock
48 Exchange, any other stock exchange approved by the
49 commissioner, the National Association of Securities
50 Dealers Automated Quotation/National Market System
51 (NASDAQ/NMS), or any other market system approved
52 by the commissioner, any other security of the same issuer
53 which is of senior or substantially equal rank, any security
54 called for by subscription rights or warrants so listed or
55 approved, or any warrant or right to purchase or subscribe
56 to any of the foregoing, except that the commissioner may
57 adopt and promulgate rules pursuant to chapter
58 twenty-nine-a of this code which, after notice to such
59 exchange or market system and an opportunity to be
60 heard, remove any such exchange or market system from
61 this exemption if the commissioner finds that the listing
62 requirements or market surveillance of such exchange or
63 market system are such that the continued availability of
64 such exemption for such exchange or market system is
65 not in the public interest and that removal is necessary for
66 the protection of investors;

67 (9) Any security issued by any person organized and
68 operated not for private profit but exclusively for
69 religious, educational, benevolent, charitable, fraternal,
70 social, athletic or reformatory purposes, or as a chamber
71 of commerce or trade or professional association, and no
72 part of the net earnings of which inures to the benefit of
73 any person, private stockholder or individual;

74 (10) Any commercial paper which arises out of a
75 current transaction or the proceeds of which have been or
76 are to be used for current transactions, and which
77 evidences an obligation to pay cash within twelve months
78 of the date of issuance, exclusive of days of grace, or any
79 renewal of such paper which is likewise limited, or any
80 guarantee of such paper or of any such renewal;

81 (11) Any investment contract issued in connection
82 with an employees' stock purchase, savings, pension,
83 profit-sharing or similar benefit plan if the commissioner
84 is notified in writing thirty days before the inception of
85 the plan or, with respect to plans which are in effect on the
86 effective date of this chapter, within sixty days thereafter

87 (or within thirty days before they are reopened if they are
88 closed on the effective date of this chapter);

89 (12) Any security issued by an agricultural
90 cooperative association operating in this state and
91 organized under article four, chapter nineteen of this code,
92 or by a foreign cooperative association organized under
93 the laws of another state and duly qualified to transact
94 business in this state.

95 (b) The following transactions are exempt from
96 sections 301 and 403:

97 (1) Any isolated nonissuer transaction, whether
98 effected through a broker-dealer or not;

99 (2) Any nonissuer distribution of an outstanding
100 security if: (A) A recognized securities manual contains
101 the names of the issuer's officers and directors, a balance
102 sheet of the issuer as of a date within eighteen months, and
103 a profit and loss statement for either the fiscal year
104 preceding that date or the most recent year of operations;
105 or (B) the security has a fixed maturity or a fixed interest
106 or dividend provision and there has been no default
107 during the current fiscal year or within the three preceding
108 fiscal years, or during the existence of the issuer and any
109 predecessors if less than three years, in the payment of
110 principal, interest or dividends on the security;

111 (3) Any nonissuer transaction effected by or through
112 a registered broker-dealer pursuant to an unsolicited order
113 or offer to buy; but the commissioner may by rule require
114 that the customer acknowledge upon a specified form that
115 the sale was unsolicited, and that a signed copy of each
116 such form be preserved by the broker-dealer for a
117 specified period;

118 (4) Any transaction between the issuer or other person
119 on whose behalf the offering is made and an underwriter,
120 or among underwriters;

121 (5) Any transaction in a bond or other evidence of
122 indebtedness secured by a real or chattel mortgage or
123 deed of trust, or by an agreement for the sale of real estate
124 or chattels, if the entire mortgage, deed of trust, or

125 agreement, together with all the bonds or other evidences
126 of indebtedness secured thereby, is offered and sold as a
127 unit;

128 (6) Any transaction by an executor, administrator,
129 sheriff, marshal, constable, receiver, trustee in bankruptcy,
130 guardian or conservator, and any transaction constituting a
131 judicial sale;

132 (7) Any transaction executed by a bona fide pledgee
133 without any purpose of evading this chapter;

134 (8) Any offer or sale to a bank, savings institution,
135 trust company, insurance company, investment company
136 as defined in the Investment Company Act of 1940,
137 pension or profit-sharing trust, or other financial
138 institution or institutional buyer, or to a broker-dealer,
139 whether the purchaser is acting for itself or in some
140 fiduciary capacity;

141 (9) Any transaction pursuant to an offer directed by
142 the offeror to not more than ten persons (other than those
143 designated in subdivision (8) above) in this state during
144 any period of twelve consecutive months, whether or not
145 the offeror or any of the offerees is then present in this
146 state, if: (A) The seller reasonably believes that all the
147 buyers in this state (other than those designated in
148 subdivision (8) above) are purchasing for investment; and
149 (B) no commission or other remuneration is paid or given,
150 directly or indirectly, for soliciting any prospective buyer
151 in this state (other than those designated in subdivision (8)
152 above), but the commissioner may by rule or order, as to
153 any security or transaction or any type of security or
154 transaction, withdraw or further condition this exemption,
155 or increase or decrease the number of offerees permitted,
156 or waive the conditions in clauses (A) and (B) with or
157 without the substitution of a limitation on remuneration;

158 (10) Any offer or sale of a preorganization certificate
159 or subscription if: (A) No commission or other
160 remuneration is paid or given, directly or indirectly, for
161 soliciting any prospective subscriber; (B) the number of
162 subscribers does not exceed ten; and (C) no payment is
163 made by any subscriber;

164 (11) Any transaction pursuant to an offer to existing
165 security holders of the issuer, including persons who at the
166 time of the transaction are holders of convertible
167 securities, nontransferable warrants or transferable
168 warrants exercisable within not more than ninety days of
169 their issuance, if: (A) No commission or other
170 remuneration (other than a standby commission) is paid
171 or given, directly or indirectly, for soliciting any security
172 holder in this state; or (B) the issuer first files a notice
173 specifying the terms of the offer and the commissioner
174 does not by order disallow the exemption within the next
175 five full business days;

176 (12) Any offer (but not a sale) of a security for which
177 registration statements have been filed under both this
178 chapter and the Securities Act of 1933 if no stop order or
179 refusal order is in effect and no public proceeding or
180 examination looking toward such an order is pending
181 under either chapter.

182 (c) The commissioner may by order deny or revoke
183 any exemption specified in subdivision (9) or (11) of
184 subsection (a) or in subsection (b) of this section with
185 respect to a specific security or transaction. No such order
186 may be entered without appropriate prior notice to all
187 interested parties, opportunity for hearing, and written
188 findings of fact and conclusions of law, except that the
189 commissioner may by order summarily deny or revoke
190 any of the specified exemptions pending final
191 determination of any proceeding under this subsection.
192 Upon the entry of a summary order, the commissioner
193 shall promptly notify all interested parties that it has been
194 entered and of the reasons therefor and that within fifteen
195 days of the receipt of a written request the matter will be
196 set down for hearing. If no hearing is requested and none
197 is ordered by the commissioner, the order will remain in
198 effect until it is modified or vacated by the commissioner.
199 If a hearing is requested or ordered, the commissioner,
200 after notice of and opportunity for hearing to all
201 interested persons, may modify or vacate the order or
202 extend it until final determination. No order under this
203 subsection may operate retroactively. No person may be
204 considered to have violated section 301 or 403 by reasons

205 of any offer or sale effected after the entry of an order
206 under this subsection if he or she sustains the burden of
207 proof that he or she did not know, and in the exercise of
208 reasonable care could not have known, of the order.

209 (d) In any proceeding under this chapter, the burden
210 of proving an exemption or an exception from a
211 definition is upon the person claiming it.

**§32-4-405. Unlawful representations concerning registration,
exemption or notice filing.**

1 (a) Neither (1) the fact that a notice filing or an
2 application for registration under article two of this
3 chapter or a registration statement under article three of
4 this chapter has been filed nor (2) the fact that a person or
5 security is effectively registered constitutes a finding by
6 the commissioner that any document filed under this
7 chapter is true, complete and not misleading. Neither any
8 such fact nor the fact that an exemption or exception is
9 available for a security or a transaction means that the
10 commissioner has passed in any way upon the merits or
11 qualifications of, or recommended or given approval to,
12 any person, security or transaction.

13 (b) It is unlawful to make, or cause to be made, to any
14 prospective purchaser, customer or client any
15 representation inconsistent with subsection (a).

**§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 shall
3 be, the commissioner of securities of this state. He or she
4 has the power and authority to appoint or employ such
5 assistants as are necessary for the administration of this
6 chapter.

7 (b) The auditor shall set up a special operating fund
8 for the securities division in his or her office. The auditor
9 shall pay into the fund twenty percent of all fees collected
10 as provided for in this chapter. If, at the end of any fiscal
11 year, the balance in the operating fund exceeds one
12 hundred fifty thousand dollars, the excess shall be

13 withdrawn from the special fund and deposited in the
14 general revenue fund.

15 The special operating fund shall be used by the
16 auditor to fund the operation of the securities division
17 located in his or her office. The special operating fund
18 shall be appropriated by line item by the Legislature.

19 (c) Moneys payable for assessments established by
20 section four hundred seven-a of this article shall be
21 collected by the commissioner and deposited into the
22 general revenue fund.

23 (d) It is unlawful for the commissioner or any of his
24 or her officers or employees to use for personal benefit
25 any information which is filed with or obtained by the
26 commissioner and which is not made public. No
27 provision of this chapter authorizes the commissioner or
28 any of his or her officers or employees to disclose any
29 information except among themselves or when necessary
30 or appropriate in a proceeding or investigation under this
31 chapter. No provision of the chapter either creates or
32 derogates from any privilege which exists at common law
33 or otherwise when documentary or other evidence is
34 sought under a subpoena directed to the commissioner or
35 any of his or her officers or employees.

§32-4-407a. Administrative assessments.

1 (a) A registrant, applicant for registration, issuer or
2 other person upon whom the commissioner has conducted
3 an examination, audit, investigation or prosecution and
4 who has been determined by the commissioner to have
5 violated this article or rule or order of the commissioner
6 under this article shall pay for all the costs incurred in the
7 conduct of such examination, audit, investigation or
8 prosecution. These costs shall include, but not be limited
9 to, the salaries and other compensation paid to clerical,
10 accounting, administrative, investigative, examiner and
11 legal personnel, the actual amount of expenses reasonably
12 incurred by such personnel and the commissioner in the
13 conduct of such examination, audit, investigation or
14 prosecution, including a pro rata portion of the
15 commissioner's administrative expense.

16 (b) After giving notice and opportunity for a hearing,
17 the commissioner may issue an order accompanied by
18 written findings of fact and conclusions of law which
19 imposes an administrative assessment in an amount
20 provided in subdivision (1) against a broker-dealer, agent,
21 investment adviser or investment adviser representative
22 registered under section two hundred one, article two of
23 this chapter, or an affiliate of the broker-dealer or
24 investment adviser where the commissioner finds that the
25 person either willfully has violated this article or a rule or
26 order of the commissioner under this article or has
27 engaged in dishonest or unethical practices in the
28 securities business or has taken unfair advantage of a
29 customer.

30 (1) The commissioner, in issuing an order under this
31 subsection may impose an administrative assessment of up
32 to ten thousand dollars for a single violation or of up to
33 fifty thousand dollars for multiple violations in a single
34 proceeding or a series of related proceedings. Each act or
35 omission that provides a basis for issuing an order under
36 this subsection shall constitute a separate violation.

37 (2) For purposes of determining the amount of
38 administrative assessment to be imposed in an order issued
39 under this subsection, the commissioner shall consider:

40 (i) The circumstances, nature, frequency, seriousness,
41 magnitude, persistence and willfulness of the conduct
42 constituting the violation;

43 (ii) The scope of the violation, including the number
44 of persons in and out of this state affected by the conduct
45 constituting the violation;

46 (iii) The amount of restitution or compensation that
47 the violator has made and the number of persons in this
48 state to whom the restitution or compensation has been
49 made;

50 (iv) Past and concurrent conduct of the violator that
51 has given rise to any sanctions or judgment imposed by,
52 or plea of guilty or nolo contendere or settlement with, the
53 commissioner or any securities administrator of any other
54 state or other country, any court of competent jurisdiction,
55 the securities and exchange commissioner, the commodity

56 futures trading commission, any other federal or state
57 agency or any national securities association or national
58 securities exchange as defined in the Securities Exchange
59 Act of 1934 (48 Stat. 88a, 15 U.S.C. 78A et seq.);

60 (v) Any other factor that the commissioner finds
61 appropriate in the public interest or for the protection of
62 investors and consistent with the purposes fairly intended
63 by the policy and provisions of this article.

64 (3) An administrative assessment imposed by an order
65 issued under this subsection is not mutually exclusive of
66 any other remedy available under this article.

67 (4) The commissioner shall not impose an
68 administrative assessment with respect to any public
69 proceeding which was instituted prior to the date of
70 enactment of this section.

§32-4-409. Criminal penalties.

1 (a) Any person who willfully violates any provision of
2 this chapter, except section 404, or who willfully violates
3 any rule or order under this chapter, or who willfully
4 violates section 404 knowing the statement made to be
5 false or misleading in any material respect, shall be guilty
6 of a felony and, upon conviction thereof, shall be fined
7 not more than fifty thousand dollars, or imprisoned in the
8 penitentiary not less than one nor more than three years,
9 or both fined and imprisoned; but no person may be
10 imprisoned for the violation of any rule or order if he or
11 she proves that he or she had no knowledge of the rule or
12 order. No indictment may be returned under this chapter
13 more than five years after the alleged violation.

14 (b) The commissioner may refer such evidence as is
15 available concerning violations of this chapter or of any
16 rule or order hereunder to the proper prosecuting
17 attorney, who may, with or without such a reference,
18 institute the appropriate criminal proceedings under this
19 chapter.

20 (c) Nothing in this chapter limits the power of the state
21 to punish any person for any conduct which constitutes a
22 crime by statute or at common law.

§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 notice filings and all applications for registration and
5 registration statements which are or have ever been
6 effective under this chapter and all denial, suspension or
7 revocation orders which have been entered under this
8 chapter. The register shall be open for public inspection.

9 (c) The information contained in or filed with any
10 registration statement, application or report may be made
11 available to the public under rules prescribed by the
12 commissioner.

13 (d) Upon request and at such reasonable charges as he
14 or she prescribes, the commissioner shall furnish to any
15 person photostatic or other copies (certified under his or
16 her seal of office if requested) of any entry in the register
17 or any document which is a matter of public record. In
18 any proceeding or prosecution under this chapter, any
19 copy so certified is prima facie evidence of the contents of
20 the entry or document certified.

21 (e) The commissioner in his or her discretion may
22 honor requests from interested persons for interpretative
23 opinions. Copies of the opinions shall be filed in a special
24 file maintained for that purpose and shall be public
25 records available for public inspection. The commissioner
26 shall charge a one hundred-dollar fee for each
27 interpretative opinion.

§32-4-414. Scope of the chapter and service of process.

1 (a) Sections 101, 201(a), 301, 405 and 410 apply to
2 persons who sell or offer to sell when (1) an offer to sell is
3 made in this state, or (2) an offer to buy is made and
4 accepted in this state.

5 (b) Sections 101, 201(a) and 405 apply to persons
6 who buy or offer to buy when (1) an offer to buy is made
7 in this state, or (2) an offer to sell is made and accepted in
8 this state.

9 (c) For the purpose of this section, an offer to sell or
10 to buy is made in this state, whether or not either party is
11 then present in this state, when the offer: (1) Originates

12 from this state; or (2) is directed by the offeror to this state
13 and received at the place to which it is directed (or at any
14 post office in this state in the case of a mailed offer).

15 (d) For the purpose of this section, an offer to buy or
16 to sell is accepted in this state when acceptance: (1) Is
17 communicated to the offeror in this state; and (2) has not
18 previously been communicated to the offeror, orally or in
19 writing, outside this state; and acceptance is communicated
20 to the offeror in this state, whether or not either party is
21 then present in this state, when the offeree directs it to the
22 offeror in this state reasonably believing the offeror to be
23 in this state and it is received at the place to which it is
24 directed (or at any post office in this state in the case of a
25 mailed acceptance).

26 (e) An offer to sell or to buy is not made in this state
27 when (1) the publisher circulates or there is circulated on
28 his or her behalf in this state any bona fide newspaper or
29 other publication of general, regular and paid circulation
30 which is not published in this state, or which is published
31 in this state but has had more than two thirds of its
32 circulation outside this state during the past twelve months,
33 or (2) a radio or television program originating outside
34 this state is received in this state.

35 (f) Sections 102 and 201(c), as well as section 405 so
36 far as investment advisers are concerned, apply when any
37 act instrumental in effecting prohibited conduct is done in
38 this state, whether or not either party is then present in this
39 state.

40 (g) Every person making a notice filing and every
41 applicant for registration under this chapter and every
42 issuer which proposes to offer a security in this state
43 through any person acting on an agency basis in the
44 common-law sense shall file with the commissioner, in
45 such form as he or she by rule prescribes, an irrevocable
46 consent appointing the commissioner or his or her
47 successor in office to be his or her attorney to receive
48 service of any lawful process in any noncriminal suit,
49 action or proceeding against him or her or his or her
50 successor, executor or administrator which arises under
51 this chapter or any rule or order hereunder after the
52 consent has been filed, with the same force and validity as
53 if served personally on the person filing the consent. A

54 person who has filed such a consent in connection with a
55 previous registration need not file another. Service may
56 be made by leaving a copy of the process in the office of
57 the commissioner, but it is not effective unless: (1) The
58 plaintiff, who may be the commissioner in a suit, action or
59 proceeding instituted by him, forthwith sends notice of the
60 service and a copy of the process by registered or certified
61 mail to the defendant or respondent at his or her last
62 address on file with the commissioner; and (2) the
63 plaintiff's affidavit of compliance with this subsection is
64 filed in the case on or before the return day of the process,
65 if any, or within such further time as the court allows.

66 (h) When any person, including any nonresident of
67 this state, engages in conduct prohibited or made
68 actionable by this chapter or any rule or order hereunder,
69 and he or she has not filed a consent to service of process
70 under subsection (g) of this section and personal
71 jurisdiction over him or her cannot otherwise be obtained
72 in this state, that conduct shall be considered equivalent to
73 his or her appointment of the commissioner or his or her
74 successor in office to be his or her attorney to receive
75 service of any lawful process in any noncriminal suit,
76 action or proceeding against him or her or his or her
77 successor, executor or administrator which grows out of
78 that conduct and which is brought under this chapter or
79 any rule or order hereunder, with the same force and
80 validity as if served on him or her personally. Service
81 may be made by leaving a copy of the process in the
82 office of the commissioner, and it is not effective unless
83 (1) the plaintiff, who may be the commissioner in a suit,
84 action or proceeding instituted by him, forthwith sends
85 notice of the service and a copy of the process by
86 registered or certified mail to the defendant or respondent
87 at his or her last-known address or takes other steps which
88 are reasonably calculated to give actual notice, and (2) the
89 plaintiff's affidavit of compliance with this subsection is
90 filed in the case on or before the return day of the process,
91 if any, or within such further time as the court allows.

92 (i) When process is served under this section, the court,
93 or the commissioner in a proceeding before him, shall
94 order such continuance as may be necessary to afford the
95 defendant or respondent reasonable opportunity to
96 defend.

CHAPTER 224

(S. B. 534—By Senators Wooton, Ball, Bowman, Dittmar, Hunter, Oliverio, Ross, Schoonover, Snyder, White, Buckalew, Deem, Kimble and Scott)

[Passed April 12, 1997; in effect ninety days from passage. Approved by the Governor.]

AN ACT to amend article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen-a; and to amend article five, chapter eight of said code by adding thereto a new section, designated section twenty, all relating to voluntary associations and membership organizations primarily comprised of counties or municipalities in this state or elected or appointed officials of such counties or municipalities; requiring that such association and organizations, whether or not for profit, which annual receive more than five thousand dollars in public funds receive the dues of their members to file triennial audits with the secretary of tax and revenue; requiring that such audits be performed by independent certified public accountants; and providing criminal penalties for failure to comply.

Be it enacted by the Legislature of West Virginia:

That article five, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seventeen-a; and that article five, chapter eight of said code be amended by adding thereto a new section, designated section twenty, all to read as follows:

Chapter

7. County Commissions and Officers.
8. Municipal Corporations.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-17a. Triennial audits by certain associations and organizations receiving county funds.

1 (a) Any voluntary association or other membership
2 organization, whether nonprofit or for profit, the majority
3 of the membership of which is comprised of counties of
4 this state or of persons who hold elected or appointed
5 county offices in this state, and which annually receives
6 more than five thousand dollars in public moneys from
7 the various counties of this state to pay the membership
8 dues of counties or elected or appointed county officials,
9 shall file with the secretary of tax and revenue on a
10 triennial basis, beginning the first day of July, one thou-
11 sand nine hundred ninety-seven, an audit of the receipt
12 and disbursement of funds. The period covered by the
13 audit shall be the previous three years or for the years
14 since the last such audit.

15 (b) Any audit required by the provisions of this
16 section shall be performed by an independent certified
17 public accountant.

18 (c) Any voluntary association or membership organi-
19 zation subject to the provisions of this section which fails
20 or refuses to file an audit shall be guilty of a misdemeanor
21 and, upon conviction thereof, shall be fined not less than
22 one thousand dollars nor more than five thousand dollars.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-20. Triennial audits of certain associations and organiza- tions.

1 (a) Any voluntary association or other membership
2 organization, whether nonprofit or for profit, the majority
3 of the membership of which is comprised of municipali-
4 ties of this state or of persons who hold elected or appoint-
5 ed municipal offices in this state, and which annually
6 receives more than five thousand dollars in

7 public moneys from the various municipalities of this state
8 to pay the membership dues of municipalities or elected
9 or appointed municipal officials, shall file with the
10 secretary of tax and revenue on a triennial basis,
11 beginning the first day of July, one thousand nine
12 hundred ninety-seven, an audit of the receipt and
13 disbursement of funds. The period covered by the audit
14 shall be the previous three years or for the years since the
15 last such audit.

16 (b) Any audit required by the provisions of this
17 section shall be performed by an independent certified
18 public accountant.

19 (c) Any voluntary association or membership
20 organization subject to the provisions of this section which
21 fails or refuses to file an audit shall be guilty of a
22 misdemeanor and, upon conviction thereof, shall be fined
23 not less than one thousand dollars nor more than five
24 thousand dollars.

CHAPTER 225

(Com. Sub. for H. B. 2712—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 11, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nine-a, article one, chapter sixteen 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 thirteen-c, all relating to public water systems; definition of public water system; criminal penalties; civil and administrative penalties; violation of drinking water rules or regulations; creation of safe drinking water penalty fund; designation of division of health as instrumentality to enter into agreements for and accept grants made by the United States environmental protection agency; creation of drinking water

treatment revolving fund; legislative rules; administration and management of fund by division of health and water development authority; use of grant moneys generally; use of grant moneys for providing technical assistance services for small public water systems; use of grant moneys for disadvantaged communities; deposits of grant moneys; set-aside accounts; audit of grant moneys; remedies to enforce payment of loans from fund; and construction of article.

Be it enacted by the Legislature of West Virginia:

That section nine-a, article one, chapter sixteen 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 thirteen-c, all to read as follows:

Article

1. Division of Health.

13C. Drinking Water Treatment Revolving Fund Act.

ARTICLE 1. DIVISION OF HEALTH.

§16-1-9a. Public water system defined; regulation of maximum contaminant levels in water systems; authorizing inspections; criminal, civil and administrative penalties; safe drinking water penalty fund.

1 (a) A public water system is any water supply or sys-
 2 tem which regularly supplies or offers to supply water for
 3 human consumption through pipes or other constructed
 4 conveyances, if serving at least an average of twenty-five
 5 individuals per day for at least sixty days per year, or
 6 which has at least fifteen service connections, and shall
 7 include: (1) Any collection, treatment, storage, and distri-
 8 bution facilities under the control of the owner or operator
 9 of such system and used primarily in connection with such
 10 system; and (2) any collection or pretreatment storage
 11 facilities not under such control which are used primarily
 12 in connection with such system. A public water system
 13 does not include a system which meets all of the following
 14 conditions: (1) Which consists only of distribution and
 15 storage facilities (and does not have any collection and
 16 treatment facilities); (2) which obtains all of its water from,
 17 but is not owned or operated by, a public water system

18 which otherwise meets the definition; (3) which does not
19 sell water to any person; and (4) which is not a carrier
20 conveying passengers in interstate commerce.

21 (b) (1) The division of health shall prescribe by legis-
22 lative rule the maximum contaminant levels to which all
23 public water systems shall conform in order to prevent
24 adverse effects on the health of individuals, and, if it
25 deems appropriate, treatment techniques that reduce the
26 contaminant or contaminants to a level which will not
27 adversely affect the health of the consumer. Such rule
28 shall contain provisions to protect and prevent contamina-
29 tion of wellheads and well fields used by public water
30 supplies so that contaminants do not reach a level which
31 would adversely affect the health of the consumer.

32 (2) It shall further prescribe by legislative rule mini-
33 mum requirements for: Sampling and testing; system
34 operation; public notification by a public water system on
35 being granted a variance or exemption or upon failure to
36 comply with specific requirements of this section and
37 regulations promulgated under this section; record keep-
38 ing; laboratory certification; as well as procedures and
39 conditions for granting variances and exemptions to pub-
40 lic water systems from state public water systems regula-
41 tions.

42 (3) In addition, the division of health shall establish by
43 legislative rule, as set out in chapter twenty-nine-a of this
44 code, requirements covering the production and distribu-
45 tion of bottled drinking water and may by legislative rule,
46 as set out in chapter twenty-nine-a of this code, establish
47 requirements governing the taste, odor, appearance, and
48 other consumer acceptability parameters of drinking wa-
49 ter.

50 (c) Authorized representatives of the division of health
51 shall have right of entry to any part of a public water sys-
52 tem, whether or not the system is in violation of a legal
53 requirement, for the purpose of inspection, sampling or
54 testing, and shall be furnished records or information
55 reasonably required for a complete inspection.

56 (d) (1) Any individual, partnership, association, syndi-
57 cate, company, firm, trust, corporation, government corpo-
58 ration, institution, department, division, bureau, agency,
59 federal agency, or any entity recognized by law who vio-
60 lates any provision of this section, or any of the rules or
61 orders issued pursuant thereto, is guilty of a misdemeanor
62 and, upon conviction thereof, shall be fined not less than
63 twenty-five dollars nor more than two hundred dollars,
64 and each day's violation shall constitute a separate of-
65 fense. In addition thereto, the division of health may seek
66 injunctive relief in the circuit court of the county in which
67 all or part of the public water system is situated for threat-
68 ened or continuing violations.

69 (2) For a willful violation of a provision of this section,
70 or of any of the regulations or orders issued thereunder
71 for which a penalty is not otherwise provided under subdi-
72 vision (3) of this subsection, an individual, partnership,
73 association, syndicate, company, firm, trust, corporation,
74 government corporation, institution, department, division,
75 bureau, agency, federal agency, or entity recognized by
76 law, upon a finding thereof by the circuit court of the
77 county in which the violation occurs, shall be subject to a
78 civil penalty of not more than five thousand dollars, and
79 each day's violation shall be grounds for a separate penal-
80 ty.

81 (3) The division of health shall have the authority to
82 assess administrative penalties and initiate such proceed-
83 ings as may be necessary for the enforcement of drinking
84 water regulations. The administrative penalty for a viola-
85 tion of any drinking water rule or regulation adopted by
86 the division shall be a minimum of one thousand dollars
87 per day per violation and each day's violation shall be
88 grounds for a separate penalty. In any action brought to
89 enforce drinking water rules or regulation, the administra-
90 tive penalty may not exceed an aggregate amount of five
91 thousand dollars for systems serving a population of less
92 than ten thousand persons and may not exceed twenty-five
93 thousand dollars for systems serving a population of ten
94 thousand persons or more. Payments shall be payable to
95 the division of health. All moneys collected under this
96 section shall be deposited into a restricted account known

97 as the safe drinking water penalty fund, which is hereby
98 created in the office of the state treasurer. All money
99 deposited into the fund shall be used by the division of
100 health to provide technical assistance to public water sys-
101 tems.

**ARTICLE 13C. DRINKING WATER TREATMENT REVOLVING
FUND ACT.**

§16-13C-1. Definitions.

§16-13C-2. Designation of division of health as state instrumentality; rules;
small systems; disadvantaged communities.

§16-13C-3. Drinking water treatment revolving fund; duties of division of
health and water resources authority; set-aside accounts.

§16-13C-4. Management of funds.

§16-13C-5. Remedies to enforce payment.

§16-13C-6. Construction of article.

§16-13C-1. Definitions.

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

3 (1) "Authority" means the water development au-
4 thority provided for in section four, article one, chapter
5 twenty-two-c of this code.

6 (2) "Capacity development" means the technical,
7 managerial and financial capability of a public water sys-
8 tem.

9 (3) "Cost" means the cost of all labor, materials, ma-
10 chinery, equipment, lands, property, rights and easements,
11 plans and specifications and all other expenses necessary
12 or incident to the acquisition, construction, improvement,
13 expansion, extension, repair or rehabilitation of all or part
14 of a project.

15 (4) "Disadvantaged community" means the service
16 area of a public water system that meets affordability crite-
17 ria established after public review and comment by the
18 state.

19 (5) "Federal safe drinking water act" means the fed-
20 eral statute commonly known as the "Safe Drinking Water

21 Act”, 42 U.S.C. 300f et seq., as enacted, amended, and as
22 may be subsequently amended.

23 (6) “Fund” means the West Virginia drinking water
24 treatment revolving fund created in this article.

25 (7) “Instrumentality” means the division of health
26 which shall have the primary responsibility for administer-
27 ing the fund and this article pursuant to requirements of
28 the federal safe drinking water act.

29 (8) “Local Entity” means any municipality, public
30 utility, or person, including any individual, firm, partner-
31 ship, association, not-for-profit corporation or other cor-
32 poration organized and existing under the laws of the state
33 which is empowered to construct and operate an eligible
34 project.

35 (9) “Public water system” means that term as defined
36 in section nine-a, article one, chapter sixteen of the code.

37 (10) “Project” means a project for improving a
38 drinking water system for the purpose of achieving or
39 maintaining compliance with applicable state and federal
40 drinking water regulations.

41 (11) “Set-aside accounts” means those accounts that
42 may be set up for activities required by the federal safe
43 drinking water act and the moneys for these accounts may
44 be taken from the federal capitalization grant for these
45 nonproject activities before the capitalization grant is de-
46 posited into the fund.

47 (12) “Small system” means a public water system
48 serving 10,000 or fewer persons.

**§16-13C-2. Designation of division of health as state instrumen-
tality; rules; small systems; disadvantaged com-
munities.**

1 (a) The division of health shall act as the instrumentality
2 that is hereby empowered to enter into capitalization
3 agreements with the United States Environmental Protec-
4 tion Agency, to accept capitalization grant awards made
5 under the federal safe drinking water act, and to direct the
6 administration and management of the drinking water

7 treatment revolving fund created in this article in accor-
8 dance with the requirements of federal law.

9 (b) The division of health shall propose rules for legis-
10 lative approval in accordance with provisions of article
11 three, chapter twenty-nine-a of the code for the purpose of
12 effecting the administration of the provisions of this arti-
13 cle. The rules shall include, but are not limited to, estab-
14 lishing requirements for: (1) Capacity development; (2)
15 environmental review; (3) disadvantaged community des-
16 ignation; (4) receipt and disbursement of fund moneys;
17 and (5) establishment of a drinking water treatment re-
18 volving fund program to direct the financial management
19 of the fund to water systems and establish the interest rates
20 and repayment terms of the loans.

21 (c) Two percent of the annual federal capitalization
22 grants made to this state shall be utilized to provide techni-
23 cal assistance services for small systems to assist those
24 systems in maintaining compliance with the federal safe
25 drinking water act. The division of health shall enter into
26 contracts to provide technical assistance services for small
27 systems with such nonprofit organizations that: (1) Have a
28 membership that represent at least twenty-five percent of
29 the small systems of this state; and (2) have at least five
30 years experience in providing on-site technical assistance
31 to small systems.

32 (d) The division of health shall, in accordance with the
33 provisions of the federal safe drinking water act, establish
34 a program for loan subsidies to disadvantaged communi-
35 ties. Thirty percent of the annual federal capitalization
36 grants made to this state shall be dedicated to the funding
37 of projects for disadvantaged communities.

**§16-13C-3. Drinking water treatment revolving fund; duties of
division of health and water resources authori-
ty; set-aside accounts.**

1 (a) There is hereby created in the office of the state
2 treasurer a special fund to be known as the "West Virginia
3 drinking water treatment revolving fund". The fund shall
4 be administered and managed in accordance with the
5 provisions of the federal safe drinking water act.

6 (b) The fund shall be administered and managed by
7 the water development authority under the direction of the
8 division of health. The fund shall be comprised of mon-
9 eys appropriated to the fund by the Legislature, moneys
10 allocated to the state by the federal government expressly
11 for the purpose of establishing and maintaining a drinking
12 water treatment revolving fund, all receipts from loans
13 made from the fund, all income from the investment of
14 moneys held in the fund, and all other sums designated
15 for deposits to the fund from any source, public or pri-
16 vate. Moneys in the fund shall be used solely to make
17 loans or provide other allowable financial assistance to
18 eligible projects for public water systems, as described in
19 the federal safe drinking water act.

20 (c) In order to carry out the administration and man-
21 agement of the fund, the authority is authorized to employ
22 officers, employees, agents, advisors and consultants, in-
23 cluding attorneys, financial advisors, engineers, other tech-
24 nical advisors and public accountants, and notwithstanding
25 any provisions of this code to the contrary, to determine
26 their duties and compensation without the approval of any
27 other agency or instrumentality.

28 (d) The authority shall propose rules for legislative
29 approval in accordance with the provisions of article three
30 chapter twenty-nine-a of this code to govern the pledge of
31 loans to secure bonds of the authority.

32 (e) All moneys belonging to the fund shall be kept in
33 appropriate depositories and secured in conformance with
34 the provisions of this code. Disbursements from the fund
35 shall be authorized for payment by the director of the
36 authority or the director's designee. Any depository or
37 officer of the depository to which moneys of the fund are
38 paid shall act as trustee of the moneys and shall hold and
39 apply them solely for the purposes for which the moneys
40 are provided under this article. Moneys in the fund shall
41 not be commingled with other money of the authority.
42 Notwithstanding any provision of this code to the con-
43 trary, amounts in the fund shall be deposited by the au-
44 thority in one or more banking institutions: *Provided,*
45 That any moneys so deposited shall be deposited in a

46 banking institution located in this state. The banking
47 institution shall be selected by the authority by competi-
48 tive bid. If not needed for immediate use or disburse-
49 ment, moneys in the fund may be invested or reinvested
50 by the authority in obligations or securities which are
51 considered lawful investments for public funds under this
52 code.

53 (f) Pursuant to the provisions of the federal safe drink-
54 ing water act, set-aside accounts may be set up in accounts
55 separate from the drinking water treatment revolving fund.
56 These set-aside accounts shall include, but not be limited
57 to, administration costs, source water protection, operator
58 training and certification, technical assistance to systems,
59 local assistance, and other state activities permitted by the
60 federal safe drinking water act. The division of health
61 shall direct the authority to establish and administer the
62 set-aside accounts as permitted by the federal safe drink-
63 ing water act. An application fee may be charged and
64 deposited into the administrative account to defray the
65 cost of administering the program.

§16-13C-4. Management of funds.

1 The authority shall manage the funds received pursu-
2 ant to the provisions of this article for accounting purpos-
3 es. The authority shall cause an audit of its books and
4 accounts to be made at least once each fiscal year and the
5 cost thereof may be defrayed as administrative expense
6 under provisions of this article. The audit shall be con-
7 ducted by a certified public accountant and provide an
8 auditor's opinion on the fund financial statements, a re-
9 port on the internal controls and a report prepared in
10 compliance with the provisions of the drinking water treat-
11 ment revolving fund.

§16-13C-5. Remedies to enforce payment.

1 (a) In order to ensure the timely payment of all sums
2 due and owing to the fund under a revolving fund loan
3 agreement made between the state and a local entity, and
4 notwithstanding any provisions of this code to the con-
5 trary, the authority has and may, at its option, exercise the

6 following rights and remedies in the event of any default
7 by a local entity under a loan agreement:

8 (1) The authority may directly impose, in its own
9 name and for its own benefit, service charges upon all
10 users of a project funded by a loan distributed to a local
11 entity pursuant to this article, and may proceed directly to
12 enforce and collect the service charges, together with all
13 necessary costs of the enforcement and collection.

14 (2) The authority may exercise, in its own name or in
15 the name of and as the agent for a particular local entity,
16 all of the rights, powers and remedies of the local entity
17 with respect to the project or which may be conferred
18 upon the local entity by statute, rule, regulation or judicial
19 decision, including all rights and remedies with respect to
20 users of the project funded by the loan distributed to that
21 local entity pursuant to this article.

22 (3) The authority may, by civil action, mandamus or
23 other judicial or administrative proceeding, compel per-
24 formance by a local entity of all the terms and conditions
25 of the loan agreement between the state and that local
26 entity including:

27 (A) The adjustment of service charges as required to
28 repay the loan or otherwise satisfy the terms of the loan
29 agreement;

30 (B) The enforcement and collection of service charg-
31 es; and

32 (C) The enforcement by the local entity of all rights
33 and remedies conferred by statute, rule, regulation or
34 judicial decision.

35 (b) The rights and remedies enumerated in this article
36 are in addition to rights and remedies conferred upon the
37 authority by law or pursuant to the loan agreement.

§16-13C-6. Construction of article.

1 The provisions of this article shall be liberally con-
2 strued to the end that its beneficial purposes may be ef-
3 fected. Insofar as the provisions of this article are incon-
4 sistent with the provisions of any other general, special or
5 local law, the provisions of this article are controlling.

CHAPTER 226

(S. B. 430—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 12, 1997; 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, fifteen and eighteen, article nine, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto a new section, designated section twenty; and to amend and reenact section twenty-four, article two, chapter forty-eight-a of said code, all relating to conforming the West Virginia works act and support enforcement law to federal requirements; legislative findings; defining terms; removing obsolete language relating to program implementation, waiver proposals and emergency rules; removing requirement that rules be promulgated in accordance with administration procedures act; changing work exemption for new mothers; requiring personal responsibility contract be signed before receipt of cash assistance; diversionary assistance allowances; providing for confidentiality of information; fines and criminal penalties for unauthorized release of confidential information; and removing the pass-through of the first fifty dollars of amounts collected as child support.

Be it enacted by the Legislature of West Virginia:

That sections two, three, four, five, six, seven, eight, nine, ten, eleven, twelve, fifteen and eighteen, article nine, chapter nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty; and that section twenty-four, article two, chapter forty-eight-a of said code be amended and reenacted, all to read as follows:

Chapter

9. Human Services.

48A. Enforcement of Family Obligations.**CHAPTER 9. HUMAN SERVICES.****ARTICLE 9. WEST VIRGINIA WORKS PROGRAM.**

- §9-9-2. Legislative findings; purpose.
- §9-9-3. Definitions.
- §9-9-4. Authorization for program.
- §9-9-5. West Virginia works program fund.
- §9-9-6. Program participation.
- §9-9-7. Work requirements.
- §9-9-8. Exemptions.
- §9-9-9. Personal responsibility contract.
- §9-9-10. Participation limitation; exceptions.
- §9-9-11. Breach of contract; notice; sanctions.
- §9-9-12. Diversionary assistance allowance in lieu of monthly cash assistance.
- §9-9-15. Interagency coordination.
- §9-9-18. Relationship with other law.
- §9-9-20. Confidentiality, fines and penalties.

§9-9-2. Legislative findings; purpose.

- 1 (a) The Legislature hereby finds and declares that:
 - 2 (1) The entitlement of any person to receive federal-
3 state cash assistance is hereby discontinued;
 - 4 (2) At-risk families are capable of becoming self-
5 supporting;
 - 6 (3) A reformed assistance program should both
7 expect and assist a parent and caretaker-relatives in at-risk
8 families to support their dependent children and children
9 for which they are caretakers;
 - 10 (4) Every parent or caretaker-relative can exhibit
11 responsible patterns of behavior so as to be a positive role
12 model;
 - 13 (5) Every parent or caretaker-relative who receives
14 cash assistance has a responsibility to participate in an
15 activity to help them prepare for, obtain and maintain
16 gainful employment;

17 (6) For a parent or caretaker-relative who receives
18 cash assistance and for whom full-time work is not
19 feasible, participation in some activity is expected to
20 further themselves, their family or their community;

21 (7) The state should promote the value of work and
22 the capabilities of individuals;

23 (8) Job development efforts should enhance the
24 employment opportunities of participants;

25 (9) An effective public education system is the key to
26 long-term self-support; and

27 (10) A reformed assistance program should be
28 structured to achieve a clear set of outcomes; deliver
29 services in an expedient, effective and efficient manner;
30 and maximize community support for participants. After
31 five years, there is expected to be a decrease in the follow-
32 ing: (i) The number of persons receiving public assis-
33 tance; and (ii) the amount of time an individual remains
34 on public assistance.

35 (b) The goals of the program are to achieve more
36 efficient and effective use of public assistance funds;
37 reduce dependency on public programs by promoting
38 self-sufficiency; and structure the assistance programs to
39 emphasize employment and personal responsibility. The
40 program is to be evaluated on the increase in employment
41 rates in the program areas; the completion of educational
42 and training programs; the increased compliance in
43 preventive health activities, including immunizations; and
44 a decrease in the case-load of division of personnel.

§9-9-3. Definitions.

1 In addition to the rules for the construction of statutes
2 in section ten, article two, chapter two of this code and the
3 words and terms defined in section two, article one of this
4 chapter, unless a different meaning appears from the
5 context:

6 (a) "At-risk family" means a group of West Virginian
7 ians living in the same household, living below the federal-
8 ly designated poverty level, lacking the resources to

9 become self-supporting, and consisting of a dependent
10 minor child or children living with a parent, stepparent or
11 caretaker-relative; an "at-risk family" may include an
12 unmarried minor parent and his or her dependent child or
13 children who live in an adult supervised setting;

14 (b) "Beneficiary" or "participant" means any parent
15 or caretaker-relative in an at-risk family who receives cash
16 assistance for himself or herself and family members;

17 (c) "Cash assistance" means temporary assistance for
18 needy families or diversionary assistance;

19 (d) "Challenge" means any fact, circumstance or
20 situation that prevents a person from becoming self-
21 sufficient or from seeking, obtaining or maintaining
22 employment of any kind, including physical or mental
23 disabilities, lack of education, testing, training, counseling,
24 child care arrangements, transportation, medical treatment
25 or substance abuse treatment;

26 (e) "Community or personal development" means
27 activities designed or intended to eliminate challenges to
28 participation in self-sufficiency activities. These activities
29 are to provide community benefit and enhance personal
30 responsibility, including, but not limited to, classes or
31 counseling for learning life skills or parenting, dependent
32 care, job readiness, volunteer work, participation in
33 sheltered workshops or substance abuse treatment;

34 (f) "Department" means the state department of
35 health and human resources;

36 (g) "Division" means the division of human services;

37 (h) "Income" means money received by any mem-
38 ber of an at-risk family which can be used at the discretion
39 of the household to meet its basic needs: *Provided*, That
40 income shall not include earnings of minor children in
41 school, payments received from earned income tax credit
42 or tax refunds;

43 (i) "Personal responsibility contract" means a written
44 agreement entered into by the division and a beneficiary

45 which establishes the responsibilities and obligations of the
46 beneficiary;

47 (j) "Secretary" means the secretary of the state
48 department of health and human resources;

49 (k) "Subsidized employment" means employment
50 with earnings provided by an employer who receives a
51 subsidy from the division for the creation and mainte-
52 nance of the employment position;

53 (l) "Support services" means, but is not limited to, the
54 following services: Child care; medicaid; transportation
55 assistance; information and referral; resource development
56 services which is assisting families to receive child support
57 enforcement and supplemental social security income;
58 family support services which is parenting, budgeting and
59 family planning; relocation assistance; and mentoring
60 services;

61 (m) "Unsubsidized employment" means employ-
62 ment with earnings provided by an employer who does
63 not receive a subsidy from the division for the creation
64 and maintenance of the employment position;

65 (n) "Work" means unsubsidized employment,
66 subsidized employment, work experience or community
67 or personal development; and

68 (o) "Work experience" means unpaid structured
69 work activities that are provided in an environment where
70 performance expectations are similar to those existing in
71 unsubsidized employment and which provide training in
72 occupational areas that can realistically be expected to
73 lead to unsubsidized employment.

§9-9-4. Authorization for program.

1 (a) The secretary shall conduct the West Virginia
2 works program in accordance with this article and any
3 applicable regulations promulgated by the secretary of the
4 federal department of health and human services in
5 accordance with federal block-grant funding or similar
6 federal funding stream. This program shall be imple-
7 mented to replace welfare assistance programs for at-risk

8 families in accordance with this article and within federal
9 requirements; to coordinate the transfer of all applicable
10 state programs into the temporary assistance to needy
11 families West Virginia works program; to expend only the
12 funds appropriated by the Legislature to establish and
13 operate the program or any other funds available to the
14 program pursuant to any other provisions of the code or
15 rules; to establish administrative due process procedures
16 for revocation or termination proceedings; and implement
17 such other procedures as may be necessary to accomplish
18 the purpose of this article.

19 (b) The secretary may establish the program as one or
20 more pilot projects to test the policy being evaluated. Any
21 pilot project so established is to be consistent with the
22 principles and goals set forth in this article. The secretary
23 shall determine the counties in which to implement the
24 provisions of this program, considering a fair representa-
25 tion of both rural and urban areas, and may vary the
26 program components to test the effectiveness, efficiency
27 and fiscal impact of each prior to statewide implementa-
28 tion. The secretary shall structure the initial pilot pro-
29 gram, or programs to include a minimum of fifteen
30 percent of the state population that qualifies for temporary
31 assistance for needy families, or any successor program.
32 The pilot program shall eventually include a minimum of
33 fifteen-percent of the participants eligible in other catego-
34 ries, as funds are available.

35 (c) The West Virginia works program authorized
36 pursuant to this act does not create an entitlement to that
37 program or any services offered within that program,
38 unless entitlement is created pursuant to a federal law or
39 regulation. The West Virginia works program, and each
40 component of that program established by this act or the
41 expansion of any component established pursuant to
42 federal law or regulation, is subject to the annual appropri-
43 ation of funds by the Legislature.

44 (d) Copies of all rules proposed by the secretary shall
45 also be filed with the legislative oversight commission on
46 health and human resources accountability established

47 pursuant to article twenty-nine-e, chapter sixteen of this
48 code.

49 (e) In conjunction with the performance evaluation of
50 the department of health and human resources scheduled
51 during the interim of the Legislature in the year one
52 thousand nine hundred ninety-seven, the performance
53 evaluation and research division of the legislative auditor's
54 office shall undertake a statistical study evaluating the
55 rates at which participants in the pilot program established
56 under this article move to unsubsidized employment,
57 subsidized employment and work experience, and report
58 findings to the joint committee on government operations
59 not later than the thirtieth day of October, one thousand
60 nine hundred ninety-seven. The performance evaluation
61 and research division may review and make recommenda-
62 tions with respect to the methodology established by the
63 secretary for evaluating the effectiveness, efficiency and
64 fiscal impact of the pilot project established pursuant to
65 this section.

66 (f) Notwithstanding the provisions of subsection (b) of
67 this section, the secretary shall implement, not later than
68 the first day of January, one thousand nine hundred
69 ninety-eight, modifications to the temporary assistance to
70 needy families program so that the method of calculating
71 the amount of cash assistance for which a participant's
72 family is eligible, including treatment of income and
73 assets, does not vary depending on the participant's
74 county of residence: *Provided*, That nothing in this
75 subsection may be construed to require the expansion or
76 statewide implementation of the program created in this
77 article until such time as the effectiveness, efficiency and
78 fiscal impact of the program is tested and evaluated.

§9-9-5. West Virginia works program fund.

1 There is hereby created a special account within the
2 state treasury to be known as the "West Virginia Works
3 Program Fund". Expenditures from the fund shall be
4 used exclusively to meet the necessary expenditures of the
5 program, including wage reimbursements to participating
6 employers, temporary assistance to needy families,
7 employment-related child care payments, transportation

8 expenses and administrative costs directly associated with
9 the operation of the program. Moneys paid into the
10 account shall be from specific annual appropriations of
11 funds by the Legislature.

§9-9-6. Program participation.

1 (a) Unless otherwise noted in this article, all adult
2 recipients of cash assistance shall be required to participate
3 in the West Virginia works pilot program in accordance
4 with the provisions of this article. The level of participa-
5 tion, services to be delivered and work requirements shall
6 be defined within the terms of the personal responsibility
7 contract and through rules established by the secretary.

8 (b) To the extent funding permits, any individual
9 exempt under the provisions of section eight of this article
10 may participate in the activities and programs offered
11 through the West Virginia works program.

12 (c) Support services other than cash assistance through
13 the works program may be provided to at-risk families to
14 eliminate the need for cash assistance.

15 (d) Cash assistance through the works program may
16 be provided to an at-risk family if the combined family
17 income is below the income and asset test levels estab-
18 lished by the division: *Provided*, That an at-risk family
19 that includes a married man and woman and dependent
20 children of either one or both may receive an additional
21 cash assistance benefit in an amount ten percent greater
22 than the cash assistance benefit provided to the same size
23 household in which there are no married adults: *Provid-*
24 *ed, however*, That an at-risk family shall receive an
25 additional cash assistance benefit in an amount equal to
26 the amount of child support collected in a month on
27 behalf of a child or children of the at-risk family, not to
28 exceed fifty dollars.

§9-9-7. Work requirements.

1 Unless otherwise exempted by the provisions of
2 section eight of this article, the West Virginia works
3 program shall require that anyone who possesses a high
4 school diploma, or its equivalent, or anyone who is of the

5 age of twenty years or more, to work or attend an educa-
6 tional or training program for a minimum of twenty hours
7 per week to receive any form of cash assistance. In
8 accordance with federal law or regulation, the work,
9 education and training requirements of this section are
10 waived for any qualifying participant with a child under
11 six years of age if the participant is unable to obtain
12 appropriate and available child care services. In order for
13 any participant to receive cash assistance, he or she shall
14 enter into personal responsibility contracts pursuant to the
15 provisions of section nine of this article.

§9-9-8. Exemptions.

1 Participants exempt from the work requirements of
2 the works program pursuant to the provisions of this
3 section shall be required to develop a personal responsibil-
4 ity contract. The secretary shall establish by rule catego-
5 ries of persons exempt only from the work requirements
6 of the program, which categories include, but are not
7 limited to, the following:

8 (a) A parent caring for a dependent child with a life-
9 threatening illness;

10 (b) Individuals over the age of sixty years;

11 (c) Full-time students that are less than twenty years of
12 age and are pursuing a high school diploma or equivalent;

13 (d) Persons with a physical or mental incapacity or
14 persons suffering from a temporary debilitating injury
15 lasting more than thirty days, as defined by the secretary;

16 (e) Relatives providing in-home care for an individual
17 that would otherwise be institutionalized; and

18 (f) Any woman during the last trimester of pregnancy
19 and the first six months after the birth of the child but in
20 no case shall the woman be exempt from the work re-
21 quirements for more than a total of six months: *Provided,*
22 That, in the case of the birth of the first child to said
23 woman after said woman first becomes a cash assistance
24 recipient, the woman may be exempt up to the time her
25 child reaches twelve months of age.

§9-9-9. Personal responsibility contract.

1 (a) Every eligible adult beneficiary shall participate in
2 a program orientation and the development, and subse-
3 quent revisions, of a personal responsibility contract. The
4 contract shall be defined based on the assessed goals and
5 challenges of the participant:

6 (1) If the participant has a recent attachment to the
7 work force, the contract shall include provisions regarding
8 required job search activities, identified support services,
9 level of benefits requested and time limitation.

10 (2) If the participant does not have a recent attach-
11 ment to the work force, the contract shall identify the
12 evaluation or testing activities, and/or job training activities
13 necessary prior to job search activities, identified support
14 services, benefits requested and time limitation.

15 (3) If it is determined that the participant is not able to
16 obtain or maintain gainful employment, the contract shall
17 contain appropriate provisions defining the activities that
18 benefit the participant, their family or their community.

19 (4) The participant's contract shall include the require-
20 ment that the participant develop and maintain, with the
21 appropriate health care provider, a schedule of preventive
22 care for their dependent child, including routine examina-
23 tions and immunizations; assurance of school attendance
24 for school age children under their care; assurance of
25 properly supervised child care, including after-school
26 care; and establish paternity or actively pursue child
27 support, or both, if applicable and if deemed necessary,
28 nutrition or other counseling, parenting or family plan-
29 ning classes.

30 (5) If the participant must overcome challenges prior
31 to employment, the contract shall include a list of the
32 identified challenges and an individual plan for overcom-
33 ing the same.

34 (6) If the participant is a teenage parent, the partici-
35 pant may work, but the contract shall include the require-
36 ments that the participant:

37 (A) Remain in an educational activity to complete
38 high school, obtain a general equivalent diploma or obtain
39 vocational training and make satisfactory scholastic
40 progress;

41 (B) Attend parenting classes or participate in a
42 mentorship program, or both if appropriate; and

43 (C) Live at home or in other adult supervised arrange-
44 ments if they are unemancipated minor parents.

45 (7) If the participant is under the age of twenty years
46 and does not have a high school education or its equiva-
47 lent, the contract shall include requirements to participate
48 in mandatory education or training, which if the partici-
49 pant is unemployed, may include a return to high school
50 with satisfactory scholastic progress.

51 (b) In order to receive cash assistance the participant
52 shall enter into a personal responsibility contract. If the
53 participant refuses to sign the personal responsibility
54 contract, the participant and family members shall be
55 ineligible to receive cash assistance: *Provided*, That a
56 participant who alleges that the terms of a personal
57 responsibility contract are inappropriate based on the
58 individual circumstances of the participant may request
59 and shall be provided a fair and impartial hearing in
60 accordance with administrative procedures established by
61 the division and due process of law. A participant who
62 signs a personal responsibility contract, or complies with a
63 personal responsibility contract, does not waive his or her
64 right to request and receive a due process hearing under
65 this subsection.

66 (c) Personal responsibility contracts shall be drafted
67 by the division on a case-by-case basis; take into consider-
68 ation the individual circumstances of each beneficiary;
69 reviewed and reevaluated not less often than every two
70 years; and, in the discretion of the division, amended or
71 extended on a periodic basis.

§9-9-10. Participation limitation; exceptions.

1 The length of time a participant may receive cash
2 assistance through the West Virginia works program shall

3 be defined in the personal responsibility contract: *Provid-*
4 *ed*, That no participant may receive benefits for a period
5 longer than sixty months, except in circumstances as
6 defined by the secretary.

§9-9-11. Breach of contract; notice; sanctions.

1 (a) The division may refuse to extend or renew a
2 personal responsibility contract and the benefits received
3 by the beneficiary, or may terminate an existing contract
4 and benefits, if the division finds any of the following:

5 (1) The employment of fraud or deception by the
6 beneficiary in applying for or receiving program benefits;

7 (2) A substantial breach of the requirements and
8 obligations set forth in the personal responsibility con-
9 tract;

10 (3) A violation of any provision of the personal
11 responsibility contract, this article, or any rule promulgat-
12 ed by the secretary pursuant to this article.

13 (b) In the event the division determines that a personal
14 responsibility contract or the benefits received by the
15 beneficiary are subject to revocation or termination,
16 written notice of the violation, revocation or termination
17 shall be deposited in the United States mail, postage pre-
18 paid and addressed to the beneficiary at his or her last
19 known address thirteen days prior to such termination or
20 revocation. Such notice shall state the action of the
21 division, its reason or reasons for such termination and
22 grant to the beneficiary a reasonable opportunity to be
23 heard at a fair and impartial hearing before the division in
24 accordance with administrative procedures established by
25 the division and due process of law.

26 (c) In any hearing granted pursuant to the provisions
27 of this section, the beneficiary shall maintain the burden
28 of proving that his or her benefits were improperly
29 terminated and shall bear his or her own costs, including
30 attorneys fees.

31 (d) The secretary shall determine by rule de minimis
32 violations and those violations subject to sanctions and

33 maximum penalties. In the event the division finds that a
34 beneficiary has violated any provision of this article, of his
35 or her personal responsibility contract or any applicable
36 division rule, the division shall impose sanctions against
37 the beneficiary as follows:

38 (1) For the first noncompliance, a one-third reduction
39 of benefits for three months;

40 (2) For the second noncompliance, a two-thirds
41 reduction in benefits for three months; and

42 (3) For the third noncompliance, a termination of
43 benefits for six months.

44 (e) For any sanction imposed pursuant to subsection
45 (d) of this section, if compliance occurs within thirteen
46 days of the date of the notice of the sanction, the reduc-
47 tion in benefits shall not be imposed, but the noncompli-
48 ance shall count in determining the level of sanction to be
49 imposed for any future noncompliance. Once a reduction
50 in benefits is in effect, it shall remain in effect for the
51 designated time period: *Provided*, That if a participant
52 incurs a second noncompliance sanction during the time
53 period of an imposed first noncompliance sanction, the
54 sanctions shall run concurrently at the second noncompli-
55 ance sanction rate: *Provided, however*, That if during the
56 time period of an imposed second noncompliance sanc-
57 tion, a third noncompliance occurs, the third noncompli-
58 ance sanction shall be imposed and the participant's
59 benefits shall be terminated. If benefits are terminated,
60 benefits may not be provided until after the six-month
61 time period and the noncompliance that caused the
62 termination has been rectified or excused.

§9-9-12. Diversionary assistance allowance in lieu of monthly cash assistance.

1 (a) In order to encourage at-risk families not to apply
2 for ongoing monthly cash assistance from the state, the
3 secretary may issue one-time diversionary assistance
4 allowances to families in an amount not to exceed three
5 months of cash assistance in order to enable such families
6 to become immediately self-supporting: *Provided*, That

7 receipt of such allowance, regardless of amount, shall
8 count as three months of the sixty months designated
9 under the provisions of section ten of this article.

10 (b) The secretary shall establish by rule the standards
11 to be considered in making diversionary assistance
12 allowances.

13 (c) Nothing in this section shall be construed to
14 require that the division or any assistance issued pursuant
15 to this section be subject to any of the provisions of
16 chapter thirty-one or chapter forty-six-a of this code.

§9-9-15. Interagency coordination.

1 The Legislature encourages the development of a
2 system of coordinated services, shared information and
3 stream-lined application procedures between the program
4 and the other agencies within the department to implement
5 the provisions of this article. The secretary shall require
6 the coordination of activities between the program and the
7 following agencies:

8 (a) The child support enforcement division for the
9 purpose of establishing paternity, promoting cooperation
10 in the pursuit of child support, encouraging noncustodial
11 parents to get job search assistance and determining
12 eligibility for cash assistance and support services;

13 (b) The bureau of public health for the purpose of
14 determining appropriate immunization schedules, delivery
15 systems and verification procedures; and

16 (c) The bureau of medical services for the purpose of
17 reporting eligibility for medical assistance and transitional
18 benefits.

19 The secretary may require the coordination of
20 procedures and services with any other agency he or she
21 deems necessary to implement this program: *Provided*,
22 That all agencies coordinating services with the division
23 shall, when provided with access to division records or
24 information, abide by state and federal confidentiality
25 requirements including the provisions of section twenty of
26 this article.

27 The secretary shall propose any rules, including
28 emergency rules, necessary for the coordination of various
29 agency activities in the implementation of this section.

§9-9-18. Relationship with other law.

1 If any provision of this article conflicts with any other
2 provision of this code or rules, the provisions of this article
3 shall supersede such provisions: *Provided*, That the
4 provisions of this article shall not supersede any provisions
5 which are required or mandated by federal law.

6 Any reference in this code or rules to “aid to families
7 with dependent children” means “temporary assistance
8 for needy families” or any successor state program
9 funded under Part A, Title IV of the Social Security Act.

§9-9-20. Confidentiality, fines and penalties.

1 (a) Except as otherwise provided in this code or rules,
2 all records and information of the department regarding
3 any beneficiary or beneficiary's family members shall be
4 confidential and shall not be released, except under the
5 following circumstances:

6 (1) If permissible under state or federal rules or
7 regulations;

8 (2) Upon the express written consent of the beneficia-
9 ry or his or her legally authorized representative;

10 (3) Pursuant to an order of any court based upon a
11 finding that said information is sufficiently relevant to a
12 proceeding before the court to outweigh the importance
13 of maintaining the confidentiality established by this
14 section: *Provided*, That all confidential records and
15 information presented to the court shall after review be
16 sealed by the clerk and shall not be open to any person
17 except upon order of the court upon good cause being
18 shown therefor; or

19 (4) To a department or division of the state, pursuant
20 to the terms of an interagency agreement.

21 (b) Any person who knowingly and willfully releases
22 or causes to be released the confidential records and

23 information described in this section, except under the
24 specific circumstances enumerated in this section, is guilty
25 of a misdemeanor and, upon conviction thereof, shall be
26 fined not more than five hundred dollars or confined in
27 the county or regional jail for not more than six months,
28 or both.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION; CHILD SUPPORT ENFORCE- MENT DIVISION; ESTABLISHMENT AND ORGANIZATION.

§48A-2-24. Disbursements of amounts collected as support.

1 (a) Amounts collected as child or spousal support by
2 the child support enforcement division shall be distributed
3 within ten days of receipt, except as otherwise specifically
4 provided in this chapter. Such amounts shall, except as
5 otherwise provided under the provisions of subsection (c)
6 of this section, be distributed as follows:

7 (1) Any amounts which are collected periodically
8 which represent monthly support payments shall be paid
9 by the child support enforcement division to the appropri-
10 ate administrative unit of the department of health and
11 human resources to reimburse it for assistance payments
12 to the family during that period (with appropriate reim-
13 bursement of the federal government to the extent of its
14 participation in the financing);

15 (2) Amounts as are in excess of amounts required to
16 reimburse the department of health and human resources
17 under subdivision (1) of this subsection and are not in
18 excess of the amount required to be paid during such
19 period to the family by a court order shall be paid to the
20 obligee; and

21 (3) Amounts that are in excess of amounts required to
22 be distributed under subdivisions (1) and (2) of this
23 subsection shall be: (A) Paid by the child support en-
24 forcement division to the appropriate administrative unit
25 of the department of health and human resources (with

26 appropriate reimbursement of the federal government to
27 the extent of its participation in the financing) as reim-
28 bursement for any past assistance payments made to the
29 family for which the department has not been reimbursed;
30 or (B) if no assistance payments have been made by the
31 department which have not been repaid, such amounts
32 shall be paid to the obligee.

33 (b) (1) Whenever a family for whom support pay-
34 ments have been collected and distributed under the
35 provisions of this chapter ceases to receive assistance from
36 the department of health and human resources, the child
37 support enforcement division shall provide notice to the
38 family of their rights with regard to a continuation of
39 services. Unless notified by the family that services are no
40 longer desired, the child support enforcement division
41 shall continue to collect amounts of support payments
42 which represent monthly support payments from the
43 obligor and pay any amount so collected, which represents
44 monthly support payments, to the family (without requir-
45 ing any formal reapplication and without the imposition
46 of any application fee) on the same basis as in the case of
47 other obligees who are not receiving assistance from the
48 department of health and human resources.

49 (2) So much of any amounts of support so collected
50 shall be paid, first, to the obligee until all past due support
51 owed to the family by the obligor has been paid. After all
52 arrearages owing to the family have been paid, any
53 amounts of support collected which are in excess of the
54 required support payments shall be distributed in the
55 manner provided by paragraphs (A) and (B), subdivision
56 (3), subsection (a) of this section with respect to excess
57 amounts described in said subsection.

58 (c) (1) Notwithstanding the preceding provisions of
59 this section, amounts collected by the child support
60 enforcement division as child support for months in any
61 period on behalf of a child for whom the department of
62 health and human resources is making foster care mainte-
63 nance payments shall:

64 (A) Be paid by the child support enforcement division
65 to the appropriate administrative unit of the department of

66 health and human resources to the extent necessary to
67 reimburse the department for foster care maintenance
68 payments made with respect to the child during such
69 period (with appropriate reimbursement of the federal
70 government to the extent of its participation in financing);

71 (B) Be paid to the appropriate administrative unit of
72 the department of health and human resources to the
73 extent that the amounts collected exceed the foster care
74 maintenance payments made with respect to the child
75 during such period but do not exceed the amounts
76 required by a court order to be paid as support on behalf
77 of the child during such period; and the department of
78 health and human resources may use the payments in the
79 manner it determines will serve the best interests of the
80 child, including setting such payments aside for the child's
81 future needs or making all or a part thereof available to
82 the person responsible for meeting the child's day-to-day
83 needs; and

84 (C) Be paid to the appropriate administrative unit of
85 the department of health and human resources if any
86 portion of the amounts collected remains after making the
87 payments required under paragraphs (A) and (B) of this
88 subdivision, to the extent that such portion is necessary to
89 reimburse the department of health and human resources
90 (with appropriate reimbursement to the federal govern-
91 ment to the extent of its participation in the financing), for
92 any past foster care maintenance payments, or payments
93 of aid to families with dependent children which were
94 made with respect to the child (and with respect to which
95 past collections have not previously been retained);

96 (d) Any payment required to be made under the
97 provisions of this section to a family shall be made to the
98 resident parent, legal guardian or caretaker relative having
99 custody of or responsibility for the child or children.

100 (e) The commission shall establish bonding require-
101 ments for employees of the child support enforcement
102 division who receive, disburse, handle or have access to
103 cash.

104 (f) The director shall maintain methods of
105 administration which are designed to assure that
106 employees of the child support enforcement division or
107 any persons employed pursuant to a contract who are
108 responsible for handling cash receipts do not participate in
109 accounting or operating functions which would permit
110 them to conceal in the accounting records the misuse of
111 cash receipts: *Provided*, That the director may provide for
112 exceptions to this requirement in the case of sparsely
113 populated areas in this state where the hiring of
114 unreasonable additional staff in the local office would
115 otherwise be necessary.

116 (g) No penalty or fee may be collected by or
117 distributed to a recipient of child support enforcement
118 division services from the state treasury or from the child
119 support enforcement fund when child support is not
120 distributed to the recipient in accordance with the time
121 frames established herein.

CHAPTER 227

(H. B. 2854—By Delegates Boggs, Stemple, Leggett and Border)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to establish the Little Kanawha River Parkway Authority; functions; members; appointment; powers and duties; officers; bylaws and rules; compensation and expenses; authority as corporate body; and severability.

Be it enacted by the Legislature of West Virginia:

WEST VIRGINIA LITTLE KANAWHA RIVER PARKWAY AUTHORITY.

- §1. Highway authority created; purpose.
- §2. Members; appointment; officers.
- §3. Powers.
- §4. Compensation.

§5. Body corporate.

§6. Severability.

§1. Highway authority created; purpose.

1 There is hereby created the Little Kanawha River
2 Parkway Authority, to promote and advance the
3 construction of a modern highway through Wirt, Braxton,
4 Gilmer, Calhoun and Wood counties, to be known as the
5 Little Kanawha River Parkway Authority and to coordinate
6 with counties, municipalities, state and federal agencies,
7 public nonprofit corporations, private corporations, as-
8 sociations, partnerships and individuals for the purpose of
9 planning, assisting and establishing recreational, tourism,
10 industrial, economic and community development of the
11 Little Kanawha River Parkway for the benefit of West
12 Virginians.

§2. Members; appointment; officers.

1 (a) The authority consists of fifteen voting members
2 and three ex officio nonvoting members. All members
3 shall be appointed before the first day of July, one
4 thousand nine hundred ninety-seven.

5 (b) Each of the county commissions of the counties
6 of Wirt, Gilmer, Calhoun, Braxton and Wood shall appoint
7 three voting members to the authority. The terms of the
8 voting members initially appointed by a county
9 commission are as follows: One member from each
10 county shall be appointed for a term of one year, one
11 member from each county shall be appointed for a term
12 of two years and the rest of the members shall be
13 appointed for a term of four years. All successive
14 appointments shall be for a term of four years. Any
15 voting member may be removed for cause by the
16 appointing county commission.

17 (c) The three ex officio nonvoting members are the
18 commissioner of highways or designee, the director of
19 natural resources or designee and the executive director of
20 the West Virginia development office or designee.

21 (d) Should a vacancy occur, the person appointed to
22 fill the vacancy shall serve only for the unexpired portion
23 thereof. All members are eligible for reappointment.

24 (e) The authority shall meet annually on the third
25 Monday in July and at such other times designated by the
26 authority in its bylaws. A special meeting may be called
27 by the president, the secretary or any two members of the
28 authority and may be held only after all members are
29 given notice of the meeting in writing. Eight voting
30 members constitute a quorum for all meetings. At each
31 annual meeting of the authority, it shall elect a president,
32 vice president, secretary and treasurer. The authority shall
33 adopt bylaws and rules as may be necessary for its
34 operation and management.

§3. Powers.

1 The authority has all, but only those powers
2 necessary, incidental, convenient and advisable for the
3 following purposes:

4 (1) The promotion of economic development and
5 tourism along Little Kanawha River Parkway;

6 (2) Advocating actions consistent with that plan or its
7 provisions to or before any governmental entity or any
8 private person or entity; and

9 (3) Otherwise acting in an advisory capacity with
10 regard to any aspects of the Little Kanawha River Parkway
11 and West Virginia routes between Burnsville and Elizabeth
12 into Mineral Wells at the request of or without the request
13 of any governmental entity or private person or entity.

14 The authority may not own any of the real estate or
15 real property herein described for development and may
16 not be responsible for operating or maintaining the
17 highway.

§4. Compensation.

1 Each voting member of the authority shall receive
2 compensation and expense reimbursement from the
3 governing body which appointed the member in an
4 amount to be fixed by the governing body, not to exceed

5 the same compensation and expense reimbursement as is
6 paid to members of the Legislature for their interim duties
7 as recommended by the citizens legislative compensation
8 commission and authorized by law, for each day or
9 substantial portion thereof engaged in the performance of
10 official duties.

§5. Body corporate.

1 The authority hereby created shall be a public
2 corporation and as such it may contract and be contracted
3 with, sue and be sued, plead and be impleaded and may
4 have and use a corporate seal.

§6. Severability.

1 If any provision hereof is held invalid, the invalidity
2 may not affect other provisions hereof which can be given
3 effect without the invalid provision, and to this end the
4 provisions of this act are severable.

CHAPTER 228

(H. B. 2727—By Delegates Flanigan, Osborne,
Frederick and Staton)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to establish the Mercer County Governmental Council to provide a forum for elected and appointed leaders of Mercer County to use in building consensus about issues facing the county, in order to present a unified voice to government at state and federal levels.

Be it enacted by the Legislature of West Virginia:

MERCER COUNTY GOVERNMENTAL COUNCIL.

- §1. Mercer County Governmental Council created.
- §2. Purpose.
- §3. Membership.
- §4. Officers.

§5. Meetings.

§6. Voting.

§1. Mercer County Governmental Council created.

1 There is hereby created the Mercer County
2 Governmental Council as a cooperative endeavor of the
3 various governmental units and officials of Mercer
4 County, West Virginia, and its municipalities.

§2. Purpose.

1 The purpose of the council created herein is to foster
2 and promote cooperation and understanding among the
3 various governing bodies and officials of Mercer County,
4 West Virginia and the Mercer County legislative
5 delegation. The desired effect of this organization is for
6 Mercer County to present a unified voice and vision to the
7 state and federal governments for the betterment of
8 Mercer County and to ensure that the citizens of Mercer
9 County are heard by their state and federal representatives
10 and receive a fair and equitable proportion of resources
11 available from these levels of government.

§3. Membership.

1 The Mercer County Governmental Council shall be
2 composed of three distinct groups of members: Full
3 members; affiliate members; and associate members.

4 The full members shall be the elected members of the
5 governing bodies of the municipalities located within
6 Mercer County, the members of the Mercer County
7 Commission, and those members of the state Senate and
8 the House of Delegates elected to represent Mercer
9 County, or a portion thereof, in the Legislature. The terms
10 of office for these members shall be coextensive with the
11 terms of their respective elected offices.

12 The affiliate members shall be those individuals
13 elected to the following Mercer County public offices:
14 Sheriff, county clerk, circuit clerk, assessor, prosecuting
15 attorney, circuit judge, and magistrate. The terms of office
16 of these members shall be coextensive with the terms of
17 their respective elected offices.

18 The associate members shall be those individuals who
19 are elected or appointed to the following offices or posi-
20 tions: Mercer County Economic Development Authority;
21 Bluefield city manager; Princeton city manager; Region I
22 Planning and Development Council; West Virginia Divi-
23 sion of Highways district office; Chambers of Commerce;
24 Mercer County Board of Education; Mercer County
25 Health Board; Bluestone Convention and Tourism Board;
26 Mercer County Emergency Services; and hospital admin-
27 istrators of hospitals located in Mercer County. The terms
28 of office of these members shall be coextensive with the
29 terms of their elected or appointed offices or positions.

§4. Officers.

1 The Mercer County Governmental Council shall, at its
2 first meeting in July, one thousand nine hundred ninety-
3 seven, elect from among its membership a president and
4 vice president, who shall serve in their respective capacities
5 for terms of two years. The president shall appoint an
6 individual to serve as secretary/treasurer, who shall serve
7 until a successor is appointed.

§5. Meetings.

1 The Mercer County Governmental Council shall hold
2 an annual meeting each year on a day in July, to be
3 chosen by a majority vote of the members. Thereafter, the
4 council shall conduct monthly meetings to discuss
5 problems of mutual concern and opportunities for
6 common good; to provide a forum for discourse and
7 discussion among the elected and appointed leaders of
8 Mercer County; and, where possible, to reach consensus
9 on issues of common concern so that Mercer County's
10 governmental leaders may be unified in their efforts to
11 improve the county.

12 Notice of all meetings shall be provided to members at
13 least one week in advance. The president or, in the
14 president's absence, the vice president shall preside. All
15 meetings shall be governed by Roberts Rules of Order and
16 be open to the public, in accordance with the Open
17 Governmental Meetings Act. A simple majority of
18 members constitutes a quorum for conducting business.

§6. Voting.

1 The council as a whole may take up for consideration
2 any matter brought before it by any member but only full
3 members of the council are entitled to vote on a matter. A
4 simple majority of the full members present voting in the
5 affirmative shall be sufficient for the measure to carry.
6 However, no vote of the council may have a binding effect
7 upon any member in the performance of his or her duties
8 as an elected or appointed official and such votes of the
9 council shall be advisory only.

CHAPTER 229

(H. B. 2577—By Delegates Warner and Cann)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the city of Nutter Fort to meet as a levying body for the purpose of presenting to the voters of the city an election to consider an excess levy for the fire department in Nutter Fort, from the second Tuesday of March until the third Tuesday in May, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

NUTTER FORT EXCESS LEVY.**§1. Extended time for the city of Nutter Fort to meet as levying body for election to consider an excess levy for fire department.**

1 The city of Nutter Fort is hereby authorized to extend
2 the time for its meeting as a levying body, setting the levy
3 rate and certifying its actions to the state tax commissioner
4 from the second Tuesday in March, until the third
5 Tuesday in May, one thousand nine hundred ninety-seven,
6 for the purpose of submitting to the voters of Nutter Fort
7 the consideration of an excess levy for fire department.

CHAPTER 230

(H. B. 2633—By Delegate Everson)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to extend the time for the municipality of Philippi to meet as a levying body for the purpose of presenting to the voters of the municipality an election to consider an excess levy for park and recreational facilities in the municipality of Philippi, from the third Tuesday of April until the last Thursday in May, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

MUNICIPALITY OF PHILIPPI EXCESS LEVY.

§1. Extended time for Philippi governing body to meet as levying body for election to consider an excess levy for park and recreational facilities.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the code of West Virginia, one thousand nine
3 hundred thirty-one, as amended, to the contrary, the
4 municipality of Philippi is hereby authorized to extend the
5 time for its meeting as a levying body, setting the levy rate
6 and certifying its actions to the state tax commissioner
7 from the third Tuesday in April, until the last Thursday in
8 May, one thousand nine hundred ninety-seven, for the
9 purpose of submitting to the voters of the municipality of
10 Philippi the consideration of an excess levy for park and
11 recreational facilities.

CHAPTER 231

(Com. Sub. for H. B. 2397—By Delegates Michael, Doyle, Martin, Mezzatesta,
Proudfoot, Collins and Williams)

[Passed April 12, 1997; in effect from passage. Approved by the Governor.]

AN ACT to establish the Robert C. Byrd Corridor H Highway Authority; functions; members; appointment; powers and duties; officers; bylaws and rules; compensation and expenses; authority as corporate body; and severability.

Be it enacted by the Legislature of West Virginia:

ROBERT C. BYRD CORRIDOR H HIGHWAY AUTHORITY.

- §1. Highway authority created; purpose.
- §2. Members; appointment; officers.
- §3. Powers.
- §4. Compensation.
- §5. Body corporate.
- §6. Severability.

§1. Highway authority created; purpose.

1 There is hereby created the Robert C. Byrd Corridor
2 H Highway Authority, to promote and advance the
3 construction of a modern highway, to be known as the
4 Robert C. Byrd Corridor H Highway, through Randolph,
5 Tucker, Grant, Hardy, Barbour, Upshur and Lewis counties
6 and to coordinate with counties, municipalities, state and
7 federal agencies, public nonprofit corporations, private
8 corporations, associations, partnerships and individuals for
9 the purpose of planning, assisting and establishing
10 recreational, tourism, industrial, economic and community
11 development of the Robert C. Byrd Corridor H Highway
12 for the benefit of West Virginians.

§2. Members; appointment; officers.

1 (a) The authority consists of twenty-one voting
2 members and three ex officio nonvoting members. All

3 members shall be appointed before the first day of July,
4 one thousand nine hundred ninety-seven.

5 (b) Each of the county commissions of the counties of
6 Randolph, Tucker, Grant, Hardy, Barbour, Upshur and
7 Lewis shall appoint three voting members to the authority.
8 The terms of the voting members initially appointed by a
9 county commission are as follows: One member from
10 each county shall be appointed for a term of one year, one
11 member from each county shall be appointed for a term
12 of two years and the rest of the members shall be
13 appointed for a term of four years. All successive
14 appointments shall be for a term of four years. Any
15 voting member may be removed for cause by the
16 appointing county commission.

17 (c) The three ex officio nonvoting members are the
18 commissioner of highways or designee, the director of
19 natural resources or designee and the executive director of
20 the West Virginia development office or designee.

21 (d) Should a vacancy occur, the person appointed to
22 fill the vacancy shall serve only for the unexpired portion
23 thereof. All members are eligible for reappointment.

24 (e) The authority shall meet annually on the third
25 Monday in July and at such other times designated by the
26 authority in its bylaws. A special meeting may be called
27 by the president, the secretary or any two members of the
28 authority and may be held only after all members are
29 given notice of the meeting in writing. Eleven voting
30 members constitute a quorum for all meetings. At each
31 annual meeting of the authority, it shall elect a president,
32 vice president, secretary and treasurer. The authority shall
33 adopt bylaws and rules as may be necessary for its
34 operation and management.

§3. Powers.

1 The authority has all, but only those powers necessary,
2 incidental, convenient and advisable for the following
3 purposes:

- 4 (1) The promotion of economic development and
5 tourism along Robert C. Byrd Corridor H Highway;
- 6 (2) Advocating actions consistent with that plan or its
7 provisions to or before any governmental entity or any
8 private person or entity; and
- 9 (3) Otherwise acting in an advisory capacity with
10 regard to any aspects of the Robert C. Byrd Corridor H
11 Highway at the request of or without the request of any
12 governmental entity or private person or entity.
- 13 The authority may not own any of the real estate or
14 real property herein described for development and may
15 not be responsible for operating or maintaining the
16 highway.

§4. Compensation.

- 1 Each voting member of the authority shall receive
2 compensation and expense reimbursement from the
3 governing body which appointed the member in an
4 amount to be fixed by the governing body, not to exceed
5 the same compensation and expense reimbursement as is
6 paid to members of the Legislature for their interim duties
7 as recommended by the citizens legislative compensation
8 commission and authorized by law, for each day or
9 substantial portion thereof engaged in the performance of
10 official duties.

§5. Body corporate.

- 1 The authority hereby created is a public corporation
2 and as such it may contract and be contracted with, sue
3 and be sued, plead and be impleaded and may have and
4 use a corporate seal.

§6. Severability.

- 1 If any provision hereof is held invalid, the invalidity
2 may not affect other provisions hereof which can be given
3 effect without the invalid provision, and to this end the
4 provisions of this act are severable.

CHAPTER 232

(Com. Sub. for H. B. 2539—By Delegates Varner, Hutchins,
Ennis, Givens, Tucker, Pettit and Davis)

(Passed April 12, 1997; in effect from passage. Approved by the Governor.)

AN ACT to establish the West Virginia Route 2 and Interstate 68 authority; functions; members; appointment; powers and duties; officers; bylaws; rules; compensation and expenses; authority as corporate body; and severability.

Be it enacted by the Legislature of West Virginia:

WEST VIRGINIA ROUTE 2 AND INTERSTATE 68 AUTHORITY.

§1. West Virginia Route 2 and Interstate 68 authority created; purposes.

§2. Members; appointment; officers.

§3. Powers.

§4. Compensation.

§5. Body corporate.

§6. Severability.

§1. West Virginia Route 2 and Interstate 68 Authority created; purposes.

1 There is hereby created a West Virginia Route 2 and
2 Interstate 68 Authority, to promote and advance the
3 construction of a modern highway through Wood,
4 Pleasants, Tyler, Wetzel, Marshall, Ohio, Brooke, Hancock,
5 Marion and Monongalia counties and to coordinate with
6 counties, municipalities, state and federal agencies, public
7 nonprofit corporations, private corporations, associations,
8 partnerships and individuals for the purpose of planning,
9 assisting and establishing recreational, tourism, industrial,
10 economic and community development of West Virginia
11 Route 2, between Parkersburg and Chester, and Interstate
12 68, between Moundsville and Morgantown for the benefit
13 of West Virginians.

§2. Members; appointment; officers.

1 (a) The authority consists of twenty voting members
2 and three ex officio nonvoting members. All members
3 shall be appointed before the first day of July, one
4 thousand nine hundred ninety-seven.

5 (b) Each of the county commissions of the counties of
6 Wood, Pleasants, Tyler, Wetzel, Marshall, Ohio, Brooke,
7 Hancock, Marion and Monongalia shall appoint two
8 voting members to the authority. The terms of the voting
9 members initially appointed by a county commission are
10 as follows: One member shall be appointed for a term of
11 two years and one member shall be appointed for a term
12 of four years. All successive appointments shall be for a
13 term of four years. Any voting member may be removed
14 for cause by the appointing county commission.

15 (c) The three ex officio nonvoting members are the
16 commissioner of highways or designee, the director of
17 natural resources or designee and the executive director of
18 the West Virginia development office or designee.

19 (d) Should a vacancy occur, the person appointed to
20 fill the vacancy shall serve only for the unexpired portion
21 thereof. All members are eligible for reappointment.

22 (e) The authority shall meet annually on the third
23 Monday in July and at such other times designated by the
24 authority in its bylaws. A special meeting may be called
25 by the president, the secretary or any two members of the
26 authority and may be held only after all members are
27 given notice of the meeting in writing. Eleven voting
28 members constitute a quorum for all meetings. At each
29 annual meeting of the authority, it shall elect a president,
30 vice president, secretary and treasurer. The authority shall
31 adopt bylaws, rules as may be necessary for its operation
32 and management.

§3. Powers.

1 The authority has all, but only those powers necessary,
2 incidental, convenient and advisable for the following
3 purposes:

4 (1) The promotion of economic development and
5 tourism along West Virginia Route 2, between Parkersburg
6 and Chester, and Interstate 68, between Moundsville and
7 Morgantown;

8 (2) Advocating actions consistent with that plan or its
9 provisions to or before any governmental entity or any
10 private person or entity; and

11 (3) Otherwise acting in an advisory capacity with
12 regard to any aspects of West Virginia Route 2, between

13 Parkersburg and Chester, and Interstate 68, between
14 Moundsville and Morgantown, at the request of or without
15 the request of any governmental entity or private person
16 or entity.

17 The authority may not own any of the real estate or
18 real property herein described for development and may
19 not be responsible for operating or maintaining the
20 highways described herein.

§4. Compensation.

1 Each voting member of the authority shall receive
2 compensation and expense reimbursement from the
3 governing body which appointed the member in an
4 amount to be fixed by the governing body, not to exceed
5 the same compensation and expense reimbursement as is
6 paid to members of the Legislature for their interim duties
7 as recommended by the citizens legislative compensation
8 commission and authorized by law, for each day or
9 substantial portion thereof engaged in the performance of
10 official duties.

§5. Body corporate.

1 The authority hereby created is a public corporation
2 and as such it may contract and be contracted with, sue
3 and be sued, plead and be impleaded and may have and
4 use a corporate seal.

§6. Severability.

1 If any provision hereof is held invalid, the invalidity
2 may not affect other provisions hereof which can be given
3 effect without the invalid provision, and to this end the
4 provisions of this act are severable.

RESOLUTIONS

(Only resolutions of general interest are included herein.)

HOUSE CONCURRENT RESOLUTION 2

(By Delegate Martin)

[Adopted January 8, 1997]

Authorizing the placement of a statue of the Honorable Robert C. Byrd in the Rotunda of the Capitol.

WHEREAS, It is rare when a public servant, in an elected position, serves the citizenry for half a century; and

WHEREAS, West Virginia has been blessed with such distinguished service by U. S. Senator Robert C. Byrd; and

WHEREAS, His legislative career began in the West Virginia House of Delegates in 1947; he moved to the State Senate in 1949; then to the U. S. House of Representatives in 1953 and, finally, to the U. S. Senate in 1959. His unmatched record of service to his home State of West Virginia is acknowledged at this 50th anniversary of that service, which continues for the State he loves; therefore, be it

Resolved by the Legislature of West Virginia:

That the House of Delegates and the State Senate hereby authorize the placement of a full-sized statue of Senator Byrd to be located on the legislative floor of our stately capitol. His eternal presence will remind others of what one man, so dedicated, caring and confident can do in the service of his fellow man; and, be it

Further Resolved, That the statue is to be permanently placed in the rotunda area in gratitude for his service in both houses of our Legislature.

SENATE CONCURRENT RESOLUTION 36

(By Senators Tomblin, Mr. President, Anderson, Bailey, Ball, Boley, Bowman, Buckalew, Chafin, Craigo, Deem, Dittmar, Dugan, Fanning, Helmick, Hunter, Jackson, Kimble, Love, Macnaughtan, McKenzie, Minear, Oliverio, Plymale, Prezioso, Ross, Schoonover, Scott, Sharpe, Snyder, Sprouse, Walker, White, Wiedebusch and Wooton)

[Adopted April 8, 1997]

Expressing sadness at the passing of the Honorable William T. Brotherton, Jr., former member and president of the West Virginia Senate, former member of the West Virginia House of Delegates, former justice and chief justice of the West Virginia Supreme Court of Appeals and distinguished West Virginian.

WHEREAS, The Honorable William T. Brotherton, Jr., was born April 17, 1926, the son of the late William T. Brotherton, a Charleston grocer, and Kathryn (Slack) Brotherton; and

WHEREAS, The Honorable William T. Brotherton, Jr., served his nation with pride and distinction in the United States Navy during World War II; and

WHEREAS, The Honorable William T. Brotherton, Jr., received his education at Washington and Lee University, earning (AB)(LLB) degrees. He served the citizens of Kanawha County as an assistant prosecuting attorney. He also was a sole practitioner of law from 1950 until his election to West Virginia Supreme Court of Appeals; and

WHEREAS, On June 17, 1950, the Honorable William T. Brotherton, Jr., married Ann J. Caskey, with whom he shared the joy of having three children, Elizabeth A., William T., III, and Laura J.; and

WHEREAS, The Honorable William T. Brotherton, Jr., was elected to the West Virginia House of Delegates in 1952 and served until 1964. The outstanding leadership ability of the Honorable William T. Brotherton, Jr., was recognized during his tenure in the House of Delegates. He served as chairman of the House Committee on the Judiciary during the 1958 session and as House Majority Leader and chairman of the House Committee on the Judiciary from 1960 through 1964; and

WHEREAS, In 1964, the Honorable William T. Brotherton, Jr., was elected to the West Virginia Senate, representing the seventeenth senatorial district. Again, the legislative expertise and leadership ability of the Honorable William T. Brotherton, Jr., was recognized and utilized. From 1968 to 1970, Senator Brotherton served the Senate as chairman of the Senate Committee on the Judiciary. From 1970 to 1972, he served, this time in a dual role as Majority Leader and chairman of the Senate Committee on the Judiciary; and

WHEREAS, In 1972, the Honorable William T. Brotherton, Jr., rose to the highest office in the Senate, being elected as the forty-third President of the West Virginia Senate. President Brotherton will long be remembered as a legislative leader who knew and respected the legislative process. As president, his integrity and fairness to his fellow colleagues were never questioned. He served as president through 1980, when he left legislative service, bringing to an end twenty-eight years of devoted public service to the citizens, not only of Kanawha County, but to all of West Virginia; and

WHEREAS, President Brotherton's love of the legislative process combined with his unquestionable integrity, honesty, fairness and legislative expertise made him a legend in his own time in the marbled halls of the Legislature; and

WHEREAS, Following his long and honorable service to the citizens of West Virginia as a legislator and legislative leader, the Honorable William T. Brotherton, Jr., became involved in the Charleston Sternwheel Regatta Commission. During his tenure as chairman of the Sternwheel Regatta Commission, the annual event flourished, becoming Charleston's most memorable festival in the city's history; and

WHEREAS, In 1984, the Honorable William T. Brotherton, Jr., was elected to the West Virginia Supreme Court of Appeals. During his tenure on the state's high court, Justice Brotherton served as Chief Justice in 1989 and 1994. Again, the integrity, honesty and fairness of Justice Brotherton was never questioned. His brilliant knowledge of law and constitutional matters was a great asset to the state's high court. Justice Brotherton retired from the court in 1995; and

WHEREAS, Sadly, the Honorable William T. Brotherton, Jr.,

passed away on Sunday, April 6, 1997, leaving behind a loving family, many cherished friends and colleagues, and a legendary legislative and judicial career; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby expresses its sincere sadness at the passing of the Honorable William T. Brotherton, Jr., former member and president of the West Virginia Senate, former member of the West Virginia House of Delegates, former justice and chief justice of the West Virginia Supreme Court of Appeals and distinguished West Virginian; and, be it

Further Resolved, That the Honorable William T. Brotherton, Jr., will be remembered for his brilliant legal intellect, his wit and wisdom, his integrity, honesty and fairness, which, if emulated would make West Virginia's government a model for the nation; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the family of the late William T. Brotherton, Jr., former member and president of the West Virginia Senate, former member of the West Virginia House of Delegates, former justice and chief justice of the West Virginia Supreme Court of Appeals and distinguished West Virginian.

SENATE JOINT RESOLUTION 4

(By Senators Wooton, Ball, Bowman, Buckalew, Dittmar, Hunter, Kimble, Oliverio, Ross, Schoonover, Snyder and White)

[Adopted April 12, 1997]

Proposing an amendment to the Constitution of the State of West Virginia, amending section six, article ten thereof, relating to taxation and finance; eliminating the prohibition against investment of state funds in common stocks and other equity investments; authorizing the investment of state or public funds subject to procedures and guidelines established by the Legislature; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at a special election to be held on September twenty-seventh, one thousand nine hundred ninety-seven, which proposed amendment is that section six, article ten thereof, be amended to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§6. Credit of state not to be granted in certain cases.

The credit of the state shall not be granted to, or in aid of any county, city, township, corporation or person; nor shall the state ever assume, or become responsible for the debts or liabilities of any county, city, township, corporation or person. The investment of state or public funds shall be subject to procedures and guidelines heretofore or hereafter established by the Legislature for the prudent investment of such funds.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the code of West Virginia, one thousand nine hundred thirty-one, as amended, such proposed amendment is hereby numbered "Amendment No. 1" and designated as the "Modern Investment Management Amendment" and the purpose of the proposed amendment is summarized as follows: "To authorize the investment of state or public funds in common stocks and other equity investments and to further require the Legislature to establish guidelines and procedures for the prudent investment of such funds."

HOUSE RESOLUTION 6

(By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[Adopted February 12, 1997]

Amending House Rule 78, relating to composition of committees.

Resolved by the House of Delegates:

That House Rule 78 be amended to read as follows:

“Composition of Committees.

78. The Committee on Rules shall consist of not less than seven nor more than fourteen members, which number shall include the Speaker, Majority Leader and Minority Leader; the Committee on Interstate Cooperation of seven members; and all other standing committees shall consist of not less than fifteen nor more than twenty-five members.”

HOUSE RESOLUTION 24

(By Delegates Cann, Fragale, Linch and Warner)

[Adopted April 12, 1997]

In memory of Donald L. Kopp, former member, former Speaker and former Clerk of the House of Delegates from the County of Harrison.

WHEREAS, Donald L. Kopp was born May 23, 1935, the son of Francis and Jenny Kopp, in Clarksburg, West Virginia.

Don Kopp was educated in the public schools of the State and immediately following his graduation, went to work in the glass plants of Clarksburg, working alongside his father. He quickly became an officer in the union representing glassworkers and stayed true to organized labor for the remainder of his life.

Married to Beverly Wyckoff, they had three children: Donald L, II, Jenny Le, Tina Marie, and four grandchildren.

His public service began at the early age of twenty-nine, when he was first elected to the House of Delegates and continued for more than thirty years. After having served twelve years as a member and Chairman of the Committee on Industry and Labor and the Committee on Interstate Cooperation, he was elected Speaker of the House at the beginning of the 63rd Legislature. Following a severe heart attack and a hiatus of two years, Don Kopp was reelected to the House in 1980 and served as Speaker Pro Tempore until January 1, 1983, when he was appointed Clerk of the House, following the resignation of former Clerk C. A. Blankenship. He was elected Clerk of the

House on January 12, 1983, and continued in that position until his retirement on December 31, 1995.

A strong Democrat during his entire life, he served as First Vice Chairman of the West Virginia Democratic Executive Committee and was active in party affairs. His political advice was sought after by many who knew him.

Next to his grandchildren, his greatest enjoyment came from riding his motorcycle. It was not uncommon for him to plan weekend trips in the wilds of West Virginia to enjoy the natural beauty of the State and the friendliness and openness of her citizens whom he encountered at his many stops along the way. Once he even rode his motorcycle across four states to attend the annual meeting of the American Society of Legislative Clerks and Secretaries in Illinois.

Donald Kopp ended his life as we know it on the 13th day of June, 1996, in a fashion he would have himself chosen: riding his bicycle with his son, Donny.

The Legislature has lost a friend, the House of Delegate has lost a friend, colleague, and mentor; therefore, be it

Resolved by the House of Delegates:

That this House of Delegate hereby formally notes the life, service and passing of Donald L. Kopp, Member, Speaker and Clerk of the House, that it extends sincere expressions of its collective sorrow to his surviving wife, son, daughters and grandchildren, and that it recognize the years, service and accomplishments of a son, father, grandfather and friend; and, be it

Further Resolved, That the Clerk of the House of Delegates prepare certified copies of this resolution for the family of Donald L. Kopp.

HOUSE RESOLUTION NO. 25

(By Delegates Beane, Johnson, Farris, Thompson, Walters, Jenkins, Fantasia, H. White, Amores, Flanigan, Gillespie, Laird, Tillis, Wright, Hutchins, Dempsey, Heck, Tomblin, Azinger, Cann, Hunt, Clements, Seacrist and L. White)

Requesting the Speaker to appoint a House Select Committee on Insurance to meet between the regular sessions of the Legislature.

WHEREAS, The House of Delegates Committee on Banking and Insurance has been and will be subjected to the review, study, analysis and resolution of various issues in response to federal legislation and current trends in the insurance industry; and

WHEREAS, The Committee on Banking and Insurance is unable to fully respond to these issues through legislation presented to the Committee during regular sessions of the Legislature; and

WHEREAS, It is appropriate to authorize a House Select Committee to sit between regular sessions; therefore, be it

Resolved by the House of Delegates:

That the House of Delegates Select Committee on Insurance be created by Rule 90 of the Rules of the House of Delegates; and, be it

Further Resolved, That, pursuant to subsection (a), section one, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the House Select Committee on Insurance is hereby directed to meet between the regular sessions of the Legislature at such times and places as the Speaker of the House of Delegates shall direct; and, be it

Further Resolved, That in accordance with subsection (a), section one, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, the Clerk of the House of Delegates is hereby authorized to draw requisitions upon the Auditor for travel expenses of members of the House of Delegates serving on such committee or subcommittees as authorized, from time to time, by the Committee on Rules and for the payment of staff, as directed, from time to time, by the Speaker; and, be it

Further Resolved, That the authority of this resolution shall be in addition to the authority for meetings of joint standing committees or joint subcommittees thereof under the supervision of the Joint Committee on Government and Finance, pursuant to subsections (b) and (c), section one, article one, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 1997

CHAPTER 1

**(H. B. 109 —By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]**

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the executive, governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the executive, governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by three million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 8—*Governor's Office*
5 *Civil Contingent Fund*

6 (WV Code Chapter 5)

7 Account No.

8 Fund 0105 FY 1997 Org 0100

9			General
10		Act-	Revenue
11		ivity	Fund
12	1	Civil Contingent Fund—Total(R) 114	\$3,000,000

13 Any unexpended balance remaining in the
14 appropriation for Civil Contingent Fund—Total (fund
15 0105, activity 114) at the close of the fiscal year 1996-97
16 is hereby reappropriated for expenditure during the fiscal
17 year 1997-98.

18 The purpose of this bill is to supplement this account
19 in the budget act for the fiscal year ending the thirtieth
20 day of June, one thousand nine hundred ninety-seven, by
21 adding three million dollars to the existing appropriation
22 to the aforesaid account for expenditure during the fiscal
23 year one thousand nine hundred ninety-seven.

CHAPTER 2

(S. B. 1005—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in the amount of nineteen million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

WHEREAS, By the provisions of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, account no. fund 2038, organization 0201, be decreased by expiring the amount of nineteen million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by nineteen million dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	EXECUTIVE		
4	8— <i>Governor's Office—</i>		
5	<i>Civil Contingent Fund</i>		
6	(WV Code Chapter 5A)		
7	Account No.		
8	Fund <u>0105</u> FY <u>1997</u> Org <u>0100</u>		
9		General	
10		Revenue	
11		Fund	
12	1 Civil Contingent Fund - Surplus (R) . 263		\$19,000,000
13	The purpose of this bill is to expire the sum of		
14	nineteen million dollars from the revenue shortfall reserve		
15	fund, account no. fund 2038, organization 0201, and to		
16	supplement the governor's office, civil contingent fund,		
17	account no. fund 0105, fiscal year 1997, organization		
18	0100, in the budget act for the fiscal year ending the		
19	thirtieth day of June, one thousand nine hundred ninety-		
20	seven, by adding nineteen million dollars to the existing		
21	appropriation.		

CHAPTER 3

(H. B. 104—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in the amount of four hundred forty-seven thousand six hundred sixty-two dollars from the department of tax and revenue, insurance commissioner, examination revolving fund, account no. fund 7150, fiscal year 1997, organization 0704, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the auditor's office, general administration, account no. fund 0116, fiscal year 1997, organization 1200, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The Legislature finds that the account balance in the department of tax and revenue, insurance commissioner, examination revolving fund, account no. fund 7150, fiscal year 1997, organization 0704, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, It thus appearing from the provisions of this legislation that there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, appropriated to the department of tax and revenue, insurance commissioner, examination revolving fund,

account no. fund 7150, fiscal year 1997, organization 0704, be decreased by expiring the amount of four hundred forty-seven thousand six hundred sixty-two dollars to the unappropriated surplus balance in the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the auditor's office, general administration, account no. fund 0116, fiscal year 1997, organization 1200, be supplemented and amended by increasing the total appropriation by four hundred forty-seven thousand six hundred sixty-two dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 *10—Auditor's Office—*
5 *General Administration*

6 (WV Code Chapter 12)

7 Account No.

8 Fund 0116 FY 1997 Org 1200

9			General
10		Act-	Revenue
11		ivity	Fund

12	6a Encoding System and		
13	Printer Replacement	594	\$ 447,662

14 Any unexpended balance remaining in the
15 appropriation for Encoding System and Printer Replace-
16 ment (fund 0116, activity 594) at the close of the fiscal
17 year 1996-97 is hereby reappropriated for expenditure
18 during the fiscal year 1997-98.

19 The purpose of this bill is to expire funds from the
20 department of tax and revenue, insurance commissioner,
21 examination revolving fund account no. fund 7150, fiscal
22 year 1997, organization 0704, and to supplement the
23 auditor's office, general administration, account no. fund
24 0116, fiscal year 1997, organization 1200, in the budget
25 act for the fiscal year ending the thirtieth day of June, one

26 thousand nine hundred ninety-seven, by adding four
27 hundred forty-seven thousand six hundred sixty-two
28 dollars to a new line item appropriation for expenditure
29 during the fiscal year ending the thirtieth day of June, one
30 thousand nine hundred ninety-seven.

CHAPTER 4

(S. B. 1006—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT expiring the amount of four hundred twenty-five thousand dollars from the department of tax and revenue, insurance commissioner, account no. fund 7152, fiscal year 1997, organization 0704, to the unappropriated surplus balance in the state fund, general revenue, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of agriculture, account no. fund 0131, fiscal year 1997, organization 1400, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

Be it enacted by the Legislature of West Virginia:

That the amount of four hundred twenty-five thousand dollars be expired from the department of tax and revenue, insurance commissioner, account no. fund 7152, fiscal year 1997, organization 0704, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of agriculture, account no. fund 0131, fiscal year 1997, organization 1400, be supplemented and amended by increasing the total appropriation by four hundred twenty-five thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 13—Department of Agriculture

5 (WV Code Chapter 19)

6 Account No.

7 Fund 0131 FY 1997 Org 1400

8			General
9		Act-	Revenue
10		ivity	Funds
11	10a Moorefield Field		
12	Office Furnishings	637	\$275,000
13	10b Logan Farmer's Market	728	\$100,000
14	10c Weston Farmer's Market	755	\$50,000

15 Any unexpended balances remaining in the
 16 appropriations for Moorefield field office furnishings
 17 (fund 0131, activity 637), the Logan farmer's market
 18 (fund 0131, activity 728) and the Weston farmer's market
 19 (fund 0131, activity 755) at the close of the fiscal year
 20 1996-97 are hereby reappropriated for expenditure
 21 during the fiscal year 1997-98.

22 The purpose of this bill is to supplement the
 23 department of agriculture, account no. fund 0131, fiscal
 24 year 1997, organization 1400, in the budget act for the
 25 fiscal year ending the thirtieth day of June, one thousand
 26 nine hundred ninety-seven, by adding four hundred
 27 twenty-five thousand dollars in three new line item
 28 appropriations for expenditure during fiscal year ending
 29 the thirtieth day of June, one thousand nine hundred
 30 ninety-seven.

CHAPTER 5

(H. B. 105—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)

[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in the amount of sixty-one thousand dollars from the board of investments, investment legal loss expense fund account, account no. fund 8563; in the amount of forty-five thousand dollars from the department of tax and revenue, insurance commissioner, account no. fund 7152, fiscal year 1997, organization 0704; in the amount of fourteen thousand dollars from the department of tax and revenue, insurance commissioner, examination revolving fund, account no. fund 7150, fiscal year 1997, organization 0704, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the secretary of state, account no. fund 0155, fiscal year 1997, organization 1600, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The Legislature finds that the account balances in the board of investments, investment legal loss expense fund, the insurance commissioner and the insurance commissioner-examination revolving fund exceed that which is necessary for the purposes for which the accounts were established; and

WHEREAS, It thus appearing from the provisions of this legislation that there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of sixty-one thousand dollars from the board of investments, investment legal loss expense fund account, account no. fund 8563; the amount of forty-five thousand dollars from the insurance commissioner, account no. fund 7152, fiscal year 1997, organization 0704; the amount of fourteen thousand dollars from the insurance commissioner, examination revolving fund, account no. fund 7150, fiscal year 1997, organization 0704, be expired to the unappropriated surplus balance in the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the secretary of state, account no. fund 0155, fiscal year 1997, organization 1600, be supplemented and amended by increasing the total appropriation by one hundred twenty thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 EXECUTIVE

4 18—Secretary of State

5 (WV Code Chapters 3, 5 and 59)

6 Account No.

7 Fund 0155 FY 1997 Org 1600

8			General
9		Act-	Revenue
10		ivity	Fund
11	5a Technology Improvements . . .	599	\$ 120,000

12 Any unexpended balance remaining in the
13 appropriations for technology improvements (fund 0155,
14 activity 599) at the close of the fiscal year 1996-97 are
15 hereby reappropriated for expenditure during the fiscal
16 year 1997-98.

17 The purpose of this bill is to expire funds from the
18 aforementioned accounts and to supplement the secretary
19 of state, account no. fund 0155, fiscal year 1997,

20 organization 1600, in the budget act for the fiscal year
21 ending the thirtieth day of June, one thousand nine
22 hundred ninety-seven, by adding one hundred twenty
23 thousand dollars to a new line item appropriation for
24 expenditure during the fiscal year ending the thirtieth day
25 of June, one thousand nine hundred ninety-seven.

CHAPTER 6

(H. B. 106—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of administration, division of general services, account no. fund 0230, fiscal year 1997, organization 0211, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of administration, division of general services, account no. fund 0230, fiscal year 1997, organization 0211, be supplemented and amended by increasing the total appropriation by two million seven hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF ADMINISTRATION

4 23—*Division of General Services*

5 (WV Code Chapter 5A)

6 Account No.

7 Fund 0230 FY 1997 Org 0211

8			General
9		Act-	Revenue
10		ivity	Fund
11	6a Chilled Water Plant-Phase III . . .	291	\$2,700,000

12 Any unexpended balances remaining in the
 13 appropriation for chilled water plant-phase III (fund
 14 0230, activity 291) at the close of the fiscal year 1996-97
 15 is hereby reappropriated for expenditure during the fiscal
 16 year 1997-98.

17 The purpose of this bill is to supplement this account
 18 in the budget act for the fiscal year ending the thirtieth
 19 day of June, one thousand nine hundred ninety-seven, by
 20 adding two million seven hundred thousand dollars to the
 21 existing appropriation to the aforesaid account for
 22 expenditure during the fiscal year ending the thirtieth day
 23 of June, one thousand nine hundred ninety-seven, from a
 24 new line item.

CHAPTER 7

(H. B. 108—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
 [By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT expiring the amount of one million two hundred thousand dollars from the public service commission, account no. fund 8623, fiscal year 1997, organization 0926,

6	Account No.		
7	Fund <u>0265</u>	FY <u>1997</u>	Org <u>0310</u>
8			General
9		Act-	Revenue
10		ivity	Fund
11	5a Law Enforcement	722	\$ 1,200,000
12	Any unexpended balance remaining in the		
13	appropriation for law enforcement (fund 0265, activity		
14	722) at the close of the fiscal year 1996-97 is hereby		
15	reappropriated for expenditure during the fiscal year		
16	1997-98.		

17 The purpose of this bill is to expire funds from the
 18 public service commission, account no. fund 8623, fiscal
 19 year 1997, organization 0926, and to supplement the
 20 bureau of commerce, division of natural resources,
 21 account no. fund 0265, fiscal year 1997, organization
 22 0310, in the budget act for the fiscal year ending the
 23 thirtieth day of June, one thousand nine hundred ninety-
 24 seven, by adding one million two hundred thousand
 25 dollars to a new line item appropriation for expenditure
 26 during the fiscal year ending the thirtieth day of June, one
 27 thousand nine hundred ninety-seven.

CHAPTER 8

(H. B. 103—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
 [By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT expiring the amount of one hundred fifty-five thousand dollars from the department of tax and revenue, insurance commissioner, account no. fund 7152, fiscal year 1997, organization 0704, to the unappropriated surplus balance in the state fund, general revenue, and making a supplementary appropriation of public moneys out of the

treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of education, West Virginia school for the deaf and the blind, account no. fund 0320, fiscal year 1997, organization 0403, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, It thus appearing from the provisions of this legislation that there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of one hundred fifty-five thousand dollars from the department of tax and revenue, insurance commissioner, account no. fund 7152, fiscal year 1997, organization 0704, be expired to the unappropriated surplus balance in the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of education, West Virginia school for the deaf and blind, account no. fund 0320, fiscal year 1997, organization 0403, be supplemented and amended by increasing the total appropriation by one hundred fifty-five thousand dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF EDUCATION		
4	<i>39—West Virginia Schools for the Deaf and the Blind</i>		
5	(WV Code Chapters 18 and 18A)		
6	Account No.		
7	Fund <u>0320</u> FY <u>1997</u> Org <u>0403</u>		
8			General
9		Act-	Revenue
10		ivity	Fund
11	4a Fire and Smoke Alarm System . .	641	\$ 155,000

12 Any unexpended balance remaining in the
13 appropriation for fire and smoke alarm system (fund
14 0320, activity 641) at the close of the fiscal year 1996-97
15 is hereby reappropriated for expenditure during the fiscal
16 year 1997-98.

17 The purpose of this bill is to expire funds from the
18 department of tax and revenue, insurance commissioner,
19 account no. fund 7152, fiscal year 1997, organization
20 0704, and to supplement the department of education,
21 West Virginia school for the deaf and blind, account no.
22 fund 0320, fiscal year 1997, organization 0403 in the
23 budget act for the fiscal year ending the thirtieth day of
24 June, one thousand nine hundred ninety-seven, by adding
25 one hundred fifty-five thousand dollars to the existing
26 appropriation for expenditure during the fiscal year
27 ending on the thirtieth day of June, one thousand nine
28 hundred ninety-seven.

CHAPTER 9

(H. B. 102—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1997, organization 0511, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature an executive message, dated the sixteenth day of April, one thousand nine hundred ninety-seven, which included a statement

of the state fund, general revenue, setting forth therein the estimate of revenues for fiscal year 1996-97; and

WHEREAS, It thus appearing from the governor's executive message number seven, dated the sixteenth day of April, one thousand nine hundred ninety-seven, there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1997, organization 0511, be supplemented and amended by increasing the total appropriation by nineteen million eight hundred twenty-eight thousand three hundred forty-eight dollars as follows:

1	TITLE II—APPROPRIATIONS.		
2	Section 1. Appropriations from general revenue.		
3	DEPARTMENT OF HEALTH AND		
4	HUMAN RESOURCES		
5	55— <i>Division of Human Services</i>		
6	(WV Code Chapters 9, 48 and 49)		
7	Account No.		
8	Fund <u>0403</u> FY <u>1997</u> Org <u>0511</u>		
9			General
10		Act-	Revenue
11		ivity	Fund
12	8	Unclassified 099	\$ 7,148,783
13	19	Social Services 195	\$ 12,679,565
14	Any unexpended balances remaining in the		
15	appropriations for Unclassified (fund 0403, activity 099)		
16	and social services (fund 0403, activity 195) at the close of		

17 the fiscal year 1996-97 are hereby reappropriated for
18 expenditure during the fiscal year 1997-98.

19 The purpose of this bill is to supplement this account
20 in the budget act for the fiscal year ending the thirtieth
21 day of June, one thousand nine hundred ninety-seven, by
22 adding nineteen million eight hundred twenty-eight thou-
23 sand three hundred forty-eight dollars to the existing
24 appropriation for expenditure during fiscal year one thou-
25 sand nine hundred ninety-seven.

CHAPTER 10

(H. B. 111—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public mon-
eys out of the treasury from the balance of moneys remain-
ing as an unappropriated balance in the state fund, general
revenue, to the department of health and human resources,
division of health central office, account no. fund 0407,
fiscal year 1997, organization 0506, all supplementing and
amending the appropriation for the fiscal year ending the
thirtieth day of June, one thousand nine hundred ninety-
seven.

WHEREAS, The governor submitted to the Legislature an exec-
utive message, dated the sixteenth day of April, one thousand
nine hundred ninety-seven, which included a statement of the
state fund, general revenue, setting forth therein the estimate of
revenues for fiscal year 1996-97; and

WHEREAS, It thus appearing from the governor's executive
message number seven, dated the sixteenth day of April, one
thousand nine hundred ninety-seven, there now remains an un-
appropriated balance in the state treasury which is available for

appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of health and human resources, division of health central office, account no. fund 0407, fiscal year 1997, organization 0506, be supplemented and amended by increasing the total appropriation by one hundred forty-one thousand six hundred forty-eight dollars as follows:

1 **TITLE II—APPROPRIATIONS.**
2 **Section 1. Appropriations from general revenue.**
3 **DEPARTMENT OF HEALTH AND**
4 **HUMAN RESOURCES**
5 *51—Division of Health*
6 *Central Office*
7 (WV Code Chapter 16)
8 Account No.
9 Fund 0407 FY 1997 Org 0506

10		General
11	Act-	Revenue
12	ivity	Fund
13 4	Unclassified 099	\$141,648

14 Any unexpended balance remaining in the appropri-
15 ation for Unclassified (fund 0407, activity 099) at the
16 close of the fiscal year 1996-97 is hereby reappropriated
17 for expenditure during the fiscal year 1997-98.

18 The purpose of this bill is to supplement this account
19 in the budget act for the fiscal year ending the thirtieth
20 day of June, one thousand nine hundred ninety-seven, by
21 adding one hundred forty-one thousand six hundred
22 forty-eight dollars to the existing appropriation for expen-
23 diture during the fiscal year ending the thirtieth day of
24 June, one thousand nine hundred ninety-seven.

7	Account No.		
8	Fund <u>0453</u> FY <u>1997</u> Org <u>0612</u>		
9			General
10		Act-	Revenue
11		ivity	Fund
12	6a	Riverside High Detachment 753	\$300,000
13	Any unexpended balance remaining in the		
14	appropriation for Riverside High detachment (fund 0453,		
15	activity 753) at the close of the fiscal year 1996-97 is		
16	hereby reappropriated for expenditure during the fiscal		
17	year 1997-98.		

18 The purpose of this bill is to supplement this account
 19 in the budget act for the fiscal year ending the thirtieth
 20 day of June, one thousand nine hundred ninety-seven, by
 21 adding three hundred thousand dollars to the existing
 22 appropriation to the aforesaid account for expenditure
 23 from a new line item during the fiscal year ending the
 24 thirtieth day of June, one thousand nine hundred ninety-
 25 seven.



CHAPTER 12

(S. B. 1001—By Senators Tomblin, Mr. President, and Buckalew)
 [By Request of the Executive]



[Passed April 20, 1997; in effect from passage. Approved by the Governor.]



AN ACT expiring the amount of seven hundred seventy-one thousand dollars from the public service commission, account no. fund 8623, fiscal year 1997, organization 0926, to the unappropriated surplus balance in the state fund, general revenue, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in

the state fund, general revenue, to the department of military affairs and public safety, West Virginia state police, account no. fund 0453, fiscal year 1997, organization 0612, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The Legislature finds that the account balance in the public service commission, account no. fund 8623, fiscal year 1997, organization 0926, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, It thus appearing from the provisions of this legislation that there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the amount of seven hundred seventy-one thousand dollars from the public service commission, account no. fund 8623, fiscal year 1997, organization 0926, be expired to the unappropriated surplus balance in the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of military affairs and public safety, West Virginia state police, account no. fund 0453, fiscal year 1997, organization 0612, be supplemented and amended by increasing the total appropriation by seven hundred seventy-one thousand dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Section 1. Appropriations from general revenue.**
- 3 DEPARTMENT OF MILITARY AFFAIRS
- 4 AND PUBLIC SAFETY
- 5 62— *West Virginia State Police*
- 6 (WV Code Chapter 15)
- 7 Account No.
- 8 Fund 0453 FY 1997 Org 0612

		General Revenue Fund
9		
10		
11	Act- ivity	
12	13a Trooper Class	754 \$771,000

13 Any unexpended balance remaining in the
14 appropriation for the trooper class (fund 0453, activity
15 754) is hereby reappropriated for expenditure during the
16 fiscal year 1997-98.

17 The purpose of this bill is to expire funds from the
18 public service commission, account no. fund 8623,
19 organization 0926, and to supplement the department of
20 military affairs and public safety, West Virginia state
21 police, account no. fund 0453, fiscal year 1997,
22 organization 0612, in the budget act for the fiscal year
23 ending the thirtieth day of June, one thousand nine
24 hundred ninety-seven, by adding seven hundred seventy-
25 one thousand dollars to a new line item for expenditure
26 during the fiscal year one thousand nine hundred ninety-
27 seven.

CHAPTER 13

(S. B. 1007—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of tax and revenue, tax division, account no. fund 0470, fiscal year 1997, organization 0702.

WHEREAS, There now remains an unappropriated balance in the state treasury which is available for appropriation during the

fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of tax and revenue, tax division, account no. fund 0470, fiscal year 1997, organization 0702, be supplemented and amended by increasing the total appropriation by two million eight hundred thousand dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 69—Tax Division

4 (WV Code Chapter 11)

5 Account No.

6 Fund 0470 FY 1997 Org 0702

7			General
8			Revenue
9			Funds
10	4a Property Tax Electronic Data Pro-		
11	4b cessing System Network Project	714	\$1,600,000
12	5 Automation Project (R)	442	\$1,200,000

13 Any unexpended balances remaining in the
 14 appropriations for the property tax electronic data
 15 processing system network project (fund 0470, activity
 16 714) and the automation project (fund 0470, activity 442)
 17 at the close of the fiscal year 1996-97 are hereby
 18 reappropriated for expenditure during the fiscal year
 19 1997-98.

20 The purpose of this bill is to supplement this account
 21 in the budget act for the fiscal year ending the thirtieth
 22 day of June, one thousand nine hundred ninety-seven, by
 23 adding two million eight hundred thousand dollars to the
 24 existing appropriation to the aforesaid account for
 25 expenditure during the fiscal year one thousand nine
 26 hundred ninety-seven from a new line item and an
 27 existing line item.

CHAPTER 14

(S. B. 1008—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of military affairs and public safety, division of criminal justice and highway safety, account no. fund 0546, fiscal year 1997, organization 0620, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor submitted to the Legislature an executive message, dated the sixteenth day of April, one thousand nine hundred ninety-seven, which included a statement of the state fund, general revenue, setting forth therein the estimate of revenues for fiscal year 1996-97; and

WHEREAS, It thus appearing from the governor's executive message number seven, dated the sixteenth day of April, one thousand nine hundred ninety-seven, there now remains an unappropriated balance in the state fund, general revenue, which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of military affairs and public safety, division of criminal justice and highway safety, account no. fund 0546, fiscal year 1997, organization 0620, be supplemented and amended by increasing the total appropriation by nine thousand eight hundred ninety-one dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF MILITARY AFFAIRS

4 AND PUBLIC SAFETY

5 67—*Division of Criminal Justice and Highway Safety*

6 (Executive Order)

7 Account No.

8 Fund 0546 FY 1997 Org 0620

9			General
10			Revenue
11		Act-	Fund
		ivity	
12	4 Unclassified	099	\$ 9,891

13 Any unexpended balance remaining in the appropria-
14 tion for unclassified (fund 0546, activity 099) at the close
15 of the fiscal year 1996-97 is hereby reappropriated for
16 expenditure during the fiscal year 1997-98.

17 The purpose of this bill is to supplement this account
18 in the budget act for the fiscal year ending the thirtieth
19 day of June, one thousand nine hundred ninety-seven, by
20 adding nine thousand eight hundred ninety-one dollars to
21 the existing appropriation for expenditure during fiscal
22 year one thousand nine hundred ninety-seven.

CHAPTER 15

(H. B. 101—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 20, 1997; in effect July 1, 1997. Approved by the Governor.]

AN ACT to amend article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eighteen-a; to amend and reenact sections eighteen-b and nineteen, article five of said chapter; to amend and reenact section ten, article two, chapter seventeen-b of said code; to amend and reenact section six, article three of said chapter; to amend and reenact sections nine and thirteen, article one, chapter seventeen-e of said code; to amend and reenact sections one and five, article two, chapter eighteen-a of said code; to amend and reenact section one, article seven, chapter eighteen-b of said code; to amend article one, chapter nineteen of said code by adding thereto a new section, designated section ten; to amend and reenact section seven, article two, chapter twenty-one of said code; to amend and reenact section two, article three-c of said chapter; to amend and reenact section five-c, article five of said chapter; to amend and reenact section seven, article eleven of said chapter; to amend and reenact section one, article nine, chapter twenty-two-a of said code; to amend and reenact section three, article seven, chapter twenty-two-c of said code; to amend and reenact section four, article three-b, chapter twenty-nine of said code; to amend and reenact sections six and thirteen, article one, chapter thirty of said code; to amend and reenact section three, article twelve, chapter thirty-three of said code; to amend and reenact section nine, article fourteen, chapter thirty-seven of said code; to amend and reenact section five, article twelve, chapter forty-seven of said code; to amend and reenact section thirty, article one-a, chapter forty-eight-a of said code; to amend and reenact sections thirty-one, thirty-two, thirty-three and thirty-four, article two of said chapter; to further amend said article by adding thereto a new section, designated section thirty-three-a; to further amend said chapter by adding thereto a new article, designated article five-a; and to amend and reenact sections three and six, article six of said chapter, all relating generally to enacting legislation to comply with mandates of the federal Personal Responsibility and Work Reconciliation Act of 1996 regarding the establishment, modification or enforcement of child support.

Be it enacted by the Legislature of West Virginia:

That article one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eighteen-a; that sections eighteen-b and nineteen, article five of said chapter be amended and reenacted; that section ten, article two, chapter seventeen-b of said code be amended and reenacted; that section six, article three of said chapter be amended and reenacted; that sections nine and thirteen, article one, chapter seventeen-e of said code be amended and reenacted; that sections one and five, article two, chapter eighteen-a of said code be amended and reenacted; that section one, article seven, chapter eighteen-b of said code be amended and reenacted; that article one, chapter nineteen of said code be amended by adding thereto a new section, designated section ten; that section seven, article two, chapter twenty-one of said code be amended and reenacted; that section two, article three-c of said chapter be amended and reenacted; that section five-c, article five of said chapter be amended and reenacted; that section seven, article eleven of said chapter be amended and reenacted; that section one, article nine, chapter twenty-two-a of said code be amended and reenacted; that section three, article seven, chapter twenty-two-c of said code be amended and reenacted; that section four, article three-b, chapter twenty-nine of said code be amended and reenacted; that sections six and thirteen, article one, chapter thirty of said code be amended and reenacted; that section three, article twelve, chapter thirty-three of said code be amended and reenacted; that section nine, article fourteen, chapter thirty-seven of said code be amended and reenacted; that section five, article twelve, chapter forty-seven of said code be amended and reenacted; that section thirty, article one-a, chapter forty-eight-a of said code be amended and reenacted; that sections thirty-one, thirty-two, thirty-three and thirty-four, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section thirty-three-a; that said chapter be further amended by adding thereto a new article, designated article five-a; and that sections three and six, article six of said chapter be amended and reenacted, all to read as follows:

Chapter

- 16. Public Health.**
- 17B. Motor Vehicle Driver's Licenses.**
- 17E. Uniform Commercial Driver's License Act.**

- 18A. School Personnel.
- 18B. Higher Education.
- 19. Agriculture.
- 21. Labor.
- 22A. Miners' Health, Safety and Training.
- 22C. Environmental Resources; Boards, Authorities, Commissions and Compacts.
- 29. Miscellaneous Boards and Officers.
- 30. Professions and Occupations.
- 33. Insurance.
- 37. Real Property.
- 47. Regulation of Trade.
- 48A. Enforcement of Family Obligations.

CHAPTER 16. PUBLIC HEALTH.

Article

- 1. State Bureau of Public Health.
- 5. Vital Statistics.

ARTICLE 1. STATE BUREAU OF PUBLIC HEALTH.

§16-1-18a. Requirement for social security number on applications.

- 1 The director of health shall require every applicant
- 2 for a license, permit, certificate of registration, or registra-
- 3 tion under this chapter to place his or her social security
- 4 number on the application.

ARTICLE 5. VITAL STATISTICS.

§16-5-18b. Limitation on use of social security numbers.

§16-5-19. Death registration.

§16-5-18b. Limitation on use of social security numbers.

- 1 A social security account number obtained in accor-
- 2 dance with the provisions of this article with respect to the
- 3 filing of: (1) A certificate of birth; (2) an application for a
- 4 delayed registration of birth; (3) a judicial order establish-
- 5 ing a record of birth; (4) an adoption order or decree; or
- 6 (5) a certificate of paternity shall not be transmitted to a
- 7 clerk of the county commission. Such social security
- 8 account number shall not appear upon the public record
- 9 of the register of births or upon any certificate of birth
- 10 registration issued by the state registrar, local registrar,

11 county clerk or other issuing authority, if any. Such so-
12 cial security account numbers shall be made available by
13 the state registrar to the child support enforcement divi-
14 sion created by chapter forty-eight-a upon the request of
15 the division, to be used solely in connection with the en-
16 forcement of child support orders.

§16-5-19. Death registration.

1 (a) A death certificate for each death which occurs in
2 this state shall be filed with the local registrar of the regis-
3 tration district in which the death occurs within three days
4 after such death, and prior to removal of the body from
5 the state, and shall be registered by such registrar if it has
6 been completed and filed in accordance with this section:
7 *Provided, That*

8 (1) If the place of death is unknown, a death certificate
9 shall be filed in the registration district in which a dead
10 body is found within three days after the finding;

11 (2) If death occurs in a moving conveyance, a death
12 certificate shall be filed in the registration district in which
13 the dead body is first removed from such conveyance; and

14 (3) If the death occurs in a district other than where
15 the deceased resided, a death certificate shall be filed in
16 the registration district in which the death occurred and in
17 the district in which the deceased resided.

18 (b) The funeral director or person acting for him who
19 first assumes custody of a dead body shall file the death
20 certificate. He shall obtain the necessary personal data
21 from the next of kin or the best qualified person or source
22 available. The funeral director or person acting for him
23 shall obtain the medical certification of the cause of death
24 from the person responsible for making such certification.
25 The personal data obtained shall include the deceased
26 person's social security number or numbers. The social
27 security account number of an individual who has died
28 shall be placed in the records relating to the death and
29 shall be recorded on the death certificate. A record of the
30 social security number or numbers shall be filed with the
31 local registrar of the district in which the deceased person

32 resided within seven days after the death, and the local
33 registrar shall transmit such number or numbers to the
34 state registrar of vital statistics in the same manner as other
35 personal data is transmitted to the state registrar.

36 (c) The medical certification shall be completed and
37 signed within twenty-four hours after death by the physi-
38 cian in charge of the patient's care for the illness or con-
39 dition which results in death except when inquiry is re-
40 quired pursuant to chapter sixty-one, article twelve or
41 other applicable provisions of this code.

42 (d) When death occurs without medical attendance and
43 inquiry is not required pursuant to chapter sixty-one,
44 article twelve or other applicable provisions of this code,
45 the local health officer shall investigate the cause of death
46 and complete and sign the medical certification within
47 twenty-four hours after receiving notice of the death.

48 (e) When death occurs in a manner subject to investi-
49 gation, the coroner or other officer or official charged
50 with the legal duty of making such investigation shall
51 investigate the cause of death and shall complete and sign
52 the medical certification within twenty-four hours after
53 making determination of the cause of death.

54 (f) In order that each county may have a complete
55 record of the deaths occurring in said county, the local
56 registrar shall transmit each month to the county clerk of
57 his county a copy of the certificates of all deaths occur-
58 ring in said county, and if any person shall die in a county
59 other than that county within the state in which such per-
60 son last resided prior to death, then the state registrar shall,
61 if possible, also furnish a copy of such death certificate to
62 the clerk of the county commission of the county wherein
63 such person last resided, from which copies the clerk shall
64 compile a record of such deaths and shall enter the same
65 in a systematic and orderly way in a well-bound register of
66 deaths for that county, which such register shall be a pub-
67 lic record. The form of said death register shall be pre-
68 scribed by the state registrar of vital statistics.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

Article

- 2. **Issuance of License, Expiration and Renewal.**
- 3. **Cancellation, Suspension or Revocation of Licenses.**

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.**§17B-2-10. Restricted licenses.**

1 (a) The division upon issuing a driver's license shall
 2 have authority whenever good cause appears to impose
 3 restrictions suitable to the licensee's driving ability with
 4 respect to the type of or special mechanical control devic-
 5 es required on a motor vehicle which the licensee may
 6 operate or such other restrictions applicable to the licensee
 7 as the division may determine to be appropriate to assure
 8 the safe operation of a motor vehicle by the licensee.

9 (b) The division shall issue a restricted license to a
 10 person who has failed to pay overdue child support or
 11 comply with subpoenas or warrants relating to paternity or
 12 child support proceedings, if a circuit court orders restric-
 13 tions of the person's license as provided in article five-a,
 14 chapter forty-eight-a of this code.

15 (c) The division may either issue a special restricted
 16 license or may set forth such restrictions upon the usual
 17 license form.

18 (d) The division may upon receiving satisfactory evi-
 19 dence of any violation of the restrictions of such license
 20 suspend or revoke the same but the licensee shall be enti-
 21 tled to a hearing as upon a suspension or revocation under
 22 this chapter.

23 (e) It is a misdemeanor for any person to operate a
 24 motor vehicle in any manner in violation of the restric-
 25 tions imposed in a restricted license issued to such person.

ARTICLE 3. CANCELLATION, SUSPENSION OR REVOCATION OF LICENSES.**§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 hearing
3 upon a showing by its records or other sufficient evidence
4 that the licensee:

5 (1) Has committed an offense for which mandatory
6 revocation of a driver's license is required upon conviction;
7

8 (2) Has by reckless or unlawful operation of a motor
9 vehicle, caused or contributed to an accident resulting in
10 the death or personal injury of another or property damage;
11

12 (3) Has been convicted with such frequency of serious
13 offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws
14 and a disregard for the safety of other persons on the
15 highways;
16

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 if
21 committed in this state would be a ground for suspension
22 or revocation;

23 (7) Has failed to pay or has defaulted on a plan for the
24 payment of all costs, fines, forfeitures or penalties imposed
25 by a magistrate court or municipal court within ninety
26 days, as required by section two-a, article three, chapter
27 fifty or section two-a, article ten, chapter eight of this
28 code;

29 (8) Has failed to appear or otherwise respond before a
30 magistrate court or municipal court when charged with a
31 motor vehicle violation as defined in section three-a of this
32 article;

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, chapter
36 eighteen of this code; or

37 (10) Has failed to pay overdue child support or com-
38 ply with subpoenas or warrants relating to paternity or
39 child support proceedings, if a circuit court has ordered
40 the suspension of the license as provided in article five-a,
41 chapter forty-eight-a of this code and the child support
42 enforcement division has forwarded to the division a copy
43 of the court order suspending the license, or has forward-
44 ed its certification that the licensee has failed to comply
45 with a new or modified order that stayed the suspension
46 and provided for the payment of current support and any
47 arrearage due.

48 (b) The driver's license of any person having his or
49 her license suspended shall be reinstated if:

50 (1) The license was suspended under the provisions of
51 subdivision (7), subsection (a) of this section and the pay-
52 ment of costs, fines, forfeitures or penalties imposed by
53 the applicable court has been made;

54 (2) The license was suspended under the provisions of
55 subdivision (8), subsection (a) of this section, and the
56 person having his or her license suspended has appeared
57 in court and has prevailed against the motor vehicle viola-
58 tions charged; or

59 (3) The license was suspended under the provisions of
60 subdivision (10), subsection (a) of this section, and the
61 division has received a court order restoring the license or
62 a certification by the child support enforcement division
63 that the licensee is complying with the original support
64 order or a new or modified order that provides for the
65 payment of current support and any arrearage due.

66 (c) Any reinstatement of a license under subdivision
67 (1), (2) or (3), subsection (b) of this section shall be sub-
68 ject to a reinstatement fee designated in section nine of
69 this article.

70 (d) Upon suspending the driver's license of any per-
71 son as hereinbefore in this section authorized, the division
72 shall immediately notify the licensee in writing, sent by
73 certified mail, return receipt requested, to the address giv-
74 en by the licensee in applying for license, and upon his

75 request shall afford him an opportunity for a hearing as
76 early as practical within not to exceed twenty days after
77 receipt of such request in the county wherein the licensee
78 resides unless the division and the licensee agree that such
79 hearing may be held in some other county. Upon such
80 hearing the commissioner or his duly authorized agent
81 may administer oaths and may issue subpoenas for the
82 attendance of witnesses and the production of relevant
83 books and papers and may require a reexamination of the
84 licensee. Upon such hearing the division shall either re-
85 scind its order of suspension or, good cause appearing
86 therefor, may extend the suspension of such license or
87 revoke such license. The provisions of this subsection (d)
88 providing for notice and hearing are not applicable to a
89 suspension under subdivision (10), subsection (a) of this
90 section.

CHAPTER 17E. UNIFORM COMMERCIAL DRIVER'S LICENSE ACT.

ARTICLE 1. COMMERCIAL DRIVER'S LICENSE.

§17E-1-9. Commercial driver license qualification standards.

§17E-1-13. Disqualification and cancellation.

§17E-1-9. Commercial driver license qualification standards.

1 (a) (1) *General.* — No person may be issued a com-
2 mercial driver's license unless that person is a resident of
3 this state and has passed a knowledge and skills test for
4 driving a commercial motor vehicle which complies with
5 minimum federal standards established by federal regula-
6 tions enumerated in 49 C.F.R. part 383, sub-parts G and
7 H, and has satisfied all other requirements of the Federal
8 Commercial Motor Vehicle Safety Act in addition to other
9 requirements imposed by state law or federal regulations.
10 The tests will be administered by the West Virginia state
11 police according to rules promulgated by the commission-
12 er.

13 (2) *Third party testing.* — The commissioner may
14 authorize a person, including an agency of this or another
15 state, an employer, private individual or institution, depart-
16 ment, agency or instrumentality of local government, to
17 administer the skills test specified by this section: *Provid-*

18 *ed*, That (i) the test is the same which would otherwise be
19 administered by the state and (ii) the party has entered
20 into an agreement with the state which complies with the
21 requirements of 49 C.F.R. part 383.75.

22 (3) *Indemnification of driver examiners.* — No person
23 who has been officially trained and certified by the state as
24 a driver examiner, who administers any such driving test,
25 and no other person, firm or corporation by whom or with
26 which such person is employed or is in any way associat-
27 ed, may be criminally liable for the administration of such
28 tests, or civilly liable in damages to the person tested or
29 other persons or property unless for gross negligence or
30 willful or wanton injury.

31 (4) Monitoring of third party testing will be carried
32 out by the West Virginia state police according to rules
33 promulgated by the commissioner.

34 (b) *Waiver of skills test.* — The commissioner may
35 waive the skills test specified in this section for a commer-
36 cial driver license applicant who meets the requirements of
37 49 C.F.R. part 383.77 and those requirements specified by
38 the commissioner.

39 (c) *Limitations on issuance of license.* — A commer-
40 cial driver's license or commercial driver's instruction
41 permit may not be issued to a person while the person is
42 subject to a disqualification from driving a commercial
43 motor vehicle, or while the person's driver's license is
44 suspended, revoked or canceled in any state; nor may a
45 commercial driver's license be issued by any other state
46 unless the person first surrenders all such licenses to the
47 department, which must be returned to the issuing state(s)
48 for cancellation. The division shall issue a restricted com-
49 mercial driver's license to a person who has failed to pay
50 overdue child support or comply with subpoenas or war-
51 rants relating to paternity or child support proceedings, if
52 a circuit court orders restrictions of the person's license as
53 provided in article five-a, chapter forty-eight-a of this
54 code.

55 (d) *Commercial driver's instruction permit.* — (1) A
56 commercial driver's instruction permit may be issued to

57 an individual who holds a valid operator or Class "D"
58 driver license who has passed the vision and written tests
59 required for issuance of a commercial driver license. (2)
60 The commercial instruction permit may not be issued for
61 a period to exceed six months. Only one renewal or reis-
62 suance may be granted within a two-year period. The
63 holder of a commercial driver's instruction permit may
64 drive a commercial motor vehicle on a highway only when
65 accompanied by the holder of a commercial driver license
66 valid for the type of vehicle driven who occupies a seat
67 beside the individual for the purpose of giving instruction
68 or testing. (3) A commercial driver's instruction permit
69 may only be issued to an individual who is at least eigh-
70 teen years of age and has held an operator's or junior
71 operator's license for at least two years. (4) The applicant
72 for a commercial driver's instruction permit must also be
73 otherwise qualified to hold a commercial driver's license.

§17E-1-13. Disqualification and cancellation.

1 (a) *Disqualification offenses.* — Any person is dis-
2 qualified from driving a commercial motor vehicle for a
3 period of not less than one year if convicted of a first
4 violation of:

5 (1) Driving a commercial motor vehicle under the
6 influence of alcohol or a controlled substance;

7 (2) Driving a commercial motor vehicle while the
8 alcohol concentration of the person's blood or breath is
9 four hundredths or more;

10 (3) Leaving the scene of an accident involving a com-
11 mercial motor vehicle driven by the person;

12 (4) Using a commercial motor vehicle in the commis-
13 sion of any felony as defined in this article: *Provided,*
14 That the commission of any felony involving the manu-
15 facture, distribution, or dispensing of a controlled sub-
16 stance, or possession with intent to manufacture, distribute
17 or dispense a controlled substance falls under the provi-
18 sions of subsection (d) of this section;

19 (5) Refusal to submit to a test to determine the driver's
20 alcohol concentration while driving a commercial motor
21 vehicle.

22 In addition, the conviction of any of the following
23 offenses as an operator of any vehicle is a disqualification
24 offense:

25 (1) Manslaughter or negligent homicide resulting
26 from the operation of a motor vehicle as defined under
27 the provisions of section five, article three, chapter
28 seventeen-b, and section one, article five, chapter
29 seventeen-c of this code;

30 (2) Driving while license is suspended or revoked, as
31 defined under the provisions of section three, article four,
32 chapter seventeen-b of this code;

33 (3) Perjury or making a false affidavit or statement
34 under oath to the department of motor vehicles, as defined
35 under the provisions of subsection (4), section five, article
36 three, and section two, article four, chapter seventeen-b of
37 this code.

38 If any of the above violations occurred while trans-
39 porting a hazardous material required to be placarded, the
40 person is disqualified for a period of not less than three
41 years.

42 (b) A person is disqualified for life if convicted of two
43 or more violations of any of the offenses specified in
44 subsection (a) of this section, or any combination of those
45 offenses, arising from two or more separate incidents.

46 (c) The commissioner may issue rules establishing
47 guidelines, including conditions, under which a disqualifi-
48 cation for life under subsection (b) of this section may be
49 reduced to a period of not less than ten years.

50 (d) A person is disqualified from driving a commer-
51 cial motor vehicle for life who uses a commercial motor
52 vehicle in the commission of any felony involving the
53 manufacture, distribution or dispensing of a controlled
54 substance, or possession with intent to manufacture, dis-
55 tribute or dispense a controlled substance.

56 (e) A person is disqualified from driving a commercial
57 motor vehicle for a period of not less than sixty days if
58 convicted of two serious traffic violations, or one hundred

59 twenty days if convicted of three serious violations, com-
60 mitted in a commercial motor vehicle arising from sepa-
61 rate incidents occurring within a three-year period.

62 (f) A person is disqualified from driving a commercial
63 motor vehicle if he or she has failed to pay overdue child
64 support or comply with subpoenas or warrants relating to
65 paternity or child support proceedings, if a circuit court
66 has ordered the suspension of the commercial driver's
67 license as provided in article five-a, chapter forty-eight-a
68 of this code and the child support enforcement division
69 has forwarded to the division a copy of the court order
70 suspending the license, or has forwarded its certification
71 that the licensee has failed to comply with a new or modi-
72 fied order that stayed the suspension and provided for the
73 payment of current support and any arrearage due. A
74 disqualification under this section shall continue until the
75 division has received a court order restoring the license or
76 a certification by the child support enforcement division
77 that the licensee is complying with the original support
78 order or a new or modified order that provides for the
79 payment of current support and any arrearage due.

80 (g) After suspending, revoking or canceling a com-
81 mercial driver's license, the department shall update its
82 records to reflect that action within ten days.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-1. Employment in general.

§18A-2-5. Employment of service personnel; limitation.

§18A-2-1. Employment in general.

1 The employment of professional personnel shall be
2 made by the board only upon nomination and recommen-
3 dation of the superintendent. In case the board refuses to
4 employ any or all of the persons nominated, the superin-
5 tendent shall nominate others and submit the same to the
6 board at such time as the board may direct. All personnel
7 so nominated and recommended for employment and for
8 subsequent assignment shall meet the certification, licens-
9 ing, training, and other eligibility classifications as may be
10 required by provisions of this chapter and by state board

11 regulation. In addition to any other information required,
 12 the application for any certification or licensing shall
 13 include the applicant's social security number. Profession-
 14 al personnel employed as deputy, associate or assistant
 15 superintendents by the board in offices, departments or
 16 divisions at locations other than a school and who are
 17 directly answerable to the superintendent shall serve at the
 18 will and pleasure of the superintendent and may be re-
 19 moved by the superintendent upon approval of the board.
 20 Such professional personnel shall retain seniority rights
 21 only in the area or areas in which they hold valid certifica-
 22 tion or licensure.

§18A-2-5. Employment of service personnel; limitation.

1 The board is authorized to employ such service per-
 2 sonnel, including substitutes, as is deemed necessary for
 3 meeting the needs of the county school system: *Provided*,
 4 That the board may not employ a number of such person-
 5 nel whose minimum monthly salary under section eight-a,
 6 article four, of this chapter is specified as pay grade "H",
 7 which number exceeds the number employed by the
 8 board on the first day of March, one thousand nine hun-
 9 dred eighty-eight.

10 Effective the first day of July, one thousand nine hun-
 11 dred eighty-eight, a county board shall not employ for the
 12 first time any person who has not obtained a high school
 13 diploma or general educational development certificate
 14 (GED) or who is not enrolled in an approved adult educa-
 15 tion course by the date of employment in preparation for
 16 obtaining a GED: *Provided*, That such employment is
 17 contingent upon continued enrollment or successful com-
 18 pletion of the GED program.

19 Before entering upon their duties service personnel
 20 shall execute with the board a written contract which shall
 21 be in the following form:

22 "COUNTY BOARD OF EDUCATION
 23 SERVICE PERSONNEL CONTRACT
 24 OF EMPLOYMENT

25 THIS (Probationary or Continuing) CONTRACT OF
26 EMPLOYMENT, made and entered into this _____
27 day of _____, 19____, by and between THE
28 BOARD OF EDUCATION OF THE COUNTY OF
29 _____, a corporation, hereinafter called the
30 'Board,' and (Name and Social Security Number of Em-
31 ployee), of (Mailing Address), hereinafter called the 'Em-
32 ployee.'

33 WITNESSETH, that whereas, at a lawful meeting of the
34 Board of Education of the County of _____ held
35 at the offices of said Board, in the City of
36 _____, _____ County,
37 West Virginia, on the _____ day of
38 _____, 19____, the Employee was duly
39 hired and appointed for employment as a (Job Classifica-
40 tion) at (Place of Assignment) for the school year com-
41 mencing _____ for the employment term and at the
42 salary and upon the terms hereinafter set out.

43 NOW, THEREFORE, pursuant to said employment,
44 Board and Employee mutually agree as follows:

45 (1) The Employee is employed by the Board as a (Job
46 Classification) at (Place of Assignment) for the school
47 year or remaining part thereof commencing
48 _____, 19____. The period of employment is
49 _____ days at an annual salary of \$_____ at the rate
50 of \$_____ per month.

51 (2) The Board hereby certifies that the Employee's
52 employment has been duly approved by the Board and
53 will be a matter of the Board's minute records.

54 (3) The services to be performed by the Employee
55 shall be such services as are prescribed for the job classifi-
56 cation set out above in paragraph (1) and as defined in
57 Section 8, Article 4, Chapter 18A of the Code of West
58 Virginia, as amended.

59 (4) The Employee may be dismissed at any time for
60 immorality, incompetency, cruelty, insubordination, in-
61 temperance or willful neglect of duty pursuant to the pro-
62 visions of Section 8, Article 2, Chapter 18A of the Code of
63 West Virginia, as amended.

64 (5) The Superintendent of the _____ County
65 Board of Education, subject to the approval of the Board,
66 may transfer and assign the Employee in the manner pro-
67 vided by Section 7, Article 2, Chapter 18A of the Code of
68 West Virginia, as amended.

69 (6) This contract shall at all times be subject to any
70 and all existing laws, or such laws as may hereafter be
71 lawfully enacted, and such laws shall be a part of this con-
72 tract.

73 (7) This contract may be terminated or modified at
74 any time by the mutual consent of the Board and the Em-
75 ployee.

76 (8) This contract must be signed and returned to the
77 Board at its address of _____
78 _____ within thirty
79 days after being received by the Employee.

80 (9) By signing this contract the Employee accepts
81 employment upon the terms herein set out.

82 WITNESS the following signatures as of the day,
83 month and year first above written:

84 _____, (President, _____ County Board of
85 Education) _____, (Secretary, _____ County
86 Board of Education) _____, (Employee)"

87 The use of this form shall not be interpreted to autho-
88 rize boards to discontinue any employee's contract status
89 with the board or rescind any rights, privileges or benefits
90 held under contract or otherwise by any employee prior to
91 the effective date of this section.

92 Each contract of employment shall be designated as a
93 probationary or continuing contract. The employment of
94 service personnel shall be made a matter of minute record.
95 The employee shall return the contract of employment to
96 the county board of education within thirty days after
97 receipt or otherwise he shall forfeit his right to employ-
98 ment.

99 Under such regulation and policy as may be estab-
100 lished by the county board, service personnel selected and

101 trained for teacher-aide classifications, such as monitor
102 aide, clerical aide, classroom aide and general aide, shall
103 work under the direction of the principal and teachers to
104 whom assigned.

CHAPTER 18B. HIGHER EDUCATION.

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.

1 (a) Definitions for terms used in this section shall be in
2 accordance with those provided in section two, article nine
3 of this chapter except that the provisions of this section
4 shall apply only to classified employees whose employ-
5 ment, if continued, shall accumulate to a minimum total of
6 one thousand forty hours during a calendar year and
7 extend over at least nine months of a calendar year: *Pro-*
8 *vided*, That this section shall also apply for one year to
9 any classified employee who is involuntarily transferred to
10 a position in nonclassified status for which he or she did
11 not apply.

12 (b) All decisions by the appropriate governing board
13 or their agents at state institutions of higher education
14 concerning reductions in work force of full-time classified
15 personnel, whether by temporary furlough or permanent
16 termination, shall be made in accordance with this section.
17 For layoffs by classification for reason of lack of funds or
18 work, or abolition of position or material changes in duties
19 or organization and for recall of employees so laid off,
20 consideration shall be given to an employee's seniority as
21 measured by permanent employment in the service of the
22 state system of higher education. In the event that the
23 institution wishes to lay off a more senior employee, the
24 institution must demonstrate that the senior employee
25 cannot perform any other job duties held by less senior
26 employees of that institution in the same job class or any
27 other equivalent or lower job class for which the senior
28 employee is qualified: *Provided*, That if an employee
29 refuses to accept a position in a lower job class, such em-
30 ployee shall retain all rights of recall hereinafter provided.

31 If two or more employees accumulate identical seniority,
32 the priority shall be determined by a random selection
33 system established by the employees and approved by the
34 institution.

35 (c) Any employee laid off during a furlough or re-
36 duction in work force shall be placed upon a preferred
37 recall list and shall be recalled to employment by the insti-
38 tution on the basis of seniority. An employee's listing
39 with an institution shall remain active for a period of one
40 calendar year from the date of termination or furlough or
41 from the date of the most recent renewal. If an employee
42 fails to renew the listing with the institution, the employ-
43 ee's name may be removed from the list. An employee
44 placed upon the preferred list shall be recalled to any
45 position opening by the institution within the classifica-
46 tion(s) in which the employee had previously been em-
47 ployed or to any lateral position for which the employee is
48 qualified. An employee on the preferred recall list shall
49 not forfeit the right to recall by the institution if compel-
50 ling reasons require such employee to refuse an offer of
51 reemployment by the institution.

52 The institution shall be required to notify all employ-
53 ees maintaining active listings on the preferred recall list
54 of all position openings that from time to time exist. Such
55 notice shall be sent by certified mail to the last known
56 address of the employee. It shall be the duty of each
57 employee listed to notify the institution of any change in
58 address and to timely renew the listing with the institution.
59 No position openings shall be filled by the institution,
60 whether temporary or permanent, until all employees on
61 the preferred recall list have been properly notified of
62 existing vacancies and have been given an opportunity to
63 accept reemployment.

64 (d) A nonexempt classified employee, including a
65 nonexempt employee who has not accumulated a mini-
66 mum total of one thousand forty hours during the calen-
67 dar year or whose contract does not extend over at least
68 nine months of a calendar year, who meets the minimum
69 qualifications for a job opening at the institution where the
70 employee is currently employed, whether the job be a

71 lateral transfer or a promotion, and applies for same shall
72 be transferred or promoted before a new person is hired
73 unless such hiring is affected by mandates in affirmative
74 action plans or the requirements of Public Law 101-336,
75 the Americans with Disabilities Act. If more than one
76 qualified, nonexempt classified employee applies, the
77 best-qualified nonexempt classified employee shall be
78 awarded the position. In instances where such classified
79 employees are equally qualified, the nonexempt classified
80 employee with the greatest amount of continuous seniority
81 at that state institution of higher education shall be award-
82 ed the position. A nonexempt classified employee is one
83 to whom the provisions of the federal Fair Labor Stan-
84 dards Act, as amended, apply.

85 (e) In addition to any other information required, any
86 application for personnel governed by the provisions of
87 this section shall include the applicant's social security
88 number.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-10. Requirement for social security number on applica- tions.

1 The commissioner shall require every applicant for a
2 license, permit, certificate of registration, or registration
3 under this chapter to place his or her social security num-
4 ber on the application.

CHAPTER 21. LABOR.

Article

- 2. Employment Agencies.
- 3C. Elevator Safety.
- 5. Wage and Payment Collection.
- 11. West Virginia Contractor Licensing Act.

ARTICLE 2. EMPLOYMENT AGENCIES.

§21-2-7. License required; displaying license; annual tax.

1 No employment agent shall engage in the business for
2 profit or receive any fee, charge commission or other
3 compensation, directly or indirectly, for services as em-
4 ployment agent, without first having obtained a license

5 therefor from the state tax commissioner. Such license
6 shall not be issued until the commissioner of labor shall
7 have approved in writing the application therefor, and,
8 when issued, such license shall constitute a license from
9 the state to operate as an employment agent for compen-
10 sation and shall not be transferable. Such license shall at
11 all times be kept posted in a conspicuous place at the place
12 of business of such employment agent. Every employ-
13 ment agent shall pay the annual license tax provided for in
14 article twelve, chapter eleven of this code.

15 In addition to any other information required, an
16 application for a license under this section shall include
17 the applicant's social security number.

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-2. Inspectors; certificates of competency; application; examination; reexamination.

1 No person may serve as an elevator inspector unless he
2 or she successfully completes the examination required by
3 this article and holds a certificate of competency for eleva-
4 tor inspections issued by the division.

5 Application for examination for elevator inspections
6 shall be in writing, accompanied by a fee of ten dollars,
7 upon a form designed and furnished by the division and
8 shall, at a minimum, state the level of education of the
9 applicant, list his or her employers, his or her period of
10 employment and the position held with each. In addition
11 to any other information required, the application shall
12 include the applicant's social security number. The appli-
13 cant shall also submit a letter from one or more of his or
14 her previous employers concerning his or her character
15 and experience.

16 Applications which contain any willfully submitted
17 false or untrue information shall be rejected. After review
18 of the application by the division, the applicant, if deemed
19 appropriate by the division, shall be tested by means of a
20 written examination as prescribed by the division dealing
21 with the construction, installation, operation, maintenance
22 and repair of elevators and their 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 set
26 in legislative rules promulgated by the division, as autho-
27 rized by this article. An applicant who fails to successfully
28 complete an initial examination may submit an application
29 for a second examination ninety days or more after the
30 initial examination and upon payment of the ten dollar
31 examination fee. Should an applicant fail to successfully
32 complete the prescribed examination on the second trial,
33 he or she shall not be permitted to submit an application
34 for another examination for a period of one year after the
35 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 into
40 a contract to hire inspectors who are certified by the divi-
41 sion. The division shall hire an inspector supervisor who
42 shall supervise the inspection activities under this article.

ARTICLE 5. WAGE AND PAYMENT COLLECTION.

§21-5-5c. License required for polygraph examiners; qualifi- cations; promulgation of rules governing admin- istration of polygraph tests.

1 (a) No person, firm or corporation shall administer a
2 polygraph, lie detector or other such similar test utilizing
3 mechanical measures of physiological reactions to evalu-
4 ate truthfulness to an employee or prospective employee
5 without holding a current valid license to do so as issued
6 by the commissioner of labor. No test shall be adminis-
7 tered by a licensed corporation except by an officer or
8 employee thereof who is also licensed.

9 (b) A person is qualified to receive a license as an
10 examiner if he:

11 (1) Is at least eighteen years of age;

12 (2) Is a citizen of the United States;

13 (3) Has not been convicted of a misdemeanor involv-
14 ing moral turpitude or a felony;

15 (4) Has not been released or discharged with other
16 than honorable conditions from any of the armed services
17 of the United States or that of any other nation;

18 (5) Has passed an examination conducted by the com-
19 missioner of labor or under his supervision, to determine
20 his competency to obtain a license to practice as an exam-
21 iner;

22 (6) Has satisfactorily completed not less than six
23 months of internship training; and

24 (7) Has met any other qualifications of education or
25 training established by the commissioner of labor in his
26 sole discretion which qualifications are to be at least as
27 stringent as those recommended by the American poly-
28 graph association.

29 (c) The commissioner of labor may design and by
30 procedural rule designate and thereafter administer any
31 test he deems appropriate to those persons applying for a
32 license to administer polygraph, lie detector or such simi-
33 lar test to employees or prospective employees. The test
34 designed by the commissioner of labor shall be so de-
35 signed as to ensure that the applicant is thoroughly famil-
36 iar with the code of ethics of the American polygraph
37 association and has been trained in accordance with asso-
38 ciation rules. The test must also include a rigorous exami-
39 nation of the applicant's knowledge of and familiarity
40 with all aspects of operating polygraph equipment.

41 (d) The license to give a polygraph, lie detector or
42 similar test to employees or prospective employees shall
43 be issued for a period of one year. It may be reissued
44 from year to year.

45 (e) The commissioner of labor shall charge a fee of
46 one hundred dollars for each issuance or reissuance of a
47 license to give a polygraph, lie detector or similar test to
48 employees or prospective employees. Such fee shall be
49 deposited in the general revenue fund of the state. In
50 addition to any other information required, an application
51 for a license shall include the applicant's social security
52 number.

53 (f) The commissioner of labor shall promulgate legis-
54 lative rules pursuant to the provisions of chapter twenty-
55 nine-a, article three, governing the administration of poly-
56 graph, lie detector or such similar test to employees. Such
57 legislative rules shall include:

58 (1) The type and amount of training or schooling
59 necessary for a person before which he may be licensed to
60 give or interpret such polygraph, lie detector or similar
61 test;

62 (2) Standards of accuracy which shall be met by ma-
63 chines or other devices to be used in polygraph, lie detec-
64 tor or similar tests; and

65 (3) The conditions under which a polygraph, lie detec-
66 tor or such similar test may be given.

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

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

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

11 (b) A person holding a business registration certificate
12 to conduct business in this state as a contractor on the
13 thirtieth day of September, one thousand nine hundred
14 ninety-one, may register with the board, certify by affida-
15 vit the requirements of subsection (c), section fifteen here-
16 of, and pay such license fee not to exceed one hundred
17 fifty dollars and shall be issued a contractor's license
18 without further examination.

CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

ARTICLE 9. MINE INSPECTORS' EXAMINING BOARD.

§22A-9-1. Mine inspectors' examining board.

1 The mine inspectors' examining board is continued.
2 It consists of five members who, except for the public
3 representative on such board, shall be appointed by the
4 governor, by and with the advice and consent of the Sen-
5 ate. Members so appointed may be removed only for the
6 same causes and in like manner as elective state officers.
7 One of the members of the board shall be a representative
8 of the public, who shall be the director of the school of
9 mines at West Virginia university. Two members of the
10 board shall be persons who by reason of previous training
11 and experience may reasonably be said to represent the
12 viewpoint of coal mine operators and two members shall
13 be persons who by reason of previous training and experi-
14 ence may reasonably be said to represent the viewpoint of
15 coal mine workers.

16 The director of the office of miners' health, safety and
17 training is an ex officio member of the board and shall
18 serve as secretary of the board, without additional com-
19 pensation; but the director has no right to vote with respect
20 to any matter before the board.

21 The members of the board, except the public repre-
22 sentative, shall be appointed for overlapping terms of eight
23 years, except that the original appointments shall be for
24 terms of two, four, six and eight years, respectively. Any
25 member whose term expires may be reappointed by the
26 governor. Members serving on the effective date of this
27 article may continue to serve until their terms expire.

28 Each member of the board shall be paid the same
29 compensation, and each member of the board shall be
30 paid the expense reimbursement, as is paid to members of
31 the Legislature for their interim duties as recommended
32 by the citizens legislative compensation commission and
33 authorized by law for each day or portion thereof en-
34 gaged in the discharge of official duties. Any such
35 amounts shall be paid out of the state treasury upon a
36 requisition upon the state auditor, properly certified by
37 such members of the board.

38 The public member is chair of the board. Members of
39 the board, before performing any duty, shall take and
40 subscribe to the oath required by section 5, article IV of
41 the constitution of West Virginia.

42 The mine inspectors' examining board shall meet at
43 such times and places as shall be designated by the chair.
44 It is the duty of the chair to call a meeting of the board on
45 the written request of three members or the director of the
46 office of miners' health, safety and training. Notice of
47 each meeting shall be given in writing to each member by
48 the secretary at least five days in advance of the meeting.
49 Three members is a quorum for the transaction of busi-
50 ness.

51 In addition to other duties expressly set forth else-
52 where in this article, the board shall:

53 (1) Establish, and from time to time revise, forms of
54 application for employment as mine inspectors, which
55 shall include the applicant's social security number, and
56 forms for written examinations to test the qualifications of
57 candidates for that position;

58 (2) Adopt and promulgate reasonable rules relating to
59 the examination, qualification and certification of candi-
60 dates for appointment as mine inspectors, and hearing for
61 removal of inspectors, required to be held by section
62 twelve, article one of this chapter. All of such rules shall
63 be printed and a copy thereof furnished by the secretary
64 of the board to any person upon request;

65 (3) Conduct, after public notice of the time and place
66 thereof, examinations of candidates for appointment as
67 mine inspector. By unanimous agreement of all members
68 of the board, one or more members of the board or an
69 employee of the office of miners' health, safety and train-
70 ing may be designated to give a candidate the written
71 portion of the examination;

72 (4) Prepare and certify to the director of the office of
73 miners' health, safety and training a register of qualified
74 eligible candidates for appointment as mine inspectors.
75 The register shall list all qualified eligible candidates in the
76 order of their grades, the candidate with the highest grade

77 appearing at the top of the list. After each meeting of the
78 board held to examine such candidates, and at least annu-
79 ally, the board shall prepare and submit to the director of
80 the office of miners' health, safety and training a revised
81 and corrected register of qualified eligible candidates for
82 appointment as mine inspector, deleting from such revised
83 register all persons (a) who are no longer residents of West
84 Virginia, (b) who have allowed a calendar year to expire
85 without, in writing, indicating their continued availability
86 for such appointment, (c) who have been passed over for
87 appointment for three years, (d) who have become ineligi-
88 ble for appointment since the board originally certified
89 that such person was qualified and eligible for appoint-
90 ment as mine inspector, or (e) who, in the judgment of at
91 least four members of the board, should be removed from
92 the register for good cause;

93 (5) Cause the secretary of the board to keep and pre-
94 serve the written examination papers, manuscripts, grading
95 sheets, and other papers of all applicants for appointment
96 as mine inspector for such period of time as may be estab-
97 lished by the board. Specimens of the examinations giv-
98 en, together with the correct solution of each question,
99 shall be preserved permanently by the secretary of the
100 board;

101 (6) Issue a letter or written notice of qualification to
102 each successful eligible candidate;

103 (7) Hear and determine proceedings for the removal
104 of mine inspectors in accordance with the provisions of
105 this article;

106 (8) Hear and determine appeals of mine inspectors
107 from suspension orders made by the director pursuant to
108 the provisions of section four, article one of this chapter:
109 *Provided*, That an aggrieved inspector, in order to appeal
110 from any order of suspension, shall file such appeal in
111 writing with the mine inspectors' examining board not
112 later than ten days after receipt of notice of suspension.
113 On such appeal the board shall affirm the act of the direc-
114 tor unless it be satisfied from a clear preponderance of the
115 evidence that the director has acted arbitrarily;

116 (9) Make an annual report to the governor and the
117 director concerning the administration of mine inspection
118 personnel in the state service, making such recommenda-
119 tions as the board considers to be in the public interest.

**CHAPTER 22C. ENVIRONMENTAL
RESOURCES; BOARDS,
AUTHORITIES, COMMISSIONS AND COMPACTS.**

ARTICLE 7. OIL AND GAS INSPECTORS' EXAMINING BOARD.

**§22C-7-3. Oil and gas inspectors' examining board created;
composition; appointment, term and compensa-
tion of members; meetings; powers and duties
generally; continuation following audit.**

1 (a) There is hereby continued an oil and gas inspec-
2 tors' examining board consisting of five members, two of
3 whom shall be ex officio members and three of whom
4 shall be appointed by the governor, by and with the advice
5 and consent of the Senate. Appointed members may be
6 removed only for the same causes and like manner as
7 elective state officers. One member of the board shall be
8 the representative of the public at large and shall be a
9 person who is knowledgeable about the subject matter of
10 this article and has no direct or indirect financial interest
11 in oil and gas production other than the receipt of royalty
12 payments which do not exceed a five-year average of six
13 hundred dollars per year; one member shall be a person
14 who by reason of previous training and experience may
15 reasonably be said to represent the viewpoint of indepen-
16 dent oil and gas operators; and one member shall be a
17 person who by reason of previous training and experience
18 may reasonably be said to represent the viewpoint of ma-
19 jor oil and gas producers.

20 The chief of the office of oil and gas of the division of
21 environmental protection and the chief of the office of
22 water resources of the division of environmental protec-
23 tion shall be ex officio members.

24 The appointed members of the board shall be appoint-
25 ed for overlapping terms of six years, except that the orig-
26 inal appointments shall be for terms of two, four and six

27 years, respectively. Any member whose term expires may
28 be reappointed by the governor.

29 The board shall pay each member the same compen-
30 sation and expense reimbursement as is paid to members
31 of the Legislature for their interim duties as recommended
32 by the citizens legislative compensation commission and
33 authorized by law for each day or portion thereof en-
34 gaged in the discharge of official duties.

35 The chief of the office of oil and gas shall serve as
36 chair of the board. The board shall elect a secretary from
37 its members.

38 Members of the board, before performing any duty,
39 shall take and subscribe to the oath required by section 5,
40 article IV of the constitution of West Virginia.

41 The board shall meet at such times and places as shall
42 be designated by the chair. It is the duty of the chair to
43 call a meeting of the board on the written request of two
44 members. Notice of each meeting shall be given in writ-
45 ing to each member by the secretary at least five days in
46 advance of the meeting. A majority of members is a quo-
47 rum for the transaction of business.

48 (b) In addition to other powers and duties expressly
49 set forth elsewhere in this article, the board shall:

50 (1) Establish, and from time to time revise, forms of
51 application for employment as an oil and gas inspector
52 and supervising inspector, which shall include the appli-
53 cant's social security number, and forms for written exam-
54 inations to test the qualifications of candidates, with such
55 distinctions, if any, in the forms for oil and gas inspector
56 and supervising inspector as the board may from time to
57 time deem necessary or advisable;

58 (2) Adopt and promulgate reasonable rules relating to
59 the examination, qualification and certification of candi-
60 dates for appointment, and relating to hearings for remov-
61 al of inspectors or the supervising inspector, required to be
62 held by this article. All of such rules shall be printed and
63 a copy thereof furnished by the secretary of the board to
64 any person upon request;

65 (3) Conduct, after public notice of the time and place
66 thereof, examinations of candidates for appointment. By
67 unanimous agreement of all members of the board, one or
68 more members of the board or an employee of the divi-
69 sion of environmental protection may be designated to
70 give to a candidate the written portion of the examination;

71 (4) Prepare and certify to the director of the division
72 of environmental protection a register of qualified eligible
73 candidates for appointment as oil and gas inspectors or as
74 supervising inspectors, with such differentiation, if any,
75 between the certification of candidates for oil and gas
76 inspectors and for supervising inspectors as the board may
77 from time to time deem necessary or advisable. The regis-
78 ter shall list all qualified eligible candidates in the order of
79 their grades, the candidate with the highest grade appear-
80 ing at the top of the list. After each meeting of the board
81 held to examine such candidates and at least annually, the
82 board shall prepare and submit to the director of the divi-
83 sion of environmental protection a revised and corrected
84 register of qualified eligible candidates for appointment,
85 deleting from such revised register all persons: (a) Who
86 are no longer residents of West Virginia; (b) who have
87 allowed a calendar year to expire without, in writing, indi-
88 cating their continued availability for such appointment;
89 (c) who have been passed over for appointment for three
90 years; (d) who have become ineligible for appointment
91 since the board originally certified that such persons were
92 qualified and eligible for appointment; or (e) who, in the
93 judgment of at least three members of the board, should
94 be removed from the register for good cause;

95 (5) Cause the secretary of the board to keep and pre-
96 serve the written examination papers, manuscripts, grading
97 sheets and other papers of all applicants for appointment
98 for such period of time as may be established by the
99 board. Specimens of the examinations given, together
100 with the correct solution of each question, shall be pre-
101 served permanently by the secretary of the board;

102 (6) Issue a letter or written notice of qualification to
103 each successful eligible candidate;

104 (7) Hear and determine proceedings for the removal
105 of inspectors or the supervising inspector in accordance
106 with the provisions of this article;

107 (8) Hear and determine appeals of inspectors or the
108 supervising inspector from suspension orders made by
109 said director pursuant to the provisions of section two,
110 article six, chapter twenty-two of this code: *Provided,*
111 That in order to appeal from any order of suspension, an
112 aggrieved inspector or supervising inspector shall file such
113 appeal in writing with the oil and gas inspectors' examin-
114 ing board not later than ten days after receipt of the notice
115 of suspension. On such appeal the board shall affirm the
116 action of said director unless it be satisfied from a clear
117 preponderance of the evidence that said director has acted
118 arbitrarily;

119 (9) Make an annual report to the governor concerning
120 the administration of oil and gas inspection personnel in
121 the state service; making such recommendations as the
122 board considers to be in the public interest; and

123 (10) Render such advice and assistance to the director
124 of the division of environmental protection as the director
125 shall from time to time determine necessary or desirable in
126 the performance of such duties.

127 (c) After having conducted a preliminary performance
128 review through its joint committee on government opera-
129 tions, pursuant to article ten, chapter four of this code, the
130 Legislature hereby finds and declares that the oil and gas
131 inspectors' examining board within the division of envi-
132 ronmental protection should be continued and reestab-
133 lished. Accordingly, notwithstanding the provisions of
134 said article, the oil and gas inspectors' examining board
135 within the division of environmental protection shall con-
136 tinue to exist until the first day of July, two thousand.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3B. SUPERVISION OF ELECTRICIANS.

§29-3B-4. Licenses; classes of licenses; issuance of licenses by commissioner; qualifications required for li-

cense; nontransferability and nonassignability of licenses; expiration of license; renewal; reciprocity.

1 (a) The following four classes of license may be issued
2 by the state fire marshal: "Master electrician license,"
3 "journeyman electrician's license," "apprentice electrician
4 license" and "temporary electrician license." Additional
5 classes of specialty electrician license may be issued
6 by the state fire marshal.

7 (b) The state fire marshal shall issue the appropriate
8 class of license to a person, firm or corporation upon a
9 finding that such person, firm or corporation possesses the
10 qualifications for the class of license to be issued.

11 (c) The qualifications for each class of license to be
12 issued are as follows:

13 (1) For a "master electrician license" a person must
14 have five years of experience in electrical work of such
15 breadth, independence and quality that such work indicates
16 that the applicant is competent to perform all types
17 of electrical work and can direct and instruct journeyman
18 electricians and apprentice electricians in the performance
19 of electrical work. Such applicant, or a member of a firm
20 or an officer of a corporation if the applicant be a firm or
21 corporation, must also pass the master electrician examination
22 given by the state fire marshal with a grade of eighty
23 percent correct or better;

24 (2) For a "journeyman electrician's license," a person
25 must have at least four years of experience in performing
26 electrical work under the direction or instruction
27 of a master electrician or must have completed a formal
28 apprentice program, or an electrical vocational education
29 program of at least one thousand eighty hours in length
30 and approved by the state board of education or its successor,
31 providing actual electrical work experience and training
32 conducted by one or more master electricians. Such applicant
33 must also pass the journeyman electrician's examination
34 given by the state fire marshal with a grade of eighty percent
35 correct or better;

36 (3) For an "apprentice electrician license," a person
37 must pass the apprentice electrician's examination given
38 by the state fire marshal with a grade of eighty percent
39 correct or better or be enrolled in an electrical apprentice
40 program approved by the state fire marshal;

41 (4) A one time temporary master or journeyman elec-
42 trician license of ninety-days duration may be issued to an
43 applicant providing the applicant has completed a United
44 States department of labor/bureau of apprenticeship and
45 training registered electrical apprenticeship program, or an
46 electrical vocational education program of at least one
47 thousand eighty hours in length and approved by the state
48 board of education or its successor, and have at least four
49 years of experience in performing electrical work and
50 furnishes the state fire marshal with satisfactory evidence
51 of electrical work;

52 (5) Other specialty electrician license may be issued
53 by the state fire marshal which limits the work in a limited
54 area of expertise. Such applicant must pass the specialty
55 electrician's examination given by the state fire marshal
56 with a grade of eighty percent correct or better.

57 (d) (1) Certificates of license for a master electrician's
58 license issued by the state fire marshal shall specify the
59 name of the person, firm or corporation so qualifying and
60 the name of the person, who in the case of a firm shall be
61 one of its members and in the case of a corporation shall
62 be one of its officers, passing the master electrician exami-
63 nation.

64 (2) Licenses issued to electricians shall specify the
65 name of the person who is thereby authorized to perform
66 electrical work or, in the case of apprentice electricians, to
67 work with other classes of electricians to perform electrical
68 work.

69 (e) No license issued under this article is assignable or
70 transferable.

71 (f) All licenses issued by the state fire marshal shall
72 expire on the thirtieth day of June following the year of
73 issue or renewal.

74 (g) (1) Each expiring license may be renewed without
75 need for examination and without limit as to the number
76 of times renewed, for the same class of license previously
77 issued and for the same person, firm or corporation to
78 whom it was originally issued upon payment to the state
79 fire marshal of a renewal fee of fifty dollars if such appli-
80 cation for renewal and payment of such fee is made be-
81 fore the date of expiration of the license.

82 (2) In the case of a failure to renew a license on or
83 before the thirtieth day of June the person named in the
84 license may, upon payment of the renewal fee and an
85 additional fee of fifteen dollars, receive from the state fire
86 marshal a deferred renewal of such license which shall
87 expire on the thirtieth day of June in the ensuing year.
88 No person, firm or corporation may perform electrical
89 work upon expiration of such person's, firm's or corpora-
90 tion's license until a deferred renewal for such license is
91 issued by the state fire marshal even if such person, firm
92 or corporation has applied for the deferred renewal of
93 such license.

94 (h) To the extent that other jurisdictions provide for
95 the licensing of electricians, the state fire marshal may
96 grant the same or equivalent classification of license with-
97 out written examination upon satisfactory proof furnished
98 to the state fire marshal that the qualifications of such
99 applicant are equal to the qualifications required by this
100 article and upon payment of the required fee: *Provided*,
101 That as a condition to reciprocity, the other jurisdictions
102 must extend to licensed electricians of this state, the same
103 or equivalent classification.

104 (i) In addition to any other information required, the
105 applicant's social security number shall be recorded on
106 any application for a license submitted pursuant to the
107 provisions of this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REG- ISTRATION REFERRED TO IN CHAPTER.

§30-1-6. Application for license or registration; examination fee.

§30-1-13. Roster of licensed or registered practitioners.

§30-1-6. Application for license or registration; examination fee.

1 (a) Every applicant for license or registration under
2 the provisions of this chapter shall apply for such license
3 or registration in writing to the proper board and shall
4 transmit with his or her application an examination fee
5 which the board is authorized to charge for an examina-
6 tion or investigation into the applicant's qualifications to
7 practice.

8 (b) Each board referred to in this chapter is authorized
9 to establish by rule a deadline for application for exami-
10 nation which shall be no less than ten nor more than nine-
11 ty days prior to the date of the examination.

12 (c) Boards may set by rule fees relating to the licens-
13 ing or registering of individuals, which shall be sufficient
14 to enable the boards to carry out effectively their responsi-
15 bilities of licensure or registration and discipline of indi-
16 viduals subject to their authority: *Provided*, That when
17 any board proposes to promulgate a rule regarding fees
18 for licensing or registration, that board shall notify its
19 membership of the proposed rule by mailing a copy of
20 the proposed rule to the membership at the time that the
21 proposed rule is filed with the secretary of state for publi-
22 cation in the state register in accordance with section five,
23 article three, chapter twenty-nine-a of this code.

24 (d) In addition to any other information required, the
25 applicant's social security number shall be recorded on
26 the application.

§30-1-13. Roster of licensed or registered practitioners.

1 The secretary of every such board shall also prepare
2 and maintain a complete roster of the names, social securi-
3 ty numbers and office addresses of all persons licensed, or
4 registered, and practicing in this state the profession or
5 occupation to which such board relates, arranged alpha-
6 betically by name and also by the counties in which their
7 offices are situated. The board may call for and require a

8 registration whenever it deems it necessary or expedient to
9 secure an accurate roster.

CHAPTER 33. INSURANCE.

ARTICLE 12. AGENTS, BROKERS, SOLICITORS AND EXCESS LINES.

§33-12-3. Application.

1 (a) Application for an agent's, broker's or solicitor's
2 license or renewal thereof shall be made to the commis-
3 sioner upon a form prescribed by him and shall contain
4 the applicant's name, social security number and such
5 information and supporting documents as the commis-
6 sioner may require, and the commissioner may require
7 such application to be made under the applicant's oath.

8 (b) If for an agent's license, the application shall show
9 the kinds of insurance to be transacted, and shall be ac-
10 companied by the written appointment of the applicant as
11 agent by at least one licensed insurer for each kind of
12 insurance for which application is made.

13 (c) If for a solicitor's license, the application shall be
14 accompanied by written appointment of the applicant as
15 solicitor by a licensed agent.

16 (d) If for a broker's license, the application shall be
17 accompanied by a statement upon a form prescribed by
18 the commissioner as to the trustworthiness and competen-
19 cy of the applicant, signed by at least three licensed resi-
20 dent agents of this state.

21 (e) Willful misrepresentation of any fact in any such
22 application or any documents in support thereof is a viola-
23 tion of this chapter.

CHAPTER 37. REAL PROPERTY.

ARTICLE 14. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§37-14-9. Applications for license.

1 An individual who desires to engage in real estate
2 appraisal activity in this state shall make application for a
3 license, in writing, in such form as the board may pre-

4 scribe. In addition to any other information required, the
5 applicant's social security number shall be recorded on
6 the application.

7 To assist the board in determining whether grounds
8 exist to deny the issuance of a license to an applicant, the
9 board may require the fingerprinting of every applicant
10 for an original license.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 12. REAL ESTATE COMMISSION, BROKERS AND SALESPERSONS.

§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 the applicant's social
4 security number and such other data and information as
5 the commission shall require.

6 (a) Such application for broker's license shall be ac-
7 companied by the recommendation of at least two citizens
8 who are property owners at the time of signing said appli-
9 cation and have been property owners for at least twelve
10 months preceding such application, who have known the
11 applicant for two years and are not related to the applicant,
12 certifying that the applicant bears a good reputation for
13 honesty and trustworthiness, and recommending that a
14 license be granted to the 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 the applicant's social
18 security number and such other data and information as
19 the commission may require. The application shall be
20 accompanied by a sworn statement by the broker in whose
21 employ the applicant desires to enter, certifying that, in his
22 or her opinion, the applicant is honest and trustworthy,
23 and recommending the license be granted to the applicant.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

Article

- 1A. **Enforcement of Family Obligations.**
2. **West Virginia Support Enforcement Commission; Child Support Enforcement Division; Establishment and Organization.**
- 5A. **Enforcement of Support Order Through Action Against License.**
6. **Establishment of Paternity.**

ARTICLE 1A. ENFORCEMENT OF FAMILY OBLIGATIONS.**§48A-1A-30. Support order.**

1 "Support order" means a judgment, decree, or order,
2 whether temporary, final, or subject to modification, issued
3 by a court or an administrative agency of competent juris-
4 diction, for the support and maintenance of a child, in-
5 cluding a child who has attained the age of majority under
6 the law of the issuing state, or a child and the parent with
7 whom the child is living, which provides for monetary
8 support, health care, arrearage, or reimbursements, and
9 which may include related costs and fees, interest and
10 penalties, income withholding, attorneys' fees, and other
11 relief.

**ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COM-
MISSION; CHILD SUPPORT ENFORCEMENT
DIVISION; ESTABLISHMENT AND ORGANIZA-
TION.**

§48A-2-31. Providing information to consumer reporting agencies.

§48A-2-32. Establishment of central state case registry.

§48A-2-33. Subpoenas.

§48A-2-33a. Nonliability for financial institutions providing financial re-
cords to the division of child support enforcement.

§48A-2-34. Employment and income reporting.

**§48A-2-31. 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 infor-
6 mation on consumers for the purpose of furnishing con-
7 sumer reports to third parties.

8 (b) The commission shall propose and adopt a proce-
9 dural rule in accordance with the provisions of sections
10 four and eight, article three, chapter twenty-nine-a of this
11 code, establishing procedures whereby information re-
12 garding the amount of overdue support owed by an obli-
13 gor will be reported periodically by the child support
14 enforcement division to any consumer reporting agency,
15 after a request by the consumer reporting agency that it be
16 provided with the periodic reports.

17 (c) The procedural rule adopted by the commission
18 shall provide that any information with respect to an obli-
19 gor shall be made available only after notice has been sent
20 to the obligor of the proposed action, and such obligor
21 has been given a reasonable opportunity to contest the
22 accuracy of the information.

23 (d) The procedural rule adopted shall afford the obli-
24 gor with procedural due process prior to making informa-
25 tion available with respect to the obligor.

26 (e) The information made available to a consumer
27 reporting agency regarding overdue support may only be
28 made available to an entity that has furnished evidence
29 satisfactory to the division that the entity is a consumer
30 reporting agency as defined in subsection (a) of this sec-
31 tion.

32 (f) The child support enforcement division may im-
33 pose a fee for furnishing such information, not to exceed
34 the actual cost thereof.

§48A-2-32. Establishment of central state case registry.

1 The child support enforcement division shall establish
2 and maintain a central state case registry of child support
3 orders. All orders in cases when any party receives any
4 service provided by the child support enforcement divi-
5 sion shall be included in the registry. Any other support
6 order entered or modified in this state on or after the first
7 day of October, one thousand nine hundred ninety-eight,
8 shall be included in the registry. The child support en-
9 forcement division, upon receipt of any information re-
10 garding a new hire provided pursuant to section three,

11 article five of this chapter shall compare information re-
12 ceived to determine if the new hire's income is subject to
13 wage withholding and notify the employer pursuant to
14 that section.

§48A-2-33. Subpoenas.

1 In order to obtain financial and medical insurance
2 information pursuant to the establishment, enforcement
3 and modification provisions set forth in this chapter or
4 chapter forty-eight of this code, the child support enforce-
5 ment division may serve, by certified mail or personal
6 service, an administrative subpoena on any person, corpo-
7 ration, partnership, financial institution, labor organization
8 or state agency, for an appearance or for production of
9 financial or medical insurance information. In case of
10 disobedience to the subpoena, the child support enforce-
11 ment division may invoke the aid of any circuit court in
12 requiring the appearance or production of records and
13 financial documents. The child support enforcement
14 division may assess a civil penalty of no more than one
15 hundred dollars for the failure of any person, corporation,
16 financial institution, labor organization or state agency to
17 comply with requirements of this section.

**§48A-2-33a. Nonliability for financial institutions providing
financial records to the division of child sup-
port enforcement.**

1 (a) Notwithstanding any other provision of this code, a
2 financial institution shall not be liable under the law of this
3 state to any person for disclosing any financial record of
4 an individual to the division of child support enforcement
5 in response to a subpoena issued by the division pursuant
6 to section thirty-three of this article.

7 (b) The division of child support enforcement, after
8 obtaining a financial record of an individual from a finan-
9 cial institution may disclose such financial record only for
10 the purpose of, and to the extent necessary in, establishing,
11 modifying, or enforcing a child support obligation of
12 such individual.

13 (c) The civil liability of a person who knowingly, or
14 by reason of negligence, discloses a financial record of an

15 individual in violation of subsection (b) of this section is
16 governed by the provisions of federal law as set forth in
17 42 U.S.C. §669A.

18 (d) For purposes of this section the term “financial
19 institution” means:

20 (1) Any bank or savings association;

21 (2) A person who is an institution-affiliated party, as
22 that term is defined in the Federal Deposit Insurance Act,
23 12 U.S.C. §1813(u);

24 (3) Any federal credit union or state-chartered credit
25 union, including an institution-affiliated party of a credit
26 union; and

27 (4) Any benefit association, insurance company, safe
28 deposit company, money-market mutual fund, or similar
29 entity authorized to do business in this state.

30 (e) For purposes of this section, the term “financial
31 record” means an original of, a copy of, or information
32 known to have been derived from, any record held by a
33 financial institution pertaining to a customer’s relationship
34 with the financial institution.

§48A-2-34. Employment and income reporting.

1 (a) Except as provided in subsections (b) and (c) of
2 this section, all employers doing business in the state of
3 West Virginia shall report to the child support enforce-
4 ment division:

5 (1) The hiring of any person who resides or works in
6 this state to whom the employer anticipates paying earn-
7 ings; and

8 (2) The rehiring or return to work of any employee
9 who resides or works in this state.

10 (b) Employers are not required to report the hiring,
11 rehiring or return to work of any person who:

12 (1) Is employed for less than one month’s duration;
13 or

14 (2) Is employed sporadically so that the employee will
15 be paid for less than three hundred fifty hours during a
16 continuous six-month period; or

17 (3) Has gross earnings of less than three hundred
18 dollars per month.

19 (c) The commission may establish additional exemp-
20 tions to reduce unnecessary or burdensome reporting
21 through promulgation of a legislative rule pursuant to
22 chapter twenty-nine-a of this code.

23 (d) Employers shall report by mailing to the child
24 support enforcement division a copy of the employee's
25 W-4 form. However, an employer may transmit such
26 information through another means if approved in writing
27 by the child support enforcement division prior to the
28 transmittal.

29 (e) Employers shall submit a report within fourteen
30 days of the date of the hiring, rehiring or return to work
31 of the employee. The report shall include the employee's
32 name, address, social security number and date of birth
33 and the employer's name and address, any different ad-
34 dress of the payroll office and the employer's federal tax
35 identification number.

36 (f) An employer of an obligor shall provide to the
37 child support enforcement division, upon its written re-
38 quest, information regarding the obligor's employment,
39 wages or salary, medical insurance and location of em-
40 ployment.

41 (g) Any employer who fails to report in accordance
42 with the provisions of this section shall be assessed a civil
43 penalty of no more than twenty dollars. If the failure to
44 report is the result of a conspiracy between the employer
45 and the employee to not supply the required report or to
46 supply a false or incomplete report, the employer shall be
47 assessed a civil penalty of no more than three hundred
48 fifty dollars.

49 (h) Employers required to report under this section
50 may assess each employee so reported one dollar for the
51 administrative costs of reporting.

ARTICLE 5A. ENFORCEMENT OF SUPPORT ORDER THROUGH ACTION AGAINST LICENSE.

§48A-5A-1. Definitions.

§48A-5A-2. Licenses subject to action.

§48A-5A-3. Action against license; notice to licensee.

§48A-5A-4. Hearing on denial, nonrenewal, suspension or restriction of license.

§48A-5A-5. Enforcement of order by licensing authority.

§48A-5A-6. Procedure where license to practice law may be subject to denial, suspension or restriction.

§48A-5A-7. Effect of determination as to authority of federal government to require denials, suspensions or restrictions of licenses.

§48A-5A-1. Definitions.

1 For purposes of this article, the words or terms defined
2 in this section have the meanings ascribed to them. These
3 definitions are applicable unless a different meaning clear-
4 ly appears from the context.

5 (1) "Action against a license" means action taken by
6 the child support enforcement division to cause the denial,
7 nonrenewal, suspension or restriction of a license applied
8 for or held by (A) a support obligor owing overdue sup-
9 port, or (B) a person who has failed to comply with sub-
10 poenas or warrants relating to paternity or child support
11 proceedings;

12 (2) "License" means a license, permit, certificate of
13 registration, registration, credential, stamp or other indicia
14 that evidences a personal privilege entitling a person to do
15 an act that he or she would otherwise not be entitled to do,
16 or evidences a special privilege to pursue a profession,
17 trade, occupation, business or vocation.

§48A-5A-2. Licenses subject to action.

1 The following licenses are subject to an action against
2 a license as provided for in this article:

3 (1) A permit or license issued under chapter seven-
4 teen-b of this code, authorizing a person to drive a motor
5 vehicle;

6 (2) A commercial driver's license, issued under chap-
7 ter seventeen-e of this code, authorizing a person to drive
8 a class of commercial vehicle;

9 (3) A permit, license or stamp issued under article two
10 or two-b, chapter twenty of this code, regulating a per-
11 son's activities for wildlife management purposes, autho-
12 rizing a person to serve as an outfitter or guide, or autho-
13 rizing a person to hunt or fish;

14 (4) A license or registration issued under chapter thir-
15 ty of this code, authorizing a person to practice or engage
16 in a profession or occupation;

17 (5) A license issued under article twelve, chapter forty-
18 seven of this code, authorizing a person to transact busi-
19 ness as a real estate broker or real estate salesperson;

20 (6) A license or certification issued under article four-
21 teen, chapter thirty-seven of this code, authorizing a per-
22 son to transact business as a real estate appraiser;

23 (7) A license issued under article twelve, chapter thir-
24 ty-three of this code, authorizing a person to transact in-
25 surance business as an agent, broker or solicitor;

26 (8) A registration made under article two, chapter
27 thirty-two of this code, authorizing a person to transact
28 securities business as a broker-dealer, agent or investment
29 advisor;

30 (9) A license issued under article twenty-two, chapter
31 twenty-nine of this code, authorizing a person to transact
32 business as a lottery sales agent;

33 (10) A license issued under articles thirty-two or thir-
34 ty-four, chapter sixteen of this code, authorizing persons
35 to pursue a trade or vocation in asbestos abatement or
36 radon mitigation;

37 (11) A license issued under article eleven, chapter
38 twenty-one of this code, authorizing a person to act as a
39 contractor;

40 (12) A license issued under article two-c, chapter nine-
41 teen of this code, authorizing a person to act as an auc-
42 tioneer; and

43 (13) A license, permit or certificate issued under chap-
44 ter nineteen of this code, authorizing a person to sell, mar-
45 ket or distribute agricultural products or livestock.

§48A-5A-3. Action against license; notice to licensee.

1 (a) The child support enforcement division shall send
2 a written notice of an action against a license to a person
3 who:

4 (1) Owes overdue child support, if the child support
5 arrearage equals or exceeds the amount of child support
6 payable for six months;

7 (2) Has failed for a period of six months to pay medi-
8 cal support ordered under section fifteen-a, article two,
9 chapter forty-eight of this code; or

10 (3) Has failed, after appropriate notice, to comply with
11 subpoenas or warrants relating to paternity or child sup-
12 port proceedings.

13 (b) In the case of overdue child support or noncom-
14 pliance with a medical support order, notice of an action
15 against a license shall be served only if other statutory
16 enforcement methods to collect the support arrearage have
17 been exhausted or are not available.

18 (c) The division shall send a notice of action against a
19 license by regular mail and by certified mail, return re-
20 ceipt requested, to the person's last-known address or
21 place of business or employment. Simultaneous certified
22 and regular mailing of the written notice shall constitute
23 effective service unless the United States Postal Service
24 returns the mail to the child support enforcement division
25 within the thirty-day response period marked "moved,
26 unable to forward," "addressee not known," "no such
27 number/street," "insufficient address," or "forwarding
28 order expired." If the certified mail is returned for any
29 other reason without the return of the regular mail, the
30 regular mail service shall constitute effective service. If
31 the mail is addressed to the person at his or her place of
32 business or employment, with postal instructions to deliver
33 to addressee only, service will be deemed effective only if
34 the signature on the return receipt appears to be that of the
35 person. Acceptance of the certified mail notice signed by
36 the person, the person's attorney, or a competent member
37 of the person's household above the age of sixteen shall
38 be deemed effective service.

39 (d) The notice shall be substantially in the following
40 form:

NOTICE OF ACTION AGAINST LICENSE		
Name and address:	Date:	Case No:
	Social Security No:	
	Circuit Court of _____ County, West Virginia	
Section 1.		
<p><input type="checkbox"/> The child support enforcement division has determined that you have failed to comply with an order to pay child support, and that the amount you owe equals six months child support or more. The amount you owe is calculated to be \$ _____ as of the _____ day of _____.</p> <p><input type="checkbox"/> The child support enforcement division has determined that you have failed to comply with a medical support order for a period of six months. The amount you owe is calculated to be \$ _____ as of the _____ day of _____.</p> <p><input type="checkbox"/> The child support enforcement division has determined that you have failed to comply with a medical support order requiring you to obtain health insurance for your child or children.</p> <p><input type="checkbox"/> The child support enforcement division has determined that you have failed to comply with a subpoena or warrant relating to a paternity or child support proceeding.</p>		
Section 2.		
<p>Under West Virginia law, your failure to comply as described in Section 1 may result in an action against certain licenses issued to you by the State of West Virginia. Action may be taken against a driver's license, a recreational license such as a hunting and fishing license, and a professional or occupational license necessary for you to work. An application for a license may be denied. A renewal of a license may be refused. A license which you currently hold may be suspended or restricted in its use.</p> <p>The Child Support Enforcement Division has determined that you are a current license holder, have applied for, or are likely to apply for the following license or licenses:</p> <p>_____</p> <p>_____</p>		
To avoid an action against your licenses, check which of the following actions you will take:		
<p><input type="checkbox"/> I want to pay in full the overdue amount I owe as child support. I am enclosing a check or order in the amount of \$ _____.</p> <p><input type="checkbox"/> I want pay in full the amount I owe as medical support. I am enclosing a check or money order in the amount of \$ _____.</p> <p><input type="checkbox"/> I am requesting a meeting with a representative of the Child Support Enforcement Division to arrange a payment plan that will allow me to make my current payments as they become due and to pay on the arrearage I owe or to otherwise bring me into compliance with current support orders.</p> <p><input type="checkbox"/> I am requesting a hearing before the family law master or circuit judge to contest an action against my licenses. Please serve me with any petition filed, and provide me with notice of the time and place of the hearing.</p>		
Signed X _____		Date: _____
Section 3.		
<p>You must check the appropriate box or boxes in Section 2, sign your name and mail this form to the Child Support Enforcement Division before the _____ day of _____.</p> <p>Otherwise, the Child Support Enforcement Division may begin an action against your licenses in the Circuit Court without further notice to you. Mail this form to the following address:</p>		

41 (e) The notice shall advise the person that further
42 failure to comply may result in an action against licenses
43 held by the person, and that any pending application for a
44 license may be denied, renewal of a license may be re-
45 fused, or an existing license may be suspended or restrict-
46 ed unless, within thirty days of the date of the notice, the
47 person pays the full amount of the child support arrearage
48 or the medical support arrearage, makes a request for a
49 meeting with a representative of the child support enforce-
50 ment division to arrange a payment plan or to otherwise
51 arrange compliance with existing support orders, or makes
52 a request for a court hearing to the child support enforce-
53 ment division. An action against a license shall be termi-
54 nated if the person pays the full amount of the child sup-
55 port arrearage or medical support arrearage, or provides
56 proof that health insurance for the child has been obtained
57 as required by a medical support order or enters into a
58 written plan with the child support enforcement division
59 for the payment of current payments and payment on the
60 arrearage.

61 (f) If the person fails to take one of the actions de-
62 scribed in subsection (e) of this section within thirty days
63 of the date of the notice and there is proof that service on
64 the person was effective, the child support enforcement
65 division shall file a certification with the circuit court set-
66 ting forth the person's noncompliance with the support
67 order or failure to comply with a subpoena or warrant and
68 the person's failure to respond to the written notice of the
69 potential action against his or her license. If the circuit
70 court is satisfied that service of the notice on the person
71 was effective as set forth in this section, it shall without
72 need for further due process or hearing, enter an order
73 suspending or restricting any licenses held by the person.
74 Upon the entry of the order, the child support enforce-
75 ment division shall forward a copy to the person and to
76 any appropriate agencies responsible for the issuance of a
77 license.

78 (g) If the person requests a hearing, the child support
79 enforcement division shall file a petition for a judicial
80 hearing before the family law master. The hearing shall

81 occur within forty-two days of the receipt of the person's
82 request. If, prior to the hearing, the person pays the full
83 amount of the child support arrearage or medical support
84 arrearage or provides health insurance as ordered, the
85 action against a license shall be terminated. No action
86 against a license shall be initiated if the child support en-
87 forcement division has received notice that the person has
88 pending a motion to modify the child support order, if
89 that motion was filed prior to the date that the notice of
90 the action against the license was sent by the child support
91 enforcement division. The court shall consider the child
92 support enforcement division's petition to deny, refuse to
93 renew, suspend or restrict a license in accordance with
94 section four of this article.

§48A-5A-4. Hearing on denial, nonrenewal, suspension or restriction of license.

1 (a) The court shall order a licensing authority to deny,
2 refuse to renew, suspend or restrict a license if it finds that:

3 (1) All appropriate enforcement methods have been
4 exhausted or are not available;

5 (2) The person is the holder of a license or has an
6 application pending for a license;

7 (3) The requisite amount of child support or medical
8 support arrearage exists or health insurance for the child
9 has not been provided as ordered, or the person has failed
10 to comply with a subpoena or warrant relating to a pater-
11 nity or child support proceeding;

12 (4) No motion to modify the child support order, filed
13 prior to the date that the notice was sent by the child sup-
14 port enforcement division, is pending before the court;
15 and

16 (5) There is no equitable reason, such as involuntary
17 unemployment, disability, or compliance with a
18 court-ordered plan for the periodic payment of the child
19 support arrearage amount, for the person's noncompli-
20 ance with the child support order.

21 (b) If the court is satisfied that the conditions de-
22 scribed in subsection (a) of this section exist, it shall first

23 consider suspending or restricting a driver's license prior
24 to professional license. If the person fails to appear at the
25 hearing after being properly served with notice, the court
26 shall order the suspension of all licenses held by the per-
27 son.

28 (c) If the court finds that a license suspension will
29 result in a significant hardship to the person, to the per-
30 son's legal dependents under eighteen years of age living
31 in the person's household, to the person's employees, or
32 to persons, businesses or entities to whom the person pro-
33 vides goods or services, the court may allow the person to
34 pay a percentage of the past-due child support amount as
35 an initial payment, and establish a payment schedule to
36 satisfy the remainder of the arrearage within one year, and
37 require that the person comply with any current child
38 support obligation. If the person agrees to this arrange-
39 ment, no suspension or restriction of any licenses shall be
40 ordered. Compliance with the payment agreement shall
41 be monitored by the child support enforcement division.

42 (d) If a person has good cause for not complying
43 with the payment agreement within the time permitted, the
44 person shall immediately file a motion with the court and
45 the child support enforcement division requesting an ex-
46 tension of the payment plan. The court may extend the
47 payment plan if it is satisfied that the person has made a
48 good faith effort to comply with the plan and is unable to
49 satisfy the full amount of past-due support within the time
50 permitted due to circumstances beyond the person's con-
51 trol. If the person fails to comply with the court-ordered
52 payment schedule, the court shall, upon receipt of a certif-
53 ication of noncompliance from the child support enforce-
54 ment division, and without further hearing, order the im-
55 mediate suspension or restriction of all licenses held by
56 the person.

§48A-5A-5. Enforcement of order by licensing authority.

1 (a) The child support enforcement division shall pro-
2 vide the licensing authority with a copy of the order re-
3 quiring the denial, nonrenewal, suspension or restriction of
4 a license. Upon receipt of an order requiring the suspen-

5 sion or restriction of a license for nonpayment of child
6 support, the licensing authority shall immediately notify
7 the applicant or licensee of the effective date of the denial,
8 nonrenewal, suspension or limitation, which shall be twenty
9 days after the date of the notice, direct any licensee to
10 refrain from engaging in the activity associated with the
11 license, surrender any license as required by law, and in-
12 form the applicant or licensee that the license shall not be
13 approved, renewed or reinstated until the court or child
14 support enforcement division certifies compliance with
15 court orders for the payment of current child support and
16 arrearage. The child support enforcement division, in
17 association with the affected licensing authorities, may
18 develop electronic or magnetic tape data transfers to noti-
19 fy licensing authorities of denials, nonrenewals, suspen-
20 sions and reinstatements. No liability shall be imposed on
21 a licensing authority for suspending or restricting a license
22 if the action is in response to a court order issued in accor-
23 dance with this article. Licensing authorities shall not have
24 jurisdiction to modify, remand, reverse, vacate or stay a
25 court order to deny, not renew, suspend or restrict a li-
26 cense for nonpayment of child support.

27 (b) The denial, nonrenewal, suspension or restriction
28 of a license ordered by the court shall continue until the
29 child support enforcement division files with the licensing
30 authority either a court order restoring the license or a
31 child support enforcement division certification attesting
32 to compliance with court orders for the payment of cur-
33 rent child support and arrearage.

34 (c) Each licensing authority shall require license appli-
35 cants to certify on the license application form, under
36 penalty of false swearing, that the applicant does not have
37 a child support obligation, the applicant does have such an
38 obligation but any arrearage amount does not equal or
39 exceed the amount of child support payable for six
40 months, or the applicant is not the subject of a
41 child-support related subpoena or warrant. A license shall
42 not be granted to any person who applies for a license if
43 there is an arrearage equal to or exceeding the amount of
44 child support payable for six months or if it is determined
45 that the applicant has failed to comply with a warrant or

46 subpoena in a paternity or child support proceeding. The
47 application form shall state that making a false statement
48 may subject the license holder to disciplinary action in-
49 cluding, but not limited to, immediate revocation or sus-
50 pension of the license.

51 (d) The provisions of this article apply to all orders
52 issued before or after the enactment of this article. All
53 child support, medical support and health insurance provi-
54 sions in existence on or before the effective date of this
55 article shall be included in determining whether a case is
56 eligible for enforcement. This article applies to all child
57 support obligations ordered by any state, territory or dis-
58 trict of the United States that are being enforced by the
59 child support enforcement division, that are payable di-
60 rectly to the obligee, or have been registered in this state in
61 accordance with the uniform interstate family support act.

**§48A-5A-6. Procedure where license to practice law may be
subject to denial, suspension or restriction.**

1 If a person who has been admitted to the practice of
2 law in this state by order of the supreme court of appeals
3 is determined to be in default under a support order or has
4 failed to comply with a subpoena or warrant in a paternity
5 or child support proceeding, such that his or her other
6 licenses are subject to suspension or restriction under this
7 article, the child support enforcement division may send a
8 notice listing the name and social security number or
9 other identification number to the lawyer disciplinary
10 board established by the supreme court of appeals. The
11 Legislature hereby requests the supreme court of appeals
12 to promptly adopt rules pursuant to its constitutional au-
13 thority to govern the practice of law that would include as
14 attorney misconduct for which an attorney may be disci-
15 plined, situations in which a person licensed to practice law
16 in West Virginia has been determined to be in default
17 under a support order or has failed to comply with a sub-
18 poena or warrant in a paternity or child support proceed-
19 ing.

§48A-5A-7. Effect of determination as to authority of federal government to require denials, suspensions or restrictions of licenses.

1 The provisions of this article have been enacted to
2 conform to the mandates of the federal "Personal Re-
3 sponsibility and Work Opportunity Reconciliation Act of
4 1996". If a court of competent jurisdiction should deter-
5 mine, or if it is otherwise determined that the federal gov-
6 ernment lacked authority to mandate the license denials,
7 nonrenewals, suspensions or restrictions contemplated by
8 this article, then the provisions of this article shall be null
9 and void and of no force and effect.

ARTICLE 6. ESTABLISHMENT OF PATERNITY.

§48A-6-3. Medical testing procedures to aid in the determination of paternity.

§48A-6-6. Establishing paternity by acknowledgment of natural father.

§48A-6-3. Medical testing procedures to aid in the determination of paternity.

1 (a) Prior to the commencement of an action for the
2 establishment of paternity, the child support enforcement
3 division may order the mother, her child and the man to
4 submit to genetic tests to aid in proving or disproving
5 paternity. The division may order the tests upon the re-
6 quest of a party, supported by a sworn statement. If the
7 request is made by a party alleging paternity, the statement
8 shall set forth facts establishing a reasonable possibility of
9 requisite sexual contact between the parties. If the request
10 is made by a party denying paternity, the statement may
11 set forth facts establishing a reasonable possibility of the
12 nonexistence of sexual contact between the parties or
13 other facts supporting a denial of paternity. If genetic
14 testing is not performed pursuant to an order of the child
15 support enforcement division, the court may, on its own
16 motion, or shall upon the motion of any party, order such
17 tests. A request or motion may be made upon ten days'
18 written notice to the mother and alleged father, without the
19 necessity of filing a complaint. When the tests are or-
20 dered, the court or the division shall direct that the inher-
21 ited characteristics, including, but not limited to, blood
22 types be determined by appropriate testing procedures at a

23 hospital, independent medical institution or independent
24 medical laboratory duly licensed under the laws of this
25 state, or any other state, and an expert qualified as an ex-
26 aminer of genetic markers shall analyze, interpret and
27 report on the results to the court or to the division of child
28 support enforcement. The results shall be considered as
29 follows:

30 (1) Blood or tissue test results which exclude the man
31 as the father of the child are admissible and shall be clear
32 and convincing evidence of nonpaternity and, if a com-
33 plaint has been filed, the court shall, upon considering
34 such evidence, dismiss the action.

35 (2) Blood or tissue test results which show a statistical
36 probability of paternity of less than ninety-eight percent
37 are admissible and shall be weighed along with other evi-
38 dence of the defendant's paternity.

39 (3) Undisputed blood or tissue test results which show
40 a statistical probability of paternity of more than
41 ninety-eight percent shall, when filed, legally establish the
42 man as the father of the child for all purposes and child
43 support may be established pursuant to the provisions of
44 this chapter.

45 (4) When a party desires to challenge the results of the
46 blood or tissue tests or the expert's analysis of inherited
47 characteristics, he or she shall file a written protest with the
48 family law master or circuit court or with the division of
49 child support enforcement, if appropriate, within thirty
50 days of the filing of such test results, and serve a copy of
51 such protest upon the other party. The written protest
52 shall be filed at least thirty days prior to any hearing in-
53 volving the test results. The court or the child support
54 enforcement division, upon reasonable request of a party,
55 shall order that additional tests be made by the same labo-
56 ratory or another laboratory within thirty days of the entry
57 of the order, at the expense of the party requesting addi-
58 tional testing. Costs shall be paid in advance of the test-
59 ing. When the results of the blood or tissue tests or the
60 expert's analysis which show a statistical probability of
61 paternity of more than ninety-eight percent are confirmed

62 by the additional testing, then the results are admissible
63 evidence which is clear and convincing evidence of pater-
64 nity. The admission of the evidence creates a presumption
65 that the man tested is the father.

66 (b) Documentation of the chain of custody of the
67 blood or tissue specimens is competent evidence to estab-
68 lish the chain of custody. A verified expert's report shall
69 be admitted at trial unless a challenge to the testing proce-
70 dures or a challenge to the results of test analysis has been
71 made before trial. The costs and expenses of making the
72 tests shall be paid by the parties in proportions and at
73 times determined by the court.

74 (c) Except as provided in subsection (d) of this sec-
75 tion, when a blood test is ordered pursuant to this section,
76 the moving party shall initially bear all costs associated
77 with the blood test unless that party is determined by the
78 court to be financially unable to pay those costs. This
79 determination shall be made following the filing of an
80 affidavit pursuant to section one, article two, chapter fifty-
81 nine of this code. When the court finds that the moving
82 party is unable to bear that cost, the cost shall be borne by
83 the state of West Virginia. Following the finding that a
84 person is the father based on the results of a blood test
85 ordered pursuant to this section, the court shall order that
86 the father be ordered to reimburse the moving party for
87 the costs of the blood tests unless the court determines,
88 based upon the factors set forth in this section, that the
89 father is financially unable to pay those costs.

90 (d) When a blood test is ordered by the child support
91 enforcement division, the division shall initially bear all
92 costs subject to recoupment from the alleged father if
93 paternity is established.

**§48A-6-6. Establishing paternity by acknowledgment of natu-
ral father.**

1 (a) A written, notarized acknowledgment by both the
2 man and woman that the man is the father of the named
3 child legally establishes the man as the father of the child
4 for all purposes and child support may be established
5 under the provisions of this chapter.

6 (b) The written acknowledgment shall include:

7 (1) Filing instructions;

8 (2) The parties' social security numbers and address-
9 es; and

10 (3) A statement, given orally and in writing, of the
11 alternatives to, the legal consequences of, and the rights
12 and obligations of acknowledging paternity, including, but
13 not limited to, the duty to support a child. If either of the
14 parents is a minor, the statement shall include an explana-
15 tion of any rights that may be afforded due to the minori-
16 ty status.

17 (c) Failure or refusal to include all information re-
18 quired by subsection (b) of this section shall not affect the
19 validity of the written acknowledgment, in the absence of a
20 finding by a court of competent jurisdiction that the ac-
21 knowledgment was obtained by fraud, duress or material
22 mistake of fact, as provided in subsection (d) of this sec-
23 tion.

24 (d) An acknowledgment executed under the provi-
25 sions of this section may be rescinded within the earlier of
26 sixty days from the date of execution or the date of an
27 administrative or judicial proceeding relating to the child
28 in which the signatory is a party. After the sixty-day peri-
29 od has expired, the acknowledgment may thereafter be
30 challenged only on the basis of fraud, duress or material
31 mistake of fact, upon a finding of clear and convincing
32 evidence by a court of competent jurisdiction. The legal
33 responsibilities, including child support obligations, of a
34 signatory to the acknowledgment may not be suspended
35 during any challenge, except for good cause shown.

36 (e) The original written acknowledgment should be
37 filed with the state registrar of vital statistics. Upon receipt
38 of any acknowledgment executed pursuant to this section,
39 the registrar shall forward the copy of the acknowledg-
40 ment to the child support enforcement division and the
41 parents, if the address of the parents is known to the regis-
42 trar. If a birth certificate for the child has been previously
43 issued which is incorrect or incomplete, a new birth certifi-
44 cate shall be issued.

CHAPTER 16

(S. B. 1002—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend article twelve, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section thirteen, relating to the board of risk and insurance management; exempting certain entities from payment of premium taxes; and requiring payments by spending units to the board.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 12. STATE INSURANCE.

§29-12-13. Premium tax liability.

1 Notwithstanding any other provision of this code to
2 the contrary, the amount of any gross direct premiums
3 attributable to a policy or contract of insurance entered
4 into with the board of risk and insurance management
5 shall be separately reported on the annual financial
6 statement of the insurer. These gross direct premiums so
7 reported may not be subject to the tax imposed on gross
8 direct premiums pursuant to article three, chapter thirty-
9 three of this code. The provisions of this section shall be
10 effective upon passage and shall apply to any amount of
11 premium tax owed and not yet paid upon the effective
12 date of this section. When any spending unit makes
13 payment to the board of risk and insurance management
14 for payment of premiums attributable to a policy or
15 contract of insurance after the effective date of this
16 section, an amount equal to the amount of gross premium
17 tax attributable to the amount of the premium shall be

18 paid to the board: *Provided*, That these amounts shall be
19 deposited in a special revenue account hereby created
20 known as the "Premium Tax Savings Fund".
21 Expenditures from the fund shall not be made from
22 collections but shall only be made in accordance with
23 appropriation by the Legislature.

CHAPTER 17

(S. B. 1004—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections forty-three, forty-six-b, forty-six-c, forty-six-g, forty-six-i, forty-six-j and forty-six-k, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article two-b of said chapter by adding thereto a new section, designated section ten, all relating to nonresident sportsman fees; and providing for a law-enforcement and sports education stamp.

Be it enacted by the Legislature of West Virginia:

That sections forty-three, forty-six-b, forty-six-c, forty-six-g, forty-six-i, forty-six-j and forty-six-k, article two, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article two-b of said chapter be amended by adding thereto a new section, designated section ten, all to read as follows:

Article

2. Wildlife Resources.

2B. Wildlife Endowment Fund

ARTICLE 2. WILDLIFE RESOURCES.

- §20-2-43. Class E, Class EE, Class F, Class G and Class H licenses for nonresidents.
- §20-2-46b. Class N special deer hunting license.
- §20-2-46c. Class O resident and nonresident trout fishing license.

- §20-2-46g. Class RR special nonresident deer hunting stamp for an additional deer.
- §20-2-46i. Class U resident and Class UU nonresident archery deer hunting licenses.
- §20-2-46j. Class V resident and Class VV nonresident muzzle-loading deer hunting licenses.
- §20-2-46k. Class W resident and Class WW nonresident turkey hunting licenses.

§20-2-43. Class E, Class EE, Class F, Class G and Class H licenses for nonresidents.

1 On or after the first day of January, one thousand nine
2 hundred ninety-eight, the licenses in this section shall be
3 required of nonresidents to hunt and fish in West Virginia.
4 A Class E license shall be a nonresident hunting license
5 and shall entitle the licensee to hunt all legal species of
6 wild animals and wild birds in all counties of the state,
7 except when other licenses or permits are required. It
8 shall be issued only to citizens of the United States or
9 Canada and to unnaturalized persons who possess the
10 permit referred to in section twenty-nine of this article
11 who are not residents of this state. The fee therefor shall
12 be one hundred dollars.

13 A Class EE license shall be a nonresident bear hunting
14 license and shall entitle the licensee to hunt bear in all
15 counties of the state, except when additional licenses or
16 permits are required. It shall be issued only to citizens of
17 the United States or Canada and to unnaturalized persons
18 who possess the permit referred to in section twenty-nine
19 of this article who are not residents of this state. The fee
20 therefor shall be one hundred fifty dollars.

21 A Class F license shall be a nonresident fishing license
22 and shall entitle the licensee to fish for all fish in all
23 counties of the state except when additional licenses or
24 permits are required. It shall be issued only to citizens of
25 the United States or Canada and to unnaturalized persons
26 who possess the permit referred to in section twenty-nine
27 of this article who are not residents of this state. The fee
28 therefor shall be thirty dollars.

29 Trout fishing is not permitted with a Class F license
30 unless such license has affixed thereto an appropriate trout
31 stamp as prescribed by the division of natural resources.

32 A Class G license shall be a family fishing license and
33 shall entitle the licensee and members of his family to fish
34 within the territorial limits of state parks and state forests
35 and in the waters of streams bounding same, for a distance
36 of not to exceed one hundred yards from the exterior
37 boundary of any state park or state forest, except when
38 additional licenses or permits are required, for a period
39 not to exceed one week. It may be issued to any adult
40 resident or nonresident who is temporarily residing in any
41 state park or forest as tenant or lessee of the state. The fee
42 therefor shall be ten dollars for the head of the family,
43 plus two dollars additional for each member of his family
44 to whom the privileges of such license are extended. Class
45 G licenses may be issued in such manner and under such
46 rules as the director may see fit to prescribe.

47 Trout fishing is not permitted with a Class G license
48 unless such license has affixed thereto an appropriate trout
49 stamp as prescribed by the division of natural resources.
50 The trout stamp must be affixed to the license of the head
51 of the family only.

52 A Class H license shall be a nonresident small game
53 hunting license and shall entitle the licensee to hunt small
54 game in all counties of the state, except when additional
55 licenses or permits are required, for a period of six days
56 beginning with the date it is issued. It shall be issued only
57 to citizens of the United States or Canada who are not
58 residents of this state. The fee therefor shall be twenty
59 dollars. As used in this section, "small game" means all
60 game except bear, deer, wild turkey and wild boar.

§20-2-46b. Class N special deer hunting license.

1 A Class N license is a special deer hunting license for
2 antlerless deer of either sex and entitles the licensee to
3 hunt for and kill antlerless deer of either sex during the
4 Class N license season. The fee for a Class N license is
5 eight dollars.

6 The Class N license may be issued only for the
7 purpose of removing antlerless deer when the director
8 deems it essential for proper management of wildlife
9 resources. The director shall establish such rules
10 governing the issuance of such Class N licenses as he
11 deems necessary to limit, on a fair and equitable basis, the

12 number of persons who may hunt for antlerless deer in
13 any county, or any part of a county.

14 When the director deems it essential that Class N
15 license season be held in a particular county or part of a
16 county, that season shall be set by the natural resources
17 commission as provided for in section seventeen, article
18 one of this chapter.

19 Bona fide resident landowners or their resident
20 children, bona fide resident tenants of such land, and any
21 bona fide resident stockholder of resident corporations
22 which are formed for the primary purpose of hunting or
23 fishing and which are the fee simple owners of no less
24 than one thousand acres of land upon which such
25 antlerless deer may be hunted are not required to have a
26 Class N license in their possession while hunting antlerless
27 deer on their own land during the Class N license season.

28 A Class N license may be issued only to a resident of
29 this state who holds a valid Class A, Class A-L, Class AB,
30 Class AB-L, Class X or Class XJ license issued for the
31 current calendar year or a resident of West Virginia who is
32 not required to obtain a license or permit to hunt as
33 provided in section twenty-eight, article two of this
34 chapter, except that this requirement shall not apply to
35 persons under the age of fifteen. The director shall
36 require proof of age before issuing a Class N license, and
37 such license shall contain a space for recording the
38 number of the valid Class A, Class A-L, Class AB, Class
39 AB-L, Class X or Class XJ license. If at any time prior to
40 the Class N deer hunting season the director determines
41 that there is a surplus of Class N licenses after the demand
42 for such licenses by residents of this state has been met,
43 such surplus licenses may be issued to nonresidents who
44 hold a valid Class E hunting license. The fee for a Class N
45 license issued to a nonresident shall be twenty-five dollars.

§20-2-46c. Class O resident and nonresident trout fishing license.

1 A Class O license shall be a resident and nonresident
2 statewide trout fishing license and shall entitle the licensee
3 to fish for trout in all counties of the state, except as
4 prohibited by rules of the director.

5 The fee shall be seven dollars and fifty cents:
6 *Provided*, That on and after the first day of January, one
7 thousand nine hundred ninety-eight, the fee for residents
8 shall be seven dollars and fifty cents and the fee for
9 nonresidents shall be ten dollars. The revenue derived
10 from the sale of this license shall be deposited in the state
11 treasury and credited to the division of natural resources
12 and shall be used and paid out, upon order of the director,
13 for state trout hatchery production.

14 This license shall be issued in the form of a stamp
15 prescribed by the director, shall be in addition to a Class
16 AB, AB-L, B, B-L, F, G, K, X or XJ license and is valid
17 only when affixed thereto.

**§20-2-46g. Class RR special nonresident deer hunting stamp
for an additional deer.**

1 The director has the authority to issue a special Class
2 RR nonresident deer stamp when he or she determines it
3 essential for the proper management of the wildlife
4 resources. This stamp will allow the holder to hunt for
5 and kill an additional deer as designated by the director.
6 The fee for a Class RR nonresident deer stamp shall be
7 twenty-five dollars: *Provided*, That on and after the first
8 day of January, one thousand nine hundred ninety-eight,
9 the fee shall be thirty dollars.

10 The director shall propose legislative rules in
11 accordance with article three, chapter twenty-nine-a of this
12 code governing the issuance and use of the stamp.

**§20-2-46i. Class U resident and Class UU nonresident archery
deer hunting licenses.**

1 A Class U license shall be a resident statewide archery
2 deer hunting license. A Class UU license shall be a
3 nonresident statewide archery deer hunting license. A
4 Class U or Class UU license shall entitle the licensee to
5 hunt for and kill deer with a bow during the archery deer
6 season in all counties of the state, except as prohibited by
7 the rules of the director or commission. The fee for the
8 Class U archery deer license shall be five dollars. The fee
9 for the Class UU license shall be ten dollars: *Provided*,
10 That on and after the first day of January, one thousand

11 nine hundred ninety-eight, the fee shall be twenty-five
12 dollars.

13 The licenses shall be issued in a form prescribed by
14 the director, shall be in addition to a Class A, Class AB or
15 Class E license and are valid only when accompanied
16 thereby.

§20-2-46j. Class V resident and Class VV nonresident muzzle-loading deer hunting licenses.

1 There shall be a special season of at least three days
2 each year for the taking of deer with muzzle-loading
3 firearms, either rifles or pistols, to be set at such time and
4 to be of a duration determined by the commission. For a
5 minimum of two days during this season, deer of either
6 sex may be taken with muzzle-loading firearms in all
7 counties open for the taking of antlerless deer as provided
8 in section forty-six-b of this article. Antlered deer only
9 may be taken in all other counties open for the taking of
10 deer with firearms.

11 Only single shot muzzle-loading firearms with iron
12 sights having a bore diameter of no less than thirty-eight
13 one-hundredths inch are legal firearms for the taking of
14 deer during the special season provided herein.

15 The special season provided herein shall be concurrent
16 with all other seasons designated for the taking of game.

17 Any person wishing to hunt for and kill deer during
18 the special muzzle-loading season must possess a valid
19 Class V or Class VV license, except that this requirement
20 does not apply to a resident of West Virginia who is not
21 required to obtain a license or permit to hunt as provided
22 in this chapter. A Class V license shall be a resident
23 muzzle-loading deer hunting license. A Class VV license
24 shall be a nonresident muzzle-loading deer hunting
25 license. The licenses shall be issued in a form prescribed
26 by the director, are in addition to a Class A, Class AB or
27 Class E license and are valid only when accompanied
28 thereby. The fee for the Class V license shall be five
29 dollars. The fee for the Class VV license shall be ten
30 dollars: *Provided*, That on and after the first day of
31 January, one thousand nine hundred ninety-eight, the fee
32 shall be twenty-five dollars.

§20-2-46k. Class W resident and Class WW nonresident turkey hunting licenses.

1 A Class W license shall be a resident turkey hunting
2 license, and a Class WW license shall be a nonresident
3 turkey hunting license. A Class W or Class WW license
4 shall entitle the licensee to hunt for and kill turkey during
5 any turkey hunting season, except as prohibited by the
6 rules of the director or commission. The fee for the Class
7 W turkey hunting license shall be five dollars. The fee for
8 the Class WW license shall be ten dollars: *Provided*, That
9 on and after the first day of January, one thousand nine
10 hundred ninety-eight, the fee shall be twenty-five dollars.

11 The licenses shall be issued in a form prescribed by
12 the director, shall be in addition to a Class A, Class AB or
13 Class E license and are valid only when accompanied
14 thereby.

ARTICLE 2B. WILDLIFE ENDOWMENT FUND.

§20-2B-10. Law-enforcement and sports education stamp.

1 On or after the first day of January, one thousand nine
2 hundred ninety-eight, any nonresident hunter, angler or
3 trapper licensed to hunt, fish or trap in this state, in
4 addition to a hunting, fishing or trapping license of Class
5 E, EE, F, G, H or K in the case of a nonresident, shall have
6 a law-enforcement and sports education stamp which shall
7 be issued by the division of natural resources. The stamp
8 shall be sold at places where hunting, fishing or trapping
9 licenses are sold. The fee for the law-enforcement and
10 sports education stamp is five dollars for a nonresident of
11 West Virginia.

12 The revenue derived from the sale of law-enforcement
13 and sports education stamps shall be deposited in the state
14 treasury and shall be credited to the division of natural
15 resources, law-enforcement section. The revenue shall be
16 used and paid out, upon order of the director, for the law-
17 enforcement section's expenses relating to the general
18 enforcement of state laws pertaining to the conservation of
19 fish and wildlife and or law-enforcement education
20 programs for hunters, anglers, trappers and boaters:
21 *Provided*, That no expenditures of the revenue derived
22 from the sale of the law-enforcement and sports education

23 stamp shall be made for law-enforcement purposes not
24 directly related to the wildlife resources of the state or for
25 the aforementioned educational programs. Any
26 unexpended moneys derived from the sale of law-
27 enforcement and sports education stamps shall be carried
28 forward to the next fiscal year and expended for law-
29 enforcement and educational programs.

CHAPTER 18

(S. B. 1003—By Senators Tomblin, Mr. President, and Buckalew)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact section nineteen, article six, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to increasing the amount of borrowing authorized from the consolidated fund by the state building commission for construction of regional jails and correctional facilities; clarifying procedures for the loans; and setting priorities for use of the loan proceeds.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-19. Authorization for loans by the board.

1 (a) The board, upon request of the state building
2 commission, shall transfer moneys as a loan to the state
3 building commission in an amount not to exceed in the
4 aggregate twenty-one million dollars for the purposes of

5 financing or refinancing the projects specified in
6 subsections (b) and (d), section eight, article six, chapter
7 five of this code. The money borrowed shall bear interest
8 during the term of the loan at a fixed rate not to exceed
9 the interest rate on treasury notes, bills or bonds of the
10 same term as the term of the loan the week of closing on
11 the loan as reported by the treasury of the United States.
12 Loans made under this subsection shall be repaid in
13 regular monthly or semiannual payments, or as funds are
14 made available by the budget office of department of
15 administration, and shall be paid in full not later than
16 twenty-five years from the date the loans are made with
17 terms and conditions mutually agreed upon by the state
18 building commission and the investment management
19 board.

20 (b) The state investment management board shall
21 upon request of the state building commission transfer
22 moneys as a loan to the state building commission in an
23 amount not to exceed in the aggregate one hundred
24 thirty-seven million dollars for the purposes of financing
25 construction of regional jails, correctional facilities or
26 building extensions or improvements to regional jails and
27 correctional facilities. Prior to the expenditure of any
28 loan proceeds, the regional jail and correctional facility
29 authority shall certify a list of projects to the state building
30 commission and the joint committee on government and
31 finance that shall be funded from loan proceeds. This
32 certified list cannot thereafter be altered or amended other
33 than by legislative enactment. The state building
34 commission shall borrow money as needed by the
35 regional jail and correctional facility authority. The
36 investment management board shall transfer loan proceeds
37 to the authority for expenditure. The money borrowed
38 shall bear interest during the term of the loan at a fixed
39 rate not to exceed the interest rate on treasury notes, bills
40 or bonds of the same term as the term of the loan the week
41 of closing on the loan as reported by the treasury of the
42 United States.

43 (c) The regional jail and correctional facility authority
44 shall expend the loan proceeds received under the
45 provisions of subsection (b) of this section to proceed with

46 the projects included in the letter submitted to the joint
47 committee on government and finance dated the fifteenth
48 day of January, one thousand nine hundred ninety-seven:
49 *Provided*, That the letter shall not be construed to priori-
50 tize any project or projects which are included in the let-
51 ter: *Provided, however*, That the authority may also ex-
52 pend loan proceeds for any expansion to any existing
53 regional jail or any expansion to a regional jail under
54 construction upon the effective date of this section.

55 (d) Loans made under this section for the projects
56 specified in subsection (b) of this section and in subsec-
57 tion (d), section eight, article six, chapter five of this code,
58 shall be repaid in annual payments of not less than twelve
59 million dollars per year by appropriation of the Legisla-
60 ture to the board. The amount transferred for loans under
61 subsection (a) or (b) of this section shall not exceed that
62 amount which the board determines is reasonable given
63 the cash flow needs of the consolidated fund. The board
64 shall make transfers for loans first for the project specified
65 in subsection (d), section eight, article six, chapter five of
66 this code, second for the projects specified in subsection
67 (b) of this section and third for projects specified in sub-
68 section (b), section eight, article six, chapter five of this
69 code, which are in imminent danger of default in pay-
70 ment. The board shall take the steps necessary to increase
71 the liquidity of the consolidated fund over a period of the
72 next five years to allow for the loans provided in this sec-
73 tion without increasing the risk of loss in the consolidated
74 fund.

CHAPTER 19

(H. B. 110—By Mr. Speaker, Mr. Kiss, and Delegate Ashley)
[By Request of the Executive]

[Passed April 20, 1997; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance
in the state fund, general revenue, for the fiscal year ending

the thirtieth day of June, one thousand nine hundred ninety-seven, in the amount of one million dollars from the bureau of environment, division of environmental protection, solid waste reclamation and environmental response fund, account no. 3332, fiscal year 1997, organization 0313, and making a supplementary appropriation to the bureau of environment, solid waste management board, account no. fund 3288, fiscal year 1997, organization 0312, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The Legislature finds that the account balance in the bureau of environment, division of environmental protection, solid waste reclamation and environmental response fund, account no. fund 3332, fiscal year 1997, organization 0313, exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, It thus appears from the provisions of this legislation that there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

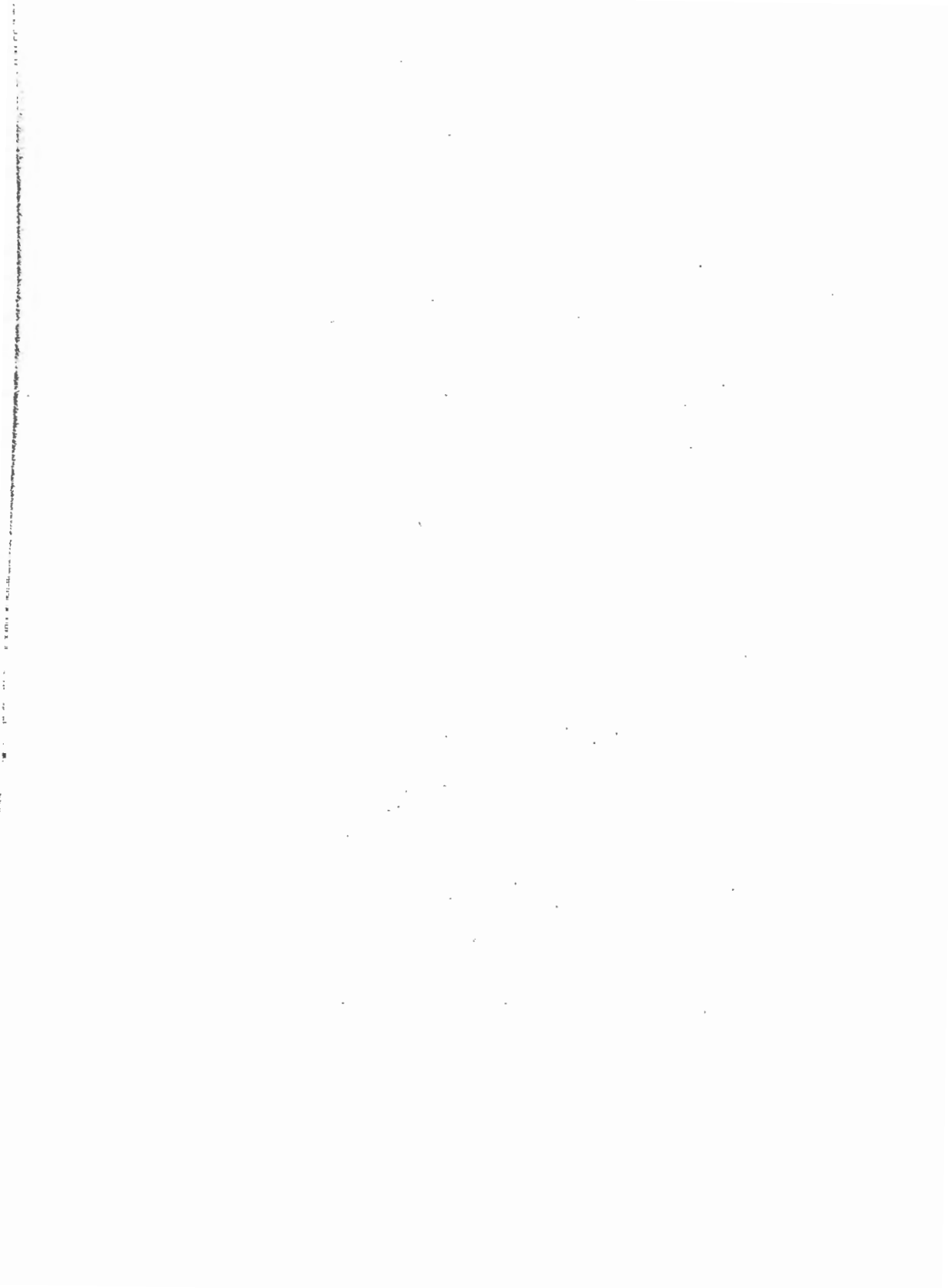
That the balance of funds available for appropriation in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the bureau of environment, division of environmental protection, solid waste reclamation and environmental response fund, account no. fund 3332, fiscal year 1997, organization 0313, be decreased by expiring the amount one million dollars to the unappropriated surplus balance in the state fund, general revenue, and that the total appropriations for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, be supplemented and amended by increasing the total appropriation to the bureau of environment, solid waste management board, account no. fund 3288, fiscal year 1997, organization 0312, by one million dollars as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 Section 1. Appropriations from general revenue.
- 3 86A—Solid Waste Management Board
- 4 (WV Code Chapter 20)
- 5 Account No.
- 6 Fund 3288 FY 1997 Org 0312

7		Act-	General
8		ivity	Revenue
9			Fund
10	4 Landfill Assistance	488	\$1,000,000

11 Any unexpended balance remaining in the appropri-
 12 ation for Landfill Assistance (fund 3288, activity 488) at
 13 the close of the fiscal year 1996-97 is hereby reappropri-
 14 ated for expenditure during the fiscal year 1997-98.

15 The purpose of this bill is to expire one million
 16 dollars to the unappropriated surplus balance in the state
 17 fund, general revenue, and to supplement the bureau of
 18 environment, solid waste management board, account no.
 19 fund 3288, fiscal year 1997, organization 0312, in the
 20 budget act for the fiscal year ending the thirtieth day of
 21 June, one thousand nine hundred ninety-seven, by adding
 22 one million dollars to the existing appropriation for ex-
 23 penditure during the fiscal year ending the thirtieth day of
 24 June, one thousand nine hundred ninety-seven. The ap-
 25 propriation is to be used to make a loan or loans for land-
 26 fill assistance.



LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 1996

CHAPTER 1

**(H. B. 205 —By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]**

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in the amount of fifteen million dollars from the revenue shortfall reserve fund, account no. fund 2038, organization 0201, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100.

WHEREAS, The Legislature finds that it anticipates that the funds available to assist flood victims and to fund other needed infrastructure and other community development projects throughout the state will fall short of that needed during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

WHEREAS, The revenue shortfall reserve fund has a sufficient balance available for appropriation in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; and

WHEREAS, By the provisions of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the revenue shortfall reserve fund, account no. fund 2038, organization 0201, be decreased by expiring the amount of fifteen million dollars to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0105, fiscal year 1997, organization 0100, be supplemented and amended by increasing the total appropriation by fifteen million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 8—Governor's Office—
4 Civil Contingent Fund

5 (WV Code Chapter 5A)

6 Account No.

7 Fund 0105 FY 1997 Org 0100

8	Act-	General
9	ivity	Revenue
10		Fund

11 1 Civil Contingent Fund-		
12 Surplus (R)	263	\$15,000,000

13 The purpose of this bill is to expire the sum of fifteen
14 million dollars from the revenue shortfall reserve fund,
15 account no. fund 2038, organization 0201, and to
16 supplement the governor's office, civil contingent fund,

17 account no. fund 0105, fiscal year 1997, organization
18 0100, in the budget act for the fiscal year ending the
19 thirtieth day of June, one thousand nine hundred ninety-
20 seven, by adding fifteen million dollars to the existing
21 appropriation.

CHAPTER 2

(H. B. 206—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, in the amount of five million dollars from the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, activity 289, and making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1997, organization 0100, activity 263.

WHEREAS, The Legislature finds that the account balance in the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, activity 289, line item appropriation for flood recovery and mitigation loans (disaster recovery trust fund), exceeds that which is necessary for the purposes for which the appropriation was enacted; and

WHEREAS, By the terms of this legislation, there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the governor's office, civil contingent fund, account no. fund 0105, fiscal year 1996, organization 0100, activity 289, be amended and decreased by expiring the amount of five million dollars to the unappropriated balance of the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to account no. fund 0105, fiscal year 1997, organization 0100, activity 263, be supplemented and amended by increasing the total appropriation by five million dollars as follows:

1 TITLE II—APPROPRIATIONS.

2 Sec. 1. Appropriations from general revenue.

3 8—Governor's Office
4 Civil Contingent Fund

5 (WV Code Chapter 5A)

6 Account No.

7 Fund 0105 FY 1997 Org 0100

8	Act-	General
9	ivity	Revenue
10		Fund
11 1 Civil Contingent Fund-		
12 Surplus (R)	263	\$5,000,000

13 The purpose of this bill is to expire the sum of five
14 million dollars from the governor's office, civil contingent
15 fund, account no. fund 0105, fiscal year 1996,
16 organization 0100, activity 289, and to supplement
17 account no. fund 0105, fiscal year 1997, organization
18 0100, activity 263, in the budget act for the fiscal year
19 ending the thirtieth day of June, one thousand nine
20 hundred ninety-seven, by adding five million dollars to
21 the existing appropriation for the civil contingent fund-
22 surplus.

CHAPTER 3

(H. B. 207—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of education, account no. fund 0313, fiscal year 1997, organization 0402, in the amount of one hundred thousand dollars, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor, by executive message, has increased the revenue estimates for the fiscal year one thousand nine hundred ninety-seven; and

WHEREAS, There now remains an unappropriated balance in the state fund, general revenue, which is available for expenditure in the fiscal year one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the state department of education, account no. fund 0313, fiscal year 1997, organization 0402, be supplemented and amended by increasing the total appropriation by one hundred thousand dollars in a new line item as follows:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 1. Appropriations from general revenue.**
- 3 DEPARTMENT OF EDUCATION
- 4 35—*State Department of Education*
- 5 (WV Code Chapters 18 and 18A)

1	Account No.		
2	Fund <u>0313</u> FY <u>1997</u> Org <u>0402</u>		
3		Act-	General
4		ivity	Revenue
5			Fund
6	34a Foreign Student Education . . . 636		\$100,000

7 The purpose of this supplementary appropriation bill
8 is to create a new line item in the above account for the
9 establishment of educational programs for foreign
10 students and to provide an appropriation from the state
11 fund, general revenue, in the amount of one hundred
12 thousand dollars to fund the program for the fiscal year
13 ending the thirtieth day of June, one thousand nine
14 hundred ninety-seven.

CHAPTER 4

(H. B. 208—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1997, organization 0511, in the amount of seven million dollars, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The governor, by executive message, has increased the revenue estimates for the fiscal year one thousand nine hundred ninety-seven; and

WHEREAS, There now remains an unappropriated balance in the state fund, general revenue, which is available for expenditure in the fiscal year one thousand nine hundred ninety-seven; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to the department of health and human resources, division of human services, account no. fund 0403, fiscal year 1997, organization 0511, be supplemented and amended by increasing the total appropriation by seven million dollars in the line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 1. Appropriations from general revenue.		
3	DEPARTMENT OF HEALTH AND HUMAN		
4	RESOURCES		
5	<i>55—Division of Human Services</i>		
6	(WV Code Chapters 9,48 and 49)		
7	Account No.		
8	Fund <u>0403</u> FY <u>1997</u> Org <u>0511</u>		
9		Act-	General
10		ivity	Revenue
11			Fund
12	19 Social Services	195	\$7,000,000

13 The purpose of this supplementary appropriation bill
 14 is to provide a supplemental appropriation from the state
 15 fund, general revenue, to the department of health and
 16 human resources, division of human services, account no.
 17 fund 0403, fiscal year 1997, organization 0511, in the
 18 amount of seven million dollars.

CHAPTER 5

(H. B. 204—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, transferring and reducing the balance of funds from the broker litigation recoveries fund, account no. fund 8564, and authorizing the transfer of these funds to the revenue shortfall reserve fund, account no. fund 2038, organization 0201, activity 999.

WHEREAS, The state has received settlements from litigation regarding the losses the state incurred in its investment funds and these funds were deposited in the broker litigation recoveries fund; and

WHEREAS, There is no current appropriation or authorization to expend funds from the broker litigation recoveries fund; therefore

Be it enacted by the Legislature of West Virginia:

1 That the balance of funds from the broker litigation
2 recoveries fund, account no. fund 8564, be transferred to
3 the revenue shortfall reserve fund, account no. fund 2038,
4 organization 0201, activity 999.

5 The purpose of this supplementary appropriation bill
6 is to provide for the transfer of the balance of funds from
7 the broker litigation recoveries fund, account no. fund
8 8564, to the revenue shortfall reserve fund, account no.
9 fund 2038, organization 0201, activity 999.

CHAPTER 6

(H. B. 201—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to a new item of appropriation designated to the division of human services - temporary assistance for needy families (TANF), account no. fund 8816, fiscal year 1997, organization 0511, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The Governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill", be supplemented and amended by adding to Title II, section six thereof, the following:

- 1 TITLE II—APPROPRIATIONS.
- 2 **Sec. 6. Appropriations from federal block grants.**
- 3 *257a—Division of Human Services—*
- 4 Temporary Assistance for Needy Families (TANF)
- 5 Account No.
- 6 Fund 8816 FY 1997 Org 0511

		Act- ivity	Federal Funds
7			
8			
9	1 Unclassified—Total	096	\$60,000,000

10 The purpose of this supplementary appropriation bill
11 is to supplement the budget act for the fiscal year ending
12 the thirtieth day of June, one thousand nine hundred
13 ninety-seven, by providing for a new item of appro-
14 priation to be established therein to appropriate federal
15 funds in the amount of sixty million dollars for temporary
16 assistance for needy families (TANF) program. These
17 moneys shall be available for expenditure upon passage of
18 this bill.

CHAPTER 7

(H. B. 202—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive]

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, to a new item of appropriation designated to the division of human services - child care and development (as amended), account no. fund 8817, fiscal year 1997, organization 0511, supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven.

WHEREAS, The Governor has established the availability of federal funds for continuing programs now available for expenditure in the fiscal year ending the thirtieth day of June, one thousand nine hundred ninety-seven, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill", be supplemented and amended by adding to Title II, section six thereof, the following:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 6. Appropriations from federal block grants.**

3 *257b—Division of Human Services—*

4 Child Care and Development

5 Account No.

6 Fund 8817 FY 1997 Org 0511

7		Act-	Federal
8		ivity	Funds
9 1	Unclassified—Total	096	\$9,729,756

10 The purpose of this supplementary appropriation bill
 11 is to supplement the budget act for the fiscal year ending
 12 the thirtieth day of June, one thousand nine hundred
 13 ninety-seven, by providing for a new item of
 14 appropriation to be established therein to appropriate
 15 federal funds in the amount of nine million seven hundred
 16 twenty-nine thousand seven hundred fifty-six dollars for
 17 the child care and development program. These moneys
 18 shall be available for expenditure upon passage of this
 19 bill.

CHAPTER 8

(H. B. 209—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
 [By Request of the Executive]

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring
 between items of the existing appropriations from the state

road fund to the department of transportation, division of highways, account no. fund 9017, fiscal year 1997, organization 0803, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9017, fiscal year 1997, organization 0803, be amended and reduced in the line item as follows:

1	TITLE II—APPROPRIATIONS.		
2	Sec. 2. Appropriations from state road fund.		
3	DEPARTMENT OF TRANSPORTATION		
4	90— <i>Division of Highways</i>		
5	(WV Code Chapters 17 and 17C)		
6	Account No.		
7	Fund <u>9017</u> FY <u>1997</u> Org <u>0803</u>		
8			State
9		Act-	Road
10		ivity	Fund
11	15 Other Federal Aid Programs . . .	279	\$4,000,000

12 And, that the items of the total appropriations from the
 13 state road fund to the department of transportation,
 14 division of highways, account no. fund 9017, fiscal year
 15 1997, organization 0803, be amended and increased in the
 16 line items as follows:

17	TITLE II—APPROPRIATIONS.		
18	Sec. 2. Appropriations from state road fund.		
19	DEPARTMENT OF TRANSPORTATION		
20	90— <i>Division of Highways</i>		
21	(WV Code Chapters 17 and 17C)		

22	Account No.		
23	Fund <u>9017</u> FY <u>1997</u> Org <u>0803</u>		
24			State
25		Act-	Road
26		ivity	Fund
27	14 Interstate Construction	278	\$4,000,000

28 The purpose of this supplementary appropriation bill
 29 is to supplement, amend, reduce and transfer between
 30 existing items in the aforesaid account for the designated
 31 spending unit. The item for Other Federal Aid Programs
 32 is reduced by four million dollars. The item for Interstate
 33 Construction is increased by four million dollars. The
 34 amounts as itemized for expenditure in fiscal year ending
 35 the thirtieth day of June, one thousand nine hundred
 36 ninety-seven, shall be available for expenditure
 37 immediately upon the effective date of this bill.

CHAPTER 9

(H. B. 210—By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
 [By Request of the Executive]

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT supplementing, amending, reducing and transferring between items of the existing appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9018, fiscal year 1997, organization 0803, as originally appropriated by chapter eight, acts of the Legislature, regular session, one thousand nine hundred ninety-six, known as the "Budget Bill".

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriations from the state road fund to the department of transportation, division of highways, account no. fund 9018, fiscal year 1997, organization 0803, be amended and reduced in the line item as follows:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 2. Appropriations from state road fund.**

3 DEPARTMENT OF TRANSPORTATION

4 *91—Division of Highways*

5 **Federal Aid Highway Matching Fund**

6 (WV Code Chapters 17 and 17C)

7 Account No.

8 Fund 9018 FY 1997 Org 0803

9				State
10			Act-	Road
11			ivity	Fund
12	3	Other Federal Aid Programs . . .	279	\$8,000,000

13 And, that the items of the total appropriations from the
14 state road fund to the department of transportation,
15 division of highways, account no. fund 9018, fiscal year
16 1997, organization 0803, be amended and increased in the
17 line items as follows:

18 TITLE II—APPROPRIATIONS.

19 **Sec. 2. Appropriations from state road fund.**

20 DEPARTMENT OF TRANSPORTATION

21 *91—Division of Highways*

22 **Federal Aid Highway Matching Fund**

23 (WV Code Chapters 17 and 17C)

24 Account No.

25 Fund 9018 FY 1997 Org 0803

		Act- ivity	State Road Fund
26			
27			
28			
29	1 Interstate Construction	278	\$8,000,000
30	The purpose of this supplementary appropriation bill		
31	is to supplement, amend, reduce and transfer between		
32	existing items in the aforesaid account for the designated		
33	spending unit. The item for Other Federal Aid Programs		
34	is reduced by eight million dollars. The item for Interstate		
35	Construction is increased by eight million dollars. The		
36	amounts as itemized for expenditure in fiscal year ending		
37	the thirtieth day of June, one thousand nine hundred		
38	ninety-seven, shall be available for expenditure		
39	immediately upon the effective date of this bill.		

CHAPTER 10

(H. B. 203—(By Mr. Speaker, Mr. Chambers, and Delegate Ashley)
[By Request of the Executive])

[Passed October 16, 1996; in effect from passage. Approved by the Governor.]

AN ACT to amend and reenact sections one, two, three, six and eight, article eleven-c, chapter eighteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto two new sections, designated sections three-a and eight-a, all relating to the corporation authorized to operate the West Virginia university hospital; authorizing the creation of a parent corporation to be known as the West Virginia health system; setting forth definitions of terms; setting forth legislative findings; amending the method by which the corporation's board is appointed; providing a description of the system and establishing the means by which the West Virginia health system's board of directors is nominated, appointed and

confirmed; providing for interim directors of the system; directing that financial audits be open to the public; prohibiting transfer of the system's membership in the corporation; addressing conflicts of interest; and providing disclaimer of liability.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11C. WEST VIRGINIA UNIVERSITY HOSPITAL AND WEST VIRGINIA HEALTH SYSTEM.

§18-11C-1. Definitions.

§18-11C-2. Findings.

§18-11C-3. Board authorized to contract with corporation; description to be met by corporation.

§18-11C-3a. Description to be met by the West Virginia health system.

§18-11C-6. Conflicts of interest; statement; penalties.

§18-11C-8. Not obligation of the state.

§18-11C-8a. Agreements subject to other provisions of law.

§18-11C-1. Definitions.

1 The following words used in this article shall, unless
2 the context clearly indicates a different meaning, be
3 construed as follows:

4 (a) "Agreement" means the long-term lease and
5 agreement to be entered into between the board and the
6 corporation pursuant to section four of this article;

7 (b) "Assets" means all assets of the board constituting
8 tangible and intangible personal property credited to the
9 hospital on the financial ledgers and equipment
10 inventories of the university at the transfer date, and as
11 more particularly or additionally identified or
12 supplemented in the agreement, excluding all hospital
13 funds deposited with the state treasurer;

14 (c) For the purposes of this article, "board" means
15 the West Virginia board of trustees;

16 (d) "Corporation" means the nonstock, not-for-profit
17 corporation to be established under the general
18 corporation laws of the state, which meets the description
19 prescribed by section three of this article;

20 (e) "Corporation employees" means employees of
21 the corporation;

22 (f) "Directors" means the board of directors of the
23 corporation;

24 (g) "Existing facilities" means the West Virginia
25 university hospital and clinics, other than those used for
26 student health and family practice, presently existing at the
27 West Virginia university medical center in Morgantown
28 and owned and operated by the board;

29 (h) "Health science schools" means the schools of
30 medicine, dentistry, pharmacy and nursing and any other
31 schools at the university considered by the board to be
32 health sciences;

33 (i) "Hospital" means the inpatient and outpatient
34 health care services of the board, other than those used for
35 student health services and family practice clinics,
36 operated in connection with the university, consisting of
37 the existing facilities and any other health care service
38 components of the West Virginia university medical center
39 at Morgantown rendering patient care services and more
40 particularly identified by the agreement;

41 (j) "Liabilities" means all liabilities, except those
42 specifically excluded by section four of this article,
43 credited to the hospital on the financial ledgers of the
44 university at the transfer date and as more particularly or
45 additionally identified, supplemented or limited in the
46 agreement;

47 (k) "Medical personnel" means both university
48 personnel and corporation employees;

49 (l) "New facilities" means a new hospital facility and
50 out-patient clinics, appurtenant facilities, equipment and
51 necessary services to be acquired, built, operated or
52 contracted for by the corporation on property leased from
53 the board within Monongalia County, West Virginia,
54 pursuant to the agreement;

55 (m) "Transfer date" means the first day of July, one
56 thousand nine hundred eighty-four, or any later date
57 agreed upon by the board and the corporation and filed
58 with the secretary of state;

59 (n) "University" means West Virginia university;

60 (o) "University personnel" means those employees of
61 the board or the university for whose services the
62 corporation contracts with the board or the university, as
63 appropriate; and

64 (p) "West Virginia health system" or "system"
65 means the nonstock, not-for-profit corporation to be
66 established under the general corporation laws of the state,
67 which meets the description set forth in section three-a of
68 this article.

§18-11C-2. Findings.

1 (a) It is hereby found and determined with regard to
2 the hospital that:

3 (1) The purposes of the existing facilities are to
4 facilitate the clinical education and research of the health
5 science schools and to provide patient care, including
6 specialized services not widely available elsewhere in West
7 Virginia. The eventual termination of the services in lieu
8 of replacement or modernization would create an
9 unreasonable hardship on patients in the area and
10 throughout the state;

11 (2) These purposes separately and collectively serve
12 the highest public interest and are essential to the public
13 health and welfare, but must be realized in the most
14 efficient manner and at the lowest cost practicable and
15 consistent with these purposes;

16 (3) It is unnecessarily costly and administratively
17 cumbersome for the board to finance, manage and carry
18 out the patient care activities of an academic institution
19 within the existing framework of a state agency. The
20 patient care operations are more efficiently served by
21 contemporary legal, management and procedural
22 structures utilized by similarly situated private entities
23 throughout the nation;

24 (4) It is fiscally desirable that the state separate the
25 business and service functions of the hospital from the
26 educational functions of the health science schools, that
27 the board cease operation of the existing facilities, that the
28 board transfer the operations to the corporation, that the
29 board pay certain existing sums and assign the assets and
30 certain leasehold interests to the corporation in order to
31 acquire the corporation's agreement to provide certain
32 space and services and to assume the liabilities, that the
33 agreement and certain other contractual relationships
34 between the board and the corporation be authorized, and
35 that the existing facilities operated by the corporation, and
36 subsequently the new facilities owned and operated by the
37 corporation, be self-sufficient and serve to remove the tax
38 burden of operating the existing facilities from the state;

39 (5) A not-for-profit corporate structure with
40 appropriate governance consistent with the delivery of
41 health care to the patient and academic need of the
42 university is the best means of assuring prudent financial
43 management and the future economy of operation under
44 rapidly changing market conditions, regulation and
45 reimbursement; and

46 (6) The interests of the citizens of the state will be best
47 met by the board's entering into and carrying out the
48 provisions of the agreement as soon as possible, to provide
49 independence and flexibility of management and funding
50 while enabling the state's tertiary health care and health
51 science education needs to be better served.

52 (b) It is hereby found and determined with regard to
53 the West Virginia health system that:

54 (1) The interests of the citizens of the state will be best
55 served by ensuring the continued vitality and viability of
56 the West Virginia based health care institutions which are
57 devoted to addressing the state's tertiary health care and
58 health science education needs and which possess the
59 flexibility and resources to effectively and efficiently
60 compete in a rapidly changing health care environment;

61 (2) The best interests of the state, and the mission and
62 purposes of the corporation created by this article, will
63 best be met by the authorization and creation of a West
64 Virginia health system as a not-for-profit corporate
65 structure to serve as the parent corporation of the
66 corporation created pursuant to this article and other
67 corporations and institutions;

68 (3) The citizens of the state are best served by
69 requiring representative governance by the board while
70 maintaining flexibility so that the West Virginia health
71 system may, over time, authorize and stimulate the
72 creation of an integrated health care delivery system which
73 may be comprised of one or more affiliated institutions;
74 and

75 (4) The citizens of the state are best served by the
76 creation of a coordinated, integrated, efficient and
77 effective health science and health care delivery system
78 which is accountable to the citizens of the state, responsive
79 to the health care and health science education needs of
80 the citizens of the state, and responsive to the financial
81 pressures of a dynamic health care environment.

**§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 if
4 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, the

8 president of the board or his or her 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 university,
12 the chief of the medical staff of the hospital, the dean of
13 the school of medicine of the university, the dean of the
14 school of nursing of the university and the chief executive
15 officer of the corporation, all of whom shall serve as ex
16 officio members of the directors, a representative elected
17 at large by the corporation employees and seven directors
18 to be appointed by the West Virginia health system board.
19 The West Virginia health system board shall select and
20 appoint the seven appointed members in accordance with
21 the provisions of section six-a, article five-b, chapter
22 sixteen of this code: *Provided*, That the current directors
23 of the corporation shall continue to serve until they resign
24 or their term expires. On and after the effective date of
25 this section, the seven appointed directors shall be
26 appointed by the system board for staggered six-year
27 terms. The system board shall select all of the appointed
28 members in a manner which assures geographic diversity
29 and assures that at least two members are from each
30 congressional district.

31 (b) The corporation shall report its audited records
32 publicly and to the joint committee on government and
33 finance at least annually.

34 (c) Upon liquidation of the corporation, the assets of
35 the corporation shall be transferred to the board for the
36 benefit of the university.

§18-11C-3a. Description to be met by the West Virginia health system.

1 (a) The West Virginia health system shall be a non-
2 stock, not-for-profit corporation established pursuant to
3 the provisions of article one, chapter thirty-one of this
4 code, known as the "West Virginia Corporation Act". The
5 system shall have the general powers of a corporation
6 including, but not limited to, the power and authority to
7 affiliate, in any manner, with the corporation and other

8 health care providers to establish an integrated health care
9 delivery system.

10 (b) The West Virginia health system shall meet the
11 following description:

12 (1) The board of directors of the system shall initially
13 consist of eleven voting members, all of whom shall
14 represent the university. As the system affiliates with other
15 health care providers, representatives of those providers
16 may be appointed to the board. The West Virginia health
17 system board shall provide for the manner and
18 appointment of nonuniversity representatives.

19 The voting members representing the university are
20 hereby designated as "university representatives". The
21 university representatives shall include the following ex
22 officio members: the president of the university, who shall
23 serve as chair of the board of directors; the vice president
24 for health sciences of the university; a member or
25 designee of the board of trustees; and a member of the
26 medical staff of the corporation. For each of the seven
27 remaining university representative positions the directors
28 of the corporation shall submit a list of three nominees to
29 the governor for each open university representative
30 position. If there is more than one open university
31 position at any one time, the directors of the corporation
32 may not nominate any person for more than one of the
33 open university positions. The governor may appoint the
34 board member from the list of nominees submitted or he
35 or she may reject the list of nominees for any open
36 university position and request that the directors of the
37 corporation submit a list of three different nominees for
38 that open university position. The board members
39 appointed by the governor shall be appointed with the
40 advice and consent of the Senate. The directors of the
41 corporation shall select its nominees and the governor
42 shall select all of the appointed members in a manner
43 which assures geographic diversity and assures that at least
44 two members are from each congressional district. The
45 appointed university representatives shall serve six-year

46 terms: *Provided*, That of the initial members appointed,
47 three members shall serve for a term of two years, two
48 members shall serve for a term of four years, and two
49 members shall serve for a term of six years.

50 (2) The number of members of the West Virginia
51 health system's board may be increased by the majority
52 vote of the existing system board members. The number
53 of university representative positions on the system's board
54 shall be increased, as a matter of law, upon a passing vote
55 by the board to increase the number of nonuniversity
56 representatives so that the total number of university
57 representatives shall at all times constitute a majority of
58 voting members of the system's board. Any additional
59 system board positions which are created shall be created
60 to provide for representation valuable to the board,
61 including, but not limited to, representation of hospitals or
62 health care providers which may, from time to time,
63 become affiliated with the system. Newly created
64 university representative positions shall be filled in
65 accordance with the provisions of subdivision (3) of this
66 subsection. To the extent possible, persons appointed to
67 newly-created university representative positions shall be
68 appointed to staggered terms so that the terms of
69 approximately one third of the appointed university
70 representatives expire every two years.

71 (3) Any vacancies in the university representative
72 positions shall be filled with qualified university
73 representatives pursuant to the ex officio designation or
74 nomination and appointment procedure set forth in
75 subdivision (1) of this subsection, so as to maintain the
76 university's required majority of voting members of the
77 system's board. To permit the orderly operation of the
78 system, vacant university representative positions may be
79 filled on an interim basis, as follows: (i) If the vacant
80 position is one of the ex officio positions, then the
81 position may be filled by the individual designated by the
82 university to serve in the position on an acting or interim
83 basis, or if no individual has been designated, the position
84 may be filled by a member or designee of the board of

85 trustees of the university; (ii) if the vacant position is
86 among the appointed university representatives, then the
87 position may be filled by an additional member or
88 designee of the board of trustees of the university until the
89 vacancy can be filled pursuant to the nomination and
90 appointment process set forth in subdivision (1) of this
91 subsection.

92 (c) The system's board shall make audited records of
93 the system available to the public and provide those
94 records to the joint committee on government and finance
95 at least annually.

96 (d) The system may not, in any manner, assign,
97 transfer or divest its rights in or to its membership in the
98 corporation.

99 (e) For purposes of organizing, incorporating and
100 conducting the business of the West Virginia health system
101 or otherwise implementing the provisions of this article,
102 the ex officio members of the system's board are
103 authorized to act on behalf of the system until the
104 remainder of the system's board members can be
105 appointed and confirmed.

§18-11C-6. Conflicts of interest; statement; penalties.

1 (a) Notwithstanding any other provisions of this code
2 to the contrary, officers and employees of the board and
3 the university may hold appointments to offices of the
4 corporation and the system and be members of the boards
5 of directors, or officers or employees of other entities
6 contracting with the corporation, the system or the board
7 or the university. The board and the directors of the
8 corporation and the system, as the case may be, must be
9 informed of the appointments annually, and either the
10 board or the directors of the corporation or the system
11 may require that an appointment be terminated to avoid
12 an actual or potential conflict of interest as determined by
13 the appropriate board: *Provided*, That between the first
14 and fifteenth day of January of each year, every member
15 of the board of the corporation and the system shall file a

16 written statement, which shall be fully available for public
17 disclosure, with the appropriate chairman of the board,
18 under oath, setting forth:

19 (1) The name of every person, firm, corporation,
20 association, partnership, sole proprietorship or other
21 business association in which the member, the member's
22 spouse or the unemancipated minor child or children of
23 the member, in their own or the member's name, or
24 beneficially, own at least ten percent of such business
25 entity, or of which he or they are an officer, director,
26 agent, attorney, representative, employee, partner or
27 employer, and which to his actual knowledge is then
28 furnishing or within the previous calendar year has
29 furnished to the state, the board of trustees, West Virginia
30 university or the corporation or system defined in this
31 article, commodities or printing as those terms are defined
32 in section one, article one, chapter five-a of this code; and

33 (2) Any other interest or relationship which might
34 reasonably be expected to be affected by action taken by
35 the board of the corporation or the system or which in the
36 public interest should be disclosed.

37 Those persons to whom the provisions of subdivisions
38 (1) and (2) of this subsection are not applicable shall file a
39 written statement to that effect with the chairman of the
40 board at the same time the reports specified in
41 subdivisions (1) and (2) are required to be filed.

42 (b) Any person who fails or refuses to file a written
43 statement under oath as required in subsection (a) of this
44 section shall, by operation of law, be automatically
45 removed from the board until the statement is filed.

46 (c) Any person who intentionally files a false
47 statement under this section is guilty of a misdemeanor
48 and, upon conviction thereof, shall be confined in jail not
49 less than six months nor more than one year.

§18-11C-8. Not obligation of the state.

1 Obligations of the corporation and the system shall
2 not constitute debts or obligations of the university, the
3 board or the state.

§18-11C-8a. Agreements subject to other provisions of law.

1 Any agreements entered into between the system and
2 any county hospital, municipal hospital or hospital created
3 by special act of the Legislature shall be subject to the
4 provisions of section three-a, article twenty-three, chapter
5 eight of this code. No agreements entered into by the
6 system shall relieve any hospital of any obligation or
7 responsibility imposed upon it by law, except to the extent
8 that actual and timely performance thereof by the system
9 or any of its members may be offered in satisfaction of
10 the obligation or responsibility.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 1997

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2049	86	2354	116	2686	90
2050	5	2397	231	2688	215
2084	72	2406	202	2707	146
2091	108	2407	196	2712	225
2093	136	2435	140	2715	158
2123	111	2436	70	2727	228
2127	104	2441	3	2741	101
2148	78	2451	96	2744	123
2160	60	2473	73	2756	76
2161	61	2496	206	2766	200
2162	59	2498	173	2767	176
2163	143	2499	185	2776	148
2167	221	2500	40	2786	87
2194	129	2501	21	2793	161
2198	47	2508	49	2795	151
2200	164	2510	83	2821	88
2204	81	2519	177	2828	130
2205	69	2524	152	2842	223
2221	74	2535	55	2847	71
2236	89	2539	232	2854	227
2237	58	2546	169	2867	187
2238	171	2563	16	2868	14
2259	128	2564	12	2869	32
2286	180	2566	155	2870	211
2287	189	2577	229	2873	54
2288	190	2590	204	2875	198
2289	191	2595	105	2876	197
2290	33	2598	139	2877	178
2291	36	2603	11	2881	170
2292	37	2609	156	2885	52
2293	35	2619	205	2890	134
2294	30	2629	97	2893	124
2295	34	2633	230	2898	18
2296	41	2637	106	2899	17
2297	31	2653	210	2900	19
2317	114	2667	109	2901	39
2333	115	2671	165	2904	38
2337	118	2680	53	2907	13
2345	117			2910	15

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 1997

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
33	107	195	120	378	113
47	92	209	121	379	208
61	2	231	7	380	93
67	85	244	42	395	144
70	80	245	6	398	9
71	46	246	23	399	43
74	138	256	160	409	132
77	195	257	219	415	217
78	186	266	159	424	167
79	193	269	214	427	84
80	192	278	91	430	226
81	182	279	213	454	48
82	199	280	63	455	147
83	172	284	56	458	102
84	181	291	218	464	4
85	179	292	77	470	135
86	183	293	68	503	216
87	188	299	162	511	154
88	184	311	57	513	207
89	175	317	166	520	133
90	174	318	103	524	153
91	194	319	24	532	82
92	201	324	212	534	224
93	62	331	66	535	112
100	99	332	126	536	20
105	150	334	65	537	125
111	64	335	67	539	25
121	131	339	98	540	26
125	1	349	163	543	22
134	75	350	203	544	157
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142	209	360	127	548	142
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House Bills = 4 Digits

Senate Bills = 2, 3 Digits

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7	231	45	151	82	532
8	565	46	71	83	2510
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12	2564	50	368	87	2786
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15	2910	53	2680	90	2686
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First Extraordinary Session, 1997

House Bills = 3 Digits

Senate Bills = 4 Digits

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DISPOSITION OF BILLS ENACTED

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Second Extraordinary Session, 1996**HOUSE BILLS**

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